

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 UNITED STATES OF AMERICA,
4 v.

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

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

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

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

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

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

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

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

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

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

20 Defendants.

21 -----x

S5 93 Cr. 181 (MBM)

September 1, 1995
10:00 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

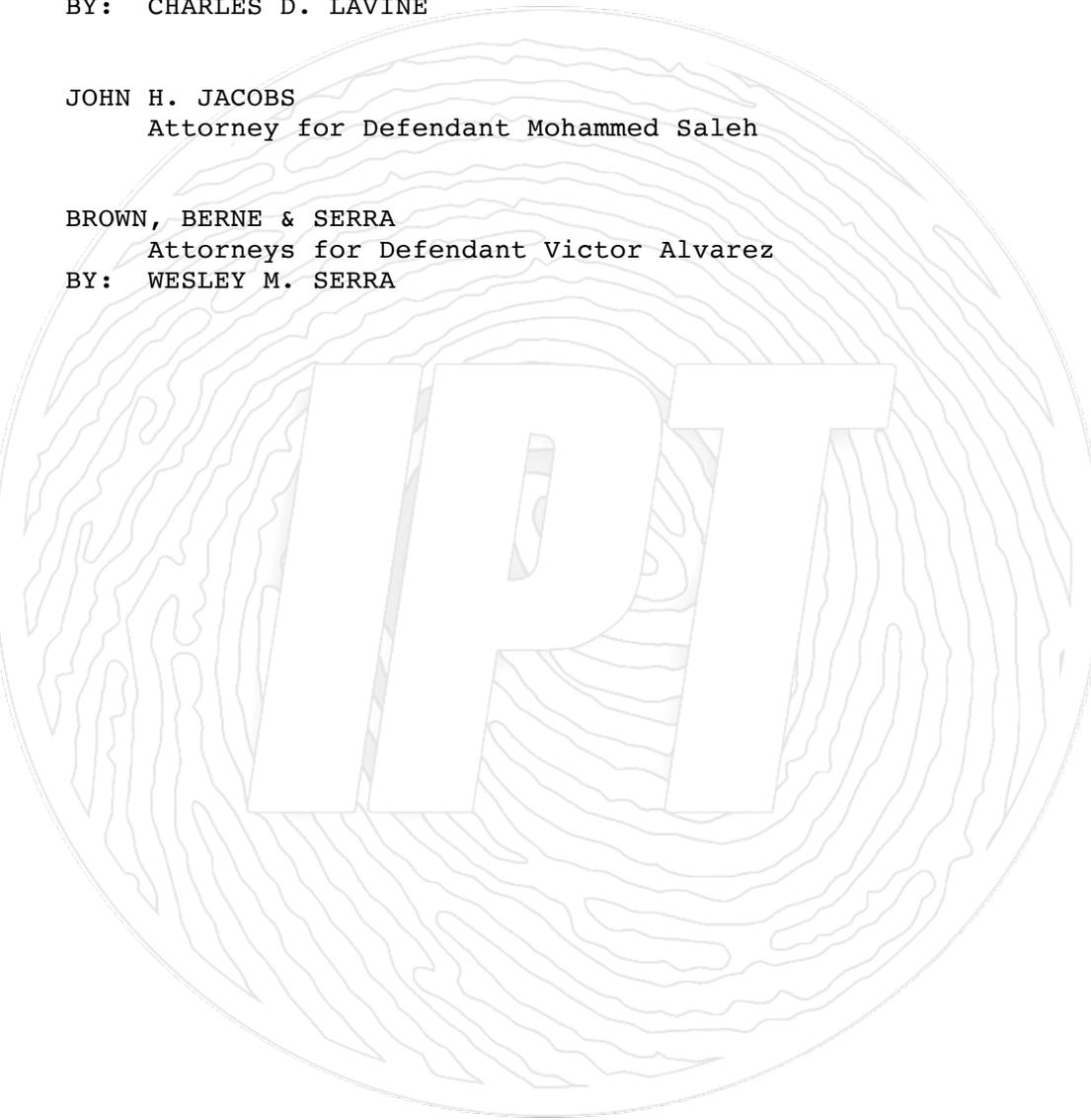
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Mr. Patel, first of all, you ran into
4 Mr. Braverman, I think, on the way in this morning.

5 MR. PATEL: I did take advantage of that.

6 THE COURT: And said you had a bone to pick with
7 respect to the references to Rabbi Meir Kahane. I will tell
8 you that your application in that regard is granted. It is
9 inadvertent and there will be no references to that.

10 MR. PATEL: Can we have that ruling with respect
11 to all our applications?

12 THE COURT: If they are that well taken and that
13 insignificant, sure.

14 More seriously, did you get Mr. McCarthy's
15 letter?

16 MR. PATEL: Your Honor, I did have a chance to
17 skim Mr. McCarthy's letter.

18 MR. RICCO: Mr. Jacobs and Ms. Amsterdam are not
19 present.

20 MR. LAVINE: They said we could start without
21 them, as they left.

22 THE COURT: I am not going near that.

23 MR. PATEL: Restraint is being exercised all over
24 the room.

25 To answer your Honor's question, I did have a

1 chance to skim over Mr. McCarthy's letter. My only response
2 to it at this point would be basically his bottom line that
3 there was some kind of waiver. I disagree with that. When
4 we met at the side bar, your Honor made an emphatic
5 ruling -- I think that is a fair characterization.

6 THE COURT: I want to explain a little bit why it
7 was as emphatic as it was, but let's go on.

8 MR. PATEL: Your Honor, you made a ruling and one
9 of the last things you said was that we will discuss this
10 later. I took that as a clue to anything else would be
11 discussed later, and I complied, I thought, with your
12 Honor's order.

13 THE COURT: You complied with it. However, I
14 want to point out a couple things. First of all, the reason
15 I was as vehement as I was was that your cross, whether you
16 intended it or not, didn't go to either what you explained
17 at the side bar or what you explained later on, or at least
18 it apparently didn't go to that. It went specifically to
19 two features of what you explained later on, both of them
20 having to do with where he lived. You asked him isn't it a
21 fact that you have a house up in Columbia County and isn't
22 it a fact that you live on, I think you said the Upper East
23 Side although later on you said the Upper West Side.

24 MR. PATEL: I misspoke if I said the Upper West
25 Side.

1 THE COURT: Both of those, first off, didn't give
2 me a clue as to where it was going, but secondly sounded, in
3 a case like this, frankly, a little bit ominous.

4 MR. PATEL: I am sorry, your Honor.

5 THE COURT: A little bit ominous.

6 MR. PATEL: I don't understand.

7 THE COURT: "We know where you live."

8 MR. PATEL: Oh. Judge, I made it a 10-block
9 radius. I only gave it a two-mile range.

10 THE COURT: That is not the way it came across.

11 MR. PATEL: I was trying to be as vague about
12 where he lived as humanly possible.

13 THE COURT: Also, you didn't ask him, for
14 example, have you ever used any other name.

15 MR. PATEL: Judge, I thought that had been cut
16 off.

17 THE COURT: Nor did you ever ask to recall him.

18 MR. PATEL: Your Honor had instructed me that I
19 was barred from that.

20 THE COURT: Did you listen to his testimony? Did
21 you listen to his direct testimony?

22 MR. PATEL: Yes, I did.

23 THE COURT: Did you hear the way he testified?

24 MR. PATEL: Yes, I did.

25 THE COURT: The reference to the gait --

1 MR. PATEL: The Hopper-esque light --

2 THE COURT: Right. Do you think you were talking
3 to your average bartender?

4 MR. PATEL: Not of the East 34th Street variety,
5 your Honor, but possibly of the Upper East Side, "wanna be"
6 actor type, which is another area that I would have gone
7 into. That also didn't get brought out but that is what he
8 is, he is a "wanna be" theater person.

9 I think he is also a Harvard graduate, your
10 Honor.

11 THE COURT: This also goes to his credibility.

12 MR. PATEL: It goes more to his vocabulary than
13 to his credibility.

14 THE COURT: Do you really want to explore that?

15 MR. PATEL: Do I want to now?

16 THE COURT: Yes.

17 MR. PATEL: Is your Honor giving me an
18 opportunity to reopen this case?

19 THE COURT: Yes, but understand this. You think
20 you are digging a gold mine, I think you are digging a
21 grave, and if it turns out that I am right and you are
22 wrong, I am going to strike everything in his cross having
23 to do with what I think are irrelevant subjects. But I am
24 going to give you the chance.

25 MR. PATEL: Your Honor, I understand your Honor's

1 invitation, but at this point in time, what may have been
2 effective last Wednesday will not be effective next Tuesday
3 when this jury has been told halleluljah, after eight months
4 it is over.

5 THE COURT: Come on. They can be told there was
6 a misunderstanding about the scope of this witness' cross,
7 he will be asked a few additional questions and you will
8 then hear summations. If this were a two-buy narcotics case
9 there would be no problem. Why don't we just treat it as a
10 two-buy narcotics case.

11 MR. PATEL: Because it's not a two-buy narcotics
12 case.

13 THE COURT: You say if it's effective. I mean,
14 let's substitute something else. If it would have been
15 defective on Wednesday, it will be defective on Tuesday.
16 The timing of that seems to me counts for very little.

17 MR. PATEL: I disagree with that. May I have a
18 moment?

19 THE COURT: Sure.

20 (Pause)

21 MR. PATEL: Your Honor, after consulting with
22 counsel, the U.S. Open is going on right now in Forest Hills
23 And I say that just because I want to quote Mr. Agassi, who
24 says timing is everything in some commercials that he has
25 been paid a lot of money to say that line. But it is

1 everything, and I think the potential for what we might get
2 from reopening his cross as opposed to the potential of what
3 the jury might feel about reopening the case --

4 THE COURT: We are talking about 10 minutes.

5 MR. PATEL: Judge --

6 THE COURT: I am not trying to sell you on the
7 idea because I will end this the way I started it. I think
8 it is a lousy idea.

9 MR. PATEL: You are offering me the opportunity
10 to jump off a cliff.

11 THE COURT: That is right.

12 MR. PATEL: And what I am trying to do is
13 politely say if I jumped off a cliff last week that's one
14 thing, but I don't want to jump off a cliff next week.

15 THE COURT: You are the person. If anybody goes
16 over the cliff it is going to be you, not me. I understand
17 that.

18 MR. PATEL: And I am not looking for a rope to
19 hang myself. I am just saying that your Honor precluded me
20 from doing it last week. To comply with your Honor's order
21 to do it next week, I don't think is effective. I am making
22 a strategic decision.

23 THE COURT: Understand that the "it" I precluded
24 you from is a totally dry well. The fact that somebody may
25 have money and tend bar -- you have to be asking the jury to

1 make two leaps, assuming that I didn't strike it, which I
2 probably would.

3 MR. PATEL: Two leaps is easy.

4 THE COURT: In this case maybe. One is that
5 whatever wealth he has he came by dishonestly, and secondly,
6 not only that it is unlawful but it is an unlawfulness that
7 has to do with a credibility issue. That's two leaps. I
8 wouldn't permit them to make that even if the government
9 doesn't do any redirect at all, because there are very good
10 reasons I can think of why somebody of wealth might want to
11 tend bar.

12 MR. PATEL: There is another reason that someone
13 might tend bar. I was just reading --

14 THE COURT: You get to listen to even more
15 outrageous cock and bull stories tending bar than you do as
16 a federal judge. You get to watch more behavior.

17 MR. PATEL: This morning I was reading United
18 States v. Martin Roman, which is a defendant who was
19 convicted of a CCE count, who tended bar. Lots of reasons
20 why people tend bar, Judge.

21 THE COURT: I still think it's a reach, a very
22 long reach and a reach that I wouldn't let the jury make if
23 what you brought out was simply that he had money and tended
24 bar.

25 On to Mr. Lavine. Did you want to tell me

1 anything about that letter?

2 MR. LAVINE: Only, Judge, that I reviewed Mr.
3 McCarthy's portion of the letter dealing with my client's
4 situation and I think that it may very well be a matter of
5 perception, but there is one thing that I did want to clear
6 up before going into that.

7 I never suggested, intimated or even thought that
8 Mr. McCarthy had a different Q32 or 381 than the one he had
9 given to me on the morning my client testified. My
10 impression was that as these documents were prepared in the
11 long months, many months before trial, that we had a
12 finished product. Yes, V5V8 and, I have forgotten which
13 exhibit that eventually became -- did undergo a vetting
14 process but the only two conversations, communications with
15 which I was concerned were Q32 and V5V8. V5V8 worked out on
16 an accommodation level and on Q32 I had presented the
17 government back in, I think, November '94, with my
18 objections to Q32. Q32 was given to me on the morning my
19 client testified. I assumed that all along the reason I had
20 been given that and we had exchanged drafts was because of
21 the requirements of Rule 16 and I thought what we had that
22 morning was a finished product. From where Mr. McCarthy
23 sat -- and I believe him -- I think he viewed it
24 differently.

25 Beyond that, I can't add anything to his letter.

1 I don't think it expands that much on the predicament that I
2 faced but I do want it to be noted that I never thought that
3 he was purposefully sandbagging me. I thought that this was
4 an opportunity which presented itself to the government, to
5 go back and redevelop and rereview a tape and a
6 conversation, and I don't fault him personally for doing
7 that. But it was my belief that under Rule 16 we were
8 finished business on Q32.

9 THE COURT: Mr. Jacobs. Mr. Jacobs. Mr. Jacobs.

10 MR. JACOBS: I am sorry.

11 THE COURT: I wondered if you had seen
12 Mr. McCarthy's letter.

13 MR. JACOBS: I did.

14 THE COURT: Is there anything else that you want
15 to tell me with respect to that?

16 MR. JACOBS: I am not sure if the government has
17 an application with respect to it.

18 THE COURT: It has no application. It doesn't
19 make an application. It simply explains a number of things
20 that you gave your side of.

21 MR. JACOBS: I am not interested in arguing back
22 and forth between the government and myself. An examination
23 was done, they did make some conclusions. I don't want to
24 argue it back and forth.

25 THE COURT: OK.

1 MR. JACOBS: I do say, though, if the government
2 is going to make an attack on Mr. Ginsberg's credibility, I
3 think this should have been disclosed. I think it was
4 disclosed informally. I don't think Mr. McCarthy did
5 anything wrong.

6 So be it. The record is complete. The
7 government conducted their examination without, I thought,
8 impeaching Mr. Ginsberg's credibility. I am perfectly
9 willing to rest on the record.

10 THE COURT: Can we discuss the charge? Do you
11 have any particular way that you want to do this?

12 MR. STAVIS: Yes, your Honor. Many of us met
13 this morning. We came to a consensus that I would move
14 through the charge with your Honor and see how we are doing,
15 and there may be some additional issues that other people
16 want to raise.

17 THE COURT: Mr. Jacobs had called my chambers to
18 tell me that he saw an inconsistency between an instruction
19 that I gave during the trial and an instruction in here with
20 respect to transcripts and tapes, and which is the evidence
21 in which situation, i.e., the English tapes and the Arabic
22 tapes, and we can get to that when we get to it. I think I
23 know what is on his mind. I don't think there is an
24 inconsistency but we can talk about that when we get down to
25 there.

1 MR. McCARTHY: Your Honor, can I interrupt for a
2 moment?

3 THE COURT: Sure.

4 MR. McCARTHY: I just wondered -- John, could you
5 give me a page cite so I can get that while we are talking
6 about the other parts of the charge?

7 MR. JACOBS: The charge that I objected to was
8 188, last paragraph, and I referred the court to --

9 THE COURT: Page 7948 and page 7949 of the
10 record.

11 MR. McCARTHY: Thank you.

12 MR. STAVIS: Your Honor, I assume that the
13 citations in your proposed charge are for our benefit and
14 not to be submitted to the jury.

15 THE COURT: That is right. That is the case
16 citations. You want me to take out the little notations
17 that say Sand or JMW or MBM also?

18 MR. STAVIS: Yes, your Honor.

19 THE COURT: Also, the line numbering feature will
20 be taken out when the charge goes to the jury. That was for
21 your convenience.

22 MR. STAVIS: On behalf of the defendants, I had
23 requested a charge, and that was my request number 2, on the
24 role of religious beliefs. I believe something of the sort
25 was included in your Honor's preliminary instruction on

1 seditious conspiracy, and it was absent from the charge, the
2 proposed charge.

3 THE COURT: I will give that, not necessarily in
4 the language that you requested, but you referenced certain
5 transcript cites, and I will go back and find those
6 transcript cites, and I will give one. Do you have a
7 suggestion about the location of that charge? Because I
8 would suggest that there is a place is within the
9 instructions on Count 1 where I talk about political or
10 other opinions of the defendants that were received, and it
11 might follow that.

12 MR. STAVIS: I believe that is how it was done in
13 your preliminary instruction. That would be satisfactory.

14 THE COURT: Good.

15 MR. STAVIS: With regard to seditious conspiracy,
16 your Honor, I would like to place my objections to the
17 charge as given. I know that we have had an opportunity in
18 several different contexts to discuss seditious conspiracy,
19 but if your Honor would permit me briefly to note our
20 objections.

21 THE COURT: Sure.

22 MR. STAVIS: Standing here, I speak on behalf of
23 all the defense attorneys in the case, your Honor.

24 On page 21 of your Honor's charge, there is an
25 issue with regard to the seditious conspiracy charge that is

1 going to also reflect on the verdict sheet, your Honor. The
2 law, as your Honor has correctly stated it in the seditious
3 conspiracy charge, is that there must be unanimity with
4 regard to the prong in the statute that the jury is finding.
5 There are two, originally three prongs alleged now two
6 prongs are alleged, the "levy war" prong of the statute and
7 the "oppose by force the authority of the United States"
8 prong of the statute.

9 THE COURT: Right. I want to ask the government
10 something about that, but go ahead.

11 MR. STAVIS: On page 21 is where the issue first
12 arises and I think the jury should be instructed that they
13 must reach a unanimous verdict with regard to a prong or
14 both prongs, and I believe that that should also be
15 reflected, but it is not, in the proposed verdict sheet.

16 THE COURT: They are told that in the charge.

17 MR. STAVIS: They are told it subsequently in the
18 charge, your Honor. For example, if we take page 1 of your
19 Honor's verdict sheet, B1, to wage a war of urban terrorism
20 against the United States, there is nothing in there that
21 would indicate that they must be unanimous.

22 THE COURT: No, no, no. They are told it
23 specifically in the charge, that they have to do that. They
24 are also told that the verdict form is not part of the
25 charge. I am not giving instructions on unanimity in the

1 verdict form.

2 MR. STAVIS: Yes. The need for unanimity is not
3 on page 21 where the issue first arises.

4 THE COURT: I understand your point. That is
5 denied.

6 MR. McCARTHY: Judge, do you want to ask me
7 something?

8 THE COURT: Yes, I do, and we ought to get it out
9 because it might preclude further discussion of prongs. How
10 do you distinguish "oppose by force the authority of the
11 United States" from "levy a war of urban terrorism against
12 the United States," in this case?

13 MR. McCARTHY: Yes, your Honor. I think that if
14 the jury finds -- whether or not a war as as that term is
15 commonly understood and is also explained to them in the
16 charge, whether or not there was a war is a fact question
17 for the jury. "Opposing by force the authority of the
18 United States" is a somewhat lesser category of action
19 against the United States than war is.

20 I think the statute, if I may, your Honor, is
21 best understood in terms of gradations of lessening
22 seriousness as you go from the beginning of the statute to
23 the end in terms of --

24 THE COURT: I don't.

25 MR. McCARTHY: Pardon me.

1 THE COURT: I say, I don't.

2 MR. McCARTHY: Can I explain why I think so?

3 THE COURT: It talks about varieties of conduct,
4 but go ahead.

5 MR. McCARTHY: I think that as you travel through
6 2384, the first prong of the statute is to overthrow the
7 government or destroy it by force. Then there is levying
8 war. Then there is opposing by force the authority of.
9 Then there is obstructing the execution of the laws. And
10 finally there is seizing territory.

11 I think it is a rational interpretation of the
12 statute that the way it was drafted, the drafters intended
13 to lay out the various conduct in terms of how they
14 perceived the seriousness of the different applications of
15 force, notwithstanding the fact that any one of them is
16 adequate for purposes of conviction under the statute.

17 THE COURT: Other than your own reading of the
18 statute, do you have any authority for that as the structure
19 of the statute?

20 MR. McCARTHY: I don't.

21 THE COURT: Because I don't see it that way. I
22 think it refers to discrete kinds of conduct, and what I am
23 raising a question about -- I don't know what the answer is
24 necessarily -- is whether the defendants in this case were
25 opposing -- on your theory of the evidence -- by force the

1 authority of the United States to conduct its foreign
2 relations and do the things that it did that they objected
3 to, or whether they were simply opposing the results of the
4 exercise of that authority. I think that the statute that
5 deals with opposing the authority of the United States may
6 very well be read to be aimed at opposing the authority of
7 the United States, for example, to govern one of its
8 territories, such as, say, Puerto Rico, where there were
9 uprisings against the authority of the United States, not
10 seeking to overthrow the United States but just opposing its
11 authority in that island.

12 MR. McCARTHY: I must say, just responding to
13 that, I understand intellectually the difference between
14 opposing the government in its execution of some
15 governmental function that it is entitled to carry out and
16 opposing the government because of the result of its
17 execution. I don't think necessarily that that is a
18 distinction that makes a difference in terms of --

19 THE COURT: It may not, because part of the
20 government's authority to conduct its affairs, including its
21 foreign relations, is the authority, in essence, to conduct
22 them as it pleases, or as it sees the the interests of the
23 United States, without somebody telling the government if
24 you do it that way we will blow up buildings and kill
25 people.

1 MR. McCARTHY: Can I try to make an example,
2 grounded, I hope, in the evidence in the case?

3 THE COURT: Sure.

4 MR. McCARTHY: I think it would be rational for a
5 fact finder on the facts of this case, if we were dealing,
6 say, with the proposal to bomb 26 Federal Plaza, a fact
7 finder could find that that in his mind did not amount to a
8 war on the United States and still find that it amounted to
9 opposing the authority of the United States.

10 THE COURT: That is true. That's true.

11 MR. McCARTHY: And the guilt would lie --

12 THE COURT: When I say that's true, I am saying
13 that appeals at this point to my view of the statute.

14 Mr. Stavis, did you want to be heard?

15 MR. STAVIS: Yes. There is some authority on the
16 question, your Honor. In Baldwin v. Franks, 120 U.S. 678,
17 the United States Supreme Court construed --

18 THE COURT: I read Baldwin.

19 MR. STAVIS: -- the "oppose by force the
20 authority" prong of the statute and said, and I quote, on
21 page 663: "This evidently implies force against the
22 government as a government. To constitute an offense under
23 the first clause, the authority of the government must be
24 opposed, that is to say, force must be brought to resist
25 some positive assertion of the authority by the government.

1 Mere violation of law is not enough."

2 I think that Mr. McCarthy's Federal Plaza example
3 is not apposite here, because --

4 THE COURT: I do, because there is discussion
5 specifically of the motive for doing it here. But go ahead.
6 You think it is not apposite because?

7 MR. STAVIS: There is no assertion of the
8 authority of the United States government. There is no
9 positive assertion in the terms of Baldwin v. Franks. In
10 terms of having a resultant impact on United States foreign
11 policy as I understand Mr. McCarthy's theory, the statute
12 has been construed in Baldwin v. Franks as requiring a
13 direct impact, not an indirect impact. In the Baldwin case,
14 the United States foreign policy was affected by the actions
15 of the defendants in running the Chinese nationals out of
16 the town in California, and that is why the seditious
17 conspiracy case was brought against them. It impacted the
18 foreign policy, but not in a direct way.

19 THE COURT: I understand your point and I don't
20 read Baldwin the way you do. Let's move on.

21 MR. STAVIS: Your Honor has used the formulation
22 on page 22, opposition to the United States functioning
23 through its government, and I had previously referred your
24 Honor to that section of the Baldwin v. Franks case which
25 refers to the government as a government, and so I object to

1 this formulation.

2 THE COURT: I think that cases generally, and I
3 think the Second Circuit has been explicit about this, that
4 cases generally should not be read to contain jury
5 instruction formulations unless they say they contain jury
6 instruction formulations, and that it is dangerous generally
7 to charge in the language of a case, be it the Supreme
8 Court, the Second Circuit or anywhere else.

9 MR. STAVIS: We are dealing with a very rarely
10 encountered statute, your Honor.

11 THE COURT: I know that.

12 MR. STAVIS: In the middle paragraph on page 22,
13 the last sentence, that the prosecution may prove intent,
14 such intent by showing that the conspirators intended to
15 inflict such widespread damage on civilian targets and
16 persons that the act could be perceived as an attack on the
17 United States functioning through its government. I
18 emphasize the word perceive and I ask the question perceived
19 by whom.

20 THE COURT: What do you propose?

21 MR. STAVIS: I think that the sentence is an
22 incorrect statement of the law.

23 THE COURT: I repeat my question. What do you
24 propose?

25 MR. STAVIS: I propose to eliminate the entire

1 sentence, your Honor.

2 THE COURT: And give them no instruction on that
3 issue?

4 MR. STAVIS: Yes. It is my objection that
5 civilian targets and widespread damage on civilian
6 targets --

7 THE COURT: I know. You told me that earlier and
8 I rejected it.

9 MR. STAVIS: Please allow me to complete my
10 sentence, your Honor.

11 -- that widespread damage on civilian targets is
12 not "levy war" as construed in the seditious conspiracy 18
13 U.S.C. 2384.

14 THE COURT: We had this discussion before. I
15 still think an atomic bomb on Manhattan is an act of war.
16 You don't, sell it to the circuit. I will change that
17 language "perceived" to "reasonably could be considered," if
18 you wish. You wish me to eliminate. I am not going to
19 eliminate it, I am going to change it.

20 Ms. Stewart.

21 MS. STEWART: I would just make the suggestion
22 and this was not raised at our previous conference and I
23 have no idea whether my cocounsel will go along with this.
24 It seems to me we are asking the jury in proceeding in an
25 orderly fashion to, on page 17, make the decision about the

1 existence of the agreement without first defining these very
2 difficult terms for them, and it seems to me that logically
3 we should put in the definitions of "intent to levy war" or
4 "forcibly to oppose the United States" before we talk to
5 them about whether or not people reached an agreement. I
6 don't see how they can decide whether there was an agreement
7 until they decide what the agreement was about.

8 THE COURT: Miss Stewart, you are suggesting --
9 forgive me. I am not saying that you are this, but you are
10 suggesting that they are. You are suggesting a
11 simple-minded approach to the application of these
12 principles. I have to explain something first. We have a
13 chicken or egg first. What I explain first is the nature of
14 conspiratorial agreement and then the goals of this
15 conspiratorial agreement. I think it is unreasonable to
16 believe that they are going to stop on page 17 and decide
17 whether this agreement existed before knowing what the
18 nature of the agreement is, particularly when they are not
19 going to decide anything until after they hear the entire
20 charge.

21 MS. STEWART: But I just say it seems to me that
22 the language is being used repeatedly in terms of the
23 agreement. It just seems to me it makes just greater sense
24 that they should know what the definition is before they get
25 to the nature of the agreement.

1 THE COURT: I don't, in part because this is the
2 structure of a conspiracy charge in every case in which I
3 have charged on conspiracy. I do it the same way, whether
4 it is a narcotics conspiracy --

5 MS. STEWART: I think seditious conspiracy is
6 different because it is more difficult to understand.

7 THE COURT: I understand your point. I am going
8 to retain the order that I have.

9 (Continued on next page)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 MR. STAVIS: Your Honor, the language "levying
2 war against them," which is contained in both Section 2384
3 and the constitutional definition contained in Article III,
4 Section 3, of the Constitution, is treason. And I think the
5 seditious conspiracy statute is one addressed to treasonous
6 acts by noncitizens.

7 THE COURT: I have your submission. I have your
8 submission on that. Do you incorporate your submission on
9 that? Is that what you want? Are you telling me what is in
10 your submission now?

11 MR. STAVIS: Yes. There is a discrete point that
12 I wish to make, your Honor. What the charge does, what your
13 Honor's proposed instructions to the jury on Count One does,
14 is, it says that any act of terrorism is an act of treason.
15 And I do not believe that this statute was ever intended to
16 apply. One of the issues that I raise with regard to
17 Article III, Section 3, the treason clause of the
18 Constitution, is the overt act requirement. And I know that
19 your Honor has rejected --

20 THE COURT: Mr. Stavis, I implore you not to
21 raise and spend a lot of time on issues that are in your
22 submission which you have preserved by making your
23 submission.

24 MR. STAVIS: I understand that, your Honor, but I
25 just would like to now illuminate for the Court how that

1 overt act requirement affects the entire instruction,
2 because what your Honor has done, on page 57, with regard to
3 the other conspiracies -- and I think page 98 with regard to
4 other conspiracies alleged -- is it refers back -- excuse
5 me, 78 and 57 -- there are several different conspiracies
6 alleged in the same indictment.

7 THE COURT: There are three.

8 MR. STAVIS: When your Honor instructs the jury
9 on the overt act requirement with those conspiracies, it
10 refers back to Count One, seditious conspiracy, and the
11 overt acts contained in Count One. There are 106 of them.

12 So not only is it required by the Constitution,
13 but the internal consistency of the charge requires that
14 overt acts be charged --

15 THE COURT: What you are telling me is that the
16 indictment has the effect of amending the requirements of
17 the statute, and it can't.

18 MR. STAVIS: That is not what I am telling you,
19 your Honor.

20 THE COURT: Sure it is, because you are telling
21 me that Count One requires proof of overt acts. Count One
22 lists overt acts that the government says were committed in
23 aid of the conspiracy. That statute does not require the
24 proof of overt acts, and I am not charging overt acts as a
25 requirement.

1 MR. STAVIS: My argument was, it is incredibly
2 confusing for a jury, in determining overt acts on other
3 conspiracies contained in the same indictment, to refer back
4 to overt acts listed in Count One and then not have overt
5 acts to be found under Count One.

6 THE COURT: It simply is a reference to where
7 they can find the overt acts. They are in fact charged in
8 the later counts through an incorporation by reference. I
9 think they are up to it.

10 MR. STAVIS: On page 24, your Honor, the first
11 full paragraph, "You should consider the acts, if any, that
12 were planned, and how severe the consequences of each
13 planned act were or might have been."

14 THE COURT: Lines 6 and 7.

15 MR. STAVIS: It is the "severe consequences." I
16 don't believe that sedition should turn on how severe the
17 consequences are of the actions involved.

18 THE COURT: Do you want me to tell them:
19 Regardless of how severe?

20 MR. STAVIS: Excuse me, your Honor?

21 THE COURT: Do you want me to tell them
22 regardless of how severe or trivial?

23 MR. STAVIS: No, I don't think that the issue
24 should be raised in a seditious conspiracy charge, your
25 Honor.

1 THE COURT: The question is that something is of
2 such substantial character as to warrant being called, in
3 essence, a war. That is the reason for "severity."

4 MR. STAVIS: That goes back to the fact that I
5 disagree with your Honor's formulation.

6 THE COURT: All right. Go ahead.

7 MR. STAVIS: I should say, I object to your
8 Honor's formulation, not that I disagree -- although I do
9 disagree as well, your Honor.

10 MR. BERNSTEIN: Two problems.

11 MR. PATEL: Your Honor, can I just jump in?

12 THE COURT: Sure.

13 MR. PATEL: On page 23, line 4, I believe it is
14 the "United States," not "Untied States."

15 THE COURT: Thank you very much. There is
16 another place in this charge where the word should be "rest"
17 and it says "reset." I will find it. There are a number of
18 those.

19 MR. McCARTHY: If we say the government will
20 reset, I think the jury will throw something at us.

21 THE COURT: Go ahead.

22 MR. STAVIS: On page 34, your Honor, your Honor
23 has proposed an instruction on effect of arrest. The first
24 two sentences, I suppose, state properly what the law is --
25 "the arrest of a conspirator does not necessarily end that

1 conspirator's participation." What I object to thereafter
2 is the marshaling of the evidence with regard specifically
3 to Mr. Nosair. I didn't request this instruction,
4 obviously. If the jury needs to be instructed, they should
5 be instructed on the legal principle without the marshaling
6 of the evidence, because only the government's evidence has
7 been marshaled and not our evidence concerning the Attica
8 facility and the tape recording.

9 THE COURT: That is a good point.

10 MR. McCARTHY: I am sorry, I lost the place.

11 THE COURT: Page 34.

12 What I will do is eliminate the sentence
13 beginning "In this case," on line 7 of page 34, down to
14 "while the conspiracy continued," on line 14. I will also
15 eliminate the word "moreover," and add balancing language
16 that says: "If you find that he did not so participate,
17 then you may not find that he was a member of the conspiracy
18 at the time that he was in custody," or words to that
19 effect.

20 MR. STAVIS: The next issue --

21 MR. McCARTHY: Can I just ask a question about
22 the order in which we are proceeding? Do you want
23 Mr. Stavis to move all the way through and me to go back, or
24 me to jump in if I have something? I think it would be
25 better if we grappled with the things as they came up.

1 THE COURT: Fine. Do you have something you want
2 to tell me?

3 MR. McCARTHY: I do. On page 31 of the charge,
4 line --

5 THE COURT: I should say, if somebody might be
6 worried, that nobody is waiving. If after we have passed
7 the page, somehow it occurs to you that you should have said
8 something about that page, the mere fact that we are on a
9 later page will not result in a waiver. Ordinarily, I would
10 not even point that out, but people here have reserved on
11 all sorts of things, and I don't want to frighten anybody.

12 MR. McCARTHY: My suggestion, your Honor, deals
13 with the final clause of the full first paragraph on that
14 page, which deals with "or until the defendant has withdrawn
15 from the conspiracy." Our position is this: I don't think
16 there is a proper withdrawal defense in this case.

17 THE COURT: Me neither.

18 MR. McCARTHY: Meaning that if somebody is going
19 to argue withdrawal and be permitted to argue withdrawal,
20 then I would ask the Court to instruct the jury on what
21 withdrawal means.

22 THE COURT: No, I am not going to get into
23 withdrawal here because there is no withdrawal. That would
24 have effect if we had a Pinkerton charge in this case.
25 There is no Pinkerton charge. There is no issue about a

1 Pinkerton charge here, I don't think. You can't withdraw
2 from an inchoate offense.

3 MR. McCARTHY: I understand that.

4 THE COURT: I will take that out, is what I am
5 saying.

6 MR. McCARTHY: All right.

7 MR. BERNSTEIN: I am sorry, what is going out,
8 Judge?

9 THE COURT: What is going out is, on page 31,
10 line 6, "or until the defendant has withdrawn from the
11 conspiracy."

12 MR. BERNSTEIN: That last piece.

13 THE COURT: Right. We were up to, I think, 34.

14 MR. STAVIS: Unless Mr. McCarthy had some issue.

15 MR. McCARTHY: I didn't.

16 THE COURT: That was his issue.

17 MR. STAVIS: On page 38, "evidence of defendants'
18 statements of opinion." I know that there was much evidence
19 offered against Dr. Abdel Rahman on that. There was also
20 some evidence offered from Mr. Haggag and Mr. Salem
21 concerning Mr. Nosair's statements of opinion concerning
22 United States foreign policy.

23 THE COURT: There was also some independent
24 evidence on that.

25 MR. STAVIS: Excuse me, your Honor?

1 THE COURT: I say there was also some independent
2 evidence of that. Your own client's recorded statements.
3 Tape.

4 MR. STAVIS: Not referring to United States
5 foreign policy, that I am aware of.

6 THE COURT: Tapes. I believe they do.

7 MR. McCARTHY: They do.

8 MR. STAVIS: They refer to his views of Israel
9 and Palestine but not United States policy toward Israel and
10 Palestine. In any event, it is statements of opinion. I
11 particularly object to your Honor's formulation that
12 "opinions expressed at one time are evidence that at some
13 other time he took actions in accordance with those
14 opinions."

15 THE COURT: They may be considered evidence; they
16 may not. That is up to the jurors. That objection is
17 overruled.

18 MR. McCARTHY: Can we go back to page 37?

19 THE COURT: Yes.

20 MR. McCARTHY: The last sentence, which I think
21 begins on line 6. I think what your Honor intended to say,
22 if I am correct, is: "If the acts were done or the
23 statements made."

24 THE COURT: You are right.

25 MR. BERNSTEIN: What line, Mr. McCarthy?

1 MR. McCARTHY: Line 6, page 37.

2 THE COURT: After the word "or" I omitted the
3 phrase "the statements." Ms. Stewart?

4 MS. STEWART: Judge, to use your formulation of
5 good news and bad news, when I read the first paragraph I
6 put an exclamation point of joy next to it. But when I got
7 to the third paragraph on 38, I was dismayed. It really
8 does not seem to me that this is a fair statement of the
9 law. It seems to me it is particularly directed, and indeed
10 it says it is directed, to Dr. Abdel Rahman. And I don't
11 think that there is any place in the law that says that the
12 defendant's own state of mind as to who he is may be
13 considered by the jury. It is like saying, if I think I am
14 Genghis Khan, then I conquered Western Europe.

15 THE COURT: No, wait a second, I didn't mean to
16 say that, and if that is what it says here, I am going to
17 change it. What I mean is: If you think you are Genghis
18 Khan, and you have another group of people who share your
19 belief that you are Genghis Khan, and with that shared
20 belief you then tell them to go out and conquer Western
21 Europe, then, assuming that the conquering of Western Europe
22 is a crime, you have in essence urged them to commit a
23 crime, and that is evidence of an agreement.

24 This really is intended to be an abstract
25 formulation of something -- and I hope you will forgive me

1 for the reference -- that Mr. Jacobs said in his opening or
2 said at some point during the case, which was that, in
3 essence, the government is charging that Dr. Abdel Rahman
4 was the godfather of this operation. I am not going to use
5 that term even as a metaphor. That was what I was trying to
6 evoke. If I didn't say that, then I ought to say it better.
7 But I think that is the law: that just as someone who
8 himself does not pull the trigger or touch the drugs can be
9 convicted of leading a conspiracy, if indeed he is a leader
10 of the conspiracy, so too someone who does not light the
11 fuse can be convicted in this case if indeed he is the
12 leader of the group that was intending to light the fuse.

13 MS. STEWART: Judge, it is just troublesome to
14 me, of course, because of the First Amendment impact of
15 this. I really feel that, for example, as to a person on a
16 radio talk show, we all express opinions, I think, with the
17 hope that someone is going to say, hey, that's right, let's
18 act on that. I think it is such an abstract idea that if
19 someone who has built for himself a certain reputation
20 expresses an opinion, he may hope that other people are
21 going to act. It just seems to me it is not concrete enough
22 for a charge in a criminal case where we expect the jury to
23 act on a very limited -- how can I say -- scope with very
24 precise meanings to the words. It's too iffy. If he knew
25 and he thought and knowing that he expressed his opinion

1 because he was aware, depending on what he said --

2 THE COURT: That they would.

3 MR. McCARTHY: And the premise is whether he was
4 an authority figure to others, not whether he thought he
5 was.

6 THE COURT: Yes. I would be happy to enhance the
7 force of the part of this that says that he has to in fact
8 be an authority figure, not simply consider himself. I
9 mean, if he thinks he is Genghis Khan and he is not, then he
10 should be institutionalized.

11 MS. STEWART: I am also thinking more in --

12 THE COURT: I will do this: I am going to
13 enhance the force of the language that says that he has to
14 indeed be regarded by them as an authority figure and know
15 it. It has to be two things: they in fact have to regard
16 him as an authority figure, that is, there has to be a
17 finding that they do, and he has to know it.

18 MS. STEWART: I just would posit to you, Judge,
19 that in this particular case he may have thought he was an
20 authority figure and certainly in CM-10 when Salem consults
21 him he does give opinions in that particular CM, which I
22 have no doubt the government will talk long and hard about,
23 but actually --

24 THE COURT: I don't know how long. They may talk
25 hard about it.

1 MS. STEWART: He knew that his approval was
2 necessary, but yet he was talking to an informant who really
3 didn't care whether he approved or didn't approve, and went
4 on reporting that he had given the approval even when in
5 fact he had not given the approval. So his knowledge of
6 whether his approval was necessary or not doesn't seem to
7 square with the factual findings that the jury must make
8 with regard to agreements.

9 THE COURT: First off, I think what you just made
10 is, in essence, a jury argument. Secondly, I think we are
11 dealing here with more than CM-10, although I understand --

12 MS. STEWART: I agree.

13 THE COURT: -- you will argue the case as
14 essentially CM-10, and you are the lawyer and that is why
15 you do what you do.

16 MS. STEWART: I have a few other things.

17 THE COURT: There are lots of strings to the bow.
18 That is the finding that they have to make, whether they
19 find it about CM-10 or not is up to them. Whether they find
20 it about other things or not is up to them. I just have to
21 give them the rules that they have to use and the conditions
22 that they have to find exist in order to determine that he
23 is in fact in a relationship of authority like the one we
24 have been talking about. As I said before, I am going to
25 beef up the language. If you have or over the next couple

1 of days get an idea about how I should do that, I would like
2 to hear it.

3 MS. STEWART: Does the government have any view
4 on this?

5 MR. McCARTHY: My view is that the charge is
6 correct as is, and I also am sympathetic to the idea that it
7 should be made abundantly clear to the jury that the
8 question is whether he was an authority figure, not whether
9 he thought he was. I am happy also, if your Honor pleases,
10 to submit a proposal tomorrow to either Ms. Stewart or --

11 THE COURT: Why don't you submit a proposal. I
12 can do something like set off by dashes, where it says "may
13 consider whether a defendant was an authority figure to
14 others," dash, "and here I mean in fact was, not simply
15 thought he was." That is inelegant; maybe we can think of a
16 more elegant way to do it. But it is that kind of thing
17 that I have in mind and that I will work on and develop.
18 But if you have a proposal or Mr. McCarthy has a proposal, I
19 would like to see it.

20 MS. STEWART: Just the last sentence in that
21 particular paragraph, Judge: I object to "may provide the
22 basis for a conviction." It may contribute to the weight of
23 the evidence. I don't think it may provide the basis. It
24 sounds like if they find this, then they are really done
25 with Dr. Abdel Rahman. I would object to "provide a basis."

1 THE COURT: If they find beyond a reasonable
2 doubt that he was an authority figure, that they knew he was
3 an authority figure, he knew he was an authority figure,
4 then yes, they can. I say it may, not that it need provide
5 the basis. That is up to them. But yes, that is
6 sufficient, I believe, under the statute. I am sorry,
7 Mr. McCarthy?

8 MS. STEWART: I really respectfully except to
9 that. "Provide the basis" sounds like they need find
10 nothing else, they need find no other co-conspirators, they
11 need find nothing. We know there is no overt act --

12 THE COURT: Wait. It says "under those
13 circumstances."

14 MS. STEWART: "Under those circumstances may
15 provide the basis for a conviction."

16 THE COURT: Those circumstances would include
17 other conspirators. Not every sentence in the charge can
18 contain the entire idea expressed even in that particular
19 charge. I tell them several times here, you can't take any
20 particular section of this out of context. We certainly
21 can't take one sentence out of context, particularly when it
22 refers back to other things. Mr. McCarthy?

23 MR. MCCARTHY: What I was going to say is wrong.
24 I would rather not say it.

25 THE COURT: Go ahead.

1 MS. STEWART: Well, Judge, I would ask to have
2 the entire thing taken out, and I would also ask to have the
3 specific reference to Dr. Abdel Rahman taken out.

4 THE COURT: I hear you. Mr. Stavis?

5 MR. STAVIS: Your Honor, I obviously join in Ms.
6 Stewart's comments, and I had joined Ms. Stewart's
7 application to dismiss the statute as overbroad on First
8 Amendment grounds. Instructions like these do sweep in
9 within them certain protected First Amendment statements.
10 And I will be very brief on this. Getting back to paragraph
11 number 2, it says opinions expressed may be evidence that
12 you took actions in accordance with those opinions. I
13 understand that opinions can be evidence of the requisite
14 state of mind necessary for conviction of a crime, but if
15 you state an opinion generally about United States foreign
16 policy, there is nothing implicit, there is nothing that
17 points toward action in that. It is just an opinion that
18 people express every day around the dinner table or
19 wherever. That is why I took issue and objected to that
20 portion in Section 2 where it says opinions may be
21 considered as actions in accordance with those opinions.

22 THE COURT: I don't say opinions may be
23 considered as actions, Mr. Stavis.

24 MR. STAVIS: Unless I misspoke, I don't believe I
25 said that.

1 THE COURT: You did.

2 MR. STAVIS: I said it may be taken as evidence
3 of actions. Some opinions are not inherently action
4 oriented is my point, your Honor.

5 THE COURT: That's right, they are not, and those
6 opinions would not be evidence of action. Let's take it out
7 of the charged atmosphere of this case. If you are Dr.
8 Timothy Leary and you say, "I think it is OK to do acid, in
9 fact I think it is a great idea, and I think the more people
10 who do it, the better," then, yes, that may be taken as some
11 evidence, in conjunction with other evidence, that in fact
12 on another occasion you distributed acid. It is perfectly
13 legitimate for him to go around expressing those opinions.
14 Once he distributes, that is over the line. But the
15 evidence of his protected opinions can be used at the trial
16 in which he is charged with committing an unprotected act.

17 MR. STAVIS: The distinction there, your Honor,
18 is that the opinion of Dr. Leary is advocacy of an act or an
19 action, as distinguished from a general opinion where no
20 action inherently flows from that opinion.

21 THE COURT: Saying, "I think it is OK to do acid"
22 isn't necessarily expressing or advocating an act. It may
23 simply be expressing an opinion.

24 MS. STEWART: Judge, some more on this. First of
25 all, I would like to join Mr. Stavis in regard to the word

1 "opinion." We wanted to call an Islamic expert to talk
2 about whether, if a sheik gives personal opinions, what an
3 opinion means within the context of a religious leader of
4 Islam. So I don't think that the jury really has the basis
5 to decide which are his opinions and which are not his
6 opinions, and what is Islamic jurisprudence, to quote one of
7 the latter witnesses. For that reason, I think that the
8 paragraph 3 also is flawed.

9 Also, Judge, in the first paragraph, where you
10 talk about expressing opinions about various political and
11 public issues, I would also ask you to include religious
12 there, because most of these opinions are stated within a
13 religious context.

14 THE COURT: Gladly. A good point. I will do it.
15 Yes?

16 MR. STAVIS: What I propose to do is to move on
17 to the specific counts that affect my client.

18 May I have a moment, your Honor?

19 THE COURT: Yes.

20 (Pause)

21 MS. LONDON: Your Honor, I would interrupt
22 Mr. Stavis for one moment and direct the Court's attention
23 to page 40, the multiple conspiracies count, which is taken
24 from Sand. However, on line 24 of page 40 there was a
25 phrase omitted from Sand that I would ask that the Court

1 include so that it reads, starting from line 23: "so long
2 as you find that some of the co-conspirators continued to
3 act for the entire duration of the conspiracy for the
4 purposes charged," etc. That phrase was omitted from the
5 Sand charge.

6 THE COURT: Yes. I questioned whether they have
7 to find the presence of a particular conspirator for the
8 entire duration in order to find one conspiracy. What is
9 your view, Mr. McCarthy?

10 MS. LONDON: Obviously, I would like it in.

11 THE COURT: I know you would.

12 Do you have a view, Mr. McCarthy?

13 MR. McCARTHY: I don't think it is necessary.

14 MS. AMSTERDAM: I would like to say it should
15 logically be since it is necessary. If you have defendants
16 with different conspiracies along the way, there is no
17 common thread.

18 THE COURT: That is different, I think, from
19 saying that you need to have at least one defendant acting
20 for the duration of the conspiracy.

21 MR. McCARTHY: Are we distinguishing defendants
22 and conspirators? I want to be clear on what Ms. London and
23 Ms. Amsterdam mean.

24 THE COURT: It need not be a defendant to --

25 MR. McCARTHY: I agree there needs to be a core

1 of conspirators.

2 THE COURT: For the entire duration? Then I am
3 putting it back in.

4 MR. McCARTHY: I believe there needs to be a core
5 of conspirators, not defendants.

6 THE COURT: All right. Thank you, Ms. London.
7 It is back in.

8 MR. McCARTHY: Your Honor, I have a minor point
9 and then a more substantive point. On page 39 of the
10 charge -- this is niggling -- but the first sentence in the
11 first full paragraph I think should read "an expression of
12 opinion alone," so that it agrees with the verb, for what it
13 is worth.

14 MS. STEWART: What page are we on?

15 MR. McCARTHY: Page 39.

16 THE COURT: In other words, it should be "an
17 expression is."

18 MR. McCARTHY: Either "expressions" should be
19 singular or "is" should be "are."

20 THE COURT: Thank you.

21 MR. McCARTHY: Next is on the multiple
22 conspiracies charge. I have a problem on page 41 with the
23 last sentence of the first full paragraph on that page,
24 because it doesn't, at least to me, make any logical sense.
25 "This is so even if you find that some conspiracy other than

1 the one charged in the indictment existed, even though the
2 purposes of both conspiracies may have been the same."

3 THE COURT: Yes. That is more appropriate in a
4 drug case. It is not appropriate here. You can have two
5 drug conspiracies that are different coexisting and have one
6 be different from the one charged in the indictment. Ms.
7 London?

8 MS. LONDON: Your Honor, you could have two, to
9 quote the government, jihad conspiracies.

10 MR. McCARTHY: My point is -- I don't mean to cut
11 you off.

12 MS. LONDON: I think there is a possibility that
13 a juror could find, for example, that the World Trade Center
14 evidence is not tied into this conspiracy and yet perhaps
15 that the goal of both conspiracies were the same.

16 MR. McCARTHY: My point there is that I think
17 "purposes" is the functional equivalent of aim or object.

18 MS. AMSTERDAM: I am sorry, I didn't hear that.

19 MR. McCARTHY: The word "purposes" as used in
20 that paragraph is the functional equivalent of aim or
21 object. By definition, if the aim or object of two
22 conspiracies is the same, they are the same conspiracy, they
23 are not different conspiracies.

24 THE COURT: That depends on how you phrase aim or
25 object, and Ms. London just phrased it in a way that

1 suggests the possibility that you can have two with the same
2 general aim or object that are in fact different. After
3 hearing her, I am inclined to leave it.

4 MR. McCARTHY: The next point I want to make is
5 this: I don't think the multiple conspiracies charge as
6 drafted covers the possibility that the defendant may be a
7 member of this conspiracy and another conspiracy.

8 THE COURT: All right.

9 MR. McCARTHY: In other words, if the jury finds
10 that the defendant is a member of the conspiracy charged in
11 the indictment, the fact that he may also be a member of
12 another conspiracy does not absolve him --

13 THE COURT: That thought is expressed in the next
14 paragraph, beginning with the word "similarly" although it
15 is phrased in the negative. If you want me to add language
16 indicating the possibility you just mentioned, I will be
17 happy to do that.

18 MR. McCARTHY: Judge, I am sorry, I am a little
19 confused. I think the language in the sentence you just
20 read, unless I am understanding it completely wrong, is
21 actually the opposite of the proposition.

22 THE COURT: No, it says "and not the one charged
23 in the indictment," meaning, "and is not a member of the
24 conspiracy charged in the indictment."

25 MR. McCARTHY: My point is that if he is a member

1 of the conspiracy --

2 THE COURT: That is why I say I will add
3 balancing language to say that: However, if you find that
4 he is a member of the conspiracy charged in the indictment,
5 then the fact that he may also be a member of another
6 conspiracy doesn't absolve him.

7 MR. McCARTHY: Thank you. Go ahead, Mr. Stavis.

8 MR. WASSERMAN: Your Honor, can I make one point?
9 If you go back to page 38, is there some way of expressing
10 the general idea that prior statements are evidence of state
11 of mind, both present and in the future? In other words,
12 there is a very specific one, two, three in the Court's
13 instructions, but the overall idea of prior statements,
14 whether introduced by the government or the defense, is that
15 it is evidence of a defendant's state of mind.

16 In other words, there is one key issue your
17 Honor, just to take another step. One key issue in this
18 case is whether the particular defendants had the intent to
19 join the conspiracies charged by the government. The
20 purpose of introducing statements from the government's
21 point of view, from the defense point of view, is to
22 evidence whether that intent was there.

23 MR. McCARTHY: I think this goes back to an
24 argument that we had the first time your Honor was giving
25 instructions to the jury. You can't charge the whole case

1 in one instruction.

2 THE COURT: In one sentence, yes.

3 MR. McCARTHY: Your Honor gave an instruction on
4 intent which embodies the idea which Mr. Wasserman is
5 driving at now and I think you give that before you get to
6 this point.

7 THE COURT: This is dealing with what has been
8 said to be problematic about particular kinds of statements.
9 I shouldn't have to tell people that statements are evidence
10 of intent. That is what you are here for. That is what you
11 are getting these princely fees to do, Mr. Wasserman, which
12 is to argue how they should consider statements. I don't
13 think this is the place for it. Mr. Stavis?

14 MR. STAVIS: What I propose to do, your Honor, is
15 the series of charges, rather, instructions which --

16 THE COURT: You were going to go on to the ones
17 that relate to your client.

18 MR. STAVIS: Yes, and then the general ones at
19 the end where we will pick up with everyone.

20 THE COURT: Fine.

21 MS. STEWART: Your Honor, I just would like to be
22 heard on the multiple conspiracies, page 40, the first
23 paragraph.

24 THE COURT: Yes?

25 MS. STEWART: I know this is directly out of

1 Sand's, but it does seem to me that by starting out: "In
2 this case, the defendants contend that the government's
3 proof fails to show the existence" -- and then goes on to
4 say: "Rather, they claim." It shifts the burden. It makes
5 it almost an affirmative defense. I would appreciate if we
6 could use different language. The second line sounds like
7 they claim that they are agreeing that there were actually
8 conspiracies in existence. I would ask that you say: In
9 this case, it is contended that the government's proof fails
10 to show the existence of one overall -- and leave the "only"
11 out.

12 THE COURT: Why don't I just say something like,
13 if I can free-wheel a little bit: In this case, the
14 defendants have argued, among other things, that the
15 government's proof fails to show the existence of one
16 overall conspiracy, but rather that, if it proves any
17 conspiracy, that it proves that there were two or more -- or
18 words to that effect.

19 MS. STEWART: Very good. I would appreciate
20 that.

21 THE COURT: Mr. McCarthy?

22 MR. McCARTHY: That is satisfactory.

23 MR. STAVIS: Your Honor, we are going to move to
24 the specific murder in aid of racketeering count.

25 THE COURT: Which is where?

1 MR. STAVIS: That begins on page 91.

2 THE COURT: All right.

3 MR. STAVIS: Your Honor, in our submission on
4 murder in aid of racketerring and in the government's
5 submission on murder in aid of racketeering, we ask the
6 Court to first charge the existence of a racketeering
7 enterprise, and then move on to have them consider: Is
8 there a racketeering enterprise? Effect on interstate
9 commerce? Did you find Mr. Nosair murdered Meir Kahane?
10 And finally, was that murder in aid of the racketeering
11 enterprise? -- the Concepcion formulation. I understand
12 Concepcion is not a jury charge case, but when Judge Kearse
13 was laying out the elements, she laid them out in that
14 order. It is something that your Honor has done in other
15 areas of this charge, in the conspiracy area. Obviously
16 there has to be the agreement first and then you go on.
17 Judge Sand, in discussing -- withdrawn -- in his instruction
18 52, 4, on RICO, obviously the enterprise comes first, and
19 then you move on to the other elements and the predicate
20 acts. In this case, I think that that is absolutely
21 critical. Your Honor may remember during the course of the
22 trial Mr. Patel and I raised as a defense, or something to
23 give to the jury as an alternative, they might find that
24 Mr. Nosair murdered Meir Kahane, but that was not part of a
25 racketeering enterprise. He was doing it on his own.

1 THE COURT: The only thing I recall about that
2 was a robing room discussion that has never until this
3 moment been echoed in this courtroom.

4 MR. STAVIS: I will give you other references to
5 the record. For example, on page 13835, when I was
6 examining Mr. Kunstler and I was trying to show that the
7 Muslim community came together as a community, my point in
8 doing that was it was not a racketeering enterprise behind
9 Mr. Nosair.

10 THE COURT: I apologize for not having a
11 subtle-enough sense of thrust of Mr. Kunstler's testimony,
12 but I still don't --

13 MR. STAVIS: It is something that comes out
14 primarily on summation, your Honor. I mean, I can
15 understand that. But it is something that we have fully
16 intended to argue to the jury.

17 In this particular case, there is no RICO count,
18 and I understand that a murder in aid of racketeering count
19 can exist by itself. But particularly because there is no
20 RICO count, I think the jury must work its way through the
21 RICO before getting to the murder. I think it is absolutely
22 critical, your Honor.

23 THE COURT: I don't. Most particularly in this
24 case I don't, because this count is Count Seven. Count One
25 charges, in essence, that the jihad organization is the RICO

1 enterprise. By the time I get to Count Seven, they are
2 going to be well familiar with what the alleged enterprise
3 is in this case. Either they will find it or they won't. I
4 don't have to introduce them to the enterprise element again
5 here, and particularly not as a threshold matter, which it
6 would be in a case that contained only one count, a murder
7 in aid of racketeering count. But I understand your point.
8 You have preserved it.

9 MR. STAVIS: One of the things that the
10 government has done, and on this Mr. Nosair was previously
11 tried for a straight murder, and this now is a federal
12 charge of murder in aid of racketeering, they have gone with
13 the evidence of Mohammad Salameh being present in the
14 Marriott D ballroom because it is important. And I believe,
15 your Honor, it is a confusing issue for the jury, and it is
16 even more complicated by the fact that the jury is aware of
17 a prior jury trial on this issue and a prior acquittal on
18 this particular issue.

19 THE COURT: Which they have also been told was
20 not evidence in this case and which I would appreciate not
21 being alluded to again.

22 MR. STAVIS: I understand that, but this is
23 murder in aid of racketeering activity. If the murder part
24 comes first, then the rest is boilerplate, quite frankly,
25 your Honor, and it is a very important, critical issue to

1 Mr. Nosair and one that I am going to be raising with this
2 jury in my summation.

3 THE COURT: Nothing stops you from raising it,
4 and I have told them in this charge in a number of places
5 that the government, in order to convict, has to prove each
6 element of the charge beyond a reasonable doubt. That is an
7 element of the charge. There is nothing in this charge that
8 contradicts that.

9 MR. STAVIS: Unfortunately, there is no Sand
10 charge on murder in aid of racketeering, and it is a
11 relatively clean slate that your Honor writes on.

12 THE COURT: Even if there were -- well, I don't
13 want to mess up Judge Sand's slate. Go ahead.

14 MR. STAVIS: If there were, your Honor, I think
15 Judge Sand would cite the Concepcion, as your Honor did, and
16 would go through those elements in order, as Judge Kearse
17 did in the Concepcion case.

18 THE COURT: There are two things I won't do: one
19 is to speculate about what Sand would do; the second is even
20 to call him up and ask him what he would do. You have your
21 point.

22 MR. STAVIS: This is a rhetorical device, your
23 Honor.

24 I would ask that on the verdict sheet, your
25 Honor, that your Honor may require a special finding by the

1 jury of the existence of a RICO enterprise before they
2 proceed to address the issue of whether or not Mr. Nosair
3 murdered Meir Kahane.

4 THE COURT: No, I am not going to do that. I am
5 not going to do that. Go ahead. Are you up to Count Nine?

6 MR. STAVIS: Yes, I am on the same count, your
7 Honor.

8 THE COURT: I am sorry. Go ahead.

9 MR. STAVIS: On page 98 --

10 MR. McCARTHY: Can we just back to 92 for a
11 second?

12 THE COURT: 92?

13 MR. McCARTHY: Yes. Your Honor is proposing to
14 charge Count Seven as simply a murder and not conspiracy to
15 murder, which is an alternative theory that is set forth in
16 the indictment. I just wondered if that was intentional
17 or --

18 THE COURT: Yes, it was. I am not going to
19 charge the alternative. Your theory here is that he was the
20 trigger man. All of your proof is that he was the trigger
21 man.

22 MR. McCARTHY: I didn't begin to suggest that
23 that was unreasonable. I just wanted to know.

24 THE COURT: That is the reason. If you had left
25 open, intentionally or otherwise, the possibility that he

1 was there as a diversionary person in aid of somebody else
2 doing it, then I might conceivably have charged conspiracy.
3 But that is your theory on your facts, and I am not going to
4 do it, which would kind of muck things up.

5 MR. McCARTHY: Can I move on?

6 THE COURT: Sure.

7 MR. McCARTHY: I think there is an error with
8 respect to the commerce requirement. I am directing your
9 Honor --

10 MR. STAVIS: I didn't hear that.

11 THE COURT: Error with respect to the commerce
12 requirement.

13 MR. McCARTHY: I am directing your Honor's
14 attention to page 96, going over to page 97. As I read
15 Section 1959, unlike the attempt crime that is charged
16 earlier in the indictment, 1959 requires an actual effect on
17 commerce. I think the only way you can read the statute is
18 that an actual effect as opposed to a potential effect is
19 required.

20 MR. STAVIS: I hope we can square this away, your
21 Honor, because I was going to raise that commerce issue with
22 the jury and I would like to know where I am going.

23 THE COURT: Absolutely. And what I was going to
24 say is that I obviously don't want to be reversed at all,
25 but I would hang my head in shame to be reversed on a

1 commerce issue.

2 MR. McCARTHY: I am referring your Honor to
3 1959(b)(2), which defines the enterprise --

4 THE COURT: One second.

5 MR. McCARTHY: My sense of things, from looking
6 at some of the cases in the circuit, is that if what is
7 charged is a substantive charge, and particularly where the
8 statute says an effect on commerce as opposed to a potential
9 effect on commerce, a required element of the offense is an
10 effect on commerce, however minimal. To the extent that the
11 charge --

12 THE COURT: In other words, it has to say that --
13 wait a second.

14 MR. McCARTHY: Your Honor starts out saying
15 that --

16 THE COURT: One second.

17 MR. McCARTHY: Sure.

18 THE COURT: All right, I understand your point.
19 Go ahead. What you are saying is what we have to do is to
20 take out any reference to potential effect and simply say:
21 Were affected by --

22 MR. McCARTHY: If this is at all helpful: At
23 page 71 and 72 of our request to charge we suggest some
24 examples of actual effect on commerce, and I might suggest
25 examples of that kind could substitute for the examples of

1 potential effect on commerce, or at least it conveys that
2 idea.

3 THE COURT: I will look at it. In any event,
4 make sure that I don't charge only potential effect as being
5 sufficient.

6 MR. McCARTHY: Thank you.

7 THE COURT: Mr. Stavis?

8 MR. STAVIS: My application with regard to Count
9 Seven, murder in aid of racketeering, I would also make with
10 regard to the two other racketeering counts, the assault
11 count with regard to Irving Franklin, which I think is Count
12 Eight, and the assault and attempted murder in aid of
13 racketeering.

14 THE COURT: Same ruling on those.

15 MR. STAVIS: I think it is absolutely critical,
16 to prevent the jury from being confused with regard to this
17 charge, that the enterprise be first and that an enterprise
18 be found before they go on to address the question of
19 murder.

20 THE COURT: Are we on Count Nine yet?

21 MR. STAVIS: What I had asked your Honor is, on
22 page 98, on line 7, your Honor has correctly proposed an
23 instruction that if the government has not proved beyond a
24 reasonable doubt the jihad organization described in Count
25 One existed, then they cannot find Mr. Nosair guilty of the

1 murder in aid of racketeering. I would ask that that
2 language, from line 7 through 11, be in the summary section
3 under Count Seven on page 92, where your Honor has written
4 Count Seven, summary of murder of Meir Kahane, that that
5 language be put in that initial summary to prevent the jury
6 from being confused.

7 THE COURT: It will stay where it is.

8 MR. STAVIS: Excuse me, your Honor?

9 THE COURT: I say it will stay where it is. Go
10 ahead.

11 MR. STAVIS: I would have no objection to it
12 being in both places.

13 THE COURT: I know. I should say: it will stay
14 only where it is.

15 MR. STAVIS: On page 99, which is the purpose,
16 the last sentence beginning on line 21 reads: "Any of these
17 reasons would be sufficient if proved beyond a reasonable
18 doubt." I would ask that your Honor add language under
19 United States v. Tie, that: If, on the other hand, you find
20 that the act was unrelated to the jihad organization, then
21 you must find Mr. Nosair not guilty of this charge.

22 THE COURT: I will add that. Can I have it
23 again? If on the other hand?

24 MR. STAVIS: If, on the other hand, you find that
25 the act -- not that the act" -- that the murder was

1 unrelated to the jihad organization, then you must find
2 Mr. Nosair not guilty of this charge.

3 THE COURT: Or on this count.

4 MR. STAVIS: On this count.

5 THE COURT: Good. Thank you.

6 MR. STAVIS: On page 100, your Honor has combined
7 Counts Eight and nine, and your Honor has done that also on
8 subsequent pages. It may save time, I understand, your
9 Honor, but under Count Eight as it now stands, which is the
10 assault in aid of racketeering activity on Irving Franklin,
11 there is just an assault element. As the count stands now,
12 Count Nine with regard to Mr. Acosta is an assault and
13 attempted murder in aid of racketeering. I think putting
14 them both together into one charge is confusing for the
15 jury, because there are differences. It is not just more of
16 the same, your Honor. That is why I would suggest that they
17 be broken up.

18 THE COURT: I understand your point. I think
19 actually if it is going to be that way, it is clearer to do
20 it this way than it is to do it the way you suggested. But
21 I would like to ask the government: Count Nine, as you have
22 charged it and as we have dealt with it earlier, is it
23 multiplicitous? If so, is this the stage at which that can
24 be raised?

25 MR. MCCARTHY: I think it is not multiplicitous.

1 I also think we are entitled to a verdict on both theories.
2 I think we are entitled to a verdict on both attempted
3 murder and assault with a dangerous weapon or assault with
4 intent to cause bodily injury.

5 THE COURT: Such that the assault would, in
6 essence, be a lesser-included offense?

7 MR. McCARTHY: The problem, your Honor, is that
8 the way the statute grades out the offenses, attempted
9 murder is actually a less serious offense than assault.
10 Yes. And that actually makes sense. You can attempt to
11 murder someone theoretically if you take a substantial step
12 without coming all that close to murdering him. On the
13 other hand, you can't assault someone with intent to cause
14 serious bodily injury without effecting an actual assault.
15 So I think there is some logic to the way the statute was
16 laid out.

17 THE COURT: An assault is simply placing somebody
18 in fear who is about to suffer an injury.

19 MR. McCARTHY: The charge as laid out here,
20 respectfully, your Honor, is not correct as far as that
21 element is concerned. Your Honor has charged it as assault
22 in terms of how assault is defined, I think it is, in Judge
23 Sand's charge. It is an essential element of the offense
24 that it be either an assault with a dangerous weapon or an
25 assault with intent to cause -- or let me get exactly the

1 language in front of me. I am referring, your Honor, to
2 1959(a). I believe it goes (a)(1) through (6), which are
3 the different gradations of the offense.

4 I want to preface this by saying that it is not a
5 cleanly written statute. The analogy one would think would
6 be to the drug statute where they set out the crime in one
7 section and then they go to the penalty section, which is
8 basically for the Court to decide at the time of sentencing.
9 In 1959 there may have been some thought about laying the
10 statute out that way, but they didn't really accomplish it.
11 They put some of the essential elements of the crime in the
12 penalty section, and I think they have to be found by the
13 jury.

14 The prongs of the statute that are charged with
15 respect to Acosta are: 1959(a)(3) and 1959(a)(5). (a)(3)
16 requires the jury to find beyond a reasonable doubt that the
17 assault was done with a dangerous weapon or it was assault
18 resulting in serious bodily injury.

19 THE COURT: A simple assault doesn't make it.
20 Simply putting somebody in peril of intending harm doesn't
21 do it.

22 MR. McCARTHY: They also, even though they are
23 the different assault offenses, whether it is murder or
24 assault or attempted murder, even though they are laid out
25 in the same statute, under a Blockburger analysis there

1 really are no or there are few lesser-included offenses
2 because, for example, with respect to assault and attempted
3 murder --

4 THE COURT: I hear you. So what you are saying
5 is that the either/or aspect of this has to be changed?

6 MR. McCARTHY: That's correct.

7 THE COURT: And the elements of the assault have
8 to be changed to require a finding of serious bodily injury.

9 MR. McCARTHY: Right. Or dangerous weapon.

10 THE COURT: Or dangerous weapon?

11 MR. McCARTHY: Yes, under 1959(a)(3).

12 THE COURT: Right. Mr. Stavis?

13 MR. STAVIS: Yes, your Honor. At the time that
14 we had the Rule 29 arguments, at page 13011 of the record,
15 and your Honor was dismissing the attempted murder portion
16 of the murder in aid of racketeering with regard to
17 Mr. Franklin, I indicated to the Court that that that count
18 and the Acosta count were duplicitous, because they charged
19 two crimes in one count. And your Honor said, well, if you
20 didn't raise that pretrial -- and I indicated that this
21 superseding indictment came out in early November or late
22 October, I don't remember, we were in a rush to trial. Now,
23 the duplicity problem is --

24 THE COURT: I think it is a multiplicity problem.
25 I think duplicity is charging the same offense in two

1 different counts. But anyway I will --

2 MR. STAVIS: It is the exact inverse in state
3 practice, your Honor, the terms that we call those things.
4 It isn't what we call them; it matters what they are.

5 THE COURT: Right.

6 MR. McCARTHY: In any event, your Honor did give
7 an opportunity for motions attacking the last superseding
8 indictment and in fact did get such motions, including a
9 lengthy -- well, not lengthy, but a motion to strike
10 surplusage.

11 THE COURT: I did.

12 MR. McCARTHY: And Mr. Stavis, if my recollection
13 serves me correctly, asked your Honor to incorporate by
14 reference the same double jeopardy attack he had made on the
15 earlier instrument.

16 THE COURT: Go ahead, Mr. Stavis.

17 MR. STAVIS: The Acosta count now includes --
18 well, not "now." The Acosta count includes two separate
19 crimes. Mr. McCarthy has just gone into the separate
20 subdivisions of 1959(a) with their different penalties. I
21 think at this point there has to be an election, because you
22 cannot have the jury in the one count considering two
23 separate crimes.

24 THE COURT: Do you have to make an election,
25 Mr. McCarthy?

1 MR. McCARTHY: I don't think so. I think the
2 time to raise this was prior to trial, so that we would have
3 had an opportunity to go back and supersede.

4 THE COURT: Put it in two separate counts.

5 MR. McCARTHY: Right. That is the reason Rule 12
6 requires that it be made part of the trial.

7 THE COURT: If I don't find anything different on
8 election -- and I will look at that -- then I will make it
9 explicit to them that they are being asked to make findings
10 with respect to two separate crimes in the one count; that
11 they should not question the reason for that but simply do
12 it and make sure they are charged on two separate crimes.

13 MR. McCARTHY: Just so your Honor may have
14 everything that is pertinent on the table, I concede that
15 Count Ten charges the same attempted murder, albeit not
16 with --

17 THE COURT: There is a different requirement,
18 namely, that he be a postal officer.

19 MR. McCARTHY: I just wanted to make sure your
20 Honor was aware of that.

21 THE COURT: I am aware of that. In the event
22 that I would require an election --

23 MR. McCARTHY: We would elect to proceed with the
24 assault and drop the attempted murder -- although I did have
25 fun litigating it.

1 THE COURT: I am going to take as hard and
2 serious a look as I can in the time that I have. And I
3 understand that part of this is so that you can frame your
4 arguments. So I am going to look at it and have it before
5 those arguments begin. I am not going to sort of lay back
6 and then do something in the charge. And I will let you
7 know as soon as I decide. But if I say you have to make an
8 election, your election is the assault element of Count
9 Nine.

10 MR. McCARTHY: That's correct, your Honor. And I
11 will look at that hard when we get back.

12 THE COURT: If that happens, of course, all the
13 effort that we put in on the question of the attempted
14 murder, in, out, in, out, is for naught. Anyway, go ahead.
15 But you are right, it was fun.

16 MR. STAVIS: There is an issue on page 104, your
17 Honor, with regard to the doctrine of transferred intent. I
18 understand that your Honor has employed this doctrine in a
19 very specific and limited context. As I understand it, your
20 Honor is using the doctrine of transferred intent not to
21 show the intent to kill, in taking it from the Marriott
22 ballroom to Lexington Avenue.

23 THE COURT: Absolutely.

24 MR. STAVIS: You are using it?

25 THE COURT: No, you are absolutely right.

1 MR. STAVIS: I just want to make sure I
2 understand it. What your intention was, in drafting this
3 charge, is to use the doctrine of transferred intent to take
4 the racketeering element from the ballroom and transfer it
5 down onto Lexington Avenue. I object to that, your Honor.
6 I do not think that the doctrine of transferred intent
7 applies to that situation. The key component of transferred
8 intent, which is written into New York Penal Law, Section
9 125.25, which is the murder statute, and the other
10 statute --

11 THE COURT: Can I stop you there?

12 We are not dealing with the New York Penal Law.
13 We are dealing with a specific Second Circuit case that
14 talks about transferred intent in the context of a
15 racketeering-type offense. I believe that that case,
16 although I thought the government in its charge request did
17 what you suggested at the beginning could not be done --
18 namely, the transferred intent to murder from one to the
19 other, which I said I wouldn't do and haven't done -- what I
20 think that case specifically says you can do is apply the
21 doctrine of transferred intent from, as you put it, the
22 ballroom to Lexington Avenue. Now, that may not be correct
23 as a matter of New York State law, but I believe that it is
24 correct as a matter of federal law based on that case, which
25 may very well be different from state law.

1 MR. STAVIS: I am unaware of the federal common
2 law. When I say New York State penal law, the New York
3 State penal law, the reason I am raising it is because the
4 statute incorporated the common law of transferred intents
5 which was originally taken from tort law and applied to
6 criminal law. That is what I am referring to, your Honor.
7 The difference here is, it is not -- you don't have the
8 party B, the intended victim, being spared -- in other
9 words, Meir Kahane was murdered, and if the government
10 proves it, then person A did murder person B.

11 And the other issue that you have here is one of
12 attenuation. The doctrine of transferred intent refers to
13 an immediate act directed toward one individual with an
14 unintended victim, your Honor. The intended victim,
15 according to the government's theory, was Meir Kahane, and
16 he was the victim. There is attenuation between the
17 ballroom and Lexington Avenue, your Honor. It is not as if
18 the act against Acosta took place in the ballroom when one
19 of the shots directed at Meir Kahane missed and hit Carlos
20 Acosta.

21 THE COURT: I don't think under Concepcion that
22 is required. I understand your point, though.

23 MR. STAVIS: What your Honor has done in this
24 charge is to confuse motive and intent. The doctrine of
25 transferred intent refers to intent. The motive to increase

1 or maintain the position in the racketeering enterprise is
2 what your Honor is taking from the ballroom and transferring
3 down on Lexington Avenue. That is motive and not intent,
4 your Honor.

5 THE COURT: If that were the case, then
6 transferred intent could never be applied to the
7 racketeering element, because regardless of your motive in
8 firing the shot, you can never intend that an unintended
9 victim suffer harm in aid of racketeering.

10 MR. STAVIS: But it is the aid of racketeering
11 element that your Honor is transferring, not the intent.

12 THE COURT: I know. What I am saying is that
13 Second Circuit law differs.

14 Mr. McCarthy.

15 MR. McCARTHY: I agree with that and I disagree
16 with Mr. Stavis that the element that he calls motive is
17 motive.

18 THE COURT: I think we have worn this issue out.
19 Let's proceed.

20 MR. McCARTHY: Let me just say at the risk of, I
21 guess going our side of it, at page 105, we argued,
22 obviously, the doctrine of transferred intent on both of the
23 components of intent for this offense, and your Honor has
24 ruled against us on --

25 THE COURT: Yes, I have.

1 MR. McCARTHY: With that in mind, then, I should
2 bring to the court's attention, it seems to me reading the
3 first full paragraph on page 105, to cut to the chase of
4 what I think Mr. Stavis was getting at -- and I apologize if
5 I am not getting his argument right -- that paragraph could
6 be read to inform the jury that the pure intent component as
7 opposed to the maintained or increased component is
8 susceptible of the transferred intent finding.

9 THE COURT: In other words, what you are saying
10 is that in that paragraph I put back what I intended to take
11 out.

12 MR. McCARTHY: Right.

13 THE COURT: Do you have a proposal for curing it
14 or do you want me to cure it myself?

15 MR. McCARTHY: I could write something up.

16 THE COURT: Would you.

17 MR. STAVIS: Your Honor, one of the ways that the
18 concerns that led to the transferred intent portion of the
19 charge was how do you get from the ballroom out, and one
20 thing that state prosecutors always say is that intent can
21 formulate in an instant and can formulate down on Lexington
22 Avenue.

23 THE COURT: The point of the Second Circuit case
24 is, the transferred intent is a legal fiction. He doesn't
25 actually have to intend that Acosta's murder or the assault

1 on Acosta helped his position within the jihad organization.
2 All he has to intend is that the crime he allegedly
3 committed earlier enhanced his position within the jihad
4 organization and that he have criminal intent in committing
5 a further act that is part of getting away from that act.
6 That, I believe, is what Concepcion means, and if it doesn't
7 mean that, then I am wrong and you have a point.

8 But I don't think that Concepcion says or
9 suggests that he has to believe that even in an instant
10 doing anything to Carlos Acosta is going to affect his
11 position in the jihad organization one way or another.

12 Let's move on.

13 MR. STAVIS: The same doctrine appears obviously
14 in your Honor's other charges on the racketeering.

15 THE COURT: Yes.

16 MR. STAVIS: And also the combination of the
17 Count 8 and Count 9 also occurs in those instructions.

18 On page 112, which is addressing Count 10, which
19 is the attempted murder of the federal officer --

20 MR. McCARTHY: Can we go back and finish the
21 other counts first?

22 THE COURT: I am sorry. Mr. McCarthy.

23 MR. McCARTHY: Yes, your Honor. With respect to
24 page 107 and the issue that we have already touched on,
25 which is what is required for assault --

1 THE COURT: Right, it has to be serious injury.

2 MR. McCARTHY: I think in our request to
3 charge --

4 THE COURT: Do you have a page?

5 MR. McCARTHY: Page 77.

6 MR. STAVIS: Of your request, Mr. McCarthy?

7 MR. McCARTHY: Yes, 77 over to 78.

8 THE COURT: Thanks. Does that have the serious
9 bodily injury or the dangerous weapon in it?

10 MR. McCARTHY: It does, your Honor.

11 THE COURT: All right. Thanks.

12 Mr. Stavis.

13 MR. STAVIS: Yes, your Honor. On Count 10, on
14 page 112, on line 11, your Honor explains the need for the
15 federal statute to protect federal employees and federal
16 functions, the crime of intended murder of a post office
17 employee is designed to protect federal employees and
18 federal functions. I would ask that that language be
19 removed. I think it has no place in the charge, and states
20 a problem that the jury was not particularly focused in on.
21 Congress addressed the problem and that is what is being
22 elicited in that aspect of the charge.

23 MR. McCARTHY: I think the reason it is
24 incorporated in Judge Sand's charge and the reason it is
25 usually charged is, the court is also going to charge the

1 jury that the defendant need not know that the officer is a
2 federal officer. It is important so that the jury doesn't
3 get some sense of unfairness about that, that that be in
4 there.

5 MR. STAVIS: I don't see any correlation between
6 those two things, your Honor.

7 THE COURT: This is fairly mild. This isn't one
8 of those, you know, flag-waving, protection of the public
9 kinds of things. It does explain a potential problem in
10 very mild form. I am going to leave it.

11 Understand that all the references to Rabbi Meir
12 Kahane are being taken out.

13 MR. STAVIS: Yes. On page 124, which is
14 possession of a weapon, I think that is the defaced weapon
15 count and the element of the weapon having been shipped or
16 transported in interstate commerce.

17 THE COURT: Yes.

18 MR. STAVIS: The witness' name was Kimberly
19 Pritula. I don't know if your Honor wishes to use the name
20 of the Sturm, Ruger witness.

21 THE COURT: Yes, I do.

22 MR. STAVIS: Kimberly P-R-I-T-U-L-A.

23 MR. McCARTHY: Can we go back to 112 for a
24 second?

25 THE COURT: Yes.

1 MR. McCARTHY: I think in the first paragraph,
2 your Honor, after the word post office you should add
3 "engaged in the performance of his official duties."

4 THE COURT: "And engaged," right. Good, thank
5 you. I am sorry, 124?

6 MR. PATEL: Your Honor, that language is included
7 in the sentence below. That which Mr. Stavis just asked you
8 to include, that very language is there.

9 THE COURT: I am sorry, where are we?

10 MR. PATEL: Page 112. I am sorry, I was
11 following up what Mr. McCarthy said. I was taking notes
12 there as quickly as possible, but the language is already in
13 the charge.

14 MR. McCARTHY: But it is not in the charge the
15 same way.

16 THE COURT: What I say in the charge is that he
17 doesn't have to know it. Hold it.

18 MR. McCARTHY: The jury has to understand that
19 the element itself, regardless what Mr. Nosair knew --

20 THE COURT: Right. Where he has told me to put
21 it is in the part that lists the elements. That is an
22 element. They have to find not only that he was a post
23 office employee but in fact that he was at the time engaged
24 in the performance of his duties, that he was not, for
25 example, an off-duty post office employee, although it is

1 not essential that your client knew that.

2 MR. PATEL: I understand, your Honor. What I am
3 really objecting to is the repeating that he is engaged in
4 the performance of his official duties. It seems we need it
5 in one or the other but not both places. I don't have an
6 objection to the inclusion of it where Mr. McCarthy
7 suggested. I am just asking him to take it out of --

8 THE COURT: But we can't, because he doesn't have
9 to know either one of those things. If you would like me to
10 try to shorten that phrase because you think it gives undue
11 emphasis to the on-duty aspect -- what is the problem you
12 are trying to cure?

13 MR. PATEL: Your Honor --

14 THE COURT: I am sorry.

15 MR. PATEL: I understand. Mr. Stavis made an
16 objection to the first, essentially the first sentence of
17 the second paragraph, and your Honor basically said it's
18 really no big deal. It is in fact repeating an element and
19 it is becoming a big deal.

20 I guess what I am asking is to reconsider taking
21 the explanation of Congress's action out. Why Congress
22 passed this law is of passing curiosity to this jury. What
23 the elements of the crime are is of interest in that they
24 must make a finding about it. But what Congress did and
25 Congress's motivations --

1 THE COURT: But the point that Mr. McCarthy made,
2 I think, is a valid one.

3 MR. PATEL: I am not disputing that.

4 THE COURT: Which is, it is somewhat problematic,
5 particularly when we have talked elsewhere about the need
6 for somebody to know various things and intend various
7 things, to say here you have to find it but he doesn't have
8 to have known it, and it's a bit of a curiosity at the
9 least, unfairness at the worst. This takes care of the
10 unfairness by saying look, folks, it is necessary to protect
11 this function without somebody knowing what the function is.
12 It doesn't say that, but that is the message. Given the
13 very tame language -- we are not talking about a "protection
14 of the public" charge which used to be given and isn't given
15 any more, certainly not by me.

16 MR. PATEL: Your Honor, can we go to page 116
17 quickly?

18 THE COURT: Yes.

19 MR. PATEL: I am rising to point out, your Honor
20 is instructing the jury on use or carry. I do not believe
21 that it is the government's theory that this weapon was
22 merely carried. I would request --

23 THE COURT: To strike the "or carry"?

24 MR. PATEL: Yes.

25 THE COURT: Mr. McCarthy?

1 MR. McCARTHY: No objection.

2 THE COURT: Good. Saves my breath, too.

3 MR. PATEL: Also, firearm available to
4 protecting --

5 THE COURT: Right, that will all go out.

6 MR. STAVIS: On page 124, which is the interstate
7 commerce requirement for the defaced firearm count, I would
8 ask your Honor add language that should the jury find that
9 Mr. Nosair lawfully obtained this weapon within the state of
10 manufacture, that they will not under those circumstances be
11 able to find that that element has been proved beyond a
12 reasonable doubt.

13 MR. McCARTHY: There is no --

14 THE COURT: I am not going to do that. I
15 understand your point.

16 MR. STAVIS: Yes. That is the one based on the
17 recent commerce clause decision on the safe streets, the
18 schoolyard case.

19 THE COURT: I understand. If that is going to be
20 a problem, it will be one for another court.

21 MR. STAVIS: I am back to general principles. I
22 have skipped over to page 160, your Honor. Not that I have
23 any issue with 160. I do have an issue with respect to page
24 163, your Honor. In the second paragraph concerning
25 reasonable doubt, on line 12, or line 11 through line 12,

1 your Honor has referred to the jury not being satisfied with
2 "the guilt of a defendant." I think that that is
3 burden-shifting language, and I think that with a reasonable
4 doubt charge it should be expressed as a burden, the
5 government meeting its burden of proof beyond a reasonable
6 doubt and not satisfied that the government has met its
7 burden of proof beyond a reasonable doubt, or burden of
8 proof. I object to the language "guilt of a defendant" in a
9 reasonable doubt charge. I think it is burden shifting,
10 your Honor.

11 MR. BERNSTEIN: I would join in that, other than
12 the fact that I am actually going to ask the court to delete
13 this instruction and take Sand directly, Judge.

14 THE COURT: I have given this instruction in
15 every criminal case, I think, that I have tried in this
16 courthouse. The source of it appears on page 164.

17 MR. BERNSTEIN: Yes, I presume it is Judge
18 Walker.

19 THE COURT: Yes. I see nothing wrong with it.

20 MR. BERNSTEIN: Mr. Stavis has raised our
21 concerns that it appears to place guilt into the rather than
22 it's a burden of proof that remains on the government, and
23 that it is the guilt rather than the proof of guilt beyond a
24 reasonable doubt that exists.

25 THE COURT: Let me ask you, I am having a hard

1 time kind of intuitively understanding what it is that is
2 troubling you.

3 MR. BERNSTEIN: It inverts, meaning it starts
4 first with guilt and then goes to innocence, or nonguilt.

5 THE COURT: If the word innocence is in here, it
6 shouldn't be.

7 MR. BERNSTEIN: I didn't mean innocence.

8 THE COURT: That I have strived mightily to take
9 out of this charge.

10 MR. BERNSTEIN: While it talks about the guilt in
11 paragraph 2, it talks about lack of proof, so to speak, or
12 lack of the government proving its case in the third
13 paragraph. I would certainly shift the two paragraphs. I
14 am asking for the Judge Sand charge.

15 THE COURT: I understand what you are asking for.
16 I prefer mine and it has passed muster before.

17 Does it respond to your concern to change the
18 formulation on line 11, page 163, that you are not satisfied
19 that the government has proved the guilt of the defendant?

20 MR. BERNSTEIN: It somewhat assuages my concerns
21 but it goes further. The line before that talks about the
22 juror having to candidly and honestly say that I am
23 satisfied. My concern is that it requires a juror to
24 believe that when a juror leaves this courthouse, that this
25 juror has to -- it implies this sense that when they go out

1 into the world they have to be able to articulate their
2 reasons as to what their findings were in this case. I
3 think it puts a gloss on their findings that takes it
4 outside the courtroom.

5 THE COURT: Then you say you object to the
6 definition even in the first paragraph that it is a doubt
7 based on reason arising out of the evidence or lack of
8 evidence, and that is in every single charge --

9 MR. BERNSTEIN: No, I am not contesting that,
10 Judge. I am concerned with the way the court adds that a
11 person has to candidly and honestly say as if they have to
12 articulate their reasons, and they don't have to articulate.
13 I would ask that if you do not use Sand, that that phrase
14 "you can candidly and honestly say that you are not
15 satisfied with the guilt" be taken out. It would be "if
16 after a fair and impartial consideration of all the evidence
17 you are not satisfied that the government has proved the
18 guilt of the defendant."

19 THE COURT: OK, and the next paragraph --

20 MR. BERNSTEIN: On a balancing question it would
21 be the same thing. You would remove from line 19, you can
22 candidly and honestly --

23 THE COURT: Right. It would simply be you do
24 have an abiding belief.

25 MR. BERNSTEIN: Right.

1 THE COURT: OK. I will take the language out,
2 but with great respect to all of you, can I suggest to you
3 that that is language that at least as I read it helps you.

4 MR. BERNSTEIN: I am more than happy to retain
5 that which is in my benefit, but I would assume the court
6 would require a balancing of those, and if taking it out in
7 one portion --

8 THE COURT: I think it helps you in both places.
9 That is just my opinion. You are the lawyer. I don't get
10 paid to do what you do.

11 MR. LAVINE: Judge, I think that Mr. Bernstein's
12 concern is that the phrase he has asked you to delete being
13 "you can candidly and honestly say that," might to some of
14 the jurors imply or mean that they must at some later date
15 give an explanation for the way they feel, and while it is
16 not to us readily apparent that it is that way, his fear,
17 and I understand it, is that someone on the jury could
18 actually, in a tortured way perhaps, get that inference.

19 THE COURT: You know, this is a subset of
20 something that lawyers do all the time, which is to conclude
21 that jurors check their common sense and intelligence at the
22 door when they walk in. I think it is a mistake generally
23 to seize on little phrases, but we are talking about, I
24 understand, a very important instruction within the charge.
25 What this goes to is the soul searching of a juror and it

1 emphasizes the need for soul searching. The more you take
2 that out, the worse for you. That is what I think it goes
3 to. That is what it evokes in my mind when I read it,
4 that's what I think about when I am charging a jury. Candor
5 and honesty with yourself. Look in a mirror. Is that what
6 you really believe? That's what it really means.

7 MS. STEWART: Judge, you have hit upon it. It is
8 believe, not say. This was originally my ox, so I should
9 argue it. It is not outside the jury room, where they never
10 have to say anything. Inside the jury room it could be
11 construed by jurors to say to someone you have to be able to
12 tell us why you do not believe this, you have to articulate
13 it. I can't remember the case but it was a recent
14 reasonable doubt case written, I believe, by Judge Ginsberg,
15 in which the various formulations of reasonable doubt were
16 played out. There was something very objectionable about
17 asking jurors who differ in their articulateness to be able
18 to articulate the reason.

19 THE COURT: That is right. I am not sure we have
20 the same case in mind but I know there are cases dealing
21 with and barring language which says a doubt for which you
22 can give a reason.

23 MS. STEWART: Right.

24 THE COURT: That you don't have to do.

25 MS. STEWART: No.

1 THE COURT: And I don't want to suggest that you
2 do. All you have to do is say, I have searched my soul and
3 I have a reasonable doubt, and be honest about that, and if
4 you can say that much, that is a reasonable doubt.

5 MS. AMSTERDAM: I have a suggestion. My
6 suggestion would be, if this is a concern to people, that
7 you change that phrase to say if you candidly and honestly
8 feel.

9 MS. STEWART: Believe.

10 THE COURT: Believe, fine. Mr. McCarthy.

11 MR. MCCARTHY: Instead of can candidly and
12 honestly say but rather if you candidly and honestly
13 believe. Fine.

14 MS. AMSTERDAM: Are we still on this particular
15 charge?

16 THE COURT: I guess.

17 MS. AMSTERDAM: I have one request.

18 THE COURT: Go ahead.

19 MS. AMSTERDAM: The request is that the last
20 paragraph, the one final word on the subject, which goes on
21 to say all the many things that reasonable doubt is not, I
22 would request that your Honor reverse the order. By that I
23 mean that to start at the beginning by saying "the question
24 that naturally arises is what is reasonable doubt," start
25 with that paragraph and follow it by "let me start by saying

1 what reasonable doubt is not," and put it at the front, and
2 then continue with the rest of the charge. On a personal
3 emotional level I hate a reasonable doubt charge that ends
4 up with an entire paragraph telling them what it is not. I
5 have seen people do it both ways.

6 THE COURT: This is the way I have done it, and I
7 believe this is the way I am going to continue to do it. I
8 will think about that.

9 MS. AMSTERDAM: I would appreciate it.

10 THE COURT: I will think about it.

11 MS. AMSTERDAM: I appreciate it. Say no more.

12 THE COURT: When I say I will think about it,
13 that is all I mean. I can't believe that anybody here is
14 going to do this, but just as you speak about jurors in an
15 excess of caution, let me talk about lawyers in an excess of
16 caution. I don't want anybody to suggest that somehow I am
17 going to do it and build anything into your summations about
18 that.

19 MS. AMSTERDAM: The wording wouldn't change
20 anyway. It is just my feeling that the reasonable doubt and
21 presumption of innocence are always the most important
22 charges for a defendant and I feel it is weighted where it
23 finishes up as a negative to the defendant, and I would just
24 like it to be weighted the other way. That is my request.

25 THE COURT: I will think about it.

1 MR. BERNSTEIN: So I understand, you are
2 replacing the word "say" with "believe."

3 THE COURT: And not "can" but rather "you
4 candidly and honestly believe."

5 MR. BERNSTEIN: And you are adding to it that the
6 government has proven the guilt.

7 THE COURT: That you are not satisfied that the
8 government has proved the guilt of the defendant.

9 MR. BERNSTEIN: Right.

10 THE COURT: You have done something I never
11 thought any group of lawyers could do, which is to get me to
12 rethink the reasonable doubt charge. I grudgingly applaud
13 you. Go ahead.

14 MR. STAVIS: On page 169, on the direct and
15 circumstantial evidence charge, there is just a very minor
16 point on line 19. The charge essentially tells the jury
17 what circumstantial evidence is in order to compare it
18 against direct evidence. On that line, after you say now,
19 you cannot look outside the courtroom and you cannot see
20 whether or not it is raining, if you could, then you could
21 offer direct evidence of the fact of the raining.

22 THE COURT: What it says in the next sentence
23 means that. It says so you have no direct evidence. I
24 think that is what that means.

25 MR. STAVIS: On page 171, your Honor, concerning

1 the credibility of witnesses --

2 THE COURT: I could give Judge Cannella's
3 circumstantial evidence charge.

4 MR. STAVIS: Which goes?

5 THE COURT: Do you want to hear it now?

6 MR. STAVIS: Depends how long it is.

7 THE COURT: It has to do with the
8 Louis/Schmeling fight and a friend who went to the
9 Louis/Schmeling fight and bought popcorn and went to the
10 bathroom at what he thought was before the fight, and
11 then when he got back to his seat saw the crowd on its
12 feet, Schmeling flat on his back and Louis' hand being
13 raised in the air, and that was circumstantial evidence
14 that Schmeling had been knocked out in the first round,
15 which was fine as far as it went. Then he continued by
16 saying, of course it could have been a sniper from the
17 balcony, but my friend concluded that Louis knocked out
18 Schmeling in the first round. Then he went further and
19 said that the government is arguing in this case that
20 Louis knocked out Schmeling in the first round and the
21 defendant says it was a sniper from the balcony. The
22 conviction in that case was affirmed without opinion,
23 with an admonition to the district judge to restrain his
24 enthusiasm for sports analogies.

25 MR. STAVIS: I will respond by taking the second

1 occasion in this trial to quote Emily Latella: Never mind.

2 On page 171, credibility charge, your Honor says
3 on line 11 that there are three ways in which you may decide
4 a witness' testimony is credible. Mr. Serra made the point
5 earlier that there are hundreds if not thousands of ways for
6 a juror to decide if a witness is or is not credible.

7 THE COURT: No, they can be categorized. There
8 are hundreds of thousands of reasons, but there are
9 basically three ways.

10 MR. SERRA: Your Honor, I continued my point, as
11 Mr. Stavis was quoting me, by saying that I think a major
12 way is bias, whether a witness has an interest in the
13 outcome of the case or a reason to lie, and your Honor
14 doesn't include bias as a criteria to use.

15 THE COURT: I am happy to put it in.

16 MR. SERRA: My point was that it was simply a way
17 of saying that there are many ways and these are a few
18 examples and there are others.

19 THE COURT: OK. Go ahead, Mr. Stavis.

20 MR. STAVIS: In our request to charge -- I am on
21 page 177 now, your Honor. In our request to charge I had
22 asked for the Sand charge on accomplice testimony, which I
23 think is 7-5 -- informant testimony is 7-5. Accomplice
24 testimony, I believe, is 7-14, and prior perjury is 7-18.
25 Your Honor has combined them all into one charge, which I

1 would object to in this case for the following reason.

2 Mr. Haggag, the accomplice, and Mr. Salem, the
3 informant, had different roles and are viewed differently by
4 various defense counsel. For example, your Honor,
5 hypothetically speaking, people in the safe house may wish
6 to use Mr. Haggag affirmatively and some of the things that
7 he said about Bosnia and are not attacking his credibility,
8 whereas Mr. Salem, I believe everybody is attacking his
9 credibility. It is very important to keep those two things
10 straight. There has been a lot of evidence on Mr. Salem,
11 the only informant in the case, your Honor. We have
12 presented a lot of evidence on the defense case concerning
13 Mr. Salem.

14 THE COURT: That is an argument that you can
15 make, and I am not -- they have some similar credibility
16 problems that I find it convenient to group, because
17 otherwise you get into a long fandango that winds up being
18 repetitious.

19 MR. STAVIS: The Sand charge is very brief which
20 I asked for, one on accomplice testimony, one on informant
21 testimony, your Honor.

22 THE COURT: I understand that. I think you can
23 make the distinctions in your arguments. Go ahead.

24 MR. STAVIS: On page 181, testimony of law
25 enforcement officers, I believe I had requested the Sand

1 charge, and there is a portion of Sand charge 7-16 that your
2 Honor omitted in your version of the charge. The language
3 would be, "At the same time it is quite legitimate for
4 defense counsel to try to attack the credibility of a law
5 enforcement witness on the grounds that his testimony may be
6 colored by a personal or professional interest in the
7 outcome of the case."

8 In view of the fact that on the defense case we
9 called several different FBI agents, I think that the full
10 Sand charge including that language should be included when
11 your Honor charges the jury on how to evaluate the testimony
12 of law enforcement officers.

13 THE COURT: OK. Mr. McCarthy?

14 MR. McCARTHY: Your Honor, I object to that. I
15 think we cited to the court a case called United States
16 against Quimette, where the Second Circuit held that it is
17 error to charge that law enforcement officers are specially
18 interested witnesses.

19 THE COURT: Let me get the cite. I will find it.

20 MS. AMSTERDAM: While I would agree with the
21 premise in a normal case, certainly given the affidavits
22 here, there is an argument to be made that some of these
23 agents have a very specific interest in the outcome of the
24 case that might arise to possible criminal charges in the
25 past, possible perjury, obstruction of justice --

1 THE COURT: That is why I want to look at
2 Quimette and what it involved. Again, don't build your
3 summation on, and you will hear the judge tell you. OK?

4 MS. AMSTERDAM: Understood.

5 THE COURT: Thank you.

6 MR. MCCARTHY: The cite is 798 F.2d 47, and there
7 are other citations there.

8 THE COURT: Mr. Stavis.

9 MR. STAVIS: I know I am not done, but I believe
10 I am on my last point -- I am not on my last point. I must
11 be close to my last point if I thought I was on it.

12 THE COURT: You must be close to your last point
13 because you were getting near the end of the charge. But go
14 ahead.

15 MR. STAVIS: Your Honor, we are requesting a
16 asked missing witness instruction with regard to Ali
17 Mohammed. Ali Mohammed, your Honor will recall, was the
18 person who came from Fort Bragg, North Carolina, who was
19 assigned to the United States Army Special Forces --

20 THE COURT: Yes, we saw him on that splendid
21 videotape.

22 MR. STAVIS: And trained Mr. Nosair and others
23 for Afghanistan. When we attempted, Mr. Barrett attempted
24 to find Ali Mohammed, he found a friend at Fort Bragg who
25 knew his wife was in California. His wife hadn't seen him

1 for over a year. We could not bring him in. Although he
2 was very much, I would submit, a part of the defense case,
3 we couldn't bring him in and we understand that he may have
4 some connection with the government at this time.

5 THE COURT: I don't think a missing witness
6 charge on that gentleman is warranted and I am not going to
7 give one.

8 MR. STAVIS: Your Honor, on page 187, tape
9 recordings and transcripts, on line 13, your Honor has
10 indicated the various kinds of tape recorded evidence and
11 where they come from, and has omitted the Attica tapes,
12 which were not consensual tape recordings, nor were they the
13 subject of a wiretap order.

14 MR. McCARTHY: They are consensual.

15 THE COURT: To the extent that anyone consents to
16 be at Attica. You want me to put in something about the
17 Attica tape? They are just as lawful as anything else, and
18 I will be happy to put it in and I will refer to those
19 tapes.

20 MS. STEWART: Judge, could you also refer to
21 sermons?

22 MR. JABARA: Line 12.

23 THE COURT: I said lectures. Do you want me to
24 call them sermons instead?

25 MS. STEWART: Yes.

1 THE COURT: Or sermons in addition?

2 MS. STEWART: In addition, I think.

3 THE COURT: Wait a second.

4 MR. MCCARTHY: It is a fact issue.

5 MS. AMSTERDAM: Call them lectures or sermons.

6 THE COURT: I will call them lectures or sermons.

7 MS. STEWART: That's fine.

8 MR. STAVIS: I would withdraw my original
9 objection to the charge on page 187.

10 MR. JACOBS: Do you want to hear my objections
11 now on 187?

12 THE COURT: Yes, I do.

13 Miss Stewart.

14 MS. STEWART: I just have a very small thing,
15 Judge, where you are talking about the Arabic tapes being
16 played for the jury.

17 THE COURT: Yes.

18 MS. STEWART: The government also played Exhibit
19 311 to show that Emad was crying. They played the tape so
20 that they could hear the crying on the tape when Emad was
21 only the witness stand.

22 THE COURT: Where are we?

23 MS. STEWART: The second page where you are
24 talking about Emad raising his hand.

25 THE COURT: Right.

1 MS. STEWART: So those portions where he is
2 discussing the Arabic translations are in evidence -- am I
3 getting across here?

4 THE COURT: I understand the idea you are trying
5 to convey, but the only thing this is focused on is the
6 question of the words on the tape. Whether he was crying --
7 because other people played Arabic tapes to show, obviously
8 not the words, because the jurors can't understand that, but
9 rather the tone, and if you want me to -- that some tapes
10 were played to show the tone or emotions of the various
11 participants, I can say that in general. It was Mr.
12 Wasserman --

13 MR. WASSERMAN: Right. I drafted some specific
14 language that they were placed in evidence to demonstrate
15 state of mind. I would ask, since you excluded those tapes
16 from being in evidence I would ask that there be that
17 separate category that they are there for demonstrative
18 purpose.

19 There is also one other category, but rather than
20 get into another category, does your Honor want suggested
21 language on what we are discussing now, which is the
22 demonstrative tapes?

23 THE COURT: No. I have language in here about
24 that, I thought.

25 MR. WASSERMAN: The thing is that the way your

1 Honor has proposed the instruction on page 188 -- should I
2 come to the lectern? Would it be easier?

3 THE COURT: It would for the reporter but I don't
4 want to usurp Mr. Stavis' position.

5 MR. STAVIS: I would request the indulgence of
6 the court and cocounsel to make one discrete point, after
7 which I will yield the lectern and the microphone and
8 everything. On page 193, duty to consult and need for
9 unanimity, your Honor in the opening sentence of that
10 paragraph says "The government to prevail." It is the "to
11 prevail" language that I object to, because it is
12 instructing the jury, or the inference there is that there
13 are winners and losers, and I think there is only justice,
14 and it is the "government to prevail" language --

15 THE COURT: How about the government has the
16 obligation to prove the essential elements beyond a
17 reasonable doubt, if it succeeds, so on, if not, so on.

18 MR. STAVIS: I just wanted to be clear that I had
19 withdrawn my original objection on page 187.

20 THE COURT: So you don't want me to talk --

21 MR. STAVIS: About Attica. Because then there
22 are source tapes -- there are a million kinds of tapes, your
23 Honor.

24 THE COURT: But I do refer to source tapes.

25 THE COURT: Not in that portion.

1 THE COURT: All right. Let me think about it.
2 You were about to yield to, I thought Mr.
3 Wasserman, but Ms. London is on her feet, so let me hear
4 from her first.

5 MS. LONDON: Your Honor, I just wanted to follow
6 up on what Mr. Stavis had commented on on page 193. In
7 reading that page I was a little disturbed that there was no
8 mention --

9 (Pause)

10 MS. LONDON: Your Honor, Miss Stewart has brought
11 up another matter that needs to be attended to before
12 Mr. Stavis has to leave.

13 THE COURT: Let's deal with that.
14 Miss Stewart.

15 MS. STEWART: Judge, defense counsel have been in
16 discussion on the order of summation before Mr. Nooter
17 departed from the case, and I would just like to report to
18 the court that as it stands at this point, Mr. Serra has
19 agreed that I may take his place and go last. Mr. Stavis
20 has agreed that he would take my place and go first and that
21 Mr. Serra would then go immediately before me. That was the
22 nature of the agreement.

23 THE COURT: Wait a second. Let her speak.

24 MS. STEWART: Of our agreement. I am talking
25 about the parties I have just named, their agreement.

1 THE COURT: Right.

2 MS. STEWART: Mr. Jacobs, who would be next to
3 last if the indictment were to be followed, would then be
4 pushed to third to last. This is unacceptable to him. We
5 are asking your Honor if you would permit us -- we are
6 asking your Honor to entertain the order that Mr. Serra,
7 Mr. Stavis and I have agreed to, and other counsel.

8 THE COURT: Let me hear from Mr. Jacobs first.

9 MR. JACOBS: I object. I am next to last. I
10 would like to stay where I am in the order of the
11 indictment. If Mr. Serra wants to switch with Miss --

12 THE COURT: Am I empowered to decide that order?
13 I see a nod of the head from Mr. Lavine. I think I am.

14 MR. MCCARTHY: I think under Rule 611 it is your
15 call ultimately.

16 MS. AMSTERDAM: I would want to be on the record
17 here saying I object also.

18 THE COURT: Do you want to give me a reason or
19 tell me you object?

20 MS. AMSTERDAM: I think absent unanimity -- this
21 is a topic that has been discussed repeatedly among numbers
22 of lawyers, and there are tactical advantages between going
23 last or next to last. There is a split among lawyers. If
24 we had worked it out we would have worked it out. The truth
25 is, we haven't worked it out and I don't think under the

1 circumstances that even if the court has the power to the
2 court should intervene in what is essentially a joint
3 decision on the part of the people -- on the part of the
4 lawyers.

5 MR. JACOBS: I think any safe house defendants
6 going after me prejudice my client and I strongly object to
7 the court intervening in the order of summations in this
8 case without the consent of counsel in this case. I wish to
9 go in the order of the indictment, the order that we
10 proceeded on cross-examination in this case, the order of
11 opening statements.

12 THE COURT: Nobody proceeded in any particular
13 order on cross-examination in this case. There was theme
14 and variations of all sorts.

15 MS. AMSTERDAM: But only with consent. If there
16 wasn't consent we went in the order. There is a tactical
17 advantage to going last. My defense in this case is most
18 intricately tied to Mr. Jacobs'. I want him as far down the
19 bottom as possible.

20 THE COURT: And you are telling me -- wait a
21 second. I want to appreciate the full force and effect of
22 what you are telling me. You are telling me that two from
23 the bottom you can suffer, second from the bottom you can
24 suffer, third from the bottom you can't.

25 MS. AMSTERDAM: No.

1 THE COURT: Yes, you are. Right?

2 MS. AMSTERDAM: I am saying that the further you
3 move off the bottom the less of an advantage it is, and if
4 the court is going to entertain an application, then I would
5 suggest that what would be fair would be to let Miss Stewart
6 go last, let Mr. Jacobs retain his position going next to
7 last, and let Mr. Alvarez by Mr. Serra, who has a
8 fact-specific defense, move up to third.

9 MR. JACOBS: I would like to ex parte put on the
10 record why I vigorously object to the change. I do not wish
11 to do it in front of the other lawyers. If your Honor
12 wishes, I would be happy to place on the record --

13 THE COURT: I usually entertain that. I won't
14 now. Let me hear from Mr. Serra about why he would object
15 to going third from the last rather than second from the
16 last.

17 MR. SERRA: Basically two reasons, your Honor.
18 Last is the position I would normally choose. If I could
19 choose any position in the case it would be last. For
20 reasons of this case and the broadness of the view and
21 perhaps the moral suasion of which Miss Stewart might speak,
22 I would defer to Miss Stewart. But the step from last to
23 third to last is a crucial step. Facts of the case give me
24 a second objection to it. I have no quarrel with Mr. Jacobs
25 and Ms. Amsterdam's presentation of their defense. There is

1 no conflict with what I am going to say in my summation.
2 But I don't join them, and the jury will not think from my
3 argument that I do join in it. I don't want to be book
4 ended by a defense that I don't join in where I don't have
5 to be. As Ms. Amsterdam correctly says --

6 THE COURT: By book ended, you mean having Ms.
7 Amsterdam before you and Mr. Jacobs after you.

8 MR. SERRA: That is exactly what I mean.

9 MS. AMSTERDAM: I am not directly -- I am much
10 higher in the indictment.

11 THE COURT: How much higher?

12 MS. AMSTERDAM: Substantially higher.

13 MS. STEWART: I have not agreed to any other
14 changes.

15 MS. AMSTERDAM: Actually, there was a counsel
16 meeting where everyone agreed that I would go -- this
17 conversation Mr. Jacobs and I were not party to.

18 MR. MCCARTHY: Your Honor, can I ask a question?

19 THE COURT: Yes.

20 MR. MCCARTHY: I took a closer look at 611. I
21 always assumed that was the basis of your Honor's mastery
22 over the presentation of the proceedings. It doesn't, 611
23 doesn't specifically mention jury argument.

24 THE COURT: That is interrogation and
25 presentation, i.e. conducting examinations,

1 cross-examinations, and that sort of stuff.

2 MR. McCARTHY: I don't mean to contend, and I
3 don't, that the government has any interest whatsoever in
4 who goes when.

5 THE COURT: It is a question of my power.

6 MR. McCARTHY: And also since we may have to
7 defend at some point what happens here, I was wondering if
8 any attorney here has a case or some authority for the
9 proposition that the order of the indictment is somehow
10 controlling or that there is in fact some source of
11 authority for who goes where, because if there is such
12 authority, we are having a discursive --

13 THE COURT: This is generally more lore, L-O-R-E,
14 than it is law, L-A-W, is my impression. It seems to me
15 that I have to have the power to decide on some basis
16 because I can't allow chaos in a multi-defendant case. For
17 example, if, say, somebody summed up and then it was
18 somebody else's turn to get up and sum up and two lawyers
19 proceeded to have a brawl in front of the jury about which
20 one would speak next, I would have to resolve it, wouldn't
21 I? So it follows as night does day that I have the power to
22 do it. The only question is what standard to apply.

23 Mr. Stavis.

24 MR. STAVIS: Your Honor, counsel, with the
25 exception of Mr. Jacobs and Miss Amsterdam, had agreed that

1 since Mr. Nosair is a participant from the first 1989 date
2 of the conspiracy alleged until the end of the conspiracy,
3 that Mr. Nosair's counsel would open the case and lay out
4 the entire conspiracy. This is the position of all defense
5 counsel with the exception of Miss Amsterdam and Mr. Jacobs.
6 We also thought that Miss Stewart, representing Sheik Omar
7 Abdel Rahman, who is the lead defendant and has certain
8 issues to present as a religious leader and as accused of
9 being a leader and a lot of very persuasive arguments
10 attacking broadly the case, that it would be very fitting
11 that Miss Stewart close out the case. In a multidefendant
12 case we were not able to have all 11 lawyers agree on that,
13 but the vote stands from our meetings at 9 to 2, and the
14 reasoning is very important in the case. We have prepared
15 our summations since if Mr. Serra yielded to Miss Stewart I
16 would go first. I have been working with Miss Stewart with
17 the idea --

18 THE COURT: I don't want to go on extensively
19 about it. Do you want to say anything else, Mr. Jacobs?

20 MR. JACOBS: I would do ex parte. I am not
21 prepared to do it in front of the other lawyers.

22 THE COURT: I will hear you ex parte but I have
23 to tell you that what I have heard from Miss Stewart and
24 Mr. Stavis sounds to me eminently reasonable, given the
25 position of their clients in this case and given the charges

1 in this case, and I understand that you are sitting where
2 you are sitting and I am sitting where I am sitting, but to
3 start making the kinds of distinctions you are making
4 between being third from the last and second from the last,
5 particularly whether Mr. Serra has a very distinct kind of
6 defense, really strikes me as a little bit selfish under the
7 circumstances. I will hear you ex parte gladly -- not
8 gladly. I will hear you. But I am not inclined to
9 interfere with what I understand to be the overwhelming
10 majority view here.

11 Ms. Amsterdam.

12 MR. JACOBS: I don't represent the majority, I
13 represent my client.

14 THE COURT: I am not faulting you for trying to
15 get whatever you can. I am just saying that they are trying
16 to get whatever they can for their clients, too, and I have
17 to make some judgment about the effect overall on everybody
18 without favoring somebody unduly.

19 Ms. Amsterdam.

20 MS. AMSTERDAM: Just so that there isn't some
21 flurry of activity ex parte, I will say my record on the
22 record as follows. Sheik Omar Abdel Rahman has a very
23 specific defense to him and he has a defense that
24 potentially is antagonistic to six of the defendants in the
25 safe house count, to wit, I don't know these people, they

1 weren't my followers, I don't care. I think that allowing
2 the sheik's lawyer to go last and somehow or other present
3 the potential for an antagonistic argument after that gives
4 her an advantage which I don't see why she gets. I don't
5 understand why the court should be in the position of
6 picking who gets the advantage. She may have an
7 antagonistic defense where six lawyers in this room may run
8 contrary to that, and while I appreciate that people were
9 willing to cede to Miss Stewart, I think that people in the
10 safe house really ought to be keeping the eye on the ball as
11 to who they represent, and I say this straight up, I don't
12 think it is in our advantage to have the sheik's lawyer sum
13 up last.

14 THE COURT: I will tell you that I said on day
15 one of this case, and I mean day one -- it antedates Ms.
16 Stewart's arrival in this case by over a year -- that I
17 perceive a difference between Dr. Abdel Rahman's defense and
18 the defense of any other defendant in this case.

19 MR. JACOBS: We don't see it at all.

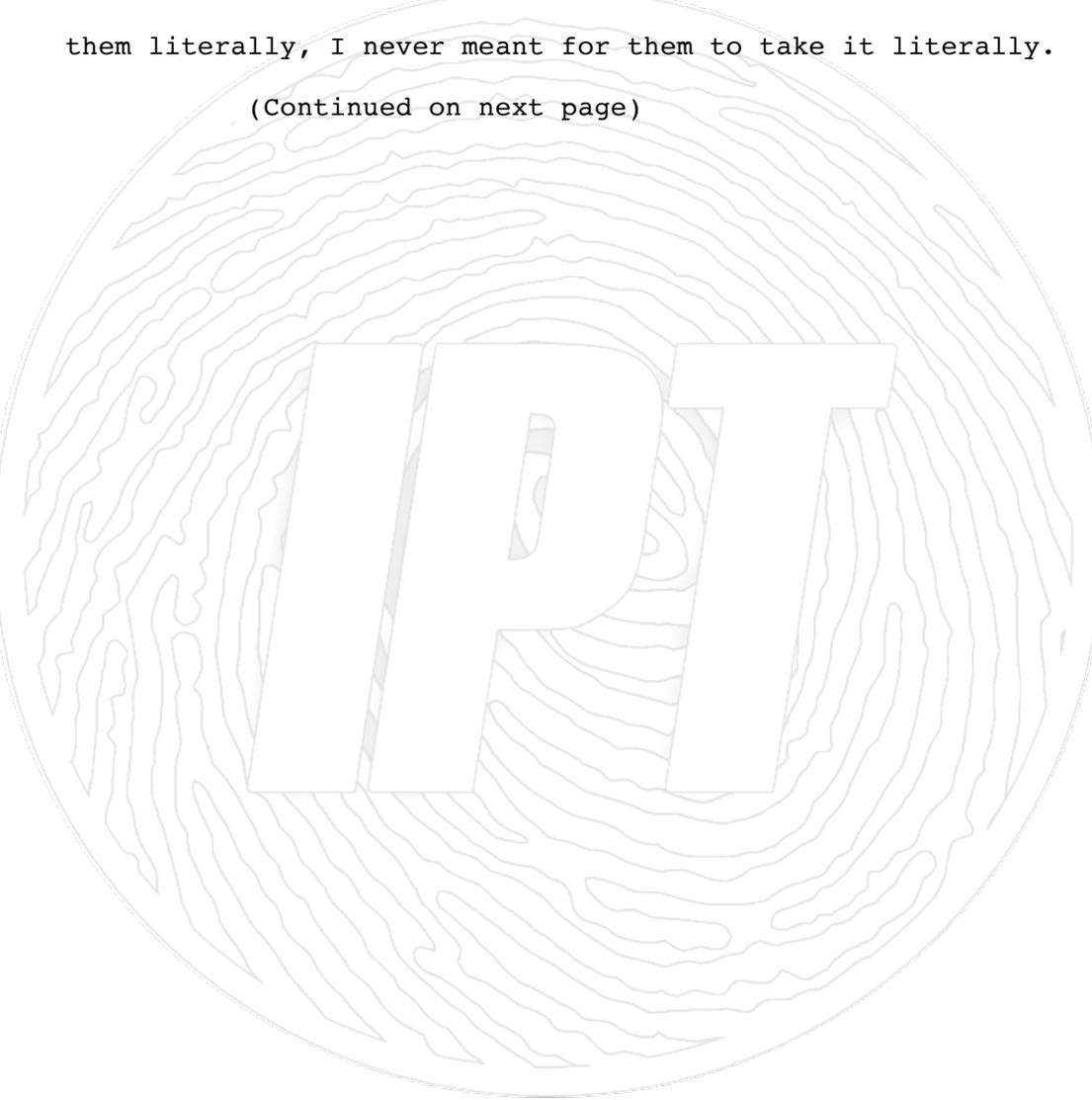
20 THE COURT: Any other defendant in this case,
21 because the nature of the charge against him is different.
22 The nature of his participation is different, and therefore
23 the nature of his defense is different. To some extent she
24 hasn't tried the case that way, that's her business. But
25 that's intractable. That arises from the nature of the

1 indictment.

2 MS. AMSTERDAM: It does, but she has an argument
3 of, I made certain sermons, they were set in a religious
4 context, these lunatics, for want of a better word, took
5 them literally, I never meant for them to take it literally.

6 (Continued on next page)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 THE COURT: That doesn't only apply to the safe
2 house people.

3 MS. AMSTERDAM: That is absolutely true, but when
4 there is the potential for an antagonistic argument, I don't
5 know why the Court feels compelled to give her the
6 advantage.

7 MS. STEWART: Judge, if I may just say this: Of
8 course, I believe Mr. Jacobs asked me this very question,
9 whether I was going to do that in my summation as part of
10 the input into what could be their position. I don't know
11 whether Ms. Amsterdam was present or not, but I told them
12 that my client forbade me to do that and that I had no
13 intention of doing that. It is his position that it is not
14 his right to rise above other people by pointing at them or
15 dumping on them. And I do not intend to do that. It may
16 well be that this is implicit in the case and that the jury
17 will seize upon it without any help in my summation. But I
18 do not intend to mention it, and this is what I have told
19 the other people of the safe house who Ms. Amsterdam would
20 not castigate.

21 THE COURT: All right.

22 MS. AMSTERDAM: The other alternative I would
23 propose is that Mr. Jacobs and I do not book-end Mr. Serra.
24 We are separated by Mr. Bernstein, Ms. London and
25 Mr. Lavine. And I don't see any specific factual reason why

1 you are going to switch the order of the indictment to go
2 Serra, Jacobs, Stewart.

3 THE COURT: I want to hear from Mr. Jacobs ex
4 parte before I consider doing that. And I also want to
5 consider the fairness of doing something on the basis of
6 anything that Mr. Jacobs tells me ex parte.

7 What do you want to do about lunch?

8 MS. AMSTERDAM: Let's keep going.

9 THE COURT: Let's keep going?

10 MR. SERRA: Can we take a few minutes?

11 MR. BERNSTEIN: Judge, on the part of
12 Mr. Jacobs --

13 THE COURT: I am perfectly willing to keep going.

14 MR. BERNSTEIN: I am sorry. I didn't wish the
15 Court to go on without having lunch.

16 THE COURT: No. I was inquiring for your
17 benefit. I don't have to eat lunch right now.

18 MS. LONDON: The cafeteria closes at 1 o'clock,
19 which eliminates an opportunity for lunch later, but if we
20 had a break, maybe we could get a lunch.

21 MR. WASSERMAN: I would join in a short break. I
22 have something I wish to discuss with Ms. Stewart.

23 THE COURT: See you in what, ten minutes?

24 MS. AMSTERDAM: Do you want to see us ex parte?

25 THE COURT: I will see Mr. Jacobs and Ms.

1 Amsterdam ex parte, but I will see everybody else in, what,
2 ten minutes?

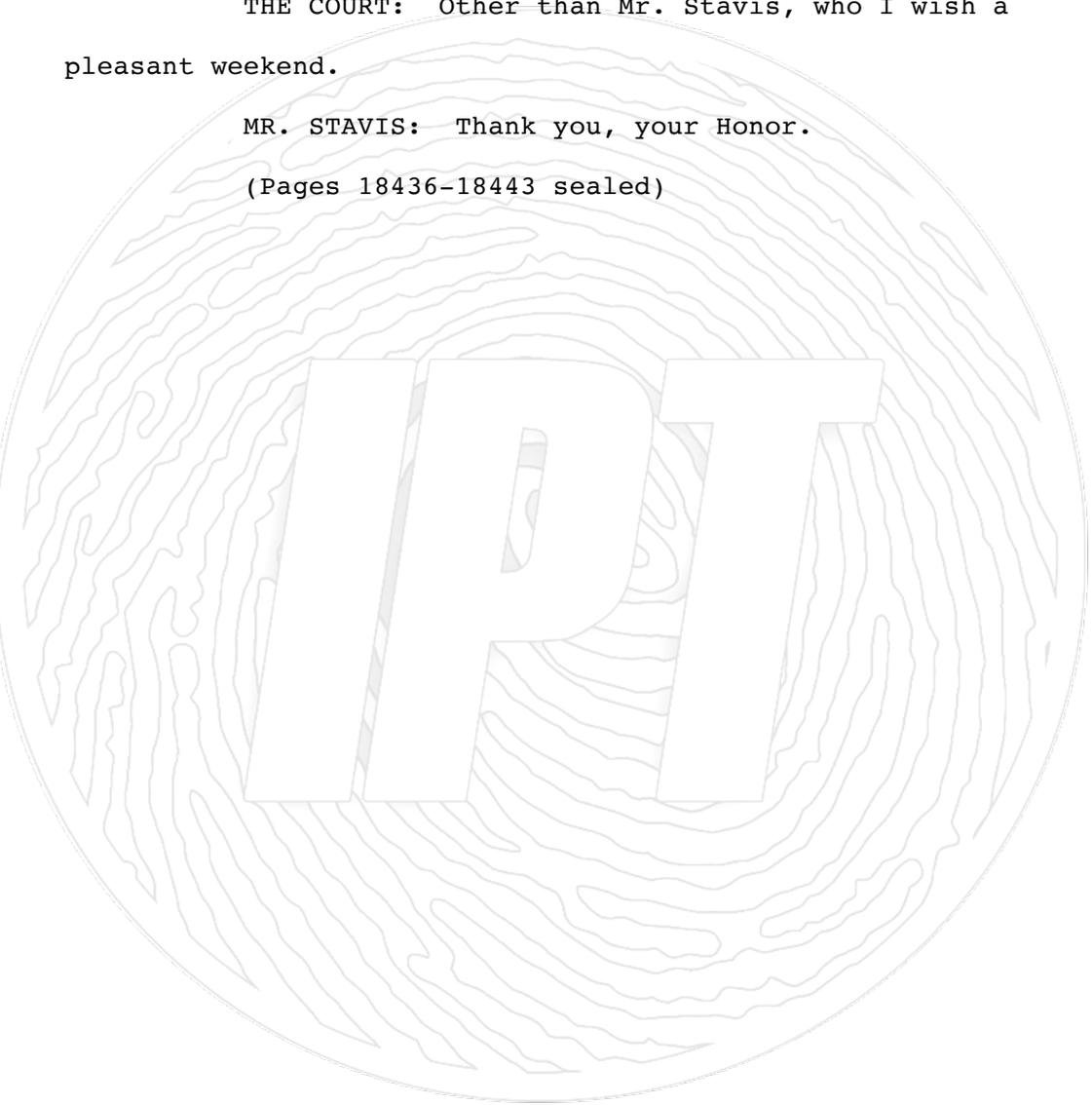
3 MR. PATEL: Almost everyone else.

4 THE COURT: Other than Mr. Stavis, who I wish a
5 pleasant weekend.

6 MR. STAVIS: Thank you, your Honor.

7 (Pages 18436-18443 sealed)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 THE COURT: Just to take the last issue we talked
2 about first, and that is the order of summations. As it
3 happens, there is authority on this. Case of United States
4 versus Cardascia, 951 F.2d, 474, discussion at page 485.
5 Apparently Judge Weinstein permitted a defense lawyer to
6 rebut the summation of another defense lawyer before the
7 government rebuttal, and he was found to have discretion to
8 do that in view of the conflicting interests of the
9 defendants in that case.

10 It seems to me that if he had discretion to do
11 that, then I certainly have discretion to talk about or at
12 least deal with the issue of the order of summations. That
13 having been said, however, the question then arises about
14 what standards you use in deciding the order of summations.
15 The problem is, there is no fair way to do this, there
16 really isn't. There are all kinds of interests involved
17 here. There is the weighted interest of, nakedly, how much
18 time somebody faces. There are things like the likelihood
19 or unlikelihood of somebody being convicted. There are my
20 own subjective judgments about both the strength of the
21 evidence and the quality of the lawyers, and on and on and
22 on.

23 I can see two ways to do it and only two ways,
24 and those are the only two ways that I am going to do it.
25 That is either by your agreement or by the order of the

1 indictment. I will not do it any other way. If you can
2 agree, fine. If you can't agree, I will go in the order of
3 the indictment, with this caveat, and that is that if
4 anybody, going in the order of the indictment if anybody
5 does anything to anybody else because of the advantage of
6 going after someone, then I am going to consider the remedy
7 that Judge Weinstein applied in Cardascia, which is to
8 permit somebody to get up and deal with it. That, to my
9 simple way of thinking, is the only fair way to deal with it
10 because it doesn't involve me making decisions about
11 something that I shouldn't be making decisions about. I
12 would urge you to try to come to a consensus. That is kind
13 of banal, but I wish you could, I hope you can. If you
14 can't, that's what I am going to do.

15 I see a small problem here in the sense that
16 Mr. Stavis, I thought, said something before he left about
17 having prepared his summation on the assumption that he was
18 going to go first.

19 MR. PATEL: That is correct, Judge. He is
20 flexible.

21 MS. STEWART: In candor, obviously, we have been
22 aware of the problem for a week or more. He had, but we
23 have all been aware that this would happen.

24 THE COURT: It is a relatively small adjustment
25 between first and second, a relatively small adjustment.

1 Again, I hope you can arrive at an agreement.

2 MR. PATEL: The only thing, and I will raise this
3 as early as possible, is, I understand Mr. Fitzgerald
4 expects to consume the bulk of two days.

5 THE COURT: It is a lot of bulk.

6 MR. PATEL: He talks fast.

7 That was an introductory phrase. Let me set out
8 the problem for you. I am asking really for an hour and a
9 half of downtime, essentially. If Miss Stewart intends to
10 go first and consume most of the day, and Mr. Stavis
11 anticipates that his summation -- again, it is an
12 eight-month trial -- will also take about a day, the concern
13 is, if Miss Stewart finishes at 3, 3:30, he will be up for
14 three days, Thursday afternoon, Friday, and finish Monday
15 morning. What I would ask is, if Miss Stewart is done,
16 rather than making him start Thursday afternoon, let him
17 start Friday morning --

18 THE COURT: Fine.

19 MR. BERNSTEIN: The court is aware that I have a
20 problem next Friday morning which I have conveyed through
21 Miss Schwartz to your Honor.

22 THE COURT: Yes.

23 MR. BERNSTEIN: If I have to be out Friday
24 morning to be before Judge Block in the Eastern District,
25 that can be done on the proviso that my cocounsel and my

1 client have no problem with that, and I don't think anybody
2 here has a problem with it and I don't think my client will.
3 I will have Mr. Warshaw sit in my absence for as long or as
4 short as Friday morning will be.

5 THE COURT: The only reason I had pause about you
6 not being there during somebody else's summation is that you
7 raised a couple of issues of conflict relating to the
8 defenses of other defendants.

9 MR. BERNSTEIN: Certainly given the timing of
10 things as we are now, if it is Miss Stewart or it is
11 Mr. Stavis going first and then moving into, I guess, Mr.
12 Ricco and Mr. Wasserman, I can't imagine that whatever
13 conflict issues exist come up to that point. I don't think
14 there are any issues that we have -- Mr. Wasserman, again,
15 is trying to see if he can scare some up. I don't think
16 there is a problem. If there is, I will work with them.

17 THE COURT: Can I get some idea -- I know how
18 hard it is. To some extent I know intellectually how hard
19 it is to estimate time, but I would like at least to be able
20 to give the jury a very broad sense of how long this is
21 going to take so that it is easier for them. Just as I gave
22 them a ballpark on the trial I would like to give them a
23 ballpark on the summations so they are not completely in the
24 dark about it.

25 MR. JACOBS: Do you really want to get sick

1 hearing this?

2 THE COURT: I assume that self-preservation is
3 going to operate to some extent. At some point you start
4 making enemies and not friends. You know all about that,
5 right? Good. I rely on that and I don't want to start
6 making arbitrary times. Mr. Fitzgerald the bulk of two
7 days. Miss Stewart a day?

8 MS. STEWART: No more than a day, your Honor.

9 THE COURT: Mr. Stavis is a day?

10 MR. PATEL: Day.

11 THE COURT: Then who? Mr. Ricco.

12 MR. RICCO: Two hours, if that.

13 THE COURT: Mr. Wasserman.

14 MR. WASSERMAN: I am going to try to confine it
15 to a half day.

16 MS. AMSTERDAM: We know what a good judge of time
17 Mr. Wasserman is.

18 MS. AMSTERDAM: I suggest, your Honor, that you
19 put him down for a day. This way you will be pleasantly
20 surprised.

21 THE COURT: Let's be serious. Half day is
22 reasonable, less is more reasonable.

23 MR. BERNSTEIN: Hour and a half estimate, going
24 half hour either way.

25 MS. AMSTERDAM: I am next unless there is

1 agreement, which I think there will be, that I will go
2 before Mr. Bernstein, and I will be less than a day but
3 certainly more than a half day.

4 THE COURT: Really?

5 MS. AMSTERDAM: Um-hum.

6 THE COURT: Ms. London.

7 MS. LONDON: Maximum two hours, your Honor.
8 Probably an hour and a half.

9 MR. LAVINE: I figure roughly an hour, your
10 Honor.

11 THE COURT: Mr. Jacobs.

12 MR. JACOBS: Day.

13 THE COURT: A day?

14 MR. JACOBS: I will try to keep it to a day.

15 MR. SERRA: Maximum two hours, hopefully an hour
16 and a half.

17 THE COURT: Mr. Jacobs, don't take this the wrong
18 way, but I don't think you are doing anybody any favors.

19 MR. JACOBS: Your Honor, I will be honest. I
20 haven't typed it up. When I type it up and read it, I can
21 give you almost to the minute what it will be.

22 THE COURT: Understand, I am delivering a charge
23 that is going to take four hours or under.

24 MR. BERNSTEIN: But you have about three breaks
25 in there.

1 THE COURT: With the breaks it will be about
2 four, four and a half hours, and I am charging on every
3 count in the indictment.

4 MR. JACOBS: Judge, I haven't done it. When it
5 is typed out --

6 THE COURT: I know, but they call it a summation
7 for a reason. Otherwise they would call it instant replay.

8 MR. JACOBS: I summed up four days in Salerno. I
9 will keep this under a day.

10 THE COURT: If there hadn't been an anonymous
11 jury in Salerno, I would call each of them and express my
12 condolences now. Sometimes less is more.

13 MS. AMSTERDAM: No one has ever said that about
14 Mr. Jacobs, however.

15 THE COURT: I will calculate what this means.
16 Rebuttal?

17 MR. McCARTHY: I would like to be less than a
18 day.

19 THE COURT: I would like you to be less than a
20 day. Basically a day or less or so. I will figure out what
21 this means and give them some ballpark estimate based on
22 that. I have a couple more particular questions about the
23 charge. Nobody has raised this but I am going to raise it
24 myself.

25 MR. SERRA: Your Honor, we are not done.

1 THE COURT: Fine, then let's proceed. Mr.
2 McCarthy.

3 MR. McCARTHY: Just so we can finish what we have
4 already covered, there are two cases that I would like to
5 cite your Honor to on the duplicity issue that came up
6 before.

7 THE COURT: That you not be required to make an
8 election?

9 MR. McCARTHY: Correct.

10 THE COURT: One second. Yes, go ahead.

11 MR. McCARTHY: United States versus Aracri,
12 A-R-A-C-R-I, which is at 968 F.2d 1512. The discussion
13 begins at 1518. My sense of it from looking at it is that
14 if there is a special verdict or at least a verdict that
15 makes clear what the jury's findings are with respect to the
16 different prongs, that it is OK to send a count to the jury
17 that charges two different offenses. If there is a general
18 verdict, it seems to me that it is probably not OK.

19 THE COURT: You can't be. It is definitely not
20 OK with a general verdict. It has to be. OK, go ahead.

21 MR. McCARTHY: The other case is not precisely on
22 point but has a discussion by Judge Newman about having a
23 judge elect remedies, a case in which the defect was
24 multiplicity rather than duplicity, United States against
25 Seda, and that is at 978 F.2d 779.

1 THE COURT: I will look at them and I will let
2 you know this afternoon what I am going to require on that.
3 Yes, it has to be this afternoon.

4 MR. McCARTHY: On your Honor's point before about
5 the litigation, all kidding aside, it is crucially important
6 as to Count 10 regardless how it comes out.

7 THE COURT: I know, I know.

8 Mr. Jacobs.

9 MR. JACOBS: I alerted your Honor last night to
10 the objection that I had on page 188.

11 THE COURT: I am assuming, by the way, that at a
12 later time you will all provide me with the exhibits to
13 which some of this discussion applies.

14 MR. JACOBS: Sure. It's 32, 331T.

15 MR. McCARTHY: 333.

16 MR. JACOBS: 333.

17 THE COURT: But there were a couple of others
18 that were covered the last day. I can find those in the
19 transcript.

20 MR. LAVINE: I think I have them. I have the one
21 that relates to my client, your Honor, and that is
22 Government's Exhibit 381.

23 THE COURT: One second, I will just get the page.

24 MR. LAVINE: 381B and 381BT, B being the video
25 and BT being the transcript.

1 THE COURT: May I have those again, Mr. Lavine.

2 MR. LAVINE: The video was 381B and the
3 transcript of the video was 381BT.

4 THE COURT: And, Mr. Jacobs, the exhibit at stake
5 on the Salem --

6 MR. JACOBS: 333T and the tape itself, which is
7 333. Am I right, Mr. McCarthy?

8 MR. MCCARTHY: Is that right, Mr. McCarthy?

9 MR. MCCARTHY: Yes.

10 THE COURT: Mr. Jacobs.

11 MR. JACOBS: Your Honor, the events of that day
12 consume a lot of pages of colloquy, and as I recall it, I
13 questioned Salem about what was on the tape and what was on
14 the transcript. He claimed he heard the word United
15 Nations. He testified to it. The government then played
16 him that portion of the tape.

17 When we went to side bar, the government
18 proffered that they had an expert who would so testify. I
19 stated that the government had a transcript that we agreed
20 to with government interpreters that didn't have it, and the
21 colloquy went back and forth over a number of pages. We
22 jointly resolved, with the government's acquiescence, to the
23 instruction your Honor gave. There was a modification of
24 how many government interpreters, and basically the charge
25 given to the jury stated at page 7949:

1 "The transcript was prepared with the assistance
2 of interpreters, including a government interpreter who said
3 he did not hear those words on the tape. The witness
4 Mr. Salem said he did hear them. Although in other
5 instances when we deal with foreign language tapes it is the
6 transcript rather than the tape that is the evidence, in
7 this instance it will be for you to decide whether those
8 words appear on the tape based upon everything you have
9 heard and seen, including the transcript, which does not
10 have those words in it, the testimony of Mr. Salem who says
11 those words are on the tape and the tape itself which you
12 have heard."

13 At that point we went back and forth about
14 whether I could comment in my summation on the fact that the
15 government didn't call an interpreter, and I represented to
16 the court that I would not do so, because that would be
17 taking unfair advantage of the government, who had an
18 interpreter available. I stand now by your Honor's
19 instructions.

20 Your Honors instructions at page 188 totally
21 leave out the instruction that the court gave.

22 THE COURT: I think I understand what you are
23 asking.

24 MR. JACOBS: What I am asking specifically is
25 this. I want to refer to your Honor's instructions that he

1 gave at the time, as I said, I think, I would, word for
2 word, without changing anything. I want to make sure I
3 don't comment on the fact that the government could have
4 called an interpreter. I want to live with your Honor's
5 instructions. But this instruction not only waters down,
6 and I don't mean it unfairly, really mischaracterizes the
7 agreement that we reached and the instruction that your
8 Honor gave. All I am asking is that your Honor take the
9 instruction that your Honor gave and give it back to the
10 jury. This is the only tape that had that agreement between
11 the parties. I wasn't a party to the Lavine things. This
12 was a particular, unusual situation.

13 THE COURT: Although Mr. Wasserman actually
14 questioned, now that I think of it, questioned Mr.
15 Abdel-Hafiz about certain phrases on some tapes.

16 MR. WASSERMAN: The difference, I think, and it
17 is a difference, is that the translation -- there was an
18 issue as to translation which depended upon what you heard
19 rather than not hearing anything. So Mr. Abdel-Hafiz
20 testified he heard, for example, X, and X translates to
21 whatever. I played for him some things, so I have a
22 proposed instruction which would cover that particular
23 aspect.

24 I think what Mr. Jacobs is talking about is where
25 there wasn't anything -- I am sorry, go ahead.

1 MR. JACOBS: Your Honor, the government is
2 perfectly free to play that portion of the tape. They can
3 ask the jurors to listen to it. That is in their right.

4 THE COURT: Let me tell you what my concern is.
5 My concern is your having just said that you plan to rely
6 heavily on that aspect of my instruction in your summation.

7 MR. JACOBS: I told you I would. I said it
8 clearly in the record. I said your Honor is going to hear
9 me repeat that to the jury because I had three interpreters
10 ready to dispute that to the government. We went back and
11 forth as to the wording. I said I can live with it as long
12 as I am permitted to use it.

13 THE COURT: Do you have that part of the
14 colloquy?

15 MR. JACOBS: Sure. We went back and forth. That
16 was the whole purpose of my agreeing to it.

17 THE COURT: Do you have that colloquy?

18 MR. JACOBS: Sure. Let me take a look at it.

19 Your Honor, I have no objection to --

20 THE COURT: Can you hand it up?

21 MR. JACOBS: It says --

22 THE COURT: I can read.

23 MR. JACOBS: I have no objection, I can --

24 MS. AMSTERDAM: He can read it faster.

25 THE COURT: Faster and fairer.

1 MR. JACOBS: It goes on for quite sometime.

2 7939 -- the government had made a proposal --

3 THE COURT: Wait a second.

4 MR. McCARTHY: It was the government that
5 objected to the instruction, and they asked for a
6 modification, which I agreed to.

7 (Pause)

8 THE COURT: I have read enough.

9 MR. JACOBS: As a matter of fact, your Honor
10 warned me --

11 THE COURT: There is no need for you to go on. I
12 have read enough to believe that that is in essence the deal
13 we made.

14 MR. JACOBS: Correct.

15 THE COURT: A card laid is a card played and
16 that's the deal. So I will give the instruction as I gave
17 it on the transcript, as to that exhibit.

18 MR. JACOBS: What I think your Honor told me is,
19 you better not say to this jury that the government could
20 have called an expert because I would have let them do it.

21 THE COURT: That sounds like me.

22 MR. JACOBS: You pretty much squarely told me
23 that, and I said I will stick to the instruction.

24 THE COURT: All I am suggesting to you is, don't
25 put more weight on it than it will carry, Mr. Jacobs.

1 MR. JACOBS: It is what it is.

2 THE COURT: Don't be the Delphian oracle either.
3 Don't give it more weight than it will carry and don't take
4 one part in isolation. Don't say the judge said this and
5 what he really meant was --

6 MR. JACOBS: No, no.

7 THE COURT: Next, Mr. Wasserman.

8 MR. JACOBS: The entrapment, are we going to
9 discuss this?

10 MR. WASSERMAN: I just have something on this
11 particular point.

12 THE COURT: Yes.

13 MR. WASSERMAN: Your Honor, I think that there
14 are two possible things that should be included at the end
15 of page 188. One is what was just mentioned a minute ago
16 about the playing of the tape on Wednesday which was denoted
17 two ways, one as Q50 and the other was a government exhibit.
18 I will supply it to the court. It is the same Arabic
19 excerpt. Mr. Abdel-Hafiz was questioned on what words he
20 heard which led to his translation, and by implication, or
21 impliedly Mr. Yousry had testified similarly though had not
22 done the hand raising and the hand lowering.

23 The reason I raise that particular point is
24 because that is an Arab tape that the jury should consider
25 as evidence for what they heard as leading to the

1 translation testified to by the two translators. In other
2 words, they were asked what word do you hear and he
3 indicated B or D or whatever, so it is that point. I
4 drafted up something that I would ask Mr. McCarthy to look
5 at with some time to do so.

6 THE COURT: I take it nobody is building a
7 summation based on that particular instruction.

8 MR. WASSERMAN: No. Might I raise a second point
9 because it might bear on your Honor's thinking with regard
10 to that.

11 THE COURT: Go ahead.

12 MR. WASSERMAN: During the defense case for
13 Mr. Hampton-El, I played a series of excerpts from the
14 Arabic CM's, denoted as the Q series for Hampton-El. Your
15 Honor allowed me -- they were introduced in particular when
16 Mr. Bernstein had an objection to Q20, which came from CM
17 20, that I was allowed to play it for the evidence of the
18 state of mind of the speakers, the tonality of their speech.
19 I think the jury should be told that those tapes, and I will
20 supply the exhibit numbers to the court, are in evidence for
21 that purpose, they were played with the pointing out of the
22 English translations contemporaneously to evidence the
23 speakers' states of mind.

24 MR. WASSERMAN: I will.

25 MR. WASSERMAN: What I would suggest, your

1 Honor --

2 THE COURT: I will.

3 MR. WASSERMAN: I will draft something up, ask
4 the government for its input and perhaps we could agree on a
5 joint --

6 THE COURT: Fine, glad to do it.

7 Mr. Jacobs.

8 MR. JACOBS: Yes. I think before the summations
9 begin as to those defendants that wish to argue entrapment,
10 or bifurcated entrapment --

11 THE COURT: What is bifurcated entrapment?

12 MR. JACOBS: Bifurcated entrapment is that if
13 they weren't entrapped, they still have a right to put in a
14 regular substantive defense under *Matthews v. United States*.

15 THE COURT: I know that. I am not denying it. I
16 am asking who wants an entrapment charge.

17 MR. JACOBS: Miss Amsterdam and I do for sure. I
18 don't want to speak for anybody else.

19 MR. WASSERMAN: I would ask for it as well.

20 MR. LAVINE: As would I.

21 MS. LONDON: And I.

22 MR. BERNSTEIN: As would I.

23 THE COURT: I am listening to lawyers, but it is
24 defendants I have to have in mind. Let me understand this.
25 It is Mr. Hampton-El.

1 MS. LONDON: Elhassan.

2 THE COURT: Mr. Elhassan.

3 MR. LAVINE: The Abdelganis.

4 MR. SERRA: Mr. Alvarez, your Honor.

5 THE COURT: Amir and Fadil Abdelgani -- I will
6 try not to phrase it that way -- and Mr. Alvarez?

7 MR. SERRA: Yes.

8 MS. AMSTERDAM: And Mr. Saleh and
9 Mr. Khallafalla.

10 MR. JACOBS: We would refer your Honor to a
11 recent Supreme Court case Hurtado, 47 F.3d 577 Second
12 Circuit 1995.

13 THE COURT: What is that supposed to tell me is
14 in dispute?

15 MR. JACOBS: The most recent case on entrapment
16 and when a defendant is entitled to it. I know your Honor
17 knows the law.

18 THE COURT: Slight inducement.

19 Mr. McCarthy, do you dispute any of that?

20 MR. MCCARTHY: I am trying to separate out
21 surprise from legal entitlement. No, I don't think so. I
22 think the government's interest is limited to making sure
23 that the jury understands what the law is, which your
24 Honor's instruction does.

25 THE COURT: Fine.

1 Yes, sir, Mr. Jacobs.

2 MR. JACOBS: I would request that perhaps as part
3 of the entrapment charge, that that is not an exclusive
4 defense on behalf of the defendants, that the defendants are
5 perfectly free to argue --

6 THE COURT: What page is that on? 166, I am
7 told.

8 May I suggest that I do it at the beginning and
9 that I clear it up something like as follows: Defendants A,
10 B, C and D, among other defenses and arguments that they
11 have asserted to all the counts in the indictment, have
12 asserted that they were the victims of entrapment by an
13 agent of the government and by among other defenses and
14 arguments, what I am saying is that this defense is not the
15 only one asserted by these defendants and that you may
16 consider it along with others and you may consider others in
17 addition to it.

18 MS. AMSTERDAM: That is fine. Thank you.

19 THE COURT: Yes?

20 MS. AMSTERDAM: Perfect.

21 THE COURT: Ms. London.

22 MS. LONDON: Your Honor, while we are on the
23 entrapment charge, on page 167 on the first line of that
24 page where you define inducement as soliciting, proposing or
25 suggesting, I would ask that the court add initiating, which

1 is also in the Sand charge, and I would also ask for the
2 word, and maybe we could get a simple word, about something
3 that is akin to inveigling or that gives the notion of
4 trickery. Inveigling may be a little too pedantic.

5 THE COURT: It has another problem, which is that
6 it disserves your interest, because I think it is more
7 than -- I mean, even a suggestion, the mildest kind of
8 inducement, a suggestion is enough.

9 MS. LONDON: Could we have initiating as well?
10 Initiating is in Sand.

11 THE COURT: I don't know that it adds anything.
12 The trouble is, initiating is a concept in and of itself and
13 it doesn't go along with this list of words. You don't
14 initiate someone, although you solicit someone, propose to
15 them or suggest to them. It is a kind of independent
16 concept on its own.

17 MS. LONDON: Continuing in that paragraph --

18 THE COURT: I think whatever thought is in there
19 is in initiate, that is directed at a defendant is there
20 with solicit, propose or suggest.

21 MS. LONDON: OK.

22 THE COURT: Go ahead.

23 MS. LONDON: Continuing in the first full
24 sentence that starts in this connection, where that part of
25 the charge concerns the videotape that I introduced into

1 evidence, I would ask that that not be included. I believe
2 that the charge there is a marshaling of the evidence
3 unfairly and selectivley. I believe that the government in
4 their summation is more than capable of marshaling the
5 evidence that is in their favor, without it being done in
6 the charge. This is on page 167.

7 THE COURT: I think I know what you are referring
8 to.

9 MS. LONDON: In this connection, you have seen
10 and heard evidence that the government informant Emad Salem
11 placed and set up items in the Queens garage, also referred
12 to as the safe house, and you also saw a separate tape
13 depicting that conduct.

14 THE COURT: That is right. That is the tape you
15 put in.

16 MS. LONDON: That is correct, your Honor.

17 THE COURT: And this is the instruction that I
18 gave at the time with regard to to that tape.

19 MS. LONDON: Then I think there has to be some
20 other suggestion in there that that is far from the sum
21 total of what -- certainly I wouldn't even be arguing that
22 as the inducement or the proposal or the suggestion, and I
23 think there has to be some indication in there that that is
24 not what the entrapment defense is based on. That is much
25 more of a prop that comes after the defendants are

1 entrapped, those that were entrapped into being in the safe
2 house.

3 THE COURT: Let me ask you this. I don't know
4 whether we can agree on something or not. It was my
5 understanding that that was going to provide part of the
6 argument for the entrapment defense. If what you are
7 telling me is that it is not, then I will take it out.
8 However, if it does, it is going back in.

9 MS. LONDON: Your Honor, I was not proposing to
10 use that as part of the entrapment argument that I was
11 making.

12 THE COURT: The sense I have, though, is that
13 others may be.

14 MS. LONDON: That is why we need to clarify with
15 everybody, I guess.

16 THE COURT: Mr. Jacobs, Mr. Serra.

17 MR. SERRA: A moment with Ms. London, your Honor.

18 MS. LONDON: Mr. Serra has a suggestion that I
19 think perhaps we should discuss before we have a full
20 discussion.

21 THE COURT: I also want to caution you something,
22 and that is, there are two prongs to the entrapment defense.
23 One is the government's conduct. The other is the
24 government's burden of proving predisposition beyond a
25 reasonable doubt. The only prong in my estimation that his

1 conduct goes to is the inducement prong.

2 MS. LONDON: Yes.

3 MR. WASSERMAN: Your Honor, I had thought, not
4 being directly impacted by that, that your Honor's
5 instruction at the time was that it was not improper for
6 Emad Salem to have done it.

7 THE COURT: And it was also to give them at least
8 a slight preview of what it is that it was being offered
9 for, so that -- and I referred generically to a defense that
10 would have to deal with the defendant's state of mind,
11 although that is the reason for the cautionary comment that
12 I made just a minute ago. It doesn't really go to a
13 defendant's state of mind. What it goes to is the
14 inducement prong of the entrapment defense but not the
15 defendant's state of mind part of that defense.

16 MR. WASSERMAN: I am not in the safe house but I
17 see it as --

18 THE COURT: Then why are you --

19 MR. WASSERMAN: Because I am under the entrapment
20 charge, so anything in the charge does have an effect. I
21 don't see it as an inducement aspect, I see it as whether a
22 government informant acts properly by doing that and the
23 jury being instructed that that is not proper. What Emad
24 did was he greased the wheel by giving it the accouterments
25 of --

1 THE COURT: Greasing the wheel, however, is not a
2 defense.

3 MS. LONDON: Your Honor, we have a proposal which
4 would leave this in but attenuate the problem that I had
5 worried about.

6 THE COURT: Which was that this was the exclusive
7 or the principal basis --

8 MS. LONDON: Right, that they would focus only on
9 this video as the total extent of the inducement.

10 THE COURT: Go ahead.

11 MS. LONDON: The suggestion is, at line 6 in the
12 sentence that begins -- page 167 -- you may consider that
13 conduct, together with the other conduct of Emad Salem.

14 THE COURT: Yes, that is fine. How about
15 together with whatever other conduct of Emad Salem you find
16 relevant.

17 MS. AMSTERDAM: Perfect.

18 MR. BERNSTEIN: Your Honor, I am on the next
19 sentence, and I think it follows the same train, where it it
20 says that the conduct of Emad Salem was not intended to
21 suggest, and I would put --

22 I will withdraw my suggestion. I think the
23 language in the sixth line is sufficient.

24 THE COURT: Thank you.

25 MS. LONDON: Also in the entrapment charge, your

1 Honor, on page 168, at line 9, I may be being petty here,
2 but the second word is inducements in the plural. I would
3 ask for it to be inducement singular.

4 THE COURT: You are right.

5 MS. LONDON: One would do the trick.

6 THE COURT: That is a typo.

7 MR. WASSERMAN: Your Honor, may I just have a
8 moment with Ms. London before addressing the court?

9 THE COURT: Yes.

10 MR. WASSERMAN: Your Honor, what was earlier
11 suggested by Ms. London, if we could address this at a later
12 point --

13 MS. LONDON: At a later point today, your Honor.
14 As opposed to wasting the court and counsel's time, we could
15 look at it while other things are being discussed.

16 THE COURT: Mr. Serra.

17 MR. SERRA: Your Honor, before we leave the
18 entrapment charge, the last paragraph in the charge, page
19 168, is, needless to say, a very correct statement of the
20 law, that entrapment to one count is not entrapment to
21 another count necessarily. However, I would ask the court
22 to consider on the facts of this case the people who just
23 requested an entrapment charge are requesting on the
24 seditious and bombing conspiracies, the attempted bombing,
25 and in Mr. Alvarez's case the Counts 15 and 16, the weapons

1 offenses.

2 I think on the facts of this case, your Honor, if
3 a defendant is entrapped as to any of those counts a
4 defendant is entrapped as to all of those counts, the people
5 who have requested the charge. I am not disputing the law,
6 but it is hard to see a reasonable view of the evidence that
7 any of the defendants who just requested the charge, and if
8 your Honor granted it, could be entrapped on one count and
9 not on others.

10 MR. McCARTHY: I disagree with that for the
11 following reason. On the firearms charges, Mr. Alvarez
12 testified, and the tape recording that came into evidence
13 corroborated that he offered the gun.

14 With respect to the problem that Mr. Serra
15 describes, your Honor's instructions pretty clearly state
16 that if the person is not guilty of the underlying predicate
17 crime, he can't be guilty of the firearms count. So that
18 the problem, I think, that he is setting out is taken care
19 of by that.

20 THE COURT: In that event, I am asking the jury
21 or suggesting to the jury that they might have to grapple
22 with a problem that they don't have to grapple with.

23 MR. SERRA: Yes, sir, that is my point.

24 MR. McCARTHY: I beg to differ. Certainly with
25 respect to -- well, if you have told them that if they are

1 not guilty of the underlying predicate there is no need to
2 resolve the firearms count, which my recollection of the
3 charge is that is what you tell them, it is a second bite at
4 the apple, which is not justified on any rational view of
5 the evidence to repeat an entrapment instruction again with
6 respect to the firearms counts, if that is what Mr. Serra is
7 asking for.

8 THE COURT: No. What Mr. Serra is asking is that
9 this last paragraph be omitted in this case, and I have a
10 certain sympathy with that. This crept into my entrapment
11 charge in another case where a defendant was a willing
12 supplier of firearms but had no apparent connection to
13 narcotics other than the informant's desire to get him to
14 buy something that would get him, ultimately, 20 years if he
15 were convicted of it, and there was an entrapment argument
16 made on the basis of the narcotics count in that indictment
17 that succeeded. Those facts are light years from these, and
18 I am inclined to take it out. The key to it is rational. I
19 don't see a rational argument that says that somebody was
20 entrapped on the seditious conspiracy count -- certainly
21 entrapped on the gun count but not on the seditious
22 conspiracy count -- that just doesn't work at all -- and I
23 am telling the jury a correct view of the law in the
24 abstract that there is absolutely no need for them to know,
25 and there is plenty here that they do have to know without

1 giving them interesting things that they don't have to know,
2 so I am going to take it out.

3 MR. McCARTHY: I hear you.

4 MR. JACOBS: Your Honor, may Miss Amsterdam and I
5 be excused? I think we have raised our points.

6 MR. SERRA: Your Honor, I do intend to raise a
7 couple of points that Ms. Amsterdam and Mr. Jacobs' clients
8 are involved in, the attempt counts in particular.

9 THE COURT: Please stay. Thank you.

10 MR. SERRA: The first, your Honor, in two
11 sentences I renew the Rule 29 motion as to Count 6, the
12 attempted bomb. I direct the court's attention to Agent
13 Thurman's testimony. I meant to have the transcript with me
14 and I don't, but Mr. Fitzgerald in rhetorical eloquence
15 phrased a question about how there is no conceivable way
16 that a bomb could be made from what was in the safe house
17 and the agent agreed. I intend to raise the issue in the
18 context of the factual impossibility charge which the court
19 included. I am not arguing factual impossibility. I am
20 renewing the Rule 29 motion in an attempt based on more
21 proof that what was made was not a substantial step in the
22 completion.

23 THE COURT: What you are telling me is that --
24 and I realize this is distant from the facts in the case but
25 play along with me for a time. Let's assume that you expect

1 to be provided with a loaded gun to carry out an
2 assassination, and unbeknownst to you you are provided with
3 a gun that has blanks. The assassination is to be carried
4 out at long distance. You pick up the gun and you fire it.
5 You cannot be convicted of an attempt? I don't think that's
6 the law.

7 MR. SERRA: Your Honor, the analogy, as you said,
8 is not -- it appears to be a gun. In the analogy your Honor
9 just gave, you had a gun in your hand.

10 THE COURT: Right.

11 MR. SERRA: In what were the facts of this case
12 there was no bomb and no possibility of making a bomb from
13 what was in the safe house.

14 THE COURT: But the assassination requires two
15 things. It requires a gun and bullets. They had the
16 gasoline. What they didn't have in proper quantity and of
17 proper type was the fertilizer. They had too much gasoline
18 and not enough fertilizer, I guess, is the problem.

19 MR. SERRA: Your Honor, I think it was a little
20 further. You recall the diagram of the three stages --

21 THE COURT: I do, I do, right.

22 MR. SERRA: Judge, I didn't mean to argue this.
23 I meant simply to draw the court's attention --

24 THE COURT: My attention having been drawn to the
25 evidence, the Rule 29 motion is denied.

1 MR. SERRA: Your Honor, let me segue from that
2 into the discussion of the factual impossibility charge.

3 THE COURT: Which is where?

4 MR. SERRA: It is page 87. I have no problem
5 with the actual charge. I would ask the court, however, for
6 the following reason not to charge factual impossibility. I
7 certainly don't intend to make the argument that it was --
8 the argument that I intend to make on the attempt, and it
9 will be relatively brief because it is not the thrust of my
10 defense, is going to be that they were so far from actually
11 being able to make the bomb that it was not a substantial
12 step. I don't intend to argue that there was a gun, that
13 somebody pulled the trigger and it had blanks in it. I
14 don't intend to argue that the pocket that attempted to be
15 picked was empty. I intend to argue that the factual issue
16 of what was done was not far enough advanced to be a
17 substantial step, and that will probably be in a paragraph.

18 THE COURT: I understand that. However, that
19 issue is in the case by virtue of your having called and
20 cross-examined Thurman regardless of whether you argue it,
21 and it is not only Thurman, but that was a very powerful way
22 of putting it into the case, and I think it needs to be
23 there. That is in a way a tribute to what you did with
24 Thurman, I guess a left-handed tribute but a tribute
25 nonetheless. But I think it needs to be there.

1 MR. SERRA: I understand, your Honor. I just was
2 informing the court that I don't intend to argue anything
3 resembling factual impossibility.

4 THE COURT: Your arguments aren't binding on your
5 cocounsel and some of their rhetoric is less precise than
6 yours, to see to say the least.

7 MR. SERRA: Your Honor, the other arguments that
8 I have are specific to the counts involving Mr. Alvarez. I
9 don't know if anyone else who needs to leave has general
10 arguments.

11 THE COURT: Ms. London.

12 MS. LONDON: If Mr. Jacobs and Ms. Amsterdam want
13 to leave, I have a couple of things on the attempted bombing
14 that maybe we could deal with right away.

15 THE COURT: OK.

16 (Continued on next page)

17

18

19

20

21

22

23

24

25

1 MS. LONDON: On page 88, noting that this charge
2 came from Sand, at the end of the main paragraph on that
3 page, which ends on line 22, there was a number of sentences
4 omitted from Sand which I draw the Court's attention to,
5 that state as follows: "As you can see, the first
6 requirement is that you find that another person has
7 committed or attempted to commit the crime charged.
8 Obviously, no one can be convicted of aiding and abetting
9 the criminal acts of another if no crime was permitted or
10 attempted by the other person in the first place. But if
11 you do find that a crime was committed or attempted, then
12 you must consider whether the defendant aided or abetted the
13 commission or attempted commission of the crime."

14 THE COURT: Mr. McCarthy?

15 MR. McCARTHY: I have no objection to your Honor
16 adding it.

17 THE COURT: Fine. I will.

18 MS. LONDON: Your Honor, I added the attempt
19 language in there, as the Court did with the other part of
20 that charge.

21 THE COURT: Right.

22 MS. LONDON: And the final matter on the attempt
23 charge is on page 89 at line 9. In the "ask yourself" list
24 of questions, the first "ask yourself" question in Sand was
25 omitted here, and which I would ask the Court to put in, in

1 that the language is very simple and direct for a jury, and
2 the language is: "Did he participate in the crime charged
3 as something he wished to bring about?" Sand lists all
4 three.

5 THE COURT: Page 89?

6 MS. LONDON: Page 89.

7 THE COURT: He participated in the crime charged
8 as something he wished to bring about? Is that it?

9 MS. LONDON: Did he participate in the crime
10 charged as something he wished to bring about?

11 THE COURT: All right.

12 MR. McCARTHY: Are you adding that to it? I
13 think it is superfluous. We do say, "Did he seek by his
14 actions to make the criminal venture succeed?" I don't see
15 what the material difference is. As your Honor would say --

16 THE COURT: I will add it. It is only my poor
17 voice that is at issue here.

18 MS. LONDON: I have nothing else that is specific
19 to all defendant counsel. I have a few other simple matters
20 but I don't know what order we will go.

21 MR. McCARTHY: Can we stay with the attempt for a
22 minute?

23 THE COURT: Yes, Mr. McCarthy.

24 MR. McCARTHY: I would like to start at page 83,
25 going over to page 84.

1 MR. BERNSTEIN: I am sorry, what line?

2 MR. McCARTHY: I should say the first full
3 paragraph of 84 is where I have the first --

4 MS. AMSTERDAM: I am sorry, the first full
5 paragraph of?

6 THE COURT: Of page 84.

7 MS. AMSTERDAM: All right.

8 MR. McCARTHY: I think that the first full
9 paragraph suggests that it may have been necessary for the
10 defendant actually to have, possess an explosive. Your
11 Honor goes on at some length defining what an explosive is.
12 It is really not relevant to guilt or lack of guilt on the
13 count whether they actually had an explosive, since, as your
14 Honor's gun example a couple of minutes ago implicitly means
15 they don't need to have had an explosive at all to have been
16 guilty of attempted bombing.

17 THE COURT: That is on page 83.

18 MR. McCARTHY: Right. But you go on from the
19 definition to say, in the middle of the first full
20 paragraph: "You need only find that the substance intended
21 to be used was such that when ignited it may cause an
22 explosion." I think the correct formulation would be, or at
23 least in addition would be: You need not find that the
24 defendant ever actually possessed an explosive. You need
25 only find that the defendant intended to use a substance

1 that, when ignited, would have caused an explosion.

2 THE COURT: That is page 84.

3 MR. McCARTHY: I think that the definitions of
4 explosive and along the lines of what your Honor said
5 earlier about imparting to the jury a lot of information
6 that they don't need in a situation where there is an awful
7 lot of information that they do need that they are going to
8 be presented with, it is a little excessive to give them
9 lengthy definitions of explosives when it is really sort of
10 beside the point.

11 MR. PATEL: Your Honor, on that point and on that
12 page, at the very top of the page, your Honor quotes from
13 the statute about an incendiary device. I don't believe
14 that there is --

15 THE COURT: There is no incendiary device.

16 MR. PATEL: Exactly.

17 THE COURT: Why don't I just take it out. This
18 particular statute, the whole thing is very long and turgid
19 and doesn't tell anybody anything that is at issue in this
20 case anyway.

21 MR. SERRA: Your Honor, there is a problem in
22 taking it out completely, which is something I wish to raise
23 later on, and that is that in Count Fifteen, you use the
24 word "explosion" in defining the firearm for purposes of
25 Count Fifteen. I for Mr. Alvarez can't have any confusion

1 that a firearm would be possibly an explosive for the
2 purpose of Count Five. I was going to raise that later on
3 because it is confusing to begin with. But unless -- your
4 Honor, that was a short version. Do you follow what I was
5 arguing?

6 THE COURT: Not at all.

7 MR. SERRA: I am sorry. On page 128 --

8 THE COURT: It sounds like I should take
9 something out of Count Fifteen. That is what I gathered.

10 MR. SERRA: Yes, I think that might do it. Line
11 11: "by action of an explosive." Now, I know it says by
12 action of an explosive, but what I would have to avoid is
13 the jury thinking that the Uzi -- by aiding and abetting it
14 going from New Jersey to New York, that that is transporting
15 an explosive, as in the purpose, one of the purposes of the
16 conspiracy charged in Count Five.

17 THE COURT: I can't conceive of their doing that.
18 This simply distinguishes a firearm from something like a
19 bow and arrow, which also expels a projectile, although not
20 by the action of an explosive.

21 MR. SERRA: And, your Honor, that could be cured
22 by adding to the charge on the bombing conspiracy the Count
23 Five charge, at about page 84 somewhere, that a firearm is
24 not an explosive, which is an undisputable statement.

25 THE COURT: It would also look weird there.

1 MR. SERRA: That is the fear of confusion, your
2 Honor, and I don't think it is completely out of the
3 question that a jury might be deliberating in asking whether
4 or not the Uzi which came from New York --

5 THE COURT: How about this. Let's focus on Count
6 Fifteen, which is where your problem really is, right?

7 MR. SERRA: I have another, more major problem in
8 Count Fifteen, but yes.

9 THE COURT: Let's deal with this one first. The
10 dispute is not whether this was in fact a firearm that could
11 fire a bullet.

12 MR. SERRA: It was stipulated, as a matter of
13 fact.

14 THE COURT: Then why don't we just say: Is any
15 weapon which will or is designed to or may readily be
16 converted to expel a bullet as that term is commonly used.

17 MR. SERRA: Fine. And delete "by action of an
18 explosive" --

19 THE COURT: Yes. Everybody knows what a bullet
20 is.

21 MR. SERRA: That is fine.

22 MR. McCARTHY: Judge, just to go back to page 84,
23 the interstate commerce --

24 THE COURT: Wait. Let me stick with this. You
25 had proposed some language to be inserted there, and I

1 didn't write it down.

2 MR. McCARTHY: I would say: You also need not
3 find that the defendant actually possessed an explosive.
4 You need only find that the defendant intended to use a
5 substance that, when ignited, would have caused an
6 explosion.

7 THE COURT: All right. Thank you.

8 MR. McCARTHY: Further down on that page, your
9 Honor, with respect to this count, the attempt count, it is
10 our understanding that here only a potential impact on
11 commerce is necessary because it is an attempt, as is the
12 case with conspiracy. And I think we cited Jones to your
13 Honor at 30 F.3d. With a conspiracy or an attempt crime,
14 there is no requirement of an actual effect on commerce,
15 only a potential effect on commerce.

16 THE COURT: All right. What is the problem?
17 Because this is charged in terms of the property that is
18 used in or affecting interstate commerce. That has to be
19 the property that is the target of the attempt. That
20 property actually has to be used in interstate commerce.
21 Since I don't see frankly any major dispute about this, can
22 we move on?

23 MR. McCARTHY: All right. My next point is on
24 page 90, and this is going to dovetail actually with page
25 56, which I think both deal with the conscious avoidance

1 instruction. I just don't think the paragraph, the last
2 paragraph, which is also the last sentence, is clear as
3 written. My sense of these things is that what is intended
4 is: It is entirely up to you whether you find that the
5 defendant deliberately closed his eyes. Similarly, any
6 inferences are entirely up to you, or something along those
7 lines. I think we are running --

8 THE COURT: Why don't I just take it out.

9 MR. McCARTHY: It is the same on 56 as on --

10 THE COURT: Right. I have taken that out.

11 MR. McCARTHY: That is all I have on these.

12 THE COURT: Mr. Jacobs?

13 MR. JACOBS: Mr. Bernstein will proceed.

14 THE COURT: This doesn't directly impact your
15 client, I guess, but I had a question of Mr. Serra and the
16 government which relates to something allegedly that
17 happened at the safe house and to an instruction that is not
18 now part of this charge but maybe should be based on
19 Mr. Alvarez's testimony, and that is an instruction on
20 voluntary intoxication.

21 MR. WASSERMAN: Before he answers, your Honor has
22 on page 167 discussed with reference to the item of the safe
23 house.

24 THE COURT: Yes.

25 MR. WASSERMAN: I would like to suggest that

1 where you have a phrase, "Emad Salem induced a defendant,"
2 that there be a phrase inserted, "who had contact with those
3 items." I am concerned that a defendant like my client --

4 THE COURT: I see.

5 MR. WASSERMAN: That is what the reference is to.

6 THE COURT: Yes.

7 MR. McCARTHY: Where are you?

8 THE COURT: He is on page 167, line 7. What he
9 suggests is insertion of the phrase, after "induced a
10 defendant" "who had contact with those items." Obviously,
11 it doesn't go to the question of inducement with respect to
12 somebody who had no contact with them.

13 MR. McCARTHY: Yes, your Honor.

14 THE COURT: Thank you, Mr. Wasserman.

15 MR. WASSERMAN: Thank you, Judge.

16 THE COURT: Mr. Serra?

17 MR. SERRA: Your Honor --

18 THE COURT: -- do you want a voluntary
19 intoxication charge?

20 MR. SERRA: Judge, I reviewed the Sand charge,
21 and needless to say, the entirety of our position is not
22 going to be that Mr. Alvarez was high on cocaine. That was
23 the point of Dr. Aranda testifying for the better part of a
24 day.

25 THE COURT: Right.

1 MR. SERRA: I took Sand's voluntary intoxication,
2 tried to make something of it that would be more
3 comprehensive, and decided it wasn't worth the effort
4 because I'd argue it. So I have no problem in saying it was
5 a tactical decision on my part not to request it, mainly
6 because I think that it would focus the jury on what is the
7 less important part of my defense rather than the more
8 important part.

9 THE COURT: All right.

10 MR. McCARTHY: Your Honor, frankly, after
11 Mr. Alvarez's testimony, I am concerned that whatever Mr.
12 Serra argues, the jury is going to be under the impression
13 that he may be absolved of guilt because he voluntarily
14 ingested a controlled substance.

15 MR. SERRA: Your Honor, I have had other cases
16 with Mr. McCarthy. I respect his ability and his intellect
17 from other cases and this case. But, frankly, I think that
18 that is a ridiculous idea, the fact that a jury would think,
19 without any instruction from the Court, that someone could
20 get high on cocaine and then go do whatever he wanted and be
21 absolved of guilt borders on the preposterous.

22 MR. McCARTHY: When he was confronted directly
23 with a fairly narrow, specific criminal activity, his
24 answer, as I recall it, was, "Gee, I don't know, I was
25 really high on cocaine all that time," as if that was

1 something that excused the behavior.

2 MR. SERRA: No, Judge, that is a leap about the
3 size of Pike's Peak, for him saying "I don't remember it" to
4 the jury saying, "Oh, well, you are not guilty." Certainly,
5 if I argue that, Judge, I deserve whatever the Court does to
6 me during the course of my argument. The problem with
7 giving any -- and I recognize that is part of the voluntary
8 intoxication charge, but the reason I didn't request a
9 special, call it, for lack of a better catch phrase,
10 diminished capacity charge, is because I couldn't fashion
11 one that didn't marshal the evidence, and I am sure the
12 government would then object to it, properly so. If the
13 Court simply charges voluntary intoxication, the Court is
14 leaving out of the equation most of my defense. I have no
15 intention of suggesting to the jury that he is not guilty
16 because he doesn't remember or because he was high.

17 THE COURT: Why can't that be cured by telling
18 them that I am addressing only the evidence relating to
19 voluntary intoxication and that whatever defense Mr. Alvarez
20 may have based on other evidence is something that they will
21 consider based on the evidence and the arguments of counsel.

22 MR. SERRA: Your Honor, I guess the devil is in
23 the details and I would have to see it. In theory, I have
24 no problem with that, and although I don't think -- if I
25 heard the Court right, you just said the defense of

1 voluntary intoxication. That shouldn't be the wording, I
2 don't think. It should be any evidence of voluntary
3 intoxication. There is no defense of voluntary
4 intoxication.

5 THE COURT: Correct, there isn't. That is part
6 of the point of the voluntary intoxication charge.

7 MR. SERRA: Right.

8 THE COURT: However, in a sense there is a
9 voluntary intoxication defense, because it can go --

10 MR. SERRA: To negate a specific intent, no
11 question about it.

12 THE COURT: That's right.

13 MR. SERRA: And I understand that that is the
14 other half, Judge, for us, for me, that is the favorable
15 side of the charge. My feeling was, I understand the
16 government's concern, I just don't think it is a realistic
17 concern. Frankly, that charge is normally --

18 THE COURT: But they are here to protect their
19 interest and you are here to protect yours. And if he tells
20 me it is a concern, and it may be, then I have to consider
21 it, at least. I don't know whether this group of folks, and
22 I have a lot of respect for their intelligence, would on
23 their own absolve him based on his having gotten high on
24 cocaine, without asking me, but I am loath to run the risk.
25 I am going to try to do something with the voluntary

1 intoxication instruction. The danger, as I understand, that
2 you have articulated is that it blows all out of proportion
3 Mr. Alvarez's testimony and diminishes the force of the
4 defense that you are relying on, which is diminished
5 capacity in a much broader view than an episode he testified
6 to.

7 MR. SERRA: Yes, sir. And in support of that, I
8 would point to the percentage of Dr. Aranda's fairly lengthy
9 testimony which was devoted to discussing cocaine abuse.

10 THE COURT: How much wind Dr. Aranda blew in that
11 direction, as opposed to the wind he blew in other
12 directions, isn't going to decide it. It is, you know, the
13 force of the wind and who I think it strikes that I am going
14 to consider. I am going to play with the voluntary
15 intoxication instruction in the Sand book.

16 MR. SERRA: Your Honor, I will also, then, renew
17 the efforts, which I abandoned fairly early on, to see if I
18 could combine voluntary intoxication with some sort of
19 diminished capacity.

20 THE COURT: Fine. And if, in doing that, you
21 should stagger into an agreement with Mr. McCarthy, please
22 let me know, because that would simplify my life.

23 MR. SERRA: I would be happy to, your Honor.
24 This weekend will be a problem, but I would be happy to.

25 As long as I am standing here, your Honor, there

1 is another problem for Count Fifteen, which Mr. McCarthy and
2 I have discussed, and I think that we have come to an
3 agreement in principle as to what should be done, although
4 we have not come to an agreement on the details.

5 Page 127 is the exact place, your Honor. 924(b)
6 is not a statute at least that I have dealt with. 924(c) we
7 see all the time. 924(b) I have not worked with before.
8 And I think the problem in the charge on page 127 comes from
9 the statute itself, which the scienter element can be
10 satisfied either by not -- quoting from the statute --
11 either by knowledge or reasonable cause to believe that an
12 offense punishable by more than a year is to be committed
13 with a weapon which is transported.

14 On page 127, that statute translated into
15 language, the last sentence: Thus, if you determine that
16 Mr. Alvarez had possession of facts which, although not
17 amounting to knowledge of a specific plan, would cause a
18 reasonable person" -- and it is that reasonable person that
19 I think there is a serious problem with. It is not a
20 reasonable person, Judge. It is a reasonable person of
21 Mr. Alvarez's intellect and experience. Because if you
22 write that out of the statute, then what you are saying is
23 that, given Mr. Alvarez, what the proof is of his
24 intelligence and lack of judgment, you don't judge him by
25 his own standard, you judge him by the standard of a

1 reasonable person. And if in fact a reasonable person comes
2 to a conclusion which Mr. Alvarez did not come to, that is
3 not a defense, the way this is now charged. I think that
4 that writes scienter, that writes culpable knowledge, out of
5 the statute as far as my argument is concerned. Your Honor
6 obviously did a lot of work on the conscious avoidance
7 charge. I think this is akin to a conscious avoidance
8 issue, but the case law, Beechnut, on conscious avoidance
9 requires the defendant have the out of saying, I actually
10 looked at the facts and, for whatever reasons, did not come
11 to this conclusion. I think that the law requires me to
12 have that out here, too.

13 THE COURT: The language you propose was a
14 reasonable person of Mr. Alvarez's intelligence, experience?

15 MR. SERRA: Intellect and experience.

16 THE COURT: Intellect and experience.

17 Mr. McCarthy?

18 MR. McCARTHY: Your Honor, I don't have a problem
19 with that outcome, provided that a couple of things go
20 before it. I have concern because it is really not
21 addressed in the charge, and I don't think it is anywhere
22 addressed any place else in the record, that the jury may
23 think that there is a form of insanity defense here, and the
24 jury may not understand what it is that Dr. Aranda's
25 testimony goes to. I would like to see something along the

1 lines of -- let me just back up for second and mention what
2 I mentioned to Mr. Serra this morning. At one point in his
3 testimony Dr. Aranda mentioned that Mr. Alvarez had been
4 institutionalized for a year or two. I blanched when I
5 heard it.

6 THE COURT: I don't remember that.

7 MR. SERRA: Is your Honor, the reason the Court
8 doesn't remember it is because the context made it clear,
9 that was in the context of how well he spoke English and why
10 Dr. Aranda didn't test him on English vocabulary, and he was
11 talking about being in the MCC for a year or two.

12 THE COURT: Yes, that I remember, sure.

13 MR. MCCARTHY: I am not for a moment suggesting
14 that he meant to convey a misimpression. What I am
15 concerned about is that they may have gotten a
16 misimpression. It is one example culled out of testimony
17 that really has not been explained and isn't explained any
18 place in the charge. I don't want the jury thinking that
19 there is an insanity defense here or that Mr. Alvarez can
20 escape liability here on that ground. I would like the jury
21 told what Dr. Aranda's testimony is for and what it is not
22 for. I would like to see the jury told that Mr. Alvarez is
23 not raising an insanity defense; that Dr. Aranda's testimony
24 was received for whatever weight the jury chooses to give it
25 on the question of his intent, his intelligence, and how

1 that goes to the jury's evaluation of his intent.

2 THE COURT: Wasn't the time to do that when Dr.
3 Aranda was on the stand?

4 MR. McCARTHY: To instruct the jury?

5 THE COURT: Yes. I instructed the jury many
6 times during the trial on the reason why things were being
7 received. I did it with the composite tape, I did it in a
8 number of other instances.

9 MR. McCARTHY: Your Honor, that may be right,
10 maybe I should have thought to ask for it before, but I
11 don't think that, not having asked for it at a time it may
12 have been appropriate doesn't mean it shouldn't --

13 THE COURT: The only danger, it seems to me, is
14 if Mr. Serra abuses it. I have to rely to some extent on
15 the arguments of lawyers to tell the jury what certain
16 evidence relates to. I try to stay out of that business. I
17 would rather stay out of it.

18 MR. SERRA: Your Honor, if you are looking at me
19 with a question --

20 THE COURT: I wasn't.

21 MR. SERRA: I have no intention of implying
22 anything like Mr. McCarthy is concerned about.

23 THE COURT: I didn't think you did. I assume you
24 are going to argue to them what it relates to.

25 MR. SERRA: Your Honor, I don't think it is a

1 mystery. I am going to argue to them that, in view of
2 Mr. Alvarez's lack of intelligence and his skewed perception
3 of things, that he did not consciously avoid knowing what a
4 juror -- judge, I opened on it; the language is in my
5 opening -- he did not consciously avoid knowing what a juror
6 probably would have known. That is going to be my argument.
7 And I think that is perfectly proper. That is the reason
8 Dr. Aranda was on the stand and I think it is an absolutely
9 indisputably proper use of the testimony.

10 MR. McCARTHY: And I am not disputing that at
11 all. It is Mr. Serra's caveat that is the reason Dr. Aranda
12 was on the stand. I don't see what is wrong with telling
13 the jury that.

14 THE COURT: That is what he is going to tell him.

15 MR. McCARTHY: I don't see what is wrong with the
16 Court explaining that to him. He is going to tell him as an
17 advocate arguing his position.

18 THE COURT: Because what you want me to tell them
19 is not that is the reason Dr. Aranda was on the stand but,
20 rather, he was not on the stand to establish an insanity
21 defense.

22 MR. SERRA: And then, your Honor -- we have had
23 this discussion, Mr. McCarthy and I -- then in order for
24 that to be meaningful, your Honor, you would have to tell
25 the jury what an insanity defense is. In order for them to

1 understand what Dr. Aranda's testimony is not, you have to
2 tell them what an insanity defense is about.

3 MR. McCARTHY: I feel a "no" coming on.

4 THE COURT: Pardon?

5 MR. McCARTHY: I feel a "no" coming on.

6 THE COURT: Yes. I think it is an unwise thing.
7 If there is any confusion about it, I think we are going to
8 get a note. I don't think we are going to get an acquittal
9 based on an insanity defense that I don't charge on. He may
10 get a note and we will jump off that bridge when we get
11 there. I don't want to get into that.

12 MR. SERRA: Your Honor, do I take it, then, that
13 the Court on page 127 is going to amend the charge to read,
14 line 16: a reasonable person of Mr. Alvarez's intelligence
15 and experience?

16 THE COURT: Yes. What else?

17 MR. SERRA: That is all I have, Judge. Thank
18 you.

19 THE COURT: Ms. London?

20 MS. LONDON: Yes, your Honor.

21 MR. SERRA: Oh, I am sorry, Judge. Your Honor, I
22 do have one other thing. With Count Sixteen Sixteen the
23 Court says explicitly that if Mr. Alvarez is acquitted on
24 the bombing conspiracy, he can't be convicted on Count
25 Sixteen. That is the in relation to weapons count. You

1 don't say that on Count Fifteen, and I think it is certainly
2 clear that it is the law. I would ask that that be put
3 somewhere in the Court's description of Count Fifteen.

4 THE COURT: How about, at the end of page 127,
5 which is the first element, knowledge of the criminal act,
6 say simply that: In connection with this element, I
7 instruct you that if you have found Mr. Alvarez not guilty
8 of the criminal conspiracy charged in Count Five, you must
9 find him not guilty in this charge as well.

10 MR. SERRA: Fine.

11 MR. MCCARTHY: I am not so sure that is correct.
12 Looking at 924(b) "Whoever with intent to commit therewith
13 an offense," it goes on, "or with knowledge or reasonable
14 cause to believe that an offense punishable by imprisonment
15 for a term exceeding one year," and it continues. As I read
16 the statute, if somebody else is guilty of the bombing
17 conspiracy but Mr. Alvarez isn't, but he gives the weapon
18 knowing that the other people are involved in the bombing
19 conspiracy, he is guilty.

20 MR. SERRA: Your Honor, that is parsing a statute
21 on the facts of this case beyond any conceivable weight that
22 it would bear. If Mr. Alvarez gives Siddig Ali and Emad
23 Salem a gun, knowing that they are going to use it to
24 protect the bomb factory and they are going to blow things
25 up in New York, he is as a matter of law a co-conspirator.

1 THE COURT: Right.

2 MR. McCARTHY: Let's just say for a moment that
3 Mr. Alvarez's arguing entrapment succeeds where others fail,
4 and such that some people are guilty of the bombing
5 conspiracy but he is not, solely because the jury buys his
6 entrapment argument. He is on tape and he has testified
7 that he offered the gun. It is conceivable on the evidence
8 that others could be guilty. The jury could find that he
9 knew that they were doing a bombing conspiracy but absolved
10 him because he was entrapped, and yet convict him for the
11 firearm.

12 MR. SERRA: Your Honor, if he was entrapped into
13 the bombing conspiracy, then there is no rational view of
14 the evidence that he would not be entrapped into Count
15 Fifteen. I don't think the government alleges that there is
16 a disconnected series of acts here. If he is entrapped to
17 participate in a bombing conspiracy, there is no question
18 that part of what he did was provide a gun, is he not
19 entrapped into that also?

20 MR. McCARTHY: In fact, I think there is a case
21 in the circuit that stands for exactly the opposite
22 proposition, although the name escapes me for the moment.
23 But let's just assume that somebody begins a string of
24 offenses that are factually connected up together. The
25 first or second he is entrapped with and he continues to

1 commit offenses thereafter, the fact that he was entrapped
2 for --

3 THE COURT: Now we are back to that last
4 paragraph in the entrapment charge, that entrapment on one
5 charge or count doesn't necessarily mean entrapment on
6 another.

7 MR. SERRA: Your Honor, again, sticking to the
8 facts of this case, the facts of this case are that
9 Mr. Alvarez asked, the one subject on which he was
10 cross-examined, he asked Emad Salem -- and it is on tape, it
11 is not in dispute -- he asked Emad Salem whether he wanted a
12 machine gun about two hours, three hours, three and a half
13 hours, after he first met Emad Salem. If Emad Salem
14 entrapped him in Siddig Ali's house in the middle of GX 352,
15 then about another 50 pages the government is saying there
16 is a reasonable view of the evidence that 50 pages later he
17 is not entrapped? I just don't see there is a reasonable
18 view of the evidence for that. What is the intervening
19 event that would expiate the entrapment that occurred 50
20 pages before?

21 THE COURT: Because entrapment can be a
22 subject-by-subject matter rather than an entrapment or not
23 matter.

24 MR. SERRA: I have no question about it as a
25 matter of theory, your Honor, that that is certainly right.

1 THE COURT: And it may be something that may be
2 true of your client, that he would at a moment's notice in
3 general provide a weapon for criminal ventures, in general,
4 of the usual street kind, but that, as to participating in a
5 bombing conspiracy, he was entrapped.

6 MR. SERRA: Your Honor, may I have a moment to
7 take a look at Count Fifteen in the indictment? I didn't
8 bring it to a charge conference.

9 (Pause)

10 MR. SERRA: Your Honor, just the way Count
11 Fifteen is written, even parsing that out --

12 THE COURT: It seems to me the most you can say
13 about the way Count Fifteen is written is that I would
14 instruct them that if they find that the conspiracy charged
15 in Count Five did not exist, they must acquit Mr. Alvarez on
16 Count Fifteen. That I can and will charge them. That is
17 the way Count Fifteen really is structured.

18 MR. SERRA: Count Fifteen reads: Siddig Ibrahim
19 Siddig Ali and Victor Alvarez, the defendants, with intent
20 to commit therewith an offense punishable by imprisonment.
21 However, the statute reads, your Honor, the government has
22 charged in Count Fifteen that Mr. Alvarez had the intent to
23 participate in the bombing conspiracy. That is the way the
24 count reads.

25 MR. McCARTHY: It also goes on from there, which

1 is "or" in the statute, and we are obviously permitted to do
2 that.

3 THE COURT: Right. He is off the hook if there
4 is no conspiracy in Count Five. He is not necessarily off
5 the hook otherwise.

6 MR. SERRA: Your Honor, I certainly see the legal
7 point. We are talking about between the agreement to
8 provide the Uzi and the initial inducement, if the jury
9 finds that there is any, in what was at the time CM-48, we
10 are talking about a period of three, three and half hours.
11 Is it possible that at that point the initial, if he was
12 entrapped originally, he was not entrapped into providing
13 the Uzi?

14 THE COURT: If you ask the wrong question, you
15 will assuredly get the wrong answer. And you keep asking
16 the wrong question. The initial inducement is presumably as
17 to participation in a bombing conspiracy.

18 MR. SERRA: Yes.

19 THE COURT: He may be from the get-go ready,
20 willing, and able to provide a weapon. There is no
21 contradiction between those two.

22 MR. SERRA: All right. Your Honor, I understand
23 the Court's position. I simply don't think that there is a
24 rational view of the evidence that would allow it to be
25 parsed that finely. How does the entrapment charge get

1 reworked, then, if at all?

2 THE COURT: The entrapment charge will stay as it
3 is, with the last paragraph intact, namely, that entrapment
4 on one charge or count doesn't necessarily mean entrapment
5 on another. And what I had thought I was going to take out
6 I am going to leave in, because it is an accurate statement
7 of the law. And as to your client, it may be apt, although
8 unlikely.

9 MR. SERRA: Your Honor, does the Court intend in
10 the charge to enumerate the defendants to whom the
11 entrapment charge applies?

12 THE COURT: Yes.

13 MR. SERRA: I will think about this over the
14 weekend. I may withdraw Mr. Alvarez's name from that list.
15 If I could, I will inform the Court on Tuesday.

16 THE COURT: That is fine. You have to tell the
17 government in time. They have to deal with it.

18 MR. SERRA: All right. For their opening
19 summation, I understand.

20 THE COURT: Yes.

21 MR. SERRA: I will speak to Mr. McCarthy.

22 MR. WASSERMAN: Your Honor?

23 THE COURT: One second.

24 THE COURT: Yes?

25 MR. WASSERMAN: I just ask to be excused. Ms.

1 Stewart and Mr. Ricco will cover. I don't think there is
2 anything in particular to my client. Thank you, your Honor.
3 Have a good weekend.

4 THE COURT: What do I do if they have a dispute?

5 MR. WASSERMAN: They won't.

6 MR. BERNSTEIN: We will try it again.

7 THE COURT: Do we have much more? Do we have
8 much more?

9 MR. LAVINE: I have a couple of quick things,
10 your Honor.

11 MS. STEWART: We all have a couple of things.

12 THE COURT: Mr. Wasserman? I am sorry.

13 MR. WASSERMAN: That is OK.

14 THE COURT: I am acting, in a sense, out of an
15 excess of caution, but a topic came up while your colleague
16 was here but you were out of the room, relating to the
17 conspiracy charge. A phrase was taken out of that charge
18 that somebody is responsible for everything that goes on in
19 the conspiracy until he withdraws. The "until he withdraws"
20 was taken out. Now, I wanted you to know that. I don't
21 know whether you were planning to do anything on that basis,
22 but be aware of it.

23 MR. WASSERMAN: I have no objection. Thank you,
24 your Honor.

25 MS. LONDON: On page 174, Judge, defendant's

1 testimony.

2 THE COURT: Yes?

3 MS. LONDON: I would ask that we reword something
4 in the last paragraph, I guess particularly the negativity
5 of the first sentence of the last paragraph, which is: "I
6 want to say to you with equal force that simply because the
7 defendant has an interest in the outcome of the trial does
8 not mean that he has testified falsely." At first reading,
9 at first hearing, it seems to suggest to me that he may have
10 many reasons for testifying falsely. I certainly don't
11 think that is the impression that is meant to be conveyed.
12 I would ask for something that doesn't emphasize the
13 negative but rather the positive but conveys the same
14 meaning, such as something like: You should examine and
15 evaluate this testimony just as you would the testimony of
16 any witness with an interest in the outcome of the case.
17 And you should not disregard or disbelieve his testimony
18 simply because he is charged as a defendant in the case.

19 THE COURT: I don't see the problem you stated in
20 your initial objection. I am not suggesting that you are
21 misrepresenting that you perceive that. When I tell them
22 about the defendants' interest, which of course they are
23 aware of -- in other words, the "however" immediately tells
24 them that I am now telling you something that cuts the other
25 way, i.e., favors the defendant. "I want to say to you with

1 equal force that simply because the defendant has an
2 interest in the outcome of the trial does not mean that he
3 has testified falsely." I can't imagine that as being read
4 by somebody as containing a suggestion that there are all
5 kinds of other reasons why he did, and I don't want to
6 change it.

7 MS. LONDON: Page 176, character testimony.

8 THE COURT: Yes?

9 MS. LONDON: Before "accordingly," the first word
10 in the second paragraph, I would ask that the Court add
11 "Such character evidence alone may indicate to you that it
12 is improbable that a person of good character would commit
13 the offenses charged," which is a sentence taken from Sand.

14 THE COURT: At the end of the first paragraph I
15 will insert a sentence that says, that reads: Evidence of
16 good character may create a reasonable doubt that a person
17 of good character would have committed the offenses
18 charged." That is in essence of what you asked for,
19 correct?

20 MS. LONDON: Yes.

21 MS. LONDON: Your Honor, also in that paragraph,
22 and I am maybe being unreasonably picky here, but I must say
23 I don't like it, at line 14, where it says, it reads, "you
24 find a reasonable doubt has been created," I would ask that
25 the Court change that to "if you find that you have a

1 reasonable doubt," as opposed to a suggestion that we are
2 creating it.

3 THE COURT: Yes.

4 THE COURT: Good.— Thank you.

5 MS. LONDON: Getting very close to the end, your
6 Honor, page 177, the second paragraph, which refers to the
7 testimony of confidential informants and accomplices. The
8 second paragraph: "You have also heard Mohammed Abdo Haggag
9 testify that he was actually involved in some of the crimes
10 charged in the indictment."

11 THE COURT: That is not quite what he testified
12 to.

13 MS. LONDON: I am sorry, your Honor?

14 THE COURT: That is not quite what he testified
15 to.

16 MS. LONDON: Right. I don't believe that is a
17 correct statement of the facts, and would ask perhaps that
18 it may read: He had some knowledge -- I am not quite sure
19 what the preferable wording is, but I just don't think that
20 is an accurate statement.

21 THE COURT: How about "He had some involvement in
22 the acts charged in the crimes in the indictment."

23 MS. LONDON: I like that, your Honor.

24 MS. LONDON: Finally, your Honor, on page 193,
25 and again I may be being overly picky here, when I --

1 THE COURT: The last time you said that, I made
2 the change you suggested. That may be why you said it.

3 MS. LONDON: This is the pre-conclusion to the
4 Court's charge. In reading it, it seems to convey the
5 overall impression of having to find an overall verdict.
6 Even though the Court has said in other places in the charge
7 that the verdict has to be found as to each count and as to
8 each defendant, perhaps it could be inserted in one place in
9 this final page here. We have the government, or it is
10 going to be changed, the --

11 THE COURT: I am sorry, I don't understand. Are
12 you talking about the gestalt of this instruction, or are
13 you talking about some particular place in it?

14 MS. LONDON: No, I am talking about the
15 instruction in general. It talks about the need for
16 unanimity -- I can't say it; you know what I mean.

17 THE COURT: Unanimity.

18 MS. LONDON: I would ask in the first paragraph
19 perhaps that it could be inserted: the government must
20 prove the essential elements of each crime charged as to
21 each defendant beyond a reasonable doubt.

22 MR. McCARTHY: I have to tell you, I think that
23 is going to water down the charge, and with this verdict
24 sheet, there is no way they don't know that.

25 MS. LONDON: All right.

1 THE COURT: You were right when you began: you
2 are being picky.

3 MS. LONDON: I will sit down, your Honor. Thank
4 you. Ms. Stewart?

5 MR. SERRA: Your Honor, one sentence: Having
6 considered, I don't need until Monday. I am continuing my
7 request for Mr. Alvarez to be included in the entrapment
8 charge.

9 THE COURT: Included. Thank you.

10 MS. STEWART: If I had more energy, I would lower
11 this microphone to a more reasonable height for a lady.

12 Judge, I would like to address some of the things
13 in the solicitation counts, nothing really major.

14 THE COURT: Page?

15 MS. STEWART: 42.

16 THE COURT: All right. Yes?

17 MS. STEWART: Your instruction says that a
18 solicitation to murder a foreign official. However, you
19 should take that away from us because you refer to him as
20 President Hosni Mubarak of Egypt repeatedly throughout this.
21 While I am not quibbling that he was certainly referred to
22 that throughout the testimony, it just seems to me that to
23 say to the jury that one of the elements they must find is
24 that he was a foreign official and indeed a President of the
25 country, and then to refer to him as "President" sort of

1 makes it endlessly repetitious. Do you see what I am
2 saying?

3 THE COURT: Yes, I do.

4 MS. STEWART: I would just ask you to say Hosni
5 Mubarak of Egypt. I don't know whether you can set the word
6 processor to do this, I am not into those mysteries, but I
7 don't know whether it can be taken out. It is in just about
8 every count here.

9 MR. PATEL: F2.

10 MS. STEWART: F2, Mr. Patel tells me.

11 THE COURT: Yes, F2. President Hosni Mubarak.
12 That assumes that all of these things are in the same
13 document. I have to go through document by document. Most
14 of them are in the same document, I think. All right.

15 MS. STEWART: Judge, page 44.

16 THE COURT: One second.

17 THE COURT: I gather your defense here is not
18 that he was soliciting the murder of some other Hosni
19 Mubarak.

20 MS. STEWART: No. First of all, Judge, you
21 didn't know my father when you said that kill the umpire
22 really didn't mean that.

23 THE COURT: I am sorry, where?

24 MS. STEWART: He was from Brooklyn, and when he
25 said that, I think that people might have thought in those

1 days of yore that he meant it. But at any rate --

2 THE COURT: It actually echoes something that you
3 said in your opening, I believe.

4 MS. STEWART: Yes. Which I must say I borrowed
5 from Peg Tyre of Newsday in a book she wrote.

6 THE COURT: Life imitates art. Go ahead.

7 MS. STEWART: Pardon me?

8 THE COURT: I say life occasionally imitates art.
9 Go ahead.

10 MS. STEWART: However, the last sentence of that
11 paragraph I do object to. I think that using an example of
12 a mob surrounding a jail in a lynching to a predominantly
13 black jury unnecessarily inflames the passion. I have not
14 been able to think at this particular moment of another
15 example, but I would ask that I be allowed to present
16 different examples, if I may.

17 THE COURT: All right. I understand. I need to
18 get it at some time that will give me enough time not only
19 to finish this but to copy it.

20 MS. STEWART: Right. I will try to do it before
21 I leave here.

22 THE COURT: I know this is going to go to the
23 back burner as soon as you leave here, but please do it. I
24 will try to come up with something myself. If I do, I will
25 check it with you.

1 MS. STEWART: Very good.

2 MS. STEWART: The other thing, Judge, page 55.
3 This is a sensitivity question, Judge. I don't think that,
4 in charging willful avoidance with regard to the sheik, we
5 should say that he closed his eyes. I ask you use the word
6 "ignored." It is in line 18.

7 MR. JABARA: It is also on line 6 on the
8 following page.

9 THE COURT: I am sorry, line 18?

10 MS. STEWART: Line 18 and line 6 on 56.

11 MR. PATEL: That paragraph on the second page is
12 out.

13 MS. STEWART: Oh, it is out. OK.

14 THE COURT: Yes, that paragraph is out.

15 THE COURT: Fine. Sorry about that.

16 MS. STEWART: That is OK. And last but not
17 least, Judge, page 175. The use "is not required to prove
18 that he is innocent."

19 THE COURT: Not guilty.

20 MS. STEWART: His lack of guilt or not guilty is
21 fine. Thank you.

22 THE COURT: I thought I had gotten all of those
23 out. No jury is ever required to find somebody innocent.

24 MR. LAVINE: I am going to yield my position to
25 Mr. Ricco.

1 THE COURT: All right.

2 MR. BERNSTEIN: I have three matters too.

3 MR. RICCO: Your Honor, I just have a few points.

4 On page 29, where the Court is discussing the third element
5 of seditious conspiracy, knowing participation, I would ask
6 the Court to look at page 29, line 16. At the end of the
7 first sentence -- second sentence, "nor is knowledge without
8 participation sufficient," I would ask the Court to consider
9 language of this nature: The law recognizes that a person
10 may know, be friendly, or related to a co-conspirator
11 without being a member of the conspiracy. Mere similarity
12 of conduct or the fact that they may have assembled together
13 and discussed common aims and interests does not necessarily
14 establish proof of the existence of a conspiracy. Then
15 continue on with the language that your Honor has.

16 MR. PATEL: May I just have a moment with Mr.
17 Ricco?

18 MR. RICCO: I know what he is going to say.

19 (Pause)

20 MR. RICCO: It is a difficult situation for me,
21 because the reason why I am asking that charge is because of
22 the fact --

23 THE COURT: I know.

24 MR. RICCO: The language, your Honor, comes from
25 Sand. Conceptually, your Honor, I would like the Court to

1 instruct the jury in this area on the fact that there are
2 associations here and there are family relationships here,
3 and how the jury should consider that.

4 Also, your Honor, there is a lot of testimony in
5 the trial about people assembling together and sharing ideas
6 together that were separate and apart from issues involving
7 sedition.

8 THE COURT: That is an argument.

9 MR. RICCO: But it is an argument that will not
10 have any guidance or instruction.

11 THE COURT: Sure it will.

12 MR. PATEL: Judge, my concern -- we have two sets
13 of cousins in this case.

14 THE COURT: Right.

15 MR. PATEL: The Abdelganis, and Nosair and
16 El-Gabrowny. I understand that Mr. Ricco wants some
17 guidance to the jury from the Court on his argument. There
18 has been so much testimony about the relationship between
19 Mr. El-Gabrowny and and Mr. Nosair, as opposed to the blood
20 relationship, you know, with demonstrations and this and
21 that, that we don't really need --

22 MR. RICCO: Your Honor, I have never been in a
23 conspiracy case or a RICO case where there was a
24 relationship between the parties, particularly under these
25 types of facts, and such a charge was not given.

1 MR. BERNSTEIN: Judge, I join Mr. Patel's
2 argument, because I have the same potential problem that a
3 greater instruction in this area, if that can lead to
4 attempts to direct to Mr. --

5 THE COURT: I will resolve it as follows: I will
6 add one phrase, two words, and that is all and those words
7 are, where I say "mere association," I will put "mere
8 association or relationship" with a conspirator. So that if
9 you want to argue it, you can argue it, and yet it presents
10 association as almost an equivalent of relationship, so that
11 we don't stress blood lines unduly.

12 MR. RICCO: Your Honor, I think Mr. Lavine wants
13 to add something on this page.

14 THE COURT: One second.
15 Yes, Mr. Lavine?

16 MR. LAVINE: Your Honor, at line 18 of page 29,
17 immediately after the language, which is actually on 17 "nor
18 is knowledge without participation sufficient," I would ask
19 you to add, as well, "nor, for that matter, is participation
20 without knowledge" -- simply stating the converse, which may
21 very well be applicable to my defense in this case.

22 THE COURT: But there are other places in the
23 charge where I say you have to have knowledge. And here,
24 this is the same problem of having to deliver the entire
25 charge every time I talk about a particular idea, and I

1 can't do that.

2 MR. RICCO: Your Honor, the only reason why it
3 was brought up here, I think this is the first time in the
4 charge that your Honor is going into this. I am not asking
5 for this type of language to be put in the bombing
6 conspiracy count in addition. I think it is sufficient to
7 do it at one point.

8 MR. MCCARTHY: But the inverse doesn't work.
9 That is the main problem with it. If the knowledge
10 component is supplied by conscious avoidance, then it is
11 simply not correct to say that participation without
12 knowledge doesn't do it.

13 MR. RICCO: But that is the law.

14 MR. LAVINE: I always thought that the conscious
15 avoidance supplied the knowledge.

16 THE COURT: We don't get to that until later.
17 Again, you can't have the whole thing in every sentence or
18 in every paragraph.

19 MR. LAVINE: Your Honor, I only ask for it at
20 this point on page 29 because I thought it was the most
21 appropriate place to put it and it is a terse, short remark,
22 and it is something I have seen many, many times in other
23 instructions at this particular point.

24 THE COURT: How about: Nor is knowledge without
25 participation or participation without knowledge sufficient.

1 MR. LAVINE: Certainly. Thank you.

2 MR. RICCO: Your Honor, the next place would be
3 on page 140.

4 THE COURT: Actually, I just thought of
5 something. There is something that I need to convey to all
6 of counsel, and I am really sorry that some of the other
7 lawyers have left, because it is basically a list of don'ts.
8 We are going to have to chat, I guess, Tuesday before the
9 summation. There are some things that I really don't want
10 to see or hear, and I kind of wanted to talk about that.

11 MR. PATEL: Can we hear them now?

12 THE COURT: Sure. For example, for lawyers whose
13 clients don't testify, and this is particularly true of Ms.
14 Amsterdam, I don't know whether she is planning to do
15 anything like this or not, since she committed in her
16 opening that her client would testify. A statement that
17 says something like: My client wanted to testify, but I
18 told him that he needn't because the government's evidence
19 wasn't sufficient even to warrant him taking the trouble, or
20 words to that effect. That is not to happen. Mr. Patel is
21 looking at me in amazement.

22 MR. PATEL: Your Honor, I read Ms. Amsterdam's
23 opening statement and there was a lot of talk about her
24 having her client testify. I don't think she actually said
25 that in her opening.

1 MR. McCARTHY: I think she said before her
2 opening that she was calling her client and made that
3 commitment, but she didn't actually flat-out promise it to
4 the jury, although she argued precisely the kind of
5 information you would expect from somebody who was going to
6 put the client on.

7 THE COURT: I guess. Nor do I obviously want to
8 hear personal endorsements, which I did hear in her opening,
9 personal opinions. What else? Addressing particular
10 jurors.

11 Also, I have given you the charge as I intend to
12 deliver it, and I am not vetting anybody's closing, but
13 understand that this is the charge as I intend to deliver it
14 now. If anybody does anything in a closing that I think has
15 to be dealt with in a charge, or in an instruction, I think
16 I told you this earlier, that I don't want anybody in
17 essence detrimentally relying on my omitting something or
18 saying something in a particular way to air out some theory,
19 and then argue that I am barred from dealing with it because
20 it is not in here. None of you will do that, I hope.

21 I am sorry, I interrupted Mr. Ricco.

22

23 (continued on next page)

24

25

1 MR. RICCO: It's OK. Your Honor, on page 140, on
2 line 17, I have always been troubled by Judge Sand's use of
3 the term "physical force is obviously sufficient." Does he
4 mean that physical force is but one means of satisfying this
5 element in the statute? And if that is what he means, I
6 would request that the court say that.

7 THE COURT: Yes, that is what he means.

8 MR. RICCO: Would the court consider instructing
9 the jury that physical force is but one means of satisfying
10 this element of the statute, or something to that effect?

11 THE COURT: I would say simply, physical force is
12 one means that satisfies this element.

13 MR. RICCO: Thank you.

14 And, your Honor, on page 141 at the end --

15 THE COURT: One second. Yes.

16 MR. RICCO: Your Honor at the end discusses the
17 alternative ways in which force can be manifested, and I
18 would request at the end of your Honor's conclusion on line
19 7 that the court add a sentence that says: The central
20 issue, however, is whether Mr. El-Gabrownny attempted to or
21 did resort to force as a method of persuasion of a federal
22 officer in the performance of his or --

23 THE COURT: As a method of persuasion, did you
24 say?

25 MR. RICCO: Yes. This is the language right from

1 United States v. Bamberger, which Judge Sand adopts this
2 language from.

3 THE COURT: It is language from a case.

4 MR. RICCO: Yes.

5 THE COURT: No. I am not beguiled by that.
6 Sorry.

7 MR. RICCO: I would ask that the court conclude
8 this instruction with the central issue on this element,
9 which is force. Regardless of the different ways in which
10 force can manifest itself, the central issue here is the use
11 of force, and I would ask the court to consider ending on a
12 sentence along those lines as opposed to the lines that the
13 court has left it.

14 THE COURT: I am going to leave it where it is.
15 You can argue it.

16 MR. RICCO: I know your Honor asked us not to
17 find commas and semicolons, but I think the court is going
18 to submit this to the jury and on page 144, line 9, I think
19 you mean "of," not "if."

20 THE COURT: Yes.

21 MR. RICCO: Your Honor, moving along to page 148,
22 on this page you describe the term prevent, on line 11,
23 which is a term that is different from the alternative means
24 that can be used with respect to Count 21.

25 THE COURT: Right.

1 MR. RICCO: Here I would ask that the court just
2 add the term, the word prevent means to forcibly keep
3 something from happening.

4 THE COURT: Yes, because it the statute says
5 forcibly. Why don't I say the word prevent here means
6 prevent forcibly.

7 MR. RICCO: Your Honor, my next concern is at
8 page 152, and that would be line 13, the sentence which
9 begins at the end of the line, I instruct you that. I would
10 ask the court to consider instructing the jury as follows,
11 and that is, if you find that the government has proven that
12 Mr. El-Gabrowny intended to use or transfer identification
13 documents -- I am sorry, your Honor. Give me one second,
14 please.

15 I withdraw that.

16 I would move down to line 20 and ask the court to
17 add the sentence at the end of, where it ends "violated a
18 law," I would ask the court to add a sentence: Therefore
19 your focus on the second element is simply whether Mr.
20 El-Gabrowny intended to use the alleged false identification
21 documents unlawfully or to transfer them unlawfully. The
22 reason I ask for that language, because it appears to me
23 what the court is doing here is, the court is getting the
24 jury to focus in on Mr. El-Gabrowny's use or intended use of
25 the passports, and your Honor is instructing the jury as to

1 the part of this element that deals with whether or not it
2 was unlawful. Your Honor has instructed the jury that it is
3 unlawful to do so, and therefore the focus should be on Mr.
4 El-Gabrowny's conduct, and I would ask the court to add a
5 sentence to that effect, at that point.

6 THE COURT: How does the sentence read again?

7 MR. RICCO: It says: Therefore, your focus on
8 this second element is simply whether Mr. El-Gabrowny
9 intended to use the alleged false identification documents
10 unlawfully or to transfer them unlawfully.

11 THE COURT: That goes where? At the end of that
12 paragraph?

13 MR. RICCO: At the end of that paragraph.

14 MR. McCARTHY: The second paragraph on 152?

15 THE COURT: The end of the second paragraph on
16 152.

17 MR. RICCO: On line 20.

18 THE COURT: OK.

19 MR. RICCO: Your Honor, I would ask the court to
20 address yourself on the same page, line 21, and I would ask
21 the court to consider omitting the language that says,
22 including that some of the documents carried the photographs
23 of Mr. Nosair and his family as well as Mr. El-Gabrowny's
24 possession of the documents at the time and place he
25 possessed them. I think that what the court is attempting

1 to do here could be accomplished by simply saying if you
2 find that Mr. El-Gabrownny possessed false identification
3 documents, you may consider all the evidence and
4 circumstances surrounding his possession of those documents
5 in order to determine whether he intended to use, etc., etc.

6 MR. McCARTHY: Mr. Ricco, I am sorry. Can I hear
7 what you want again, please?

8 THE COURT: He wants me to omit lines 24 and 25
9 and the first line of the next page up to the word "them."

10 MR. RICCO: And add the words "the evidence and
11 circumstances" on line 22.

12 MR. McCARTHY: I have no objection.

13 THE COURT: All of the evidence and circumstances
14 surrounding his possession of those documents, right?

15 MR. RICCO: Yes, your Honor.

16 THE COURT: Good, done.

17 MR. RICCO: Your Honor, can we move over to 158,
18 please?

19 THE COURT: Yes.

20 MR. RICCO: Would your Honor consider on line 5
21 deleting, after United States, even though the intended use
22 may have been something different?

23 THE COURT: No.

24 MR. RICCO: OK. Your Honor, I think that's it
25 for me. I would like to take one second and go through my

1 notes.

2 Your Honor, there was one other place. It was on
3 page 159, and I would ask the court to delete lines 10
4 through 12 and consider adding the following language
5 instead. If you the jury find that the documents were
6 obtained by giving information that was not truthful, then
7 you can conclude that the documents were procured by means
8 of a false claim or statement. I like the language, your
9 Honor, that doesn't totally take the issue away. I don't
10 think it is going to be an issue that is going to be argued.
11 However, it is ultimately up to them to make that
12 determination. I don't want to concede that issue at this
13 point.

14 THE COURT: I don't think you are conceding it,
15 but giving information that is not true is --

16 MR. RICCO: Your Honor, it is not a strong point
17 with me. I don't think that is going to be an issue that is
18 going to be litigated.

19 THE COURT: Go ahead.

20 MR. RICCO: Your Honor, that's it, other than of
21 course I previously objected to the submission of the
22 passport counts, on the grounds that Osiemi wasn't
23 applicable, which is the Fifth Circuit case that the
24 government cited in opposition to my Rule 29 motion and in
25 favor of this charge. I would object to the charge being

1 submitted for the reasons stated at the time of the Rule 29
2 motions. Thank you very much.

3 THE COURT: You are welcome.

4 Mr. Bernstein.

5 MR. BERNSTEIN: Thank you, Judge.

6 THE COURT: I don't want to sound eager, but are
7 you the last?

8 MR. BERNSTEIN: No. I think Mr. Lavine is. But
9 I am going to be short and I think Mr. Lavine is going to be
10 short.

11 MR. MCCARTHY: I have a few things.

12 MR. BERNSTEIN: Your Honor, on page 182, which
13 the court has called uncalled witness equally available to
14 both sides, I think the court has not put the last of Judge
15 Sand's charge in that area, in 6-7 on Judge Sand, which is
16 that the law never compels a criminal defendant to produce
17 any witness or produce any evidence in his behalf.

18 THE COURT: Yes, but that is the point of the
19 bottom sentence on 182 going over to the words on 183.
20 However, you should remember that each defendant is presumed
21 to be innocent whether or not he calls any witnesses.

22 MR. BERNSTEIN: It is more that it is a burden
23 question that Judge Sand puts it in terms of, that the law
24 never compels us, which is different than presumption of
25 innocence. I would just ask that it be added, and I think

1 it could be added anywhere in the last part of your charge.

2 THE COURT: I will add at the bottom of 182 the
3 phrase -- in other words, it would read as follows.

4 However, you should remember that no defendant is obligated
5 to call any witnesses and each defendant is presumed. OK?

6 MR. BERNSTEIN: Fine, Judge.

7 Two other things. Regarding the verdict sheet,
8 because there are some special verdicts or questions that
9 the court has the jury address, I would ask that somewhere,
10 possibly at the top of the verdict sheet, there be some
11 direction to the jurors that as to each question or each
12 answer that they give, there must be a unanimous verdict,
13 because my fear is there could be some confusion when they
14 go to the verdict sheet, particularly as to the nonverdicts,
15 meaning as to the special verdicts or interrogatories, that
16 they may not remember that that must be unanimous as to each
17 of those questions, and I think because unanimity is
18 required on anything on that verdict sheet, a cautionary
19 note at the top can't hurt.

20 THE COURT: Something like do not use this
21 product unless you are unanimous? A product warning?

22 MR. BERNSTEIN: Yes. No, a statement that as to
23 each question below --

24 THE COURT: I am sorry. It is late, I am being
25 frivolous.

1 MR. BERNSTEIN: It could either be on the first
2 page on the verdict form or at the top before Count 1.

3 THE COURT: I am not going to put it on the cover
4 of the verdict form. That really does sound like a product
5 warning. Your answers to any and all questions on this
6 verdict form must be unanimous. OK?

7 MR. BERNSTEIN: That is correct, Judge. That is
8 what we are requesting.

9 THE COURT: Good.

10 MR. BERNSTEIN: Last but not least for me, on the
11 elements of the crime, I note that, I think, in each and
12 every instance when you address the beginning of the
13 count, -- where you address, for instance, Count 1, page
14 16 -- I think it follows throughout the instructions -- your
15 language is, you must find beyond a reasonable doubt, and
16 then it says first, second, third or whatever it may be with
17 respect to a particular charge.

18 THE COURT: Right.

19 MR. BERNSTEIN: I note that in Judge Sand's
20 instructions he always has it say that they must find that
21 the government has sustained its burden of proving each of
22 the following elements, and I know one might say that I am
23 nitpicking on this but it would be my preference that in
24 each count there is the reminder at the top of the count
25 that the "beyond a reasonable doubt" applies to each of the

1 following elements. Yours merely says in order to find a
2 defendant guilty you must find beyond a reasonable doubt,
3 and then theoretically the jury could think it is a
4 collective first, second and third "beyond a reasonable
5 doubt" in some collective fashion. I do know that when you
6 go to the element itself, you do refer again to it, but that
7 would be our preference, that you actually take the first
8 paragraph and the last paragraph from Judge Sand's 3-10 and
9 insert it if it is merely a word processing change on a
10 macro.

11 THE COURT: No. It is in each element separately
12 as you point out, and what you are telling me to guard
13 against is the possibility that the jury is going to do
14 something that I tell them numerous times not to do, namely
15 to take some part of this charge or some partial instruction
16 as the entirety. They are not that stupid.

17 MR. BERNSTEIN: That is our request, it is
18 denied.

19 THE COURT: Mr. Lavine.

20 MR. LAVINE: Thanks, Judge.

21 Judge, can I just ask you what you think you may
22 do with page 188, where there was discussion earlier about
23 Arabic language and English translations that were admitted
24 into evidence. I know that my client has one such instance
25 in particular that we discussed before. That was GX 381B

1 and BT. Would you be including also some generic language
2 also somewhere along the line that would cover this
3 situation if there were other instances that we just cannot
4 recall offhand after eight months, where this instance of
5 some sort of discrepancy between the Arabic language and the
6 transcripts had come up? I have no problem, Judge, if we
7 want to make this fact-specific to my client and to 381B and
8 BT, but perhaps we should consider something a little more
9 generic to cover any such situations that will come up.

10 THE COURT: What I would say is on line 16,
11 instead of there is one exception, there are exceptions,
12 these include --

13 MR. LAVINE: I think that would be sufficient,
14 your Honor.

15 Judge, I just have last and least, and I sort of
16 regret that we don't have more people here to know about
17 this problem, major problem in the charge, but I direct your
18 attention to the third word on line 13 at page 9. Sometimes
19 there is just one word that can throw an entire 200-page set
20 of instructions askew and I think this is it. It is the
21 third word at line 13 on page 9, and that word, as you have
22 it, Judge, is wrong.

23 THE COURT: Yes indeed. The indictment in this
24 case rather than the indictment is this case.

25 MR. LAVINE: That is all. Thank you.

1 THE COURT: Yes indeed. That is what's known as
2 a howler. Thank you.

3 Mr. McCarthy.

4 MR. McCARTHY: Yes, your Honor. Page 49.

5 THE COURT: Yes.

6 MR. McCARTHY: Count 3 conspiracy only has one
7 aim, and I think we should just charge it as one aim or
8 objective.

9 THE COURT: Where?

10 MR. McCARTHY: Where your Honor lays out the
11 second element, with some knowledge of the unlawful aims and
12 objectives, and then the third element which speaks of some
13 objective rather than the objective.

14 THE COURT: Wait a second. Some unlawful
15 knowledge of the unlawful aim and objective of the scheme.
16 All right.

17 MR. McCARTHY: Right.

18 THE COURT: That is once on page 49?

19 MR. McCARTHY: In the second element and the
20 third element, if we cover them both, on page 49.

21 THE COURT: Also the third element, instead of
22 some should be the, right?

23 MR. McCARTHY: Right.

24 THE COURT: Page 52?

25 MR. McCARTHY: There is another mention of

1 withdrawal in the second paragraph, which ends unless there
2 is affirmative proof offered of withdrawal or
3 disassociation.

4 THE COURT: That's out. I would suggest we just
5 end the paragraph at termination. Until its termination,
6 period. Yes, next.

7 MR. McCARTHY: Page 55.

8 THE COURT: Yes.

9 MR. McCARTHY: Again, this is a conspiracy with
10 one objective. I think we may still be on the same one. In
11 any event, on line 14 there is a reference to aims --

12 THE COURT: Aim.

13 MR. McCARTHY: Right, and then dropping down to
14 line 16, speaks of unlawful aims or objective.

15 THE COURT: Aim or objective, OK.

16 MR. McCARTHY: On page 57 and 58, the overt act
17 requirement, there is a discussion in the second paragraph
18 on page 57 about overt acts committed in the Southern
19 District of New York and elsewhere, and on 58, the
20 conclusion, one overt act committed in the Southern District
21 of New York. I don't believe that venue is an issue in the
22 case. Unless I am wrong, this is the only count in the
23 indictment where there is even any reference to it.

24 THE COURT: All right. Let's get that out.
25 Nobody made a venue motion here. The last paragraph on page

1 58. I will omit the last paragraph on page 58. Let's go.

2 MR. McCARTHY: 63, the first sentence in the
3 second element, I think, is a little difficult to follow.

4 THE COURT: It sounds like something was omitted.

5 MR. McCARTHY: My suggestion is that it would
6 make sense if we dropped the words that has --

7 THE COURT: Can I make another suggestion?

8 MR. McCARTHY: Sure.

9 THE COURT: Striking the words "that has as an
10 element" and substituting the word "through." Go ahead.

11 MR. McCARTHY: Let me go to the last of the more
12 niggling things and then I will come back to the two more
13 important topics. Page 144 -- I am actually referring your
14 Honor to the description of the offense in Count 22 in the
15 statute, which requires, I think, as an essential element,
16 that the federal officers not only be performing their
17 official duties but the words in the statute say "with
18 regard thereto," describing the execution of the search
19 warrant. The reason I point that out to your Honor is
20 because as I read the element as laid out on page 145, I
21 don't think it is noted that it is required for conviction
22 that the officers not only be engaged in their official
23 duties but they be in the act of executing the search
24 warrant.

25 THE COURT: Page 145 simply strike out, after the

1 word "in" strike out the rest of that sentence and
2 substitute the phrase "in executing a search warrant."

3 MR. PATEL: What line was that, your Honor?

4 THE COURT: Line 17, fourth element. Go ahead.

5 MR. McCARTHY: I would like to come back to two
6 things. The first is relevant, I guess, at page 67, which
7 deals with the bombing conspiracy. In connection with that
8 count, your Honor explains that the object of the conspiracy
9 is to damage or destroy or attempt to damage or destroy
10 buildings, etc., and your Honor describes the alleged
11 targets of the conspiracy and lays out the buildings that
12 were the alleged targets. It is our position that all of
13 that is absolutely accurate but that the targets are not an
14 essential element of the offense. The essential element of
15 the offense is that there be an agreement to bomb buildings
16 and real property.

17 I am not at all suggesting that the charge is
18 incorrect but I do want to put everybody on notice that that
19 is what our position is, so that we can have it out now if
20 there is a dispute about that. I think it is akin to the
21 drug statute in this sense. Section 841 of the narcotics
22 laws makes it a crime to sell illegal narcotics. If a
23 defendant attempts or actually sells illegal narcotics,
24 whether he is selling heroin or cocaine is beside the point,
25 as long as he is purposely selling narcotics. I think the

1 same analogy applies here, and I don't think the targets are
2 an essential element.

3 THE COURT: So that, just to narrow it in a very
4 focused fashion, if the defendant knew that he was
5 participating in a bombing conspiracy, the fact that
6 somebody like Siddig Ali might have chosen to withhold the
7 details of a particular target until the last minute, so
8 that nobody gave them away, would not be a defense so long
9 as they knew that what they were going to do was go out and
10 plant bombs.

11 MR. McCARTHY: Correct. I don't say that will
12 not create a bunch of arguments as to whether as a matter of
13 fact there is a conspiracy, but I don't think as a matter of
14 law there needs to be agreement on the target.

15 THE COURT: I hear no dispute.

16 MR. McCARTHY: The last point I wanted to make
17 was with respect to the seditious conspiracy, and I am
18 not -- we asked someplace in our instructions for an
19 instruction which was pointed toward an argument that I
20 anticipate that Miss Stewart may make on the basis of
21 something or other she said during the course of the case.
22 It is our position, and we intend to argue this if it
23 becomes appropriate in response to whatever argument she
24 makes, that an attack on the American military outside the
25 United States, as long as it is part of a seditious

1 conspiracy that is planned inside the United States, creates
2 evidence of opposing the authority of the United States or
3 waging war against the United States. If the argument is
4 made that when Dr. Abdel Rahman suggested attacking American
5 military installations that he was referring to military
6 installations outside the United States, we intend to
7 respond that if that is his position he is guilty, on the
8 facts of this case, and I just want to be clear that we
9 believe that is a correct interpretation of the law.

10 THE COURT: So long as some of the alleged
11 conspiratorial activity goes on in the United States.

12 MR. McCARTHY: Absolutely.

13 THE COURT: Miss Stewart?

14 MS. STEWART: As we know, sedition is a problem.
15 I am trying to think whether or not the venue requirements
16 reflect the conspiracy or the crime.

17 THE COURT: Wait a second. Let's not speculate.
18 The statute is?

19 MR. McCARTHY: 2384.

20 THE COURT: It has to do with the conspiracy, it
21 being the venue.

22 MR. McCARTHY: I think, to go back to a lot of
23 the litigation we have had, the crime obviously is the
24 agreement, and what the statute requires is that two or more
25 persons in any state or territory conspire. Obviously no

1 actual attack is even necessary in order to prove liability
2 under the charge. My point is that if two people conspire
3 within the United States to conduct an operation against the
4 American military outside the United States, we intend to
5 argue that that is evidence of a seditious conspiracy.

6 MS. STEWART: I must say that I feel totally
7 sandbagged here, I will say that, because we have always
8 argued and the government knows that we have always argued
9 that the sheik urged that militant actions be performed
10 outside the United States.

11 THE COURT: That is different. He can urge to
12 his heart's content.

13 MS. STEWART: But he can't urge, according to
14 your Honor's statement. If he is urging someone in this
15 country about there, now he is also guilty of seditious
16 conspiracy here.

17 THE COURT: Not unless there is an agreement, and
18 he is their leader, he knows it, they know it, etc.

19 MS. STEWART: I just don't think that the intent
20 of the law is to reach quite that far, Judge. It seems to
21 me then if somebody in Brooklyn speaks to someone in -- two
22 people on a phone in Brooklyn speak to someone in Lebanon
23 and say you should demonstrate and occupy the United States
24 Embassy, they are then also guilty of a seditious conspiracy
25 in Brooklyn for impeding the authority of the United States

1 in that embassy in Lebanon.

2 THE COURT: No, but if they are on a three-way
3 hookup helping to plan an attack on the U.S. Embassy in
4 Lebanon, then yes.

5 MS. STEWART: It just seems to me that that
6 carries the law to an absurd point, that a law that is
7 supposed to protect the internal government of the United
8 States was never intended to reach that far or to reach
9 those kinds of activities.

10 THE COURT: It is supposed to protect a wide
11 variety of things having to do with the function of the
12 government of the United States, including its functioning
13 abroad.

14 MS. STEWART: We differ on that also, Judge.

15 THE COURT: I have no difficulty with the idea
16 that if, to carry it a step further, if two people are
17 working in Brooklyn to assemble a bomb that is to be taken
18 abroad and planted at a U.S. Embassy, that is the proof, I
19 have no problem with the idea that they are engaged in a
20 seditious conspiracy.

21 MS. STEWART: We are talking about linking a
22 conversation in a kitchen with a tape in Denmark, talking
23 about attacking military bases, and that is where this is
24 going, and that is why I say it seems to me it is a little
25 remote. I guess they can argue to the jury that that is the

1 intended reach of the statute, but to ask the court to put
2 some kind of imprimatur on that argument --

3 THE COURT: He is not asking me to. What he is
4 doing is previewing a response to an argument that you might
5 make or that he thinks you might make, or something like an
6 argument that you might make that says at most, Dr. Abdel
7 Rahman was urging these people, or was even agreeing with
8 these people to take actions against the United States
9 military abroad, and that is not charged here.

10 THE COURT: He says he will then validly come
11 back with, oh, yes, it is, and if you take the lawyer's word
12 for it that that's what he was doing, then what he is
13 telling you to do is to find him guilty.

14 MS. STEWART: And what he is previewing to you is
15 my objection at that point, which says that isn't the law.

16 THE COURT: Right, and I think what I have just
17 previewed for you is my ruling that says it is.

18 MS. STEWART: Right, I think that is what we have
19 been through back and forth. I would like some time to
20 think about it a little.

21 MR. McCARTHY: On page 21 of our requests to
22 charge which were filed on May 21, I specifically wrote in a
23 section that said if applicable, and previewed this argument
24 and asked for this instruction, so this isn't like something
25 I dreamed up overnight. This has been out there for

1 sometime.

2 MS. STEWART: That may be, Judge. To borrow Mr.
3 Jacobs's words, I am not implying anything about Mr.
4 McCarthy. It is just my sense of what is happening.

5 THE COURT: Now I am going to hark back to
6 something I said earlier, which is that if despite this
7 conversation you two get into a tussle about this, I may
8 very well pick up that proposed instruction -- I will read
9 it through, and if it applies to resolve that issue, then I
10 am going to put it in. So you are well advised to frame
11 your arguments accordingly.

12 MS. STEWART: Let me see if I can find some
13 authority on that, Judge.

14 THE COURT: Fine.

15 MR. McCARTHY: Your Honor, on a different topic,
16 I know that the verdict sheet will have to be reworked in
17 connection with the 1959 counts, so I am not going to
18 address those. But with respect to page 6 --

19 THE COURT: Of the verdict sheet?

20 MR. McCARTHY: Yes, sir. As to Count 21, Michael
21 Burke is repeated. It should be Thomas Corrigan.

22 THE COURT: So it is. And marshal has only one
23 L.

24 MR. McCARTHY: That's all I have.

25 THE COURT: Is that it?

1 MR. PATEL: Sorry, your Honor. A minor point and
2 a half. While we are on the spelling errors, I promised I
3 would point this one out to your Honor. The United States
4 as opposed to the United States. For a dyslexic to be
5 pointing that out to your Honor is truly remarkable.

6 The only other point that I would ask to raise is
7 at page 12, line 8. I think I understand exactly what your
8 Honor is saying here and I am just raising this -- the line
9 that your Honor is talking about durations in terms of the
10 indictment. The same goes for most of the other factual
11 contentions of the indictment.

12 THE COURT: Where are you?

13 MR. PATEL: The sentence starts on line 7 of page
14 12.

15 THE COURT: Right.

16 MR. PATEL: My concern, your Honor, is that you
17 stick a word in there that you are talking about the
18 duration of other factual events, not -- your Honor is not
19 trying to say that close enough is enough. Your Honor, I
20 think, is talking about time and I am just asking you to
21 make it explicit. The same goes for most of the other
22 contentions as to time and duration in the indictment.

23 THE COURT: Yes. What else?

24 MR. PATEL: That's it. Thank you.

25 MR. BERNSTEIN: Judge, one quick note. I don't

1 think we completed cleaning up the indictment in terms of
2 those acts that weren't proven by the government. I know
3 this is a long day. We started doing it at the Rule 29
4 stage and I think there was a point where the court said
5 let's deal with it at the charge conference. There were
6 overt acts that were not proved by the government that I --

7 MS. STEWART: Let them do it.

8 MR. McCARTHY: I will be happy to circulate a
9 draft redacted indictment.

10 THE COURT: OK.

11 MR. BERNSTEIN: The reason I raise it now is
12 because it may also impact on minute changes in the court's
13 charge because the charge talks about pages and numbers in
14 the indictment.

15 THE COURT: Pagination is not going to change, of
16 the indictment. The indictment is going to be redacted to
17 exclude counts that are omitted and overt acts that are
18 omitted, but the pages on which each thing appears are to
19 remain the same.

20 MR. BERNSTEIN: Fine with me.

21 THE COURT: Otherwise, please, I have to put my
22 Mickey Mouse ears on and go through this whole thing again.

23 MR. McCARTHY: Maybe you did it and I overlooked
24 it. You will explain to the jury in some fashion that it is
25 redacted and they are not to worry about why, something

1 along those lines?

2 THE COURT: I have told them that certain counts
3 are not being submitted to them for decision and they
4 shouldn't concern themselves with why that is but just
5 decide why it is submitted to them. I don't think I have to
6 tell them more than that.

7 MR. McCARTHY: I am just anticipating that with
8 overt acts you are going to have three or four lines
9 redacted out and there will be sort of a gaping hole -- I am
10 sure we will figure out what is reasonable to do when the
11 time comes.

12 THE COURT: Anything else? Thank you very much.
13 Have a pleasant weekend.

14 (Proceedings adjourned until 9:30 a.m., Tuesday,
15 September 5, 1995)

16

17

18

19

20

21

22

23

24

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----X

3 UNITED STATES OF AMERICA,
4 v.

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

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

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

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

S5 93 Cr. 181 (MBM)

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

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

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

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

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

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

Defendants.

-----X

September 5, 1995
9:35 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

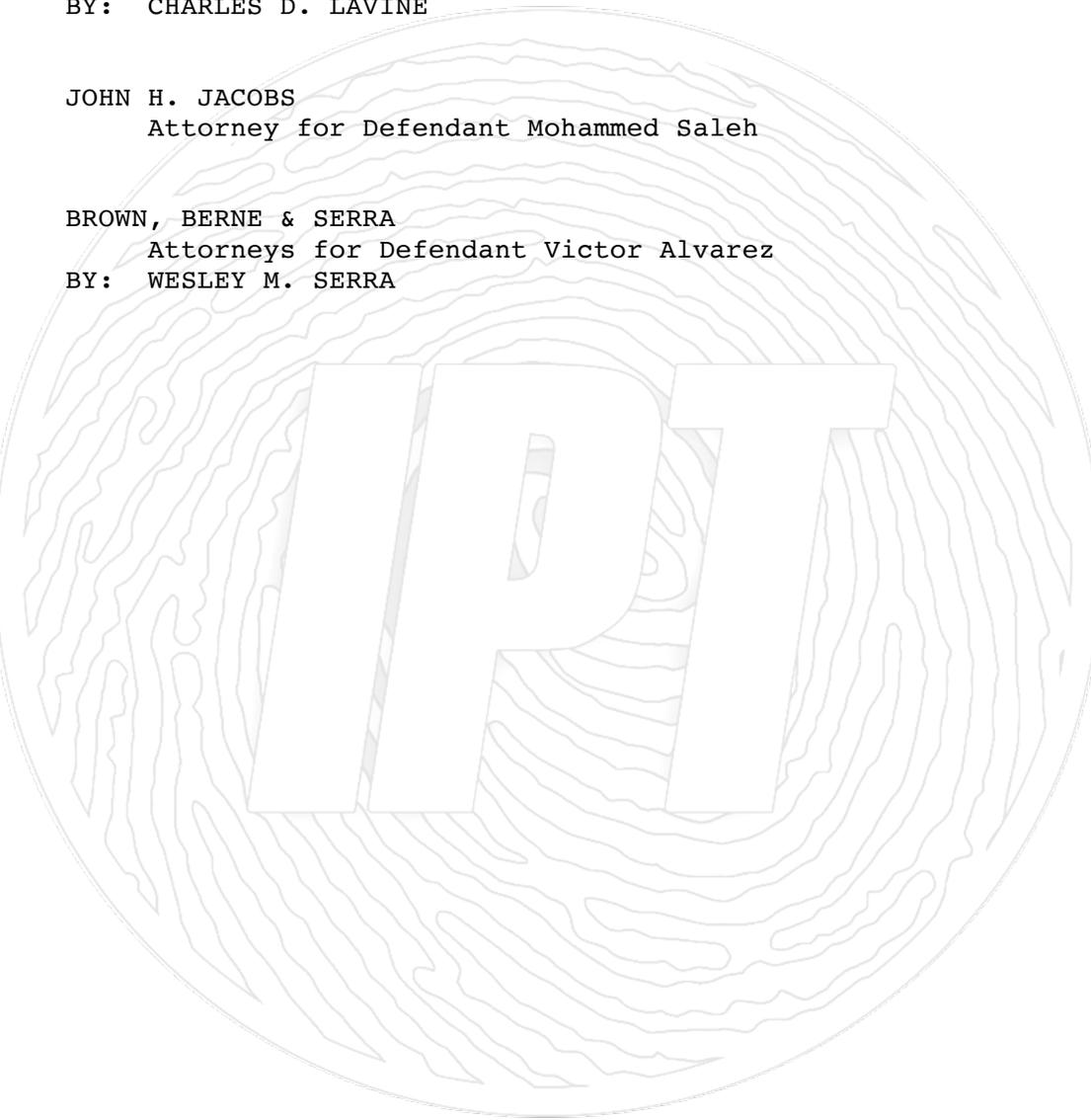
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (In open court; jury present)

2 THE COURT: Mr. Stavis.

3 MR. STAVIS: Yes. I received a letter from Mr.
4 McCarthy over the weekend concerning the charging conference
5 and certain changes that he wished your Honor to make.

6 THE COURT: Do we have to deal with this now?

7 MR. STAVIS: I would prefer to deal with it now,
8 and I will be very brief, your Honor.

9 THE COURT: OK.

10 MR. STAVIS: I assume your Honor has received Mr.
11 McCarthy's letter.

12 THE COURT: I have. I don't have it here but I
13 have received it.

14 MR. STAVIS: On page 2 of the charge, talking
15 about the murder in aid of racketeering count, Mr. McCarthy
16 has included language that Mr. Nosair, quote, planned to
17 cause the death of Meir Kahane, as opposed to caused the
18 death of Meir Kahane. I object to that. It changes the
19 theory of the prosecution.

20 THE COURT: As far as I am concerned, it is
21 murder in aid of racketeering, not conspiracy to commit
22 murder in aid of racketeering.

23 MR. McCARTHY: Your Honor, the point of that, if
24 we had left the charge the way it was, it was to his
25 disadvantage.

1 THE COURT: In that he intended.

2 MR. McCARTHY: The point of it was to make clear
3 that as far as transferred intent is concerned, that it only
4 applies to the "maintain or increase" prong, not the intent.
5 I just tried to remove the word intent.

6 THE COURT: I will make sure that it applies only
7 to that prong.

8 MR. STAVIS: The other point that I wish to
9 raise, on page 3 of Mr. McCarthy's letter where he defines
10 assault as an attempt with force and violence to do injury
11 to the person, and, quote, to put the person against whom
12 the attempt was made in fear of personal violence, I believe
13 that is a definition of the tort of assault but not the
14 criminal charge of assault, and I believe that that
15 diminishes the government's burden of proof.

16 I would also say, your Honor, that I have had
17 occasion to reread Concepcion since our charging conference,
18 particularly the portion of the case that deals with the
19 concept of transferred intent, and that case uses the
20 standard of transferred intent, the standard definition of
21 that doctrine as seeking to do harm to A and instead doing
22 harm to B, and I believe that your Honor --

23 THE COURT: That is because the facts of that
24 case dealt with that situation.

25 MR. STAVIS: There is, your Honor, I submit to

1 the court, no authority for your Honor to take the motive of
2 the racketeering purpose and transfer that from inside the
3 Marriott ballroom to outside. I believe it diminishes the
4 government's burden of proof and denies my client due
5 process of law.

6 THE COURT: I understand your point. Thank you
7 very much. Mr. Lavine.

8 MR. LAVINE: Judge, when we left off on Friday, I
9 believe that all of us had not renewed the Rule 29 motions.

10 THE COURT: Those are deemed renewed and disposed
11 of as they were at the close of the government's case.

12 MR. LAVINE: Thank you, your Honor.

13 MS. AMSTERDAM: Thank you, your Honor.

14 THE COURT: Anything else?

15 THE COURT: By the way, Mr. Stavis, two things.
16 You had raised a point on Friday about the "oppose by force"
17 prong.

18 MR. STAVIS: Yes, your Honor.

19 THE COURT: I reread the charge. The point you
20 raised, I think, is in part dealt with but I have beefed up
21 the language to make clear that there has to be not only the
22 intent to oppose by force the authority but also the effect.

23 MR. STAVIS: Thank you, your Honor.

24 (Jury present)

25 THE COURT: Good morning, ladies and gentlemen.

1 JURORS: Good morning.

2 THE COURT: You are about to hear the closing
3 arguments for each of the parties in this case. The way we
4 are going to proceed is, you will hear a closing argument in
5 behalf of the government first, that is, the government's
6 initial closing argument. Then you will hear closing
7 arguments for each of the defendants who are on trial here,
8 and then after those summations are delivered, you will
9 hear, or may hear, a brief rebuttal by the government to
10 those defense arguments that the government chooses to
11 rebut.

12 The government's initial summation is expected to
13 last today and tomorrow. The remaining summations will go
14 on over approximately the next two weeks. I suppose in
15 absolute terms that is a long time, but of course this has
16 been a long trial, and the lawyers need to discuss a great
17 deal of the evidence and to focus your attention on it. So
18 I hope you will give them your attention.

19 The government's initial summation. Mr.
20 Fitzgerald.

21 MR. FITZGERALD: Good morning. Judge Mukasey,
22 counsel, members of the jury. It was actually last winter
23 when my partner Rob Khuzami stood before you and told you
24 that the government would prove beyond a reasonable doubt
25 that each of the defendants on trial before you joined a

1 war, a war of terrorism against the United States. It has
2 now come to that part of the trial when it is time to review
3 the evidence and show you how each and every one of the
4 defendants joined an agreement, an agreement to wage a war
5 of terrorism against this country.

6 The one fear I have before you is that after so
7 many months, so many hundreds of witnesses, hundreds of
8 exhibits, that you might think that this is all a lot more
9 complicated than it really is. You have heard about
10 seditious conspiracy, and in the end you will see that it is
11 simply an agreement to terrorize, to wage a war of terrorism
12 against the United States to change its policies.

13 You have also heard a lot of evidence against a
14 lot of defendants. I don't want you to think that it is all
15 so complicated, that it is hard to figure out how each and
16 every one joined the conspiracy. To try to demonstrate that
17 to you this morning, I am going to take about 15 minutes and
18 review with you just highlights of the evidence against all
19 the defendants on trial before you, in just 15 minutes.

20 Bear with me. You may not even want to take notes because
21 we are going to go back over it at the end.

22 I remind you now, when this case first started
23 Miss Stewart stood before you on behalf of her client and
24 she told you that the title of the case, the caption, was
25 the United States versus Abdel Rahman, and that Abdel Rahman

1 meant servant of God. She said that in this trial the
2 caption fit, it's the United States against the servant of
3 God.

4 I submit to you after hearing all the evidence in
5 this case, hearing what the defendants did and agreed to do,
6 it is more accurate to say it was the defendant who called
7 himself the servant of God against the United States.
8 Defendant Omar Abdel Rahman, you heard time and time again,
9 spoke about jihad, jihad, and jihad, and he made clear what
10 his jihad was. It was not a personal struggle. It was
11 jihad by fighting. In his own words, jihad, with the sword,
12 the cannon, the grenade and the rifle. Jihad was fighting
13 against the enemies of Islam, and one of the enemies of
14 Islam, he made clear, was America. In fact, he referred to
15 America as the number one enemy of Islam.

16 He made no bones about it. He said, we are proud
17 to be terrorists, we must be terrorists, the Koran orders us
18 to terrorize the enemies of Islam. He even said, if there
19 were five or six more operations like there was in Lebanon,
20 America would move out of the Middle East. All of that is
21 on tape.

22 But the words he spoke in private were even more
23 chilling, because in May 1993, Emad Salem walked into his
24 apartment and told him that Siddig Ali and Emad Salem were
25 planning a violent attack against the United Nations. And

1 what did the servant of God say? He didn't say you can't do
2 that, that's violence, people will be killed, you can't do
3 that, that's in America. No. What he said was, that's OK,
4 it's not a good idea to do the United Nations, look for a
5 plan to attack the American military. Those are the words
6 he spoke on that day. But he wasn't done.

7 A week later, in the basement of a mosque, Siddig
8 Ali and Emad Salem met with defendant Abdel Rahman again.
9 He is meeting with the people he knows are planning a
10 violent attack, and what he basically told them was, go
11 ahead and do it, don't get me caught. He said, he who wants
12 to do a work for God, the path before him is obvious. But I
13 must remain at a distance. I must remain a front for the
14 Muslims. May God facilitate matters for you.

15 And he still wasn't done, because later on in
16 June 1993, in his own apartment, defendant Abdel Rahman sat
17 down with Siddig Ali, Emad Salem, and Haggag, and they tried
18 to figure out who the informant was. And what had this
19 informant done? The informant had fingered Mahmoud
20 Abouhalima for being in Egypt. He had told people that
21 Mahmoud was hiding in Egypt and had blown up the World Trade
22 Center. They were concerned because the informant had
23 reported to the authorities that Mahmoud and Siddig Ali, one
24 of the people in the very room, had talked about explosives
25 before the World Trade Center.

1 Defendant Abdel Rahman was trying to protect the
2 group, the jihad army. He was sitting down, trying to
3 ferret out the informant so they could succeed. And I
4 submit to you that there is very powerful, compelling
5 evidence of his participation in an agreement to wage a war
6 against America. In fact, one could hardly think of more
7 powerful evidence than someone saying direct your violence
8 directly against the American army itself.

9 And yet that very compelling evidence is on tape.
10 Those meetings I described to you are on tape, in evidence,
11 and you have heard about them.

12 Who else was part of this jihad army, this
13 agreement to wage a war against the U.S.? Defendant El
14 Sayyid Nosair. El Sayyid Nosair was reporting to defendant
15 Abdel Rahman back in 1990, while defendant Abdel Rahman was
16 still back in Egypt. El Sayyid Nosair on November 5, 1990,
17 after, quote, Afghanistan training, walked into a hotel room
18 in midtown Manhattan, pulled out not a rifle but a silver
19 revolver, a .357, walked up, and shot Rabbi Meir Kahane in
20 the head. When he left Rabbi Meir Kahane dying, bleeding on
21 the floor, his thirst for violence, his thirst for jihad --
22 because to these defendants jihad meant violence -- was not
23 done. He turned to run out of the room, having murdered a
24 man in cold blood, and on the way out he ran into a
25 77-year-old man, Irving Franklin, who testified before you.

1 Franklin was there with his wife. When Franklin tried to
2 grab Sayyid Nosair, who had just killed Meir Kahane, Sayyid
3 Nosair shot Franklin. He still was not done. He ran down
4 the hall, he ran out the hotel door, he got into a cab. He
5 put a gun to the neck of the cabdriver, tried to get him to
6 drive away. He still wasn't done. He ran out on the
7 street. He pointed a gun at Ari Gottesmann, one of the
8 witnesses before you. And then he encountered Carlos
9 Acosta. When he saw Carlos Acosta, he shot at him, too, a
10 bullet whizzing by Acosta's head, another one striking him
11 in the chest. Thankfully, he was wearing a bulletproof
12 vest.

13 But defendant El Sayyid Nosair's thirst for jihad
14 still was not done. In fact, the next day they did a search
15 of Sayyid Nosair's house. They found a book. In the book
16 was a handwritten speech, a speech about blowing up tall
17 buildings, blowing up tourist structures. That wasn't where
18 it stopped either, because while Sayyid Nosair was in jail
19 up in Attica, he called for people to come up to see him.
20 He talked to them about bombing plans. He wanted to set off
21 12 bombs around New York. He wanted to kill the judge at
22 the trial, that had presided over his trial.

23 And still, in the fall of 1992, while the people
24 who would eventually blow up the World Trade Center are
25 going up periodically to visit Sayyid Nosair, in Attica, on

1 September 20, 1992, in a telephone call that was recorded
2 and that you heard last week, he was complaining about the
3 devil FBI, let them fight the believers. And he said, wait
4 what will happen in New York.

5 You also saw that later on in early February,
6 February 7 of 1993, Mahmoud Abouhalima, involved in the
7 bombing of the World Trade Center, would take out the time,
8 go eight hours each way to Attica, to go see Sayyid Nosair.

9 On February 13, just two weeks before the bombing
10 of the World Trade Center, Mohammad Salameh would also take
11 out that eight-hour time each way to visit Sayyid Nosair at
12 Attica. And on February 26, 1993, a bomb ripped through the
13 World Trade Center, killing six, injuring thousands, causing
14 many hundreds of millions of dollars worth of damage. And
15 when Salameh was caught, he had a photograph, a photograph
16 linking up the fraudulent passports to be used if Nosair
17 ever got out of jail. What did Sayyid Nosair say? He said,
18 the war will not end, the war will continue, this is only
19 the beginning. And in fact, he had speeches, his "jihad
20 anew" speech, how he wanted to get out and jihad again.
21 That is very compelling evidence against the defendant
22 Sayyid Nosair.

23 Part of the reasons he could still operate while
24 he was in jail was defendant Ibrahim El-Gabrownny. Ibrahim
25 El-Gabrownny was defendant Sayyid Nosair's eyes and ears on

1 the street when defendant Nosair was in Attica. When
2 defendant Nosair was in Attica, El-Gabrownny talked to Salem
3 about bombs. He didn't want just Molotov cocktails, he
4 wanted high-powered explosives, he wanted detonators. When
5 Sayyid Nosair sat in jail thinking about things that could
6 be improved upon in the next jihad operation, he talked
7 about stun guns. Ibrahim El-Gabrownny went out and bought
8 the stun guns at that time.

9 You will learn when we review the evidence that
10 Ibrahim El-Gabrownny was in contact, by telephone and
11 otherwise, with the people who were involved in the bombing
12 of the World Trade Center at critical times. And in fact
13 you will see there came a moment of truth. Shortly after
14 the World Trade Center bombing, federal agents went to
15 execute a search at the residence of defendant El-Gabrownny.
16 When they got there, they saw him outside. Defendant
17 El-Gabrownny, carrying a Nosair Defense Fund letter referring
18 to the great shaytan, the great Satan, the United States,
19 assaulted two of the federal agents. From his person were
20 recovered the five fraudulent Nicaraguan passports for
21 Sayyid Nosair. In his apartment was a negative of those
22 photographs. But there were other things in the apartment.
23 One piece in particular was an envelope, an envelope of mail
24 that had been received after the bombing of the World Trade
25 Center, and yet before March 4, in that short window of time

1 right around the bombing. And on that envelope it indicated
2 a phone message. Nidal had called and it was important.
3 And the phone number was the phone number for Nidal Ayyad.
4 The evidence showed that what was important to Nidal Ayyad
5 in February 1993 was the bombing of the World Trade Center
6 that he helped participate in.

7 There is also very explicit evidence against
8 defendant Clement Hampton-El. He was caught on tape
9 agreeing to provide detonators for a bombing conspiracy he
10 knew would take place right here in America. He was caught
11 discussing it in a meeting for several hours on Rogers
12 Avenue on May 30. He was also caught again two weeks later,
13 agreeing once again to get detonators. Not only did he
14 agree to try to provide the detonators to this bombing
15 conspiracy, he was caught on tape trying to do it. You
16 heard him calling Mustafa Assad, the person he was going to
17 for the detonators.

18 You have also heard a lot of evidence about the
19 other persons in the conspiracy, and an awful lot of
20 evidence about the defendant Amir Abdelgani. Defendant Amir
21 Abdelgani went to the Queens safe house back in May of 1993,
22 a month before most of the arrests in this case. On May 27
23 and May 28, Amir Abdelgani and Fares Khallafalla went to the
24 Queens safe house with Siddig Ali and Emad Salem. When they
25 went in there, they watched as timers were being tested.

1 The code words were explained, the words for bombs, the
2 words for detonators. Siddig Ali sat down on a cardboard
3 with Fares Khallafalla and Amir Abdelgani and explained what
4 would be happening. He said boom, boom, boom, five minutes
5 apart, all America will be on stand by.

6 And yet even after learning this, Amir Abdelgani,
7 Fares Khallafalla, went full steam ahead. Amir Abdelgani
8 went back to the safe house repeatedly. He scouted, he
9 scouted targets. He went to the diamond district and
10 thought gee, this would be a good place to place the bomb.
11 He checked out the United Nations. He checked out the
12 Holland and Lincoln Tunnels on more than one occasion. Amir
13 Abdelgani picked up the five barrels of 255 gallons of
14 diesel fuel from Mohammed Saleh, he brought it to the safe
15 house and he helped mix the bomb. He was caught redhanded.

16 The conversations he had were so explicit, you
17 know that he wanted to be the person who put his hands on
18 the button to set the bomb off. This man seated in the
19 courtroom before you wanted to push the button, get out of
20 the car, lock the door, drive to other car for safety,
21 leaving the bomb going tick, tick, tick behind, while all
22 these commuters wondered what was going to happen. That is
23 the case against Amir Abdelgani.

24 Fares Khallafalla. Fares Khallafalla was there
25 on May 27, May 28, too. He heard the explanation about

1 boom, boom, boom, all America on standby. He heard other
2 explanations. He was there when Siddig Ali explained to
3 defendant Alvarez that this was a strike against America.
4 He was there when defendant Tarig Elhassan would say America
5 must change, America can break down.

6 What did Fares Khallafalla do? After hearing
7 this, he went out, he bought timers. You will see in the
8 transcripts and from surveillance, he made two attempts to
9 buy stolen cars, and he bought fertilizer. He, too, joined
10 this agreement to wage a war of terrorism against the United
11 States.

12 Defendant Victor Alvarez. Defendant Alvarez had
13 such an explicit conversation with Emad Salem,. He was
14 asked to provide a machine gun to be used against the police
15 in case they got caught with a bomb, to make clear over and
16 over, this is your country, this is America. And what did
17 he do? He provided the machine gun. He went to the safe
18 house, and he got caught mixing a bomb.

19 Defendant Tarig Elhassan. Tarig Elhassan went to
20 the safe house and had very explicit conversations. Thefts
21 about bombs, the targets, the Lincoln Tunnel, the Holland
22 Tunnel, the United Nations. He even talked about getting
23 engineering plans to help study the tunnels and how it would
24 break into pieces.

25 On June 24, 1993, he was caught mixing the bombs.

1 The transcripts show you that he, too, wanted to be one of
2 the persons to put the bombs in the cars in the tunnels.

3 Defendant Fadil Abdelgani. He brought the oil,
4 barrels of fuel oil on June 23, 1993, to the safe house.
5 As you saw in a transcript from the rebuttal case, there was
6 talk about the World Trade Center bombing and other things,
7 and we will show you that he was provided the opportunity to
8 join or not join.

9 What he decided to do was to do istikhara prayer,
10 a prayer that says let me think about it and see, should I
11 do it or should I not. And he went to the Medina Mosque in
12 Manhattan on June 23, 1993. He did his istikhara prayer and
13 he came back. And he walked into a safe house filled with
14 diesel fuel and fertilizer, and he joined in. He started
15 mixing the bombs.

16 Last but not least is defendant Mohammed Saleh.
17 Mohammed Saleh was approached on June 4, 1993, with an
18 express, explicit conversation, that targets will be here,
19 we will be striking targets here. You may remember that
20 during the conversation you actually heard a tape recording
21 of the paper on which the targets were being written, being
22 rolled up and handed to Emad Salem to eat. And when the
23 targets were being written out, they said two, two between
24 the States, referring to the tunnels. What did Mohammed
25 Saleh when he was asked does he want to participate? He

1 says yes. And in the end, sure, he provides no money but he
2 provides what's needed: 255 gallons of diesel fuel, diesel
3 fuel to be used to make bombs to be set off right here in
4 America.

5 And make no mistake about it, he knew exactly
6 what he had done, because that very night when he was
7 arrested, lying under the covers in his gas station uniform,
8 completely covered, he gets up and he lies. He lies to an
9 agent and he says I never gave any diesel fuel. And two
10 weeks later he calls up from the prison to one of his gas
11 station employees and says rip up those papers, the papers
12 that showed he provided the diesel fuel.

13 We are going to go through this evidence in a lot
14 more detail. I just wanted to remind you right up front
15 that in the end it is very simple. Each person in this
16 courtroom was presented a choice: Did they want to wage a
17 war of terrorism against the United States. And they
18 agreed. They are unhappy now that they were caught, but
19 they agreed.

20 Let me tell you how I am going to go about it. I
21 am going to go about the summation in two parts. The first
22 part, I am going to review the evidence with you in
23 chronological order, roughly the order in which it happened,
24 as opposed to the order in which it came into evidence. I
25 think when you do that, you will see that it is sort of like

1 taking a long trip. You take a long trip. Someone gives
2 you directions at the beginning, they say you go here, you
3 will see that, you will do this, you will do that. It sort
4 of makes sense to you. Then you take the trip, and then you
5 have to go a second time. The second time the directions
6 make a lot more sense because you remember it, you say
7 that's right, that's the gas station sign, that's that if
8 you know any fork in the road.

9 Now it is time to take a trip the second time
10 through the evidence, when different things will make a lot
11 more sense to you, and will also make sense to you because
12 in February and March when the evidence was coming in, you
13 would not know what was coming in June and July, and there
14 were links set at that time, and now you will see how they
15 link up.

16 Why don't we start at the very beginning, which
17 is the training, in late 1989 and early 1990. There the
18 photographs show the story. I am going to refer you to
19 three exhibits on this diesel, 217B, 218B, and 261B.

20 If you look at 261B, you see there in that
21 photograph, you see Mahmoud Abouhalima looking on as Clement
22 Hampton-El fires a rifle at the training range.

23 Looking at 218B, you see that the people at the
24 training include Mahmoud Abouhalima in the yellow shirt,
25 Mohammad Salameh on the far right.

1 If you look at 217B, you will see that in
2 addition in this photograph are a couple of people that you
3 can make out: Sayyid Nosair in the blue with his head
4 turned, Mohammad Salameh with his back to you -- and I had
5 placed a Post-It to remind myself the tall fellow was
6 identified to you as Mikhail Abdur Rahim, the person that
7 Clement Hampton-El spoke about in May 1983 when he said he
8 was going to look for someone in Baldwin, Long Island, to
9 get detonators. That is that person back in 1990 at the
10 training.

11 The thing you will notice, if you look back at
12 the photographs of what was described as Afghanistan
13 training, you will remember when Khaled Ibrahim testified
14 for the defense, he seemed to have difficulty recalling who
15 was there. Yes, Mahmoud Abouhalima, yes, he was there.
16 When you look back at those photographs, you will see that
17 more people in those pictures participated in the bombing of
18 the World Trade Center than ever set foot in Afghanistan.

19 At the beginning, this is also a time to take
20 stock of where defendant Omar Abdel Rahman is. If you look
21 at his passport, he didn't arrive in this country until July
22 of 1990. But while this training was going on, you will
23 learn that Sayyid Nosair -- you have learned that Sayyid
24 Nosair and Mahmoud Abouhalima were reporting to defendant
25 Omar Abdel Rahman back in Egypt.

1 There are three exhibits that you didn't receive
2 at the time of the training but came in after you learned
3 about the search of defendant El Sayyid Nosair's house.
4 There are three audiotapes that were received as
5 Government's Exhibits 850, 851 and 852. In 850, Sayyid
6 Nosair called up defendant Abdel Rahman and said, do you
7 have any instruction to the brothers of El Salaam Mosque?
8 He reported that they had organized a camp, and he asked
9 them, are there any other orders for us, sheik? Nosair said
10 that he would call again in a week. In 851 he did call. He
11 said that the camp went from Friday until Monday and said
12 there would be very good results. The defendant Abdel
13 Rahman, over in Egypt, talking to Sayyid Nosair over here,
14 who was involved in this training, told him he should call
15 more often, he should call at least once a week.

16 Then, in Government's Exhibit 852, you have
17 Mahmoud Abouhalima calling defendant Abdel Rahman, over in
18 Egypt. In this tape between Mahmoud Abouhalima and
19 defendant Abdel Rahman, later found in Sayyid Nosair's
20 house, he is telling defendant Abdel Rahman about some
21 dispute, a dispute with a guy named Mustafa. And defendant
22 Abdel Rahman says, tell him that this is an order from the
23 sheik, if he refuses, that I take a different stand with
24 him. Mahmoud Abouhalima is on the phone. He gets this
25 message. Reports from the training to defendant Abdel

1 Rahman. His response -- we have some blow-ups here. I am
2 hoping that you don't have to look through your books too
3 often during the summation but you will have to put up with
4 a nerd with a pointer for awhile.

5 MS. STEWART: We are having trouble hearing.

6 THE COURT: If you could speak a little louder
7 and slower.

8 MR. FITZGERALD: Thank you, Judge.

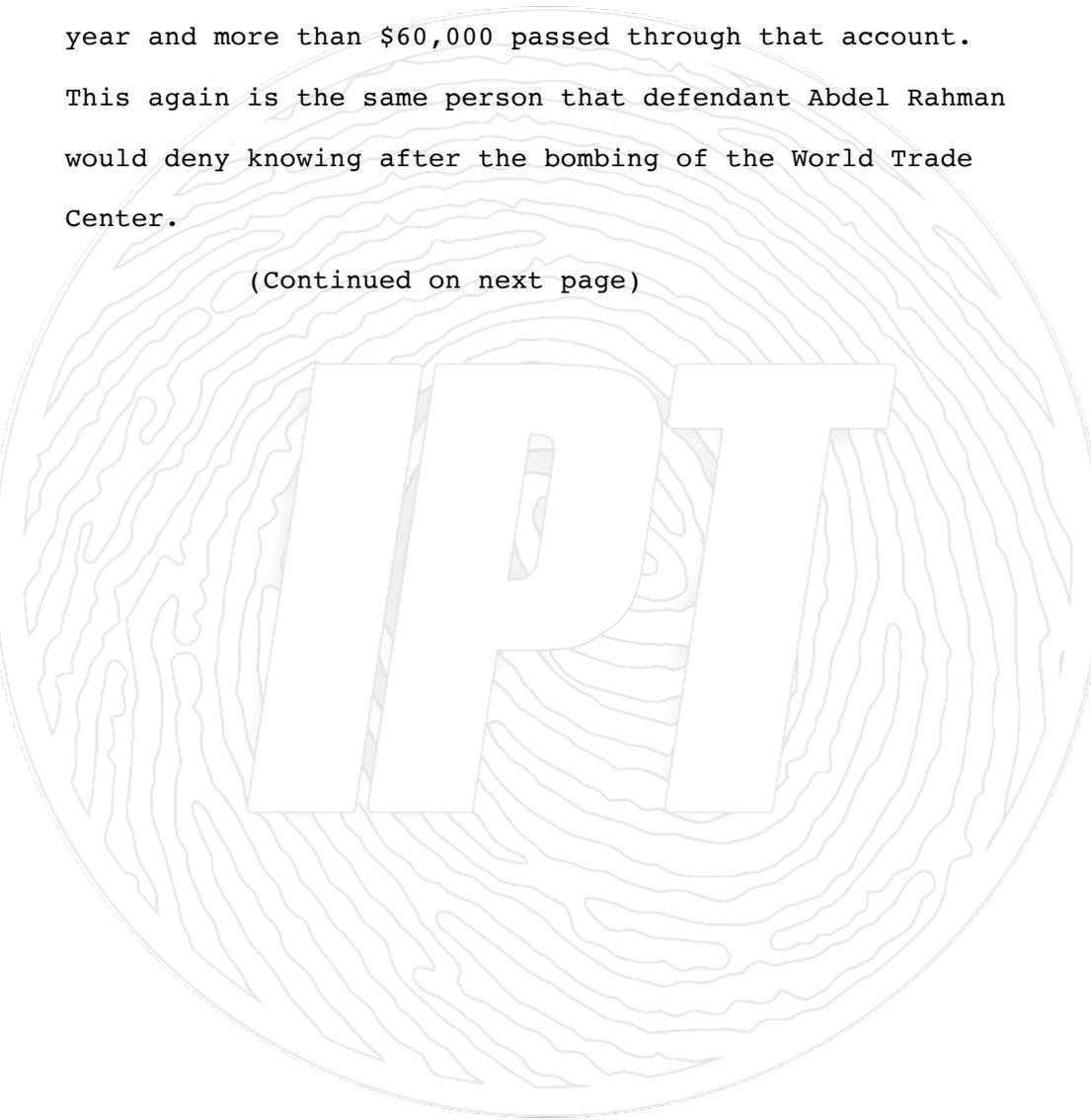
9 Government's Exhibit 852, this is the
10 conversation that defendant Abdel Rahman has told Mahmoud
11 Abouhalima that he told the person he should sit down and
12 resolve this, this is an order from the sheik. What does
13 Mahmoud Abouhalima back in early 1990, say: Omar, he is his
14 prince and leader, and everything at the start or the end
15 going to go to Sheik Omar. That is Mahmud Abouhalima
16 talking to and about defendant Abdel Rahman, the same person
17 who after the bombing of the World Trade Center would say he
18 didn't know Mahmoud Abouhalima.

19 In July 1990, defendant Abdel Rahman arrived in
20 this country. I think if you check the passport, you will
21 see it is about July 18, 1990. If you look at the bank
22 records, 509 in evidence, you will see that defendant Abdel
23 Rahman and Mahmoud Abouhalima opened up a joint bank account
24 on July 19, 1990. The bank records listed an address in
25 Brooklyn for both of them. In fact, defendant Hampton-El

1 told you there was a time when Mahmud lived at 72nd Street
2 and Fifth Avenue in Brooklyn, there was a time Abdel Rahman
3 lived at 72nd Street and Fourth Avenue in Brooklyn. This
4 bank account, interest bearing, was open for more than a
5 year and more than \$60,000 passed through that account.
6 This again is the same person that defendant Abdel Rahman
7 would deny knowing after the bombing of the World Trade
8 Center.

9 (Continued on next page)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 The first important date I would like to talk to
2 you about is November 4, 1990. I say November 4
3 deliberately. November 4, 1990 is the day before the Kahane
4 homicide.

5 I would like you all to think about this: What
6 if Emad Salem were around on November 4, 1990, and he came
7 and told people that, look, tomorrow someone is going to
8 walk into a hotel room and assassinate Rabbi Meir Kahane.
9 If anyone had told you that, you would have said, why is
10 that? There's rifle training, there's training for
11 Afghanistan. If you had looked in Sayyid Nosair's house you
12 would have seen Afghanistan materials, writings about
13 Afghanistan.

14 Yet even on November 4, 1990, there were clues.
15 There were clues in Sayyid Nosair's house. He had
16 Government Exhibit 88, a law enforcement techniques manual.
17 You know it wasn't a law enforcement technique that was
18 needed in Afghanistan. You have Government Exhibit 87, a
19 yarmulke. That wasn't needed for Afghanistan. He had an
20 article, Government Exhibit 106, indicating when Kahane
21 would speak. There were clues in his locker. Government
22 Exhibit 67 is a list of handguns. Government Exhibit 66 is
23 a list of Jewish book stores. There were clues in his car.
24 Recovered from his car a few days later would be Government
25 Exhibit 54, the green notebook.

1 By the way, in this notebook were found the
2 prints of Mohammed Salameh, Nidal Ayyad and Bilal Alkaisi.
3 Among the diagrams were diagrams of streets in New York,
4 references to 54th Street, 55th Street. What borough is not
5 clear, but it is clearly not Afghanistan.

6 There is writing in there. On page 160 it says,
7 "When he exits from the car to the store, block him between
8 two cars, front and back, and approach him while in his car,
9 standing beside him in the car and firing upon him, one of
10 the brothers advancing towards, one brother hit him from the
11 back, and when he goes down to see what happened to his car,
12 he carries out the job -- showing you that whatever was
13 going on here was a lot more than Afghanistan.

14 November 4, 1990 this license plate was stolen
15 from a car in Brooklyn. You wonder: Why in the middle of a
16 murder case are we worried about a missing license plate?
17 But whoever took this license plate from Martina Figueroa's
18 car had a reason. Someone wanted to disguise what car they
19 were using November 4, 1990. Someone was Sayyid Nosair
20 looking forward to the next day. The next day in his car
21 would be the commando knife, Government Exhibit 53.

22 And there would be more clues in his wallet.
23 Government Exhibit 25A and B were clippings that Kahane
24 would speak.

25 I submit to you that what November 4, 1990 shows

1 you is that before something happens you can often look and
2 say, well, maybe. Maybe they are thinking about doing that.
3 Maybe they are not. But without an informant, you can't
4 tell, you can't stop them. Because on November 5, 1990,
5 Sayyid Nosair did walk into a hotel room, he did walk up,
6 and he did take a gun and shoot Rabbi Meir Kahane in the
7 head. It happened.

8 That's what happens when you don't have an
9 informant to tell you what's going on.

10 Let's talk about November 5, 1990. November 5,
11 1990. You heard from Ari Gottesman, a witness who was
12 standing up near the podium where Rabbi Meir Kahane was
13 speaking. He heard a couple of shots. He saw a silver gun,
14 Government Exhibit 11. He turns and he sees the defendant,
15 Sayyid Nosair, holding the gun, running along the wall,
16 trying to escape from the Morgan D room. Ari Gottesman, a
17 very brave young man, runs after him. When he runs after
18 him, he doesn't get to him before Sayyid Nosair finds Irving
19 Franklin. Irving Franklin, 77, but feisty, grabs Sayyid
20 Nosair in a bearhug, his wife standing next to him, Irving
21 Franklin. Sayyid Nosair shoots him in the leg and leaves
22 him lying on the ground and runs off.

23 Irving Franklin told you he couldn't say who it
24 was that he grabbed, but he gave a description, dark hair,
25 bushy eyebrows, beard, a multicolored sweater. That

1 description fit to a T defendant Sayyid Nosair.

2 After Sayyid Nosair shot Franklin, he ran down
3 the corridor, he ran out of the hotel, and he got into a
4 cab. You heard the testimony of Franklin Garcia. It was
5 read to you because he was unavailable. He said that he got
6 in his cab, he saw a guy, he saw a guy with a silver thing
7 in his hand and he felt a cold hard object at his neck. He
8 told him to drive through the red light. He stopped his
9 car, he ran out of the car, he wet his pants.

10 You heard from Ari Gottesman he was outside, he
11 looked in one cab, looks in the other cab, went back to the
12 first cab, saw Sayyid Nosair point a gun at him. He ducked
13 down. Sayyid Nosair got out of the car. He's running down
14 the street. Ari Gottesman follows again. Nosair points the
15 gun. Gottesman ducks down.

16 And then Sayyid Nosair saw Carlos Acosta. Carlos
17 Acosta, a postal police officer just trying to shut the post
18 office up at 9 o'clock at night, pulling down the gates and
19 he sees Sayyid Nosair running down the street with a gun in
20 his hand. As Carlos Acosta starts to draw his weapon he
21 gets shot. One shot whizzes by his head. The other one
22 hits him in the chest.

23 The bulletproof vest is in evidence. You can see
24 right there that this is what stopped the bullet from doing
25 much more serious damage to Carlos Acosta.

1 Now, Ari Gottesman told you how he saw Sayyid
2 Nosair running down the hall; he saw the shots; he saw him
3 tucking the weapon away. He ran down the hall; he saw him
4 tussle with Irving Franklin. He followed him down the
5 hallway. Ari Gottesman was looking at the different cabs.
6 He saw Nosair get out of the cab and he saw Nosair shoot it
7 out with Acosta. Irving Franklin told you who encountered.
8 He gave you a description of Nosair -- hair, beard, eyebrows
9 and sweater.

10 There was another man who saw both the Kahane
11 shootings and the Franklin shootings: Steven Hoffman. He
12 heard the two shots. I'm sorry, he didn't see the Kahane
13 shooting. I meant the Franklin shooting. He heard the two
14 shots. He saw Nosair running from the area where Kahane had
15 been shot and he saw Nosair shoot Franklin.

16 You heard the testimony read from Franklin
17 Garcia, who identified Sayyid Nosair as the person who put
18 the cold, hard, metal object to the back of his neck. And
19 you obviously heard from Carlos Acosta, who told you what he
20 saw that night when he came face to face with jihad. He
21 came face to face with Sayyid Nosair, who shot at him, a
22 bullet whizzing by his head at pointblank range, and a
23 bullet bouncing off his vest.

24 I would like to point out to you that Mr. Stavis
25 gave an opening in this case. Mr. Khuzami opened, and a lot

1 of defense attorneys opened. They didn't have to open, but
2 they made promises to you about what the evidence would show
3 in this case.

4 When he opened, Mr. Stavis told you that when
5 Sayyid Nosair went out the hotel exit, he got into a cab and
6 said: Take me to the police station. Take me to safety.

7 Some of you may think after a long trial there is
8 a lot of evidence you could have forgotten, maybe you missed
9 that part. But you didn't. There isn't a shred of evidence
10 that when Sayyid Nosair got into the cab, when he put the
11 gun to the back of Franklin Garcia's head, he said anything
12 about taking me to safety or taking me to the police
13 station. He was the gunman.

14 That wasn't the last thing you heard in the
15 opening statements that you never heard in the evidence. We
16 will review those.

17 I will also point out that you heard from two
18 other witnesses. You heard from Ehteshamul Haque on the
19 defense case, and you heard from a fellow last week,
20 Mr. White, on the government's case. I think it is fair to
21 say that neither of them had a great view or a great
22 recollection of the incident. Mr. Haque came before you and
23 he told you that the first man running across the street
24 didn't have a gun in his hand, a second man did. The postal
25 police officer shot first.

1 Then on cross-examination he said, well I told
2 the police that night that the man in front did have the
3 gun. Then he said he didn't. Then he took a 60-second
4 pause, and then he admitted a couple of things: He said it
5 was dark, it happened so fast. He had already told the
6 defense investigator he couldn't remember anything. He said
7 the passenger in his car had a much better view. Then you
8 heard from the passenger in the car last week. He was
9 describing how he was pounding on the hood, Ehteshamul Haque
10 hid down, crouched behind the dashboard. One guy is hiding
11 behind the dashboard and the other one is hiding out of the
12 way of the car because it is starting to roll.

13 I submit to you what you do know is this: The
14 bullets that were fired at Carlos Acosta came from this gun.
15 Those are the same bullets that were fired at Irving
16 Franklin, and the same bullet that killed Rabbi Kahane was
17 fired from this gun.

18 It actually brings out an important point. As to
19 the murder of Rabbi Kahane, you have overwhelming evidence
20 in many different ways. The eyewitness testimony alone, Ari
21 Gottesman, unshaken on cross-examination, who describes
22 Kahane, Nosair, moments after Kahane is killed, the shooting
23 of Franklin and the shooting of Acosta. He alone proves the
24 defendant Sayyid Nosair killed Kahane, shot Franklin and
25 shot Acosta.

1 You have Irving Franklin's testimony; you have
2 Hoffman's testimony; you have Garcia's testimony -- an
3 overwhelming case that Sayyid Nosair was the gunman who shot
4 all three people.

5 But you have more than that. You have forensics.
6 They examined this gun. The five projectiles that came out
7 of that gun, shot at Kahane, shot at Franklin, shot at
8 Acosta, they analyzed them. Four bullets were still intact.
9 They came from this gun found at Sayyid Nosair's side. The
10 other one split apart. The jacket came off the slug. The
11 analysis showed that the slug fit right into that jacket and
12 that jacket came from this gun.

13 To make a long story short, five shots, all five
14 shots came from this gun at Sayyid Nosair's side. You also
15 know that a number of different bullets, unused rounds were
16 found in the pants pocket of Sayyid Nosair that night. The
17 bullets that were found, .38 caliber and .357 magnum, all
18 fit this gun. Sayyid Nosair is lying on the sidewalk, shot.
19 Next to him is the gun that killed Kahane, shot the others,
20 and in his pocket are the bullets that match.

21 Even if you didn't have the eyewitness testimony,
22 even if you didn't have the overwhelming forensics, you have
23 the confessions. You really have three confessions by
24 Sayyid Nosair to this murder.

25 Do you remember that when Emad Salem visited

1 Sayyid Nosair in Attica in 1992, and he said one hand alone
2 will not clap, something to that effect? Sayyid Nosair said
3 you don't need a sharp shooter. I went into a room with 300
4 people and no one saw who killed Kahane. He's bragging.
5 He's saying: I am the one who did it. Others can do it,
6 too. He said: I did my part, why aren't you doing yours?
7 That's the first confession.

8 The second confession actually came to Dr. Nunn.
9 Do you remember Dr. Nunn, the surgeon who treated Sayyid
10 Nosair, and, finally, he couldn't help it, he just asked, he
11 said: How could you kill someone?

12 What did Sayyid Nosair say? What did Sayyid
13 Nosair say? I had no choice. It was my duty. He's telling
14 you first that he did it, but he's also giving you another
15 clue. He's using mujahideen reasoning. The reasoning of
16 jihad: I had no choice. It was my duty.

17 The final confession, the third confession you
18 have was from a tape, a tape of which there were many copies
19 seized in the apartment of Ibrahim El-Gabrownny. That's
20 Government Exhibit 163 R2. I have gone ahead, and I've
21 blown up a couple of those pages so we can discuss it.

22 In this speech, Sayyid Nosair says: God, the
23 almighty -- starting at this paragraph -- God, the almighty,
24 with his own power and grace will facilitate for the
25 believers to penetrate the lines, no matter how strong they

1 are, and the greatest proof of that what happened in New
2 York. God the almighty enabled his extremely brave people,
3 with his great power to destroy one of the top infidels.
4 They were preparing him to dominate, to be the prime
5 minister, someday.

6 He's talking about Rabbi Kahane, the man he
7 murdered. Quite clear in here there's no other gunman. He
8 was killed by a Muslim. This is a war, jihad, against the
9 infidels, and Allah let it happen.

10 He continued: That is why he promised to send
11 unto them his people of terrible warfare until the day of
12 resurrection. This is the saying of God, communicated to us
13 through his holy book. So, brothers, begin the jihad, begin
14 the jihad, begin the jihad.

15 He's using the murder of Rabbi Kahane to try to
16 stoke up more violence in the name of jihad.

17 The speech continues. He says: Because with
18 fighting we can establish a, God also rules on earth. We
19 cannot establish God's rules on earth except by fighting,
20 only by fighting. God the almighty said, fighting is
21 prescribed upon you, and ye dislike it. But it is possible
22 to dislike a thing which is good for you and that ye love a
23 thing which is bad for you. But Allah knoweth, and ye know
24 not.

25 He's telling these people go out and fight, fight

1 again. How does he end?

2 So let us go, ye Muslims, let us go. Outburst.
3 By God, by God, by God. Whoever gets into the jihad once,
4 and whoever feels that he is going to be killed for the sake
5 of God, by God, I feel as if I want to do the jihad over
6 again, and to fight anew.

7 He wants to do it a second time. The first time
8 was Kahane.

9 God saved my life. God the almighty saved my
10 life for a reason, for an insight only known to God. I
11 believe that it is so that I will return to the battle, to
12 the jihad, for the sake of God. God the almighty is always
13 with me. By God, I am alive. God saved my life through a
14 miracle. A bullet gets through my neck, and, in spite of
15 all, the doctors and physicians are saying that I am alive.

16 He is saying, I did jihad, I killed, I lived, I
17 want to do it again and you, too, should outburst, begin the
18 jihad anew.

19 Now, there is another thing Mr. Stavis told you
20 about in his opening about Sayyid Nosair. He told you, and
21 I quote, "That's not my job now, four years later to solve
22 that murder for you. What I will show, ladies and
23 gentlemen, and the evidence will show that Sayyid Nosair was
24 made a scapegoat for that murder. And I will prove to you
25 through medical evidence, ladies and gentlemen, that Sayyid

1 Nosair was physically incapable of shooting those people
2 that he is accused of shooting. And I ask you to listen
3 very carefully to that evidence."

4 He said again at the end: Listen carefully to
5 the evidence concerning a lack of eyewitness testimony, the
6 medical evidence, the physical incapability of Mr. Nosair
7 killing Meir Kahane.

8 Well, you could listen all day as carefully as
9 you would like. You heard no evidence, no medical evidence,
10 no evidence of Sayyid Nosair being unable to pull the
11 trigger. In fact, Sayyid Nosair called as a witness Khalid
12 Ibrahim, the guy at the training for Afghanistan. And what
13 did he tell you? Sayyid Nosair had his own personal target,
14 a metal target on a swing that Sayyid Nosair would bring to
15 shooting practice and move to different distances and shoot
16 at it with a handgun.

17 The only person, the only doctor that examined
18 his hand in the courtroom was Dr. Nunn, who told you that it
19 was scarred, and he's the one to told you that Sayyid Nosair
20 confessed to him. He said: I had no choice. It was my
21 duty.

22 Now, the Kahane murder is not a murder mystery.
23 There is no doubt who killed Rabbi Kahane. It is not a
24 whodunit. At best it's a "whodunit with." You have a very
25 good sense who it was that helped Sayyid Nosair kill Rabbi

1 Kahane. The first thing I would like to do to show you that
2 El Sayyid Nosair wasn't acting on his own is review with you
3 a brief portion of the videotape, the videotape taken
4 moments before Kahane would be killed. You see Kahane
5 saying his last public words, and then you look and pan out
6 the hotel room, and you'll see in the background the persons
7 whose photographs were shown to you later, Mohammed Salameh,
8 Bilal Alkaisi, getting up and walking to the back of that
9 room. Why don't we just play that section briefly.

10 (Videotape played)

11 MR. FITZGERALD: You also saw there was a chart
12 put in evidence of the phone activity in the week before the
13 Kahane murder. That is the chart of Government Exhibit 504A
14 to C. It shows you that Sayyid Nosair's telephone was in
15 contact with 26 Weldon Street. You heard from the witness
16 Abdou Waly that Mohammed Salameh lived at 26 Weldon Street
17 at that time. He was in touch with his cousin Ibrahim
18 El-Gabrowny. He is in touch with Nidal. You'll see in the
19 later phone records it comes out that Nidal is Nidal Ayyad.
20 He's in touch with Mahmud Abouhalima. He's in touch with
21 the Fatima Mosque. That may be an odd reference to you, but
22 later on when they searched Sayyid Nosair's car they found
23 these pieces of paper ripped up in the ashtray. When they
24 were reconstructed, they were directions to a mosque, and
25 the phone number listed was the same phone number listed

1 here 898-7064, and that ripped piece of paper had the
2 fingerprints of Mohammed Salameh on the back⁷. More calls
3 on November 3 and 4 to Mohammed Salameh, to Nidal, to
4 Salameh, and then Ibrahim El-Gabrownny that night.

5 Now, besides the video and the phone chart, you
6 have another piece of proof that Sayyid Nosair wasn't acting
7 alone. Because following the murder, the police knew the
8 license plate of Sayyid Nosair's car and a description.
9 They specifically went out and did what was called a grid
10 search. They went out to see if they could find his car.
11 They were even checking garages, and they checked the
12 street. You learned that the area in which Sayyid Nosair's
13 car was eventually found was searched, was searched by 7:30
14 in the morning and it wasn't there. Later on, it was
15 evidently put back. Because from 9:30 on it starts
16 gathering tickets. And when the car was eventually
17 recovered, it was towed. They found that green book I told
18 you about with the diagrams, talking about an ambush, the
19 various fingerprints. They found the torn directions in the
20 ashtray, the commando knife, stolen license plate, and on
21 the rear window were the fingerprints of Bilal Alkaisi.

22 You also have witness testimony. You may recall
23 that Abdel Haggag told you that Sayyid Nosair was supposed
24 to be picked up by Mahmud Abouhalima in a yellow taxi.
25 Haggag was talking to defendant Clement Hampton-El.

1 Hampton-El told him that Mahmud the red made a mistake. In
2 fact, they thought about killing Mahmud as a result. He
3 said he was in the wrong place with his taxi. Sayyid Nosair
4 jumped into the wrong cab.

5 That makes sense. Because when you look in
6 Sayyid Nosair's house, he was a planner. Sketches, diagram,
7 sketching ambushes.

8 You know that when he planned the murder he
9 wasn't going outside just to hail any old cab. In fact, you
10 know from various different witnesses that Mahmud actually
11 had a cab. You heard that from William Kunstler, Ali
12 Shinawy and Clement Hampton-El told you that Mahmud owned a
13 cab. You also heard evidence on a tape recording,
14 Government Exhibit 325, of the conversation on May 30,
15 between Siddig Ali Emad Salem and Clement Hampton-El that he
16 was supposed to be there.

17 He said, I haven't told anybody this, you know,
18 that night I should have been with him. And Siddig
19 responds: I know, you told me. I know. And he added: I
20 love the brother very, very much. When this happened,
21 brother, and I couldn't see him, I start to begin to
22 function with my heart instead of my head. The sheik told
23 me, look, akhie, if you don't go see him, you'll understand.
24 Don't be a fool and go see him. So I had to fight my
25 emotions, use my head, and not see him.

1 He told you he was talking about Nosair in that
2 passage.

3 After Kahane was murdered, and the other people
4 were shot, we now know that was only the beginning. In
5 fact, in the Nosair search was found Government Exhibit 76,
6 a blue notebook. This is the blue notebook that had a
7 speech talking about the state of Ibrahim. Let me put up
8 some of that notebook on the easel. Look at what it says in
9 the notebook, handwritten, found in Sayyid Nosair's house,
10 the day after Kahane is murdered.

11 Before announcing the establishing of the state
12 of Ibrahim in our holy land, immediately before that, to
13 break and destroy the morale of the enemies of Allah, and
14 this is by means of destroying, exploding the structure of
15 their civilized pillars, such is the touristic
16 infrastructure which they are proud of, and their high world
17 buildings which they are proud of, and their statues which
18 they endear, and the buildings which gather their heads,
19 their leaders.

20 And you know "the touristic infrastructure" is a
21 fancy way of saying tourist building.

22 He goes on: And without any announcement of our
23 responsibility as Muslims for what had been done, and
24 therefore the enemies of God will be busy in rebuilding
25 their infrastructure and rebuilding their morales, and they

1 will not care much about what goes on around them more than
2 their care about rebuilding their morale, and, therefore,
3 the chance will be available for the Muslims to repossess
4 their sacred lands from the hands of the enemies of God, the
5 traitors and the hypocrites who will be at this moment in a
6 very psychological weakness from what they see around them.
7 And this is because the forces on which they were depending
8 were crushed into pieces and are in a tragic collapse.

9 What he is saying is we've got to take back the
10 holy land, or we've got to distract, we have to blow up
11 buildings. The buildings are not in the holy hand. You
12 don't do a distraction by attacking the target. You don't
13 attack a land to distract it. You attack the forces upon
14 which they depend. The forces on which they were depending
15 is America.

16 In his view Israel depends on America. You blow
17 up tall buildings, you distract, you break the morale. The
18 forces upon which Israel depends are distracted. Then you
19 can make your move.

20 Also, in his home on that day were found various
21 bomb formulas. I am not going to go through all the bomb
22 formulas. There were a lot of them. Suffice it to say that
23 when Khalid Ibrahim, the person who talked about the
24 Afghanistan training, was on the stand, he looked at them
25 and basically said he knew of no connection between those

1 formulas and the Afghanistan training they were conducting.

2 Now, on that day, or shortly thereafter, and on
3 another occasion the work locker of Sayyid Nosair was
4 searched. In that work locker was found a metal ring that
5 you heard was compatible with what you use, a ring on an M60
6 fuse lighter, something that lights fuse that could even
7 burn underwater.

8 The person who came in here, Mr. Rice, who works
9 with Sayyid Nosair, looked at the metal ring, said he knew
10 of no use at work for that item. There were other clues.
11 There was a phone book, or several phone books of Sayyid
12 Nosair that reads like a who's who list of this case. He
13 had the phone numbers of Sheik Omar Abdel Rahman, his
14 cousin, Ibrahim El-Gabrownny, Clement Hampton-El, Mustafa
15 Assad, the person Mustafa Assad, also known as Mustafa
16 Mohammed, who Clement Hampton-El would go to three years
17 later for detonators. He had the phone number of Mahmud
18 Abouhalima, the phone number of Nidal Ayyad and the phone
19 number of Mohammed Amin, also known as Mohammed Salameh.

20 He also had a piece of paper, a sheet of paper
21 with the name and address for a person by the name of Yousuf
22 Hussein, which didn't mean much back in November of 1990,
23 Yousuf Hussein, who lived in Wisconsin. But you have now
24 learned over the course of trial a lot about Yousuf Hussein.
25 When Haggag testified, he told you that Yousuf Hussein was

1 someone who was helping jihad financially with a lot of
2 money.

3 In fact, he came to visit defendant Omar Abdel
4 Rahman. He was a very rich man from the United Arab
5 Emirates, and he was living in America at the time. You
6 also learned that that is the person whom Siddig Ali and
7 Emad Salem were sending faxes to at the end of 1993, the
8 jihad person who they wanted to fund their project. Siddig
9 Ali had the fax number for this guy over in United Arab
10 Emirates, and you heard by stipulation that the person in
11 Wisconsin whose address appears in Sayyid Nosair's book
12 moved back to United Arab Emirates. You also learned that
13 when defendant Mohammed Saleh was arrested, the back of one
14 of his cards, written on the back of one of Mohammed Saleh's
15 cards in his wallet at the time of his arrest was the fax
16 number for Yousuf Hussein.

17 After November 1990 when Kahane is killed -- let
18 me briefly stop at December of 1990. December 1990 is when
19 defendant Abdel Rahman made a trip to Denmark. He gave a
20 speech over there. We will talk about that speech in a
21 moment.

22 You also saw on a chart put before you in
23 evidence that while defendant Abdel Rahman is in Denmark
24 giving the speech, Mahmud Abouhalima is telephoned from
25 Brooklyn, reaches out and calls the number defendant Abdel

1 Rahman is staying at. Mahmud Abouhalima is staying in touch
2 with defendant Abdel Rahman not only when he is in Egypt,
3 not only when he is in America sharing a bank account, but
4 even on his trip to Denmark.

5 During that Denmark speech, that's Government
6 Exhibit 550, a lot of things were said. But before I review
7 with you what it was that defendant Abdel Rahman said on
8 videotape, let me take you back again to last winter, back
9 again to the opening statements. Let's review with you what
10 it is that Ms. Stewart on behalf of her client told you her
11 client was all about. She told you that the evidence will
12 show that he believed that that visa, the visa with the
13 United States, was a sacred contract between him as a Muslim
14 and the United States of America for sanctuary.

15 She also told you that he has no disagreement
16 with the American people. His struggle is away from the US.

17 She further told you the sheik never spoke any
18 words that directed the actions or approved the actions of
19 others against the United States. What motivation could he
20 possibly have?

21 Finally, she said, jihad is an Arabic word for
22 struggle, the struggle internally to look at one's self. It
23 is not what the so-called scholars, the imams of the U.S.
24 Attorney's Office tell you. It is simply the Muslim duty,
25 the struggle internally with self and externally.

1 She said this, she said: And if you are going to
2 write anything down in your notebooks, write this down.
3 Externally in defense of Islam, it has no element of the
4 aggressions Mr. Khuzami spoke of.

5 That's what she told you Abdel Rahman's view of
6 jihad was. Now let's look to Abdel Rahman himself. In
7 Denmark, Government Exhibit 550.

8 Then he who seeks the protection from the
9 Americans in the meaning of the sentence, he has taken off
10 the noose of Islam from his neck, and he does not become
11 from the group of the Muslims nor from their ranks and nor
12 from their order, but he has become in the group of the Jews
13 and the Christians.

14 Then he continues: Every conspiracy against
15 Islam and scheming against Islam and the Muslims, its source
16 is America.

17 And he continued: If there are Muslim battalions
18 to do five or six operations to the Americans in surprise
19 attacks like the one that was done against them in Lebanon,
20 the Americans would have exited and gathered their armies
21 and gone back by air and sea to go back to their country.

22 He doesn't talk about an internal struggle.
23 Listen to what he says about jihad: Jihad is jihad, my
24 brother. There is no such thing as commerce, industry, and
25 science in jihad. This is calling things with other than by

1 its own names. If God, glory be to him, says do jihad, it
2 means do jihad with the sword, with the cannon, with the
3 grenades, and with a missile. This is jihad. Jihad against
4 God's enemies for God's cause and his word.

5 He ended by saying: Again, I said if six or
6 seven operations were done to the American Army, the same
7 like is done at Lebanon, the American Army would withdraw
8 all its forces. The same with the Bathist head of state in
9 Iraq.

10 So if there is a capability, form these
11 battalions -- talking about Iraq and Kuwait. If there is no
12 capability, you have the other fields.

13 With defendant Abdel Rahman there was no sacred
14 contract. America was the enemy. Jihad was not an internal
15 struggle. It was violence. If there were more operations
16 against America, America would change its policy.

17 I am going to move forward to the period 1991 and
18 1992. I am going to talk to you about someone I think you
19 have all met. That's Emad Salem, who was on this witness
20 stand for about seven weeks. Before I talk to you about
21 him, I would like to talk to you a bit about your role as
22 jurors. Because I am going to talk to you about Emad
23 Salem's credibility, I can hazard a guess that some other
24 people will get up here and talk about his credibility, as
25 well.

1 I want you to understand from the get-go that you
2 are brought into this jury room because you are real people
3 with real experience and common sense. When you go about in
4 life figuring out what makes sense what doesn't make sense,
5 where do I have to look closer, where don't I, and you are
6 just as good as anyone else, myself included -- you guys are
7 probably better at judging credibility.

8 You sat with the man for seven weeks. You have a
9 sense of who he is and who he isn't. So when lawyers,
10 including myself, talk to you about credibility, listen to
11 what we have to say. Listen when we explain why things make
12 sense or don't make sense, but don't, ever, ever, ever
13 substitute anyone's judgment for your own, because that's
14 what you are here for.

15 Now, the key with Emad Salem is not trying to
16 figure out whether or not you like him, whether or not you
17 would like to have dinner with him. The key is determining
18 whether or not what he tells you about the defendants on
19 trial, what it is that the defendants did with him is true
20 or not.

21 I submit to you the key with him, as with any
22 witness, is to look at corroboration. There is a lot of
23 corroboration with Emad Salem. First and foremost, there
24 are tapes. You heard hours and hours of tapes. You had
25 many, many transcripts put in many books before you of tapes

1 of what Emad Salem said. I submit to you the most important
2 things are corroborated on those tapes.

3 Let me give you an example. After you heard Ms.
4 Stewart's opening about how defendant Abdel Rahman was a
5 servant of God, and had no problems with America, if Salem
6 or any witness walked into this courtroom and said to you:
7 You know, I had a conversation. It was hush, hush, just me
8 and defendant Abdel Rahman, where I laid it on the line. I
9 said I want to do a violent attack. And, you know,
10 defendant Abdel Rahman, despite his sacred contract, he told
11 me, go ahead, attack the American military. With any
12 witness you would look and say, could that really be true?
13 Could a preacher, a servant of God, really direct an attack
14 against America? You know that's true, because that
15 whispering, that conversation was caught on tape.

16 Now, I also asked you to think about other
17 things. There were wiretaps going on, there were other
18 witnesses, other seizures, that Emad Salem didn't know
19 about. I ask you to look at how his account of events
20 stacked up with the other evidence and the other witnesses.

21 I ask you to evaluate his direct examination and
22 his cross-examination. The reason I told you to judge him
23 for yourself, Mr. Stavis stood up in his opening and he said
24 to you, you judge his testimony. You will find him to be a
25 vial, sleazy, disgusting human being. After a day of him on

1 the witness stand right over here, when you get home, before
2 you kiss the kids, take a shower.

3 Well, I submit to you, it's not about throwing
4 labels around about people. It is about putting them up on
5 the witness stand, having them talk about themselves, talk
6 about others and then asking them questions, which happened
7 day after day after day and week after week. I submit to
8 you, his story held up. His account of what happened held
9 up, was corroborated by his testimony, the way he answered
10 questions on cross-examination, by the tapes, by other
11 witnesses.

12 Now, a few more points about Emad Salem. When
13 there comes the time when the judge gives you the
14 instructions on the law, he's going to tell you a number of
15 important things. One important thing and at the same time
16 obvious thing is that you have to judge all witnesses
17 carefully, but particularly when a witness has admitted to
18 lying under oath before, and Emad Salem did.

19 He told you he went into a court, he made up
20 those stories about being the hero of the Sadat
21 assassination, and he said it under oath. Emad Salem told
22 you he didn't lie about other people or say they did bad
23 things they didn't do. But the fact is it was still a lie,
24 it was still under oath. That's for you to consider. But
25 when you scrutinize him carefully, and please do, look extra

1 hard at the corroboration, the corroboration in this case
2 that shows you the defendants wanted to go around blowing up
3 things to get back at America.

4 You have heard a lot about Emad Salem's million
5 dollars plus, the money he was paid. You had a blowup of a
6 check, a check of \$100,000. I am sure you will hear a lot
7 more about the money. But when you hear about that money, I
8 would like you to put a few things in context.

9 First, you heard he's going to get more than a
10 million dollars for his role in the case. But you also
11 heard that will if someone turned in, just identified where
12 Mossad Yassin or Ramzi Yousef was, they are eligible for a
13 \$2 million reward. \$2 million just to identify the location
14 of a fugitive.

15 What did Emad Salem do? Well he thought he gave
16 information about Mahmud Abouhalima. He didn't know that
17 Haggag had beat him to the punch.

18 But he also went around investigating people,
19 often with no surveillance on him, meeting people in various
20 apartments, going along on car rides with them, going with
21 them into the basements of mosques, apartments, going into
22 Rogers Avenue, meeting with Siddig Ali in his apartment,
23 meeting in the defendant Abdel Rahman's apartment.

24 What does he get for that? Sure he gets an awful
25 lot of money, but his life has changed. He's moved more

1 than a dozen times. His name has changed. He has no resume
2 that can really be checked out.

3 He goes through life for the rest of his life
4 being a new person, cutting off his roots. He told you they
5 tried to kidnap his sister. I submit to you that being
6 moved around, having your name changed, wearing a wire, all
7 of those things, there are not too many people who would
8 want to do that, even for a million dollars plus. I also
9 submit to you there aren't that many people who could.

10 You still have a lot of agents in this courtroom,
11 a lot of agents who couldn't walk into just any mosque and
12 say: I would like to talk to Sayyid Nosair and others about
13 jihad. We would like to put Walter Kronkite or Tom Brokaw
14 on the stand to say: Look, I did it like a documentary --
15 went up to each defendant, said I'm involved in jihad, tell
16 me what you guys are up to. You know that that would go
17 nowhere. So he was needed.

18 I'll make two more points on Emad Salem before I
19 head into the substance of his testimony. You heard about
20 Egyptian intelligence. He does have some friends in
21 Egyptian intelligence. Remember this, most important: The
22 government approached him. He was working in a hotel. The
23 government went up to him, asked him for information. He
24 began providing information on Russian counterintelligence
25 matters, and then he was moved over to work on this case.

1 The last thing I will talk about is Barbara
2 Rogers. Barbara Rogers, his ex-wife, came to the witness
3 stand. And believe you me, I am not interested in getting
4 into divorce court figuring out where the marriage went
5 wrong, who's right and who's wrong. But when you think
6 about her testimony, to the extent it contradicted Salem's
7 testimony, I submit to you that her testimony was sort of
8 like one of these bad late-night movies.

9 The script was she follows Salem. She sees him
10 meeting on a street corner with an Egyptian male in the
11 night. There is a briefcase full of money in Egypt. He
12 says, this is the beginning of my final mission, it starts
13 today. Then at the end he says, I've done my last mission.
14 It's over.

15 Who does he say this in front of? First he says
16 it in front of FBI agents, the people he's supposed to be
17 double-dealing on behalf of the Egyptian government. He
18 says it in front of his ex-wife, with whom he has a stormy
19 relationship. And her story is that defendant Abdel Rahman,
20 the sheik, is his final mission. When he says his final
21 mission is over, the defendant Abdel Rahman isn't even
22 arrested.

23 More important point is that when Barbara Rogers
24 was really angry at Emad Salem, which sounds like it was
25 often and vice versa, she wrote a letter to the government

1 to try to keep him out of the country. And in that letter
2 Barbara Rogers, Dr. Rogers, was trying to keep Salem out of
3 the country, she never mentioned once anything about a
4 double agent, anything about secret meetings, street
5 corners, briefcase full of money.

6 I submit to you that the bottom line will show in
7 this case that the defendants, when they thought Emad Salem
8 was about killing Jews, blowing up bombs for jihad, thought
9 he was a great guy. They couldn't get enough of him.

10 When they found out that that wasn't true, he
11 wasn't about killing and bombing, but he was about taping
12 them and coming into a courtroom to tell you what it is that
13 they did, that's when they became angry.

14 THE COURT: Mr. Fitzgerald, would this be a
15 convenient break point?

16 MR. FITZGERALD: Yes, thank you.

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

21 I will ask everybody to remain seated until the
22 jurors leave. Thank you.

23 (The jury was excused)

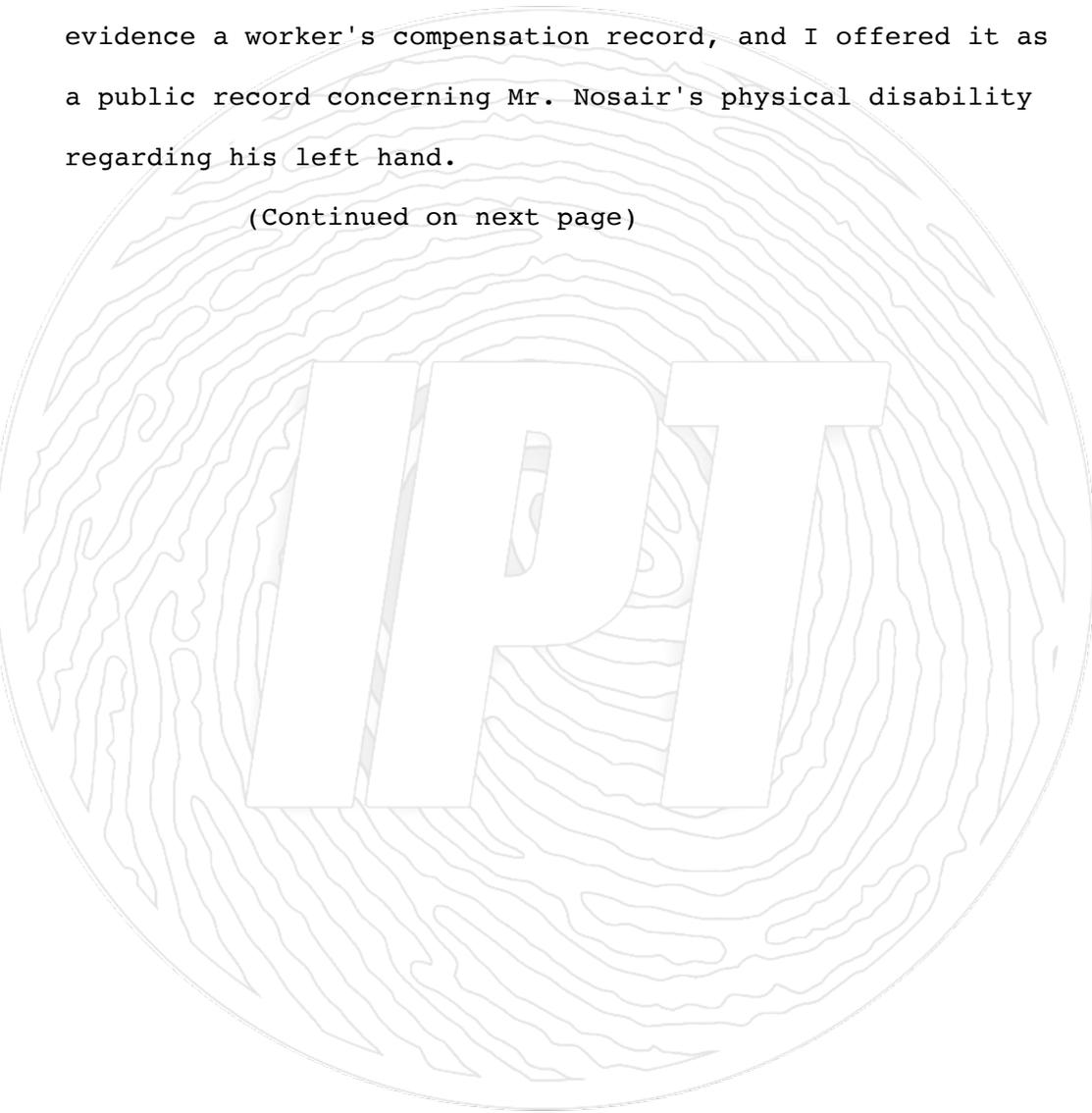
24 MR. STAVIS: I want to raise with your Honor the
25 comment of Mr. Fitzgerald where he quoted from my opening

1 statement where I said that Mr. Nosair was physically
2 incapable of shooting a gun on the evening of November 5,
3 1990.

4 Your Honor will recall that I offered into
5 evidence a worker's compensation record, and I offered it as
6 a public record concerning Mr. Nosair's physical disability
7 regarding his left hand.

8 (Continued on next page)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 THE COURT: There was a Workers' Compensation
2 record that didn't prove what you suggested it proved, that
3 called for speculation by the jury, and that was kept out.
4 You took a bet on offering evidence and it didn't develop
5 the way you thought it would.

6 MR. STAVIS: I do not believe that the government
7 can oppose the introduction of evidence and then quote from
8 an opening statement where I proffered that they would
9 have --

10 THE COURT: Mr. Stavis, the evidence was
11 incompetent to prove what you suggested it would prove. You
12 oversold it.

13 MR. STAVIS: I ask to be permitted to reopen my
14 case and to submit that evidence.

15 THE COURT: Do you want to be heard?

16 MR. McCARTHY: The evidence didn't prove what he
17 said it was going to prove then, it wouldn't prove it now if
18 the case were reopened.

19 THE COURT: The application is denied.

20 MR. STAVIS: The other statement that I wish to
21 make, when Mr. Fitzgerald quoted from my opening statement
22 concerning Mr. Nosair going into a cab and saying take me to
23 the police, that was a direct quote from Mr. Nosair's
24 statement, and I submit to the court -- from his written
25 statement -- that when there is a written statement that is

1 the subject of litigation and the government opposes a
2 suppression motion, I have every right to rely upon the
3 fact --

4 THE COURT: Mr. Stavis, if you rely upon the
5 ability of your client to get in self-serving statements,
6 you rely to your detriment and his. The application to
7 reopen, which I assume is coming, is denied.

8 MS. STEWART: Judge, I don't believe it was fair
9 comment for the government to raise the issue that I
10 challenged their Islamic expertise with regard to jihad when
11 I was not permitted to put on an Islamic expert to testify
12 as to what those concepts meant, and I think it was unfair,
13 and I think that since they opposed putting on that Islamic
14 expert and since they proffered no Islamic expert of their
15 own, that the jury should be instructed to disregard that
16 portion of the summation.

17 THE COURT: Miss Stewart, that portion of the
18 summation had to do with your client's comments, it didn't
19 have to do except tangentially with the expertise or lack of
20 it except where you pointed it out.

21 MS. STEWART: Mr. Fitzgerald specifically said --

22 THE COURT: The imams of the U.S. Attorney's
23 Office, I think is what he quoted, and the point he was
24 making was what your client's testimony was, not whether or
25 not there is or is not expert testimony. If that is an

1 application to reopen, which I assume it is, it is denied.

2 MS. STEWART: I would also say I do not believe
3 there is any evidence before this jury as to the rewards for
4 Ramzi Yousef or somebody they characterized, I believe,
5 maybe my hearing is bad over here, for Yousef Hussein, nor
6 is there any evidence about Emad Salem's sister being
7 kidnapped.

8 MR. McCARTHY: There is evidence of both. During
9 Anticev's testimony the \$2 million reward came out and I
10 believe it was during Miss Stewart's examination of Salem,
11 if I recall correctly, that the business about Salem's
12 sister came out.

13 THE COURT: I don't have a distinct recollection
14 on either point. The transcript obviously will tell. If
15 you want me to instruct the jury, as one often does, that it
16 is not what the lawyers say that is the evidence, it is what
17 their recollection is of the evidence and what the evidence
18 indeed is, I will be happy to give that instruction before
19 we resume.

20 MS. STEWART: I would appreciate that, Judge.

21 THE COURT: Good. A short break.

22 Ms. Amsterdam?

23 MS. AMSTERDAM: No, I was just standing.

24 THE COURT: Good.

25 (Recess)

1 (Jury present)

2 THE COURT: Ladies and gentlemen, I wanted to
3 remind you of something that I mentioned before the trial
4 started and that I perhaps should have mentioned before we
5 started this morning but I will mention it now. That is
6 that, although the summations of the lawyers may be useful
7 to you in helping you review the evidence, they are not in
8 and of themselves the evidence. The evidence is what you
9 have heard for the last several months. So if there is any
10 conflict between what any lawyer says, be it from the
11 government or one of defense counsel, between that and what
12 the evidence actually showed, it is the evidence that
13 controls, not what the lawyers say about it.

14 Go ahead, Mr. Fitzgerald.

15 MR. FITZGERALD: Thank you, Judge.

16 Let's focus in on December 1991. That is the
17 time when Emad Salem told you he took a trip to Detroit with
18 defendant Abdel Rahman, and he told you about the van ride
19 out to Detroit. It was a long trip. But on the van ride
20 defendant Abdel Rahman was telling Emad Salem, after Emad
21 Salem brought up his usual speech about the 18 years in the
22 Egyptian army, defendant Abdel Rahman told him that was a
23 waste, his 18 years had been for an infidel who was not
24 jihad, and asked him why doesn't he make up for it and turn
25 his rifle to the chest of Mubarak. Salem told you that he

1 didn't respond then, and the whole car became quiet.

2 He told you about the rest of the weekend but I
3 would like to focus in on an defense witness, Ali Hamamy.
4 He told you that he took the van ride, he corroborated who
5 was there, where everyone sat, and he told you that during
6 the 18 hour trip, he doesn't recall what was said. Hamamy
7 told you that he didn't recall Mubarak being mentioned, and
8 then he was shown a transcript and he recalled it. He was
9 also a witness, I submit, that didn't want the defendant
10 Rahman to look bad. He told you about how jihad would
11 affect the economy and commerce in the Middle East, and
12 eventually he backed off.

13 In the spring of 1992, Sayyid Nosair was up in
14 Attica and Ibrahim El-Gabrownny was serving as his eyes and
15 ears. You learned that he was collecting cash for the
16 Nosair Defense Fund, he was in contact with Mahmoud
17 Abouhalima, Mohammad Salameh and others. He in fact
18 introduced Emad Salem to Siddig Ali at the Nosair trial and
19 he was talking about whether Salem could build a bomb. You
20 may recall that when Emad Salem said how about a Molotov
21 cocktail, El-Gabrownny said no, he wanted high powered
22 explosives, he wanted detonators. In fact, he said that he
23 was trying to get detonators from Afghanistan. And there
24 came a point when he said that they couldn't get detonators
25 from Afghanistan, could Emad Salem get the detonators

1 himself. It was during this time that they were also
2 talking about a plan to break Nosair out of jail, but Salem
3 told you that Ibrahim El-Gabrownny's position was let's wait,
4 let's wait until after his appeal, we will see if he will
5 win his appeal first.

6 Note that Emad Salem could have told you he was
7 all up for the escape but he laid it out and said look, he
8 wanted to bomb but when it came to escape plans he said he
9 wanted to wait until the appeal was over. The first trip to
10 Attica that you heard testimony about involving Emad Salem
11 was a trip on May 6 of 1992. Emad Salem went with Tarek
12 Khatteria and Ibrahim El-Gabrownny.

13 Nosair made a number of very interesting
14 statements that day. First he said, you are sitting doing
15 nothing, I did my part, what are you doing? Sayyid Nosair
16 now has status in the jihad community. He has murdered
17 Rabbi Meir Kahane and he is looking at everyone else, saying
18 what about you? When are you going to do your share for
19 jihad?

20 He told them about the prior bomb experimentation
21 he had done. He told them he had built bombs, he worked on
22 using beepers to detonate bombs. You may recall the
23 testimony about breaking the bulb so it looked like a
24 Christmas bulb, using the spark to ignite something. He
25 talked about using propane tanks, wrapping M80's around the

1 propane tanks to make them explode. He talked about a store
2 on Canal Street in which you could buy a fuse to work under
3 water. There was that ring that lights up to the fuse
4 lighter that lights the fuse that burns under water. And he
5 told him where the store was that he could buy a timer.

6 During that time, some of the people brought up a
7 man named Leon. Leon was a Jewish fellow with the JDL who
8 had attended the Nosair trial and aggravated people. They
9 talked about taking some action against Leon. Nosair's
10 response was forget Leon, he's a kid, focus on Doug Hikind
11 and Judge Schlesinger, the judge who presided over his
12 trial. Sayyid Nosair said, he was not merciful with me, and
13 we should have no mercy. That was what Sayyid Nosair was
14 about.

15 He also talked about the murder himself. He
16 said, I was not a sharpshooter and 300 individuals in the
17 room, nobody saw who killed Meir Kahane. He actually wanted
18 to improve upon things. He talked about how he was running
19 and used a pistol, and suggested they go out and get stun
20 guns, that stun guns would make sense. This way you're not
21 making noise in the street, you can stun people. Finally he
22 talked about the escape. He said, you know, you just missed
23 a good opportunity, I went into the hospital the other day,
24 there were only two guards with pistols. Lo and behold
25 during this trial you saw one of the people involved in the

1 prison system, came in and said that four people took Sayyid
2 Nosair days before to a hospital, two of them with pistols
3 and two unarmed.

4 During this time when Sayyid Nosair is talking to
5 Emad Salem in May 1992 about buying stun guns, lo and
6 behold, what do you find out later, but Ibrahim El-Gabrowny
7 bought stun guns during that time. His apartment was
8 searched in March of 1993, and they recovered 120,000-volt
9 stun gun and a 90,000-volt stun gun, which are in evidence.

10 But what is also in evidence is the receipt
11 indicating that those stun guns were bought on May 23, 1992,
12 the same month Emad Salem tells you that Sayyid Nosair up in
13 Attica is talking about the need for stun guns.

14 You also saw there was an exhibit seized in 1993
15 from Ibrahim El-Gabrowny's apartment, a letter from overseas
16 that someone wanted stun guns sent to them. But I will
17 point out to you that that letter referred to six stun guns,
18 wanted the stun guns sent overseas and dated back to
19 February 1992. Emad Salem's account was that in May 1992 he
20 was asked that they should get stun guns and the receipt
21 shows that El-Gabrowny bought them that month, May 23, 1992.
22 That receipt is Government's Exhibit 132C.

23 There would come a second trip in the spring of
24 1992 by Emad Salem up to Attica, and he would make that
25 second trip because he got a message from Ibrahim

1 El-Gabrowny. El-Gabrowny told him that Nosair was upset
2 that still nothing had been done. Nosair wanted action. He
3 wanted jihad.

4 Salem had actually acted on what Nosair had told
5 him the last time. He went out, he bought timers, he bought
6 fuse, he bought M80's. He showed the timers to Ibrahim
7 El-Gabrowny, and Ibrahim El-Gabrowny didn't like the timers.
8 He laughed at them and said they looked like his
9 grandmother's. He told him he should get remote control
10 timers and told him about the remote control devices that
11 they use in airplanes. Defendant Elgabrowny gave an example
12 about why remote control timers are better. He used the
13 example of Dov Hikind. He puts a bomb in his door, sets it
14 for 7:00, he comes out five minutes early, five minutes
15 late, it makes a noise, does nothing. With a remote control
16 timer, nothing can happen. You see him come out, you blow
17 him up, and he's dead.

18 Ibrahim El-Gabrowny also told Emad Salem at the
19 time that there were underground people at the Abu Bakr
20 Mosque that he would meet down the road.

21 During this time when Nosair is complaining and
22 El-Gabrowny is relaying the message, Emad Salem takes a
23 trip, goes back up to Attica in June of 1992, June 14.
24 Nosair is bitter. Nothing has been done yet. Salem brings
25 in a piece of the fuse, cuts off a piece of the fuse, looks

1 like a rope, so that he can show Sayyid Nosair that he has
2 done something, he has bought the fuse. Nosair tells him,
3 don't keep it in your house. Nosair is being cautious. The
4 last time he committed a jihad crime, his house was searched
5 and they found evidence.

6 He told him that they needed a safe place to
7 build bombs, and he told him some people that they could go
8 to for help. He talked about targets, including Dov Hikind
9 again, and the judge from his trial.

10 During that meeting Nosair told Ali El Shinawy
11 that he should go get a fatwa, what I think Imam Wahhaj
12 Siraj told you was a religious verdict, from defendant
13 Rahman about their plans. Sayyid Nosair is telling them
14 before you do this, you have to check with defendant Abdel
15 Rahman.

16 On the bus ride back, Salem and Ali El Shinawy
17 talk. Shinawy spells out that there should be 12 bombs,
18 that two of the targets will be Dov Hikind and the judge.
19 And he also says two other interesting things. Shinawy
20 tells Salem that if they need help, they can go to Mustafa
21 Assad, also known as Mustafa Mohammed. This is who Ali El
22 Shinawy has in mind for someone to help in a bombing plan.
23 That is the same person Clement Hampton-El in May and June
24 of 1993 was reaching out for at the time he was trying to
25 get detonators. Back in 1992 that is who Shinawy says can

1 help with the bombing plan.

2 Shinawy also tells Salem that they need guns to
3 protect themselves, and he tells Salem that he has two
4 sources for guns, Ali El Shinawy. The first one he just
5 describes as a Spanish guy with German pistols. The second
6 guy is Abdul Rashid, defendant Hampton-El.

7 There came a time shortly after that visit on
8 June 14, just four days later, when Emad Salem met Abdel
9 Rashid with Ali Shinawy in the basement of the Abu Bakr
10 Mosque. You know that Clement Hampton-El testified, Ali El
11 Shinawy testified and Emad Salem testified. The one thing
12 that is clear is, Shinawy and Clement Hampton-El all admit
13 that they did meet on that day in the mosque, four days
14 after the meeting at Attica. Hampton-El and Shinawy both
15 said that this was a chance meeting, but if you look at the
16 phone records, the telephone traffic between Shinawy and
17 Rashid -- and the phone records are in evidence -- the only
18 traffic that shows up is during those few days in June of
19 1992. All the rest of the time there are no calls. Salem
20 told you that he showed the timer, he asked about
21 detonators, and Hampton-El said don't jeopardize yourself if
22 we can get ready-made bombs, Shinawy says, talking to Emad
23 Salem about Hampton-El. Hampton-El said he was out of
24 pistols but he could check up on it. That is how the
25 meeting ended.

1 According to Ali El Shinawy, there was no
2 discussion of bombs, no discussion of weapons. According to
3 Hampton-El there was discussion of murder by Emad Salem but
4 nothing involving these plans. Let's talk about that
5 testimony for a moment.

6 First of all, does Hampton-El's testimony about
7 that make any sense? He told you that Ali El Shinawy, Sheik
8 Shinawy, the head of the mosque, would introduce him to
9 someone who would start talking about guns, bombs and
10 murder, in a mosque, the house of God, and and that he just
11 said Salamm Aleikum and let him go, that he never told him
12 anything. I submit to you that if Clement Hampton-El is the
13 neighborhood good guy that his lawyer described in the
14 opening, if Ali Shinawy is this figure in a mosque against
15 violence, if someone like Emad Salem walked into a mosque
16 and sat down after an introduction to Shinawy and talked
17 about violence with Hampton-El, why in the world wouldn't
18 Hampton-El walk over, grab Shinawy by the shoulder and say
19 who is this guy, who did you introduce me to? That didn't
20 happen. That is an example of how you as jurors have to
21 take your common sense, sometimes throw cold water over
22 yourselves and say how could this story happen? People who
23 aren't about violence meet in a mosque and a guy starts
24 talking about wild things that they claim they are against,
25 and no one is told.

1 Another interesting part. The meeting ends, they
2 go their separate ways. A couple of weeks later, June 29,
3 1992, Salem goes back to the mosque and he gets a gun, a gun
4 from Ali Shinawy. This is the gun, Government's Exhibit
5 391. It is not a German pistol. In fact, Shinawy said I'm
6 sorry, the Spanish guy didn't have the the German pistols.

7 That raises another interesting point. Salem had
8 been told by Shinawy, I have two sources, the Spanish guy
9 with the German pistols, and Abdel Rashid. He leaves.
10 Shinawy asked him to come back, bring some money. He brings
11 some money and he is not told that Abdel Rashid provided the
12 gun, but he is told no German pistols. In Emad Salem's
13 mind, probably came from Abdel Rashid.

14 Mr. Wasserman cross-examined Mr. Salem. He says,
15 you don't know where that gun came from. Emad Salem backed
16 off and said no, I don't know. He didn't stretch, but I
17 will tell you something, you can figure out where that gun
18 came from. This gun had the serial number filed down. That
19 was restored. That serial number was traced back to a store
20 in Pennsylvania, a woman named Teresa Dove bought that gun.
21 Her husband testified. You remember Mr. Pinckney,
22 frightening guy who came in, guy who robbed banks and things
23 came in and said yes, I bought this gun back in 1990, I had
24 my wife buy it, and I took it, I went to a mosque and I ran
25 into a guy named Osama. He sold this gun to the man named

1 Osama Mohammed.

2 You know who Osama Mohammed is. He is the friend
3 of defendant Hampton-El. You know it in several ways.
4 Defendant Hampton-El told you that he knew Osama Mohammed.
5 You had the phone traffic. You heard tape recordings of
6 calls back and forth between Hampton-El and Osama Mohammed,
7 the fellow that lived in Jersey City, and he is the guy --
8 you have seen his picture -- he is the super of the
9 apartment where Garrett Wilson, the naval police officer who
10 came and testified, Garrett Wilson was taken to a location
11 over in New Jersey, they went into this room with mattresses
12 spread out. That is when Clement Hampton-El asked for clean
13 guns and detonators back in December 1992. When he came in,
14 met the super who identified his photo, and an FBI agent
15 went back later and it turns out it was Osama Mohammed. So
16 Osama Mohammed is a man Clement Hampton-El admits knowing,
17 has a meeting with Garrett Wilson in Osama Mohammed's
18 apartment building about clean guns and detonators. Lo and
19 behold the gun that Ali Shinawy provided to Salem came from
20 Abdel Rashid's contact, the gun that Salem figured but
21 didn't know came from him.

22 One other thing about Shinawy. Mr. Shinawy took
23 the witness stand. He got up there and was asked did you
24 talk about bombs? He made this big surprise face and said
25 bombs? We are Muslims, not killers, who say that. He

1 looked shocked that he was asked a question that talked
2 about bombs. Do you really believe that was the first time
3 he heard that was the issue in this case was when he hit the
4 witness stand? Do you really think that when someone is
5 being called as a witness to a meeting where the other
6 person talked about bombs, that no one would ask him before
7 he got up there, by the way, is it true? But he acted like,
8 we are Muslims, not killers, who say that? He is the same
9 person, I submit to you, who would mislead his wife when he
10 came back from Egypt. He went over on vacation, comes back,
11 doesn't happen to mention to the woman he lives with as his
12 wife that he has found a new wife to replace her.

13 The last thing I will talk to you about the
14 meeting with Salem and Clement about the gun is that there
15 is corroboration. When we go through the tape recorded
16 transcript of what happened on May 30, 1993, in the Rogers
17 Avenue location, Hampton-El's dojo, whatever you want to
18 call it, in that meeting Emad Salem brings up the year
19 before. He brings up Shinawy and that's when Hampton-El
20 says don't mention names, we have talked about a whole lot
21 before. And Hampton-El brings up during that meeting,
22 remember when you said you had something last year, and
23 during that conversation Hampton-El responds, explains how
24 it is that the persons who had C-4, people were going to
25 jail and it was harder to get in touch with them.

1 The point of that conversation is, when Emad
2 Salem brings up the year before, telling Hampton-El you had
3 something, Hampton-El doesn't look at him and say what are
4 you talking about, you're crazy? He carries on, says don't
5 mention names, and explains why it is he no longer has
6 something available. He is establishing, corroborating by
7 his response that in fact the meeting they had in 1992 was
8 about bombs and detonators.

9 There was almost a third trip to Attica in the
10 spring and summer of 1992. That was the 4th of July
11 weekend. You may not recall this, but Emad Salem told you
12 that he was going up to Attica one last time and that he had
13 a problem with the car, and because it was a busy weekend,
14 they couldn't get a replacement car and the trip was
15 canceled. There is something important about that, though,
16 because you will learn that the people that were supposed to
17 go with Emad Salem to go back to see Nosair, who was
18 clamoring for people to do some jihad, were two names that
19 are now familiar to you. They were Siddig Ali and Mustafa
20 Assad. Back in July 1992, the people that were supposed to
21 go with Salem to Attica were Mustafa Assad, the person that
22 Hampton-El would later look to for detonators, and Siddig
23 Ali, someone you have heard an awful lot about.

24 It is around this time that the FBI and Emad
25 Salem split ways. You heard, Emad Salem told you that again

1 and again and again he said, I don't want to be a witness, I
2 don't want to testify at a trial, I want my identity secret,
3 I don't want to make tapes that may be used in court and
4 will expose me as a witness.

5 There came a point in July 1992, in June of 1992,
6 when the FBI said look, we want you to wear a wire when you
7 go up to see Nosair at Attica. He told them, I will wear a
8 wire, I will tape record what Nosair says at Attica. You
9 can listen to the tape but you have to give it back to me,
10 because he didn't want them to have a tape. He didn't want
11 to be a witness. That couldn't be resolved. They wouldn't
12 agree to give it back, he wouldn't wear a wire and be a
13 witness, and he dropped out of the picture.

14 But remember what was going on at the time.
15 Ibrahim El-Gabrownny is looking for detonators. He is
16 actually looking for detonators from Afghanistan. People
17 are talking about building bombs. Siddig Ali and Mustafa
18 Assad are being brought into the picture.

19 You will learn if we move forward to the fall of
20 1992, that a detonator did arrive from Afghanistan. That
21 was a human detonator, and his name was Ramzi Yousef, with a
22 man named Ahmed Ajaj. In September 1992, the two of them
23 walked off an airplane at Kennedy Airport and came to this
24 country. You will learn that Ajaj and a whole bunch of bomb
25 manuals and things got stopped, with false identification,

1 visas, pictures in his passport that had been tampered with,
2 and he was held. Ramzi Yousef was stopped. He had an Iraqi
3 passport, but he declared political asylum and was let into
4 the country.

5 We are heading into the area where we are going
6 to talk about the World Trade Center bombing. Let me make a
7 few comments up front. You may or may not be aware in this
8 case no defendant is specifically charged with blowing up
9 the World Trade Center. What they are charged with is being
10 part of an overall conspiracy against America that included
11 the bombing of the World Trade Center. Let me try to make
12 some sense out of that. You may say to yourselves what does
13 the World Trade Center have to do with this case and what do
14 the defendants in the courtroom have to do with the World
15 Trade Center bombing? Let's draw an analogy.

16 We have talked about the jihad army. Let's talk
17 about a regular army. When a regular army fights a war,
18 different people play different roles and different people
19 go to different battles. You would say to someone did you
20 fight in the army? Yes. If you asked them did you fight in
21 this particular battle on this particular day? Some would
22 say yes and some would say no, but they are all still part
23 of the army.

24 MR. JACOBS: Objection.

25 THE COURT: Overruled.

1 MR. FITZGERALD: In this case there were a number
2 of different jihad battles. The shooting of Meir Kahane was
3 a jihad battle. The bombing of the World Trade Center was a
4 jihad battle. The plot to assassinate Hosni Mubarak of
5 Egypt was a jihad battle. And the plot to put bombs and
6 cars under tunnels connecting New York and New Jersey was a
7 jihad battle. And the charge in this case, you will learn
8 that there are different charges, but, for example, Count 1,
9 the seditious conspiracy charge, includes the charge that is
10 part of the overall conspiracy. Members of the jihad army
11 blew up the World Trade Center. The jihad army in this case
12 includes the defendants in this courtroom, includes Siddig
13 Ali, it includes Mahmoud Abouhalima, Nidal Ayyad, Mohammad
14 Salameh, and Ramzi Yousef, and Ahmed Ajaj who would join up
15 with them.

16 The point is, you don't have to resolve the issue
17 of which battle did each one participate in. Your job is to
18 determine whether they joined the overall army, part of the
19 scheme to fight a war against America.

20 MR. JACOBS: Objection.

21 MS. AMSTERDAM: Objection.

22 THE COURT: Overruled.

23 MS. AMSTERDAM: Can we go to the side bar?

24 THE COURT: No no. Overruled. I will state the
25 law to the jury in my charge.

1 MR. FITZGERALD: Thank you.

2 At the end of the trial you can ask to see any
3 exhibits and hear any testimony, and also certainly if I
4 talk in any way about the law, Judge Mukasey's instructions
5 will be a lot more thorough and a lot more complete and you
6 can listen to what he says, but you will see that no one is
7 charged specifically with the bombing of the World Trade
8 Center.

9 Just because no one in this courtroom is
10 specifically charged with the bombing of the World Trade
11 Center does not mean that any of them had nothing to do with
12 it. The best example is to follow the trail of Sayyid
13 Nosair during the time of the World Trade Center bombing. I
14 mentioned a moment ago that a human detonator arrived in
15 Afghanistan, a person by the name of Ramzi Yousef. I am
16 going to go through some phone records to show you some
17 activities that were going on at various times. There are
18 phone records already in evidence. Let me make one point.
19 I am not going to stand up here and tell you that defendant
20 Abdel Rahman picked up the phone, called overseas and
21 ordered Ramzi Yousef to show up. There is no proof of that.

22 (Continued on next page)

23

24

25

1 But I will tell you that when Ramzi Yousef and
2 Ahmed Ajaj came from Afghanistan, from Pakistan, they came
3 from the same channel, the same group of people involved
4 with jihad, the same jihad, and the same enemy, America. We
5 will see evidence of that.

6 Remember, when we go through these phone charts,
7 these records, Government Exhibit 508, that in fact
8 defendant Abdel Rahman when he was over in Egypt maintained
9 contacts over here -- Nosair reported to him; Mahmud
10 Abouhalima reported to him. When he went to Denmark, Mahmud
11 Abouhalima stayed in contact with him. In fact, when he was
12 here, he stayed in touch with Denmark, London, Pakistan,
13 Afghanistan. You heard transcripts of calls where he called
14 over, people would report to him and ask him: Any orders,
15 sheik?

16 Let me put up Government Exhibit 508, which I
17 have blown up. You have it in your books, but I don't think
18 you need to look at it, because we have it in a hopefully
19 visible format.

20 If anyone wants to follow along in your books, I
21 think one book has been broken out for today that has four
22 or five exhibits in it, and Government Exhibit 508 is in
23 there. But if you just want to sit back and follow the
24 chart, you can do that, too.

25 If you look in August of 1992, defendant Abdel

1 Rahman's telephone is being used to call this particular
2 number, 810604, in Pakistan, a number of different times.
3 You will see why that is important in a moment.

4 Then you see that September 1, 1992, Ramzi Yousef
5 and Ahmed Ajaj enter the United States. They came from
6 Pakistan.

7 What you will see is when Ahmed Ajaj was stopped,
8 a number of bomb manuals were taken from him. And among the
9 bomb manuals was one particular exhibit, Government Exhibit
10 W2805. That exhibit and a translation are in evidence.
11 That is this bomb manual. When you look at the translation
12 on the inside, one of the first few pages on the inside
13 cover, there are two numbers written, one of which is
14 810604. Ahmed Ajaj coming from Pakistan has this number
15 written on the inside of his bomb manual.

16 In September 1992, defendant Abdel Rahman
17 maintains contact with that telephone number, 810604, a
18 number of different times. You can see it on the chart.

19 Then there came a time, September 20, 1992, when
20 defendant Sayyid Nosair made a telephone call. You heard
21 this telephone call in evidence last week. That is
22 Government Exhibit 128T, which I will put up in a moment.

23 Let's talk a little bit of background about this
24 telephone call. This was the time you might recall when
25 Emad Salem had dropped out of the picture. They were

1 bringing in people to check fingerprints and to question
2 people, and Emad Salem was also brought in for questioning
3 so he would appear like everyone else in the community.
4 People were upset by that. During this phone call, Sayyid
5 Nosair is referring to the devil, referring to the FBI, he's
6 upset, and his wife is on the phone, and it's clear that his
7 wife knows the calls are being listened to. She's telling
8 him: Don't say anything on the phone. Just say -- she says
9 a prayer in Arabic. During this call, when Sayyid Nosair is
10 aggravated on September 20, 1992, look what he says. He's
11 been talking briefly about a hurricane that happened. Then
12 he goes on and says: By God, Khadijah, by God, Allah is
13 accepting my prayers. By God, by God, Khadijah. Khadijah
14 is his wife's name.

15 OK, I know.

16 Nosair: You know, I have been praying to Allah,
17 you know, books, by God. Khadijah, what is happening in
18 this country because of my preparers, referring to this
19 hurricane. By God, by God, Khadijah, what is happening in
20 this country, of this hurricanes, and all of the -- by God
21 is my prayers.

22 He views a hurricane striking this country as God
23 answering his prepares.

24 He goes on: And what will happen in New York,
25 God willing, it will be my prayers, too. Because of my

1 prayers, so let them fight, believers, my love.

2 And she immediately picks up on it and says, I
3 said for you to say, and then it is in Arabic, sufficient is
4 Allah the bountiful, the guardian.

5 She is cutting him off. She's saying: Close
6 your big mouth. Sayyid Nosair sees a hurricane as a
7 blessing from God, and in the fall of 1992, he is saying, we
8 ought to keep praying. Let them fight the believers, what
9 will happen in New York.

10 We can continue in the chronology here. We will
11 see that the phone calls to 810604 continue, September and
12 October. Then we will see an interesting set of phone calls
13 in November.

14 Again, defendant Abdel Rahman calling this number
15 in Pakistan, 810604, written on the inside of Ajaj's bomb
16 manual. It continues on. It continues on.

17 Then you see October 7, defendant Abdel Rahman
18 will call defendant El-Gabrownny. That is interesting
19 because in one of the defense exhibits, when defendant Abdel
20 Rahman is asked after the bombing of the World Trade Center
21 does he know Ibrahim El-Gabrownny, he says, I know many
22 thousands in the mosque. I don't know who prays behind me.

23 In fact, if I know someone today, I could forget
24 them tomorrow. You will see he will remember him on many
25 tomorrows and call him during this time. As we go along

1 here, we will see that on November 3, 1992, defendant Abdel
2 Rahman called that number in Pakistan again.

3 The next day you see some activity on the 251
4 Virginia Avenue telephone. 251 Virginia Avenue is a
5 residence, the place where Mohammed Salameh and Ramzi Yousef
6 lived.

7 Think about that for a moment. Ramzi Yousef not
8 only came from a country to which this group had contacts,
9 the person he came with, Ahmed Ajaj, had a phone number on
10 the inside of his bomb manual that defendant Abdel Rahman is
11 calling.

12 But where does Ramzi Yousef stay when he gets
13 here? With none other than Mohammed Salameh. It's a very
14 small world indeed. When they stay, they live at 251
15 Virginia Avenue. He know that from the witness Ashraf
16 Moneeb. He was the witness that lived in the other room,
17 saw Salameh and Yousef and said they used that telephone.

18 251 Virginia Avenue, Salameh, Yousef, make
19 contact with Mahmud Abouhalima on November 5, 1992. That
20 same day, that morning, that telephone, Salameh and Yousef
21 calls over to Pakistan that same number again, 810604.

22 Again that day, that number calls Pakistan,
23 810604, and then calls Mahmud. Then we can follow it, that
24 number, the Salameh/Yousef phone calls Nidal Ayyad, also on
25 the same day, November 5. November 10, defendant Abdel

1 Rahman calls back the same number, Pakistan, 810604.

2 Now, we can move ahead to later on in November of
3 1992, you will see that the phone of Salameh and Yousef
4 makes contact with both Mahmud Abouhalima and defendant
5 Ibrahim El-Gabrowny during that time. We will pick it up at
6 November 21, 1992.

7 You will see there is a whole page just about of
8 calls from the 251 Virginia Avenue telephone. The first
9 call to 34 Kensington, the second call to El-Gabrowny. The
10 next call, November 21, the Abu Bakr mosque, then to Mahmud
11 Abouhalima and the pattern continues. Back to Kensington.
12 Then the call to El-Gabrowny on the 23rd, then to the Abu
13 Bakr mosque.

14 The next day, El-Gabrowny's called the Abu Bakr
15 mosque. On November 25, 1992, Ibrahim El-Gabrowny calls
16 that telephone. His phone makes telephone contact with the
17 phone of Salameh and Yousef at Virginia Avenue.

18 November 29, the Salameh Yousef phone calls back
19 to the El-Gabrowny phone. Again, later that same day.
20 Defendant Abdel Rahman continues to call the number in
21 Pakistan. You see that things begin to take shape. On
22 November 30, 1992, the Space Station contract, the rental
23 contract is opened. Some chemicals are being bought and you
24 will see in fact that the phone number, the phone number
25 used by Ramzi Yousef is used to order the chemicals, the

1 urea nitrate, or the urea and the nitric acid that later
2 urea nitrate is made from.

3 We will move ahead to December of '92. In
4 December of 1992, you will see on December 6 that Ibrahim
5 El-Gabrownny visits his cousin, Sayyid Nosair, at Attica.

6 That same night, the telephone of Salameh and
7 Yousef at 251 Virginia Avenue places a telephone call to the
8 home of Ibrahim El-Gabrownny.

9 If you continue further down, December 11,
10 defendant Abdel Rahman calls Ibrahim El-Gabrownny, who had
11 been called the day before by Mahmud Abouhalima. Now you
12 will see a series of important calls on December 11, 1992.
13 On December 11, you follow the phone at 251 Virginia Avenue,
14 Salameh and Yousef calls Mahmud Abouhalima at 11:04. Calls
15 Mahmud Abouhalima again at 11:05. He calls this phone at 34
16 Kensington, which is an address that came up that was
17 searched during the bombing plots that people had some stuff
18 stored there. The Virginia Avenue phone calls the Abdel
19 Rahman telephone, December 11, that same night, at 10:23.
20 That is the telephone of Salameh and Ramzi Yousef making a
21 telephone call to the defendant Abdel Rahman, December 11,
22 1992.

23 The following morning, December 12, 1992, you
24 will see that defendant Abdel Rahman calls the number in
25 Pakistan. You will also see, I think it is on the next page

1 when we get there, the following morning that the people,
2 Salameh and Yousef, at the Virginia Avenue phone, call
3 Mahmud Abouhalima once again at 8:08 in the morning and
4 11:16 in the morning.

5 Before I turn to the next page, if you remember,
6 on December 11, this is a day that the 251 Virginia Avenue
7 phone calls Abdel Rahman in the evening. In the morning,
8 the following day, December 1, defendant Abdel Rahman at
9 11:20 and 11:28 calls Mahmud Abouhalima.

10 Then at 11:38 Mahmud Abouhalima calls defendant
11 Ibrahim El-Gabrowny, just ten minutes after defendant Abdel
12 Rahman called Mahmud, and the calls continue. Mahmud
13 Abouhalima that same day, 11:52 in the morning, calls
14 defendant Abdel Rahman. You have a series of calls from
15 Salameh and Yousef to Abdel Rahman; from Abdel Rahman to
16 Mahmud; from Mahmud to El-Gabrowny; Mahmud back to Abdel
17 Rahman.

18 If you continue on here, you will see that same
19 day, the Salameh/Yousef phone calling Mahmud Abouhalima.
20 And again at 7:29 p.m., defendant Abdel Rahman, his phone
21 calls Mahmud Abouhalima one more time. And then a few days
22 later, December 16, defendant Abdel Rahman calls the
23 defendant El-Gabrowny phone. In that same day, Mahmud
24 Abouhalima also calls the El-Gabrowny phone. You will see
25 that some important activities happened that month.

1 On December 19, 1992 there was a phone call
2 placed to Emad Salem at 9:22 in the morning. There is a
3 record of that. You will remember he said around Christmas
4 Mahmud called him up, and left a message, something about
5 wanting to get together. Well, the very next day -- or it
6 is the very same day that Mahmud Abouhalima is starting to
7 reach out to Emad Salem, after being in contact with the
8 various people above here, Salameh, Yousef, El-Gabrownny,
9 Abdel Rahman, that Mahmud Abouhalima goes and buys smokeless
10 powder. That is the witness who came in, said he bought a
11 pound of smokeless powder. You heard from the chemist that
12 smokeless powder can be used to make parts of a bomb that
13 will make it detonate, and that in fact smokeless powder was
14 recovered from the place where the chemicals were stored.
15 That happened on December 19, 1992.

16 It is also not on this chart, but you actually
17 saw a video that on December 20 of 1992 defendant
18 Hampton-El, that's the time when defendant Hampton-El was
19 meeting with Garrett Wilson, you saw the video of the white
20 car waiting outside the tunnel, a little bit of snow on the
21 ground, they finally linked up, defendant Hampton-El drove
22 off, Garrett Wilson followed, and at that meeting on
23 December 20, 1992, Clement Hampton-El asked Garrett Wilson
24 for clean guns and detonators.

25 If we move forward to January of 1992, you will

1 see that on January 2 Mahmud Abouhalima with his brother,
2 Mohammed Abouhalima visited Nosair at Attica.

3 You will see a series of calls back and forth,
4 various people. And then on January 14, 1993 you will see
5 that -- you should see that defendant Ibrahim El-Gabrownly
6 visited Sayyid Nosair in Attica. Then, on January 16, 1993,
7 in Brooklyn, defendant Abdel Rahman gave a speech. The
8 speech he gave was supposed to be about Bosnia. If listen
9 to it, he talks about America. You will see that when he
10 talks about America, he blames the Bosnian situation on the
11 Americans. During this speech, which was received as
12 Government Exhibit 451 -- I will put this up in a blowup.

13 I will be reading first from this paragraph over
14 here.

15 We are defending ourselves and refuting the
16 accusations. No. If those who have the right are
17 terrorists, then we are terrorists, and we welcome being
18 terrorists, and we do not deny this charge to ourselves.
19 And the Koran makes it among the means to perform jihad the
20 sake of Allah, which is to terrorize the enemies of God and
21 our enemies, too, and prepare for them whatever you can of
22 horses and powers with which you frighten the enemy of God
23 as well as your own enemy. Then we must be terrorists and
24 we must terrorize the enemies of Islam and to frighten them
25 and to disturb them and to shake the earth under their feet.

1 You recall there there was a pause. There was a
2 pause because people were yelling, yelling out, and then he
3 continued on, and you saw later on in the speech he made
4 clear just who these enemies of Allah were. Who is the one
5 who is fighting the Muslims? And who is the one who wants
6 to destroy them? There are two main enemies. The enemy who
7 is at the foremost of the work against Islam are America and
8 the allies.

9 He goes on to blame saying: Who's helping the
10 Serbs? Who's behind it? It's America who is providing the
11 weapons. The main enemies, the main enemy behind this is
12 America. He's telling people: You have to frighten them,
13 disturb them and shake the earth under their feet.

14 I will just play a brief section of the video
15 before we break for lunch, if that's OK, Judge.

16 THE COURT: We will take the break after that.
17 Go ahead.

18 MR. FITZGERALD: You will see the part after he
19 spoke about shaking the earth under their feet the reaction
20 he gets.

21 (Videotape played)

22 THE COURT: Is this a convenient point to break?

23 MR. FITZGERALD: Yes, Judge.

24 THE COURT: All right. Ladies and gentlemen, we
25 are going to break for lunch. Please do not discuss the

1 case. Please leave your notes and other materials behind.

2 We will resume this afternoon.

3 (Luncheon recess)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION

2:15 p.m.

(In open court; jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon, your Honor.

THE COURT: Mr. Fitzgerald, ready to continue?

MR. FITZGERALD: Yes, Judge.

Before I proceed, let me just clarify two things from this morning. First, the last exhibit you heard was Government's Exhibit 451. That is the January 16 speech in Brooklyn where he talked about shaking the earth under the feet of the enemies of Allah. The second thing I should point out to you on the telephone chart, which I will go back to briefly in a moment, is that there were some calls to the Abu Bakr Mosque, and if you recall the testimony, Ibrahim El-Gabrownny was on the board of the Abu Bakr Mosque. If you follow the sequence, it appears that someone calls El-Gabrownny and the Abu Bakr Mosque in quick succession. They are looking to speak to El-Gabrownny.

While we are talking about the blowing up of the World Trade Center, it is a good time to stop and talk to you about a test explosion. There was testimony about a test explosion during the trial. Let me sort out what happened here. You heard Haggag testify and you saw on the tapes that Siddig Ali was approached by Mahmoud Abouhalima.

1 They met somewhere outside a mosque. Mohammed Abouhalima,
2 Mahmoud's brother, he is outside the car. Siddig and
3 Mahmoud get into a car and, as Siddig describes on the tape,
4 Mahmoud asks Siddig Ali if he can test explosives. He
5 describes how he writes the word explosives on a piece of
6 paper and how sensitive and secret that conversation was
7 prior to the World Trade Center bombing.

8 It is also explained on the tapes that after
9 Siddig Ali got the request, he went to Haggag and asked him
10 if he could test the explosives, and Haggag said no. Haggag
11 didn't take Mahmoud seriously. Haggag was also told that
12 Siddig turned around and went to defendant Clement
13 Hampton-El, because he figured he was familiar with
14 explosives. And Haggag told you he was told two different
15 things by Siddig Ali at different times. The first time he
16 was told that Clement Hampton-El actually carried out a test
17 explosion. But Haggag was honest enough to tell you that
18 later on when he discussed this event that Haggag was part
19 of, when Siddig came to him about testing explosives, Siddig
20 said that he went to Hampton-El and Hampton-El said that he
21 was familiar with hand grenades and mines but not other
22 explosives and did not do a test explosion.

23 Emad Salem also told you that Siddig told him
24 about this conversation with Mahmoud and with Haggag and the
25 conversation with defendant Hampton-El, but said that Siddig

1 was never clear whether or not Hampton-El participated in a
2 test explosion. I submit to you that the evidence is quite
3 clear that Hampton-El did not actually participate in a test
4 explosion, and I will tell you why.

5 On one of the CM's, one of the tapes, which is
6 actually GX 342T, on June 14 Siddig Ali actually had a
7 meeting with Mohammed Abouhalima himself, Mahmoud's brother.
8 They are sitting down and they are talking and trying to
9 figure things out. Remember, Mohammed was a witness to
10 these events. He was actually outside the car when Siddig
11 and Mahmoud spoke, but he knew about the meeting, and
12 obviously Mohammed has access to his brother, so he can find
13 out what is true, what is accurate. When he went through
14 the story with Mohammed Abouhalima, Siddig made clear that
15 he talked to Mahmoud, they talked about explosives. Siddig
16 Ali went to Abdel Haggag, the witness, and he also went to
17 Hampton-El, and the context of the conversation makes clear
18 that he doesn't contend that Clement Hampton-El actually
19 participated in the test explosion. Indeed, you have heard
20 a stipulation that the government doesn't contend that
21 Clement Hampton-El participated in a test explosion. We do
22 contend, however, that Siddig Ali did go to talk to him.
23 What is the significance of these conversations between
24 Siddig Ali and Mahmoud in the car and between Siddig Ali and
25 Hampton-El?

1 First, the conversation between Siddig Ali and
2 Mahmoud is quite important, because later on in the case you
3 will see that when Mahmoud Abouhalima gets arrested in
4 Egypt, there were a lot of questions asked of Mahmoud in
5 Egypt about that conversation, and the word comes back,
6 Mahmoud Abouhalima is thinking I'm being asked by the
7 Egyptians about this conversation in a car, and in his mind
8 Siddig Ali must be the informant. And you will see
9 throughout the course of the spring of 1993, they are trying
10 to figure out who the informant was that gave up the
11 information about that conversation, because the people
12 involved didn't know what you knew, which is that Haggag was
13 talking to the Egyptian authorities.

14 So the significance of that conversation is to
15 show you why it was important for people, particularly
16 defendant Abdel Rahman, to figure out who the informant was.

17 The second part of that is that when defendant
18 Hampton-El is sitting there on May 30, 1993, in Rogers
19 Avenue, discussing bombings with Siddig Ali and Emad Salem,
20 he has every reason to take it quite seriously. The last
21 time he discussed explosives with Siddig Ali, the World
22 Trade Center happened afterward.

23 Let me return briefly to the chart. We will pick
24 up and look at the highlights on this chart, which shows you
25 that on February 7 of 1993, Mahmoud Abouhalima visited

1 Sayyid Nosair at Attica. I point out to you that obviously,
2 at a time when Mahmoud Abouhalima is involved in the bombing
3 of the World Trade Center, people are running around buying
4 things during that time, working on the bomb. To take eight
5 hours each way and go up to see Sayyid Nosair at Attica, it
6 had to be important. I also submit to you that you will see
7 the following day Mahmoud Abouhalima back from his visit
8 with Sayyid Nosair called Nidal Ayyad at his home and at his
9 work. You see that entry there, February 8, Mahmoud
10 Abouhalima called Nidal Ayyad at home and at work.

11 Roughly a week goes by and we are at February 13
12 of '93, and now Mohammad Salameh, the roommate of Ramzi
13 Yousef, another person doing a lot of the leg work on the
14 World Trade Center bombing, he takes the time out to go see
15 Sayyid Nosair at Attica. You follow it through, you will
16 see that on February 23, 1993, was the day that Mohammad
17 Salameh rented the Ryder truck that was driven into the
18 basement of the World Trade Center to be blown up. He used
19 a license that he had registered, that he had listed Ibrahim
20 El-Gabrownny's address as his home address.

21 In his opening statement to you, Mr. Ricco
22 suggested that perhaps Mr. Salameh was setting up Mr.
23 El-Gabrownny by using that license that had Mr. El-Gabrownny's
24 address. I submit to you, if Mohammad Salameh was going to
25 set anyone up, he wouldn't use his own name. What is

1 obvious is that Mohammad Salameh thought once the van blew
2 up there would be no traces behind. He didn't think the van
3 would be detected, he didn't think they would trace it back
4 to him.

5 That is the entry on February 23 when Nidal Ayyad
6 rented a car with Salameh. If you look in late February,
7 Nidal Ayyad is quite busy. He is in touch with 34
8 Kensington, which is an address that Salameh and Yousef
9 used. He is renting the car with Salameh. Salameh rents a
10 car which was used, you can see from the tickets, to do a
11 sort of scouting run. Salameh rents the Ryder truck. He
12 calls AJL Welding. That is the company that brought in the
13 three red hydrogen tanks that were part of the bomb and
14 shreds, little pieces of metal were found in the crater at
15 the World Trade Center. He is calling AJL Welding on
16 February 24, 1993. He calls them twice. In fact, the
17 documents in evidence show that those three hydrogen tanks
18 were bought that day.

19 Then you will see something very interesting.
20 The same day Nidal Ayyad from work calls the defendant
21 Ibrahim El-Gabrownny. What is interesting in this chart --
22 you have a copy in your books -- if you hook in the front
23 pages it gives the exhibit numbers of the various phone
24 calls. If you were to check the phone records for Nidal
25 Ayyad from work, January to April of 1993, you will see that

1 the only phone call, I believe, from Nidal Ayyad's work
2 phone to Ibrahim El-Gabrownny's phone, is on February 24,
3 1993. That exhibit number, the phone records themselves, is
4 Government's Exhibit W802.

5 Things proceed along, and in fact it was at about
6 this time that the government actually set up a wire tap, a
7 FISA wire tap on defendant Abdel Rahman's telephone. The
8 comment I will make is that during her opening statement
9 Miss Stewart described it as a window on his world, it was a
10 way of looking into his life. Indeed, on February 25, 1993,
11 unrelated to the bombing of the World Trade Center,
12 defendant Abdel Rahman received a phone call. It was a
13 phone call from someone describing something that happened
14 overseas. Abdel Rahman said there was a clash with American
15 troops in Somalia. Abdel Rahman said, and the Americans
16 were not hit by anything? The other person, Adel, said, two
17 marines were hit. Abdel Rahman: OK, that's enough. That's
18 good.

19 The following day, February 26, 1993, we all know
20 what happened. A bomb ripped through the World Trade
21 Center. But you will also see that on February 28, 1993,
22 Nidal Ayyad called Ibrahim El-Gabrownny. Those records,
23 Government's Exhibit W812, are Nidal Ayyad's home phone
24 records, and for the period of the first three months in
25 1993, you will also see that this is also the lone call from

1 Nidal Ayyad to Ibrahim El-Gabrownny, two days before and two
2 days after the World Trade Center bombing.

3 Phone records tell you a lot and there is a lot
4 that they don't tell you. Phone records tell you who is in
5 touch with whom, tell you who is in contact with whom and
6 how often and when. But obviously until you have a wiretap
7 on the phone, you don't know what was said. What you have
8 seen here about Ibrahim El-Gabrownny just with respect to the
9 World Trade Center bombing is that in the spring of 1992 he
10 is telling Emad Salem he wants bombs, he wants high
11 explosives, he wants detonators from Afghanistan. And when
12 Emad Salem drops out of the picture, you see that Ibrahim
13 El-Gabrownny is in touch with Mahmoud Abouhalima, Nidal Ayyad
14 and others, and defendant Abdel Rahman, in the period
15 leading up to the bombing of the World Trade Center. And in
16 particular he is in touch with Nidal Ayyad right at the end,
17 with some unusual calls.

18 You might say to yourselves, gee, we know what
19 Sayyid Nosair did, we know what Mahmoud Abouhalima did, we
20 know what Mohammad Salameh did, we know what Nidal Ayyad
21 did. What do we know about what Ibrahim El-Gabrownny was
22 doing? Could he have been see no evil, hear no evil, do no
23 evil? Is he a person they were in contact with for totally
24 legitimate reasons, or was it he part of the inner circle at
25 that time? You got a sense of that in this courtroom

1 because you got a moment of truth: March 4, 1993. That is
2 when the agents came to search the apartment of Ibrahim
3 El-Gabrowny, and when they saw him walking down the street,
4 they approached Ibrahim El-Gabrowny, they put their arms on
5 him, they told him there would be a search warrant, they
6 started to frisk him, that is when he assaulted two agents,
7 one elbow to Agent Corrigan, one elbow to Agent Burke, and
8 he dragged them both to the ground. What they found in his
9 jacket were five fraudulent passports, five Nicaraguan
10 passports for El Sayyid Nosair.

11 Remember, Salem had talked about how Ibrahim
12 El-Gabrowny had been talking about the plot to break Nosair
13 out of jail, how Nosair wanted to break out of jail. In
14 fact you saw in the conversations happening after the World
15 Trade Center bombing with the agents, Salem confirmed that
16 he had told a lot of this information to the agents well
17 before the bombing. What in fact do you find of Ibrahim
18 El-Gabrowny on March 4, 1993 but passports that can be used
19 when Sayyid Nosair is out of jail. Those passports are the
20 135 series. They are in evidence. You also know something
21 else about Ibrahim El-Gabrowny. These are blow-up exhibits.
22 You found out that in his apartment he had another
23 photograph, a photograph like the Nosair photo on the
24 fraudulent passports, complete with this marking, some form
25 of stamp. Someone had stamped it on some document. This is

1 a blow-up of the original photograph found in his apartment.
2 For the record, that is 133A-X. 133B-X is a blow-up made
3 from the negative found in Ibrahim El-Gabrowny's apartment.
4 A negative was used to make this photograph, which also
5 shows Sayyid Nosair and shows this marking on his lower left
6 shoulder, showing you that someone took a picture of a
7 picture to make the passport, and the negative was with
8 Ibrahim El-Gabrowny. That is 133B-X.

9 Showing you next 133C1-X, this is another
10 photograph, a blow-up of a photograph found in Ibrahim
11 El-Gabrowny's apartment, different type of format, the same
12 type of photograph with the same mark on it.

13 That is important because the same day that
14 Ibrahim El-Gabrowny was arrested, in fact earlier that
15 morning, March 4, 1993, Mohammad Salameh was arrested, and
16 in his briefcase was a picture. Government's Exhibit W90B-X
17 is a blow-up of that picture. Same Sayyid Nosair
18 photograph, same marking here. On March 4, 1993, the
19 fraudulent passports that Ibrahim El-Gabrowny had and the
20 photographs and negatives in his apartment linked up with
21 the contents of Mohammad Salameh's briefcase, Mohammad
22 Salameh, one of the bombers of the World Trade Center. This
23 is important because with a jihad army you need your leaders
24 and one of the leaders of the jihad army is certainly El
25 Sayyid Nosair.

1 One of the roles of Ibrahim El-Gabrownny was to be
2 Nosair's eyes and ears on the street, and one of the goals
3 was to get the leader free again, so that he could jihad
4 anew. In fact, that speech, that tape, I want to jihad
5 anew, I want to jihad all over again, multiple copies are
6 found in Ibrahim El-Gabrownny's apartment.

7 Before I move on to the passports, I would like
8 to remind you of something that Mr. Ricco told you in his
9 opening in behalf of his client Mr. El-Gabrownny. He told
10 you that what you are going to find is that Emad Salem gave
11 the passports to Mr. El-Gabrownny. Let him get up there and
12 deny it, it doesn't matter. I don't care if he says he did
13 or he didn't. It's going to be obvious to you that it won't
14 matter if he comes up with one of his slick stories.

15 I point out that it is easy to dump on Emad
16 Salem, a lot of people will, but not only did he deny it and
17 say he didn't know about it, you have concrete proof that
18 Emad Salem wasn't behind this.

19 First of all, the negative was in Ibrahim
20 El-Gabrownny's apartment. The other copy was in Salameh's
21 briefcase. Emad Salem showed up at the scene at the Nosair
22 trial, started working as an informant in November 1991.
23 The passports before you were issued, the fraudulent
24 passports issued in Nicaragua many months before, July 1991.
25 And you heard the testimony from Scott Stewart, the agent

1 from the State Department who came here to testify.

2 Emad Salem had nothing to do with those
3 passports. They were done long before he was involved. But
4 I submit to you that the evidence showing that Ibrahim
5 El-Gabrownny was doing illegal activity on behalf of Sayyid
6 Nosair in connection with Mohammad Salameh, not Emad Salem,
7 is pretty damning. Ibrahim El-Gabrownny can't deal with it.

8 There was more in Ibrahim El-Gabrownny's
9 apartment. I showed you earlier the two stun guns and the
10 receipt that showed that those stun guns were purchased in
11 May 1992. There was another exhibit, Government Exhibit
12 150, an envelope. It is an envelope which bears a postmark,
13 February 25, 1993, from Buffalo. What that tells you is,
14 this goes to the post office in Buffalo on February 25 of
15 1993. If it's very quick it gets to Brooklyn and is
16 delivered on the 26th, more likely a couple of days after.
17 But in any event, it got to the Ibrahim El-Gabrownny
18 apartment on or after the day of the World Trade Center
19 bombing. It was seized on March 4. So whatever is written
20 on this piece of paper is written the day of the World Trade
21 Center bombing or the following days in the short month of
22 February, the 27th, the 28th, or March 1 through 4. Written
23 on the back it says Nidal, 201-762-7436, important. I won't
24 put the phone chart back up but if you look at the phone
25 chart, the phone number for Nidal Ayyad is 201-762-7436.

1 Nidal Ayyad was calling Ibrahim El-Gabrownly about something
2 important, and the evidence shows you that in this case what
3 Nidal Ayyad was working on that was important at the end of
4 February and early March 1993 was the bombing of the World
5 Trade Center.

6 In fact, Government Exhibit W196A is the letter a
7 copy of which or part of which was found in a computer disk
8 from Nidal Ayyad. This is the Fifth Liberation Army letter
9 sent out after the bombing of the World Trade Center,
10 basically saying we declare our responsibility for the
11 explosion on the mentioned building. This action was done
12 in response to the American political, economical and
13 military support to Israel, the state of terrorism, and to
14 the rest of the dictator countries in the region. If our
15 demands are not met as set forth above, ending diplomatic
16 relations, ending all military, economic and political aid
17 to Israel, not to interfere with Middle East countries'
18 internal affairs, we will continue to execute our missions
19 against military and civilian targets in and out of the
20 United States.

21 It goes on and on to threaten more terrorism.
22 The person sending that letter, the person renting the car,
23 the person who ordered the chemicals was the one calling
24 Ibrahim El-Gabrownly from the 24th to the 28th of February
25 and the message left, Nidal, important.

1 There were other searches that went on in the
2 days following the bombing of the World Trade Center. One
3 residence of Mohammad Salameh and Ramzi Yousef was located
4 at 34 Kensington Avenue. In that residence were found
5 photographs of Salameh, Ayyad, that is, Mohammad Salameh,
6 Nidal Ayyad, and Sayyid Nosair. Also found was a book about
7 the Islamic Group, the organization you learned that
8 defendant Abdel Rahman is the emir or prince of, also known
9 as Gamat, an organization engaged in violence. That book
10 was cowritten or supervised, the writing was supervised by
11 defendant Abdel Rahman.

12 You learned of the search at 40 Pamrapo, where
13 there were found a number of chemicals, a number of
14 fingerprints and a number of documents. You also learned
15 that a search of Mahmoud Abouhalima's apartment recovered a
16 stun gun. He too had purchased a stun gun, a book on the
17 demolition of buildings, shoes with chemical stains, and a
18 receipt for other documents, including a receipt for a
19 refrigerator evidently brought bought by Mahmoud Abouhalima,
20 in which Ramzi Yousef's fingerprints were found and in which
21 nitroglycerin had been stored.

22 While this was going on, El Sayyid Nosair is up
23 in Attica. March 5, 1993, following the bombing of the
24 World Trade Center, Nosair makes the following statement:
25 If the devil leaders of New York State think placing me in

1 segregated housing will end the war, they are wrong. The
2 war will not end until I am released. This is only the
3 beginning.

4 This is the man who killed Kahane, who had the
5 materials in his house about blowing up, destroying,
6 exploding tall buildings, who wanted to set off bombs in New
7 York, who in September '92 is saying wait till you see what
8 will happen in New York, let them fight the believers, the
9 man they all went to visit, and after the bomb goes off in
10 the World Trade Center, the war will not end until I am
11 released. This is only the beginning.

12 Let me make one point before I move on from the
13 period following the bombing of the World Trade Center. How
14 things looked on November 4, 1990, the day before the murder
15 of Rabbi Meir Kahane, I ask you to look at the day before
16 the bombing of the World Trade Center. Sometimes when
17 people do violent acts, they kill people, they do hundreds
18 of millions of dollars of damage, we give them more credit
19 than they deserve about how they went about it. No dispute
20 that the bomb used in the World Trade Center was
21 sophisticated and involved a unique formula. But if you go
22 back and look at the people who did it and how they did it,
23 they didn't do a great job at times.

24 Ramzi Yousef came into this country and the INS
25 agent remembered him because he was wearing a puffy shirt,

1 silk suit and soft slippers. He used an unusual passport,
2 an Iraqi passport. Ajaj, the whole bundle of goods in his
3 suitcase, loose pictures in his passports, visa stamps,
4 identification that linked up with Ramzi Yousef's
5 identification. Mahmoud Abouhalima went and bought the
6 smokeless powder using his own name. Ramzi Yousef went and
7 gave the phone number of the place he was staying to a
8 chemical company. He left his mail in 40 Pamrapo. You will
9 see mail addressed to Ramzi Yousef in the bomb factory. If
10 you remember the pictures of 40 Pamrapo, there is blue all
11 over the walls because they had all these chemicals going
12 on. There were splotches on the ceiling because things
13 boiled over at times. They did a sloppy job at times.
14 There were burns on people's shoes. Nidal Ayyad ordered
15 lead nitrate, a component used to make lead azide, part of a
16 detonator, in his own name. The nitroglycerin was kept
17 refrigerated where it might self-explode. Salameh rented
18 the van using his own name. When he accepted the hydrogen
19 tanks, he asked the guy if it was flammable. And he went to
20 get his \$400 deposit back. Think about that. Think about
21 how long Dr. Aranda could analyze Mohammad Salameh going to
22 get the \$400 deposit back for a van used to blow up a
23 building. Remember, what did Salameh say to the FBI agent
24 undercover? No justice, no justice, no justice, you're not
25 treating me with justice. The guy offered him \$200 back,

1 \$250 back, no justice. Then he lowered the amount, 200, and
2 he said OK, and took it.

3 (Continued on next page)

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 I don't doubt that that wasn't a sophisticated
2 bomb. But don't glorify in any sort of way the efforts that
3 went about it. They made some knucklehead mistakes along
4 the way. The frightening part isn't that it was such an
5 unprofessional job. The frightening part is that people can
6 make such knuckle headed mistakes and go ahead with it, and
7 in the end you can have a bomb that can be utterly
8 devastating.

9 Let's see what else happened in the wake of the
10 bombing of the World Trade Center.

11 Defendant Abdel Rahman has been over here since
12 1990. You may remember that Mahmud Abouhalima called him in
13 Egypt back in 1990 to report on the training. You saw that
14 when defendant Abdel Rahman got here, he opened up a joint
15 bank account with Mahmud Abouhalima. You also learned just
16 from these phone records, the phone chart, that Mahmud
17 Abouhalima and defendant Abdel Rahman, their phones were in
18 contact during the relevant period.

19 Mahmud Abouhalima had reached out and called
20 defendant Abdel Rahman in December 1990 when defendant Abdel
21 Rahman was visiting Denmark. Yet when it came time for the
22 person who you were told whose name meant servant of God --
23 you have heard about his book, "The Word of Truth" -- when
24 it came time to take the public stage, sure, he would
25 condemn the World Trade Center, but he would also lie.

1 Why don't we take a look at Government Exhibit
2 411, the interview.

3 We are going to show you a video of the World
4 Trade Center bombing to kind of speed things along.

5 (Videotape played)

6 MR. FITZGERALD: Before we proceed to the next
7 question, I want you to think about all the dispute you have
8 had, that you have seen between translators over what the
9 word "wagiha" meant. Did it mean "front"? You have seen
10 that there is a transcript where later on defendant Abdel
11 Rahman will say, I want to remain a front for the Muslims,
12 and everyone agrees the word "wagiha" was used. Even if the
13 word "wagiha" was not used, see on the videotape what
14 defendant Abdel Rahman wants to be. I am not talking about
15 a front for Muslims. I am not talking about people who go
16 and pray, go to the mosque and go about their lives. I am
17 talking about a front for the people who blew up the World
18 Trade Center, terrorists like Salameh and Mahmud Abouhalima,
19 people like Salameh who went to get their money back and
20 said, I was in a mosque that day. Watch his answer.

21 (Videotape played)

22 MR. FITZGERALD: Six people are dead, thousands
23 injured, he wants to get on national TV, demand to be called
24 "The Respected Dr. Abdel Rahman," and lie through his teeth
25 about whether he knew Mahmud Abouhalima. You heard from the

1 defense case that Dr. Mehdi said, well, in fact, there was a
2 request from Mahmud Abouhalima that he say he doesn't know
3 him. That is not an excuse. That's showing that he and
4 Mahmud Abouhalima got together and decided to fix this
5 story: Don't say you know me.

6 In fact, in a different exhibit the defense put
7 in, Abdel Rahman Defense Exhibit BB at pages 14 and 15, when
8 he's asked again, does he know Mahmud Abouhalima or Ibrahim
9 El-Gabrownny, that's when he gives the answer: I know
10 thousands of Muslims and I cannot tell you about all of
11 them. And if I know a person yesterday, I may forget him
12 today.

13 You also saw on the FISA wiretap, that's 706A and
14 706B, that he had a good laugh about it with his friends
15 overseas. He would call them up. He was basically telling
16 them: Get a load of this one. They asked me if I knew
17 Mahmud Abouhalima, was he my driver. So I said I do not
18 have a car, how can I have a driver?

19 You also learned that while this is going on,
20 messages are still being passed from Mahmud Abouhalima
21 through his brother to the defendant Abdel Rahman. You also
22 learned from Government Exhibit 747 that messages from
23 Mohammed Salameh were still going to defendant Abdel Rahman.
24 And defendant Abdel Rahman maintained his contacts overseas.

25 Now, the lesson of the World Trade Center in many

1 ways is to show you how frightening it is not to have an
2 informant telling you what's going on. Without an
3 informant, it's hard to prevent this. It's harder to prove
4 up everything that happened. But what we saw in the case
5 when the case first opened back last winter, you saw a
6 number of people try to imply that the former and future
7 informant, Emad Salem, was responsible for the World Trade
8 Center bombing. Let's deal with that.

9 Ms. Amsterdam in her opening said to you, but in
10 those weeks, those days, those hours, before the bomb went
11 off, Salem never picked up a phone to call anyone. He just
12 let it happen.

13 She continued: He did nothing to stop one of the
14 greatest tragedies in this country.

15 She continued: I want you to remind yourself,
16 ask this question during the course of this trial: Where
17 was Emad Salem when the World Trade Center blew up? I don't
18 know, she said.

19 And then she said: Now, I am not accusing Emad
20 Salem of blowing up the World Trade Center, but I am going
21 to prove to you that this man stood by, maybe nearby, but he
22 stood by and watched it happen. Emad Salem, the
23 government's witness, is a man who let six Americans die in
24 the bombing of the World Trade Center, showed up immediately
25 afterward into FBI headquarters with his blood-soaked hands

1 and asked for his reward. He asked for his reward for
2 giving them names of the people that blew up the World Trade
3 Center. And when did he give those names? After it
4 happened, not before. That should make you sick. End of
5 quote.

6 Mr. Patel asked Agent Anticev during the defense
7 case: When you saw Emad Salem right after the bombing of
8 the World Trade Center, did you try to get a confession?

9 Mr. Jacobs cross-examined Mr. Salem, first
10 question: On February 26, 1993, at 12:17, where were you?

11 I submit to you there's no proof that Emad Salem
12 was responsible for that bomb. In fact, there is quite a
13 lot of proof to the contrary. Emad Salem is the one who in
14 addition to Haggag was saying, look, I know where Mahmud
15 Abouhalima is. Emad Salem said, I know this witness. I
16 have heard about him. He knows part of what happened.
17 Wahid Moharam. He is urging the FBI to go out and find a
18 defendant and a witness. The defendant could get arrested,
19 he could talk. A witness he obviously hopes will talk.

20 Obviously Emad Salem has no fear in his mind that
21 when whoever talks about the bombing they are going to point
22 the finger at him. Indeed, you saw during the various tapes
23 in the spring of 1993 Emad Salem, along with his broken
24 record about the 18 years in the Green Berets and the
25 frogmen, would keep telling the story about the World Trade

1 Center and how it was good, but not great -- you shoot me in
2 the leg, I fall down; you shoot me in the heart, you kill
3 me -- and asked people who drove the van.

4 Would he be going around asking these people all
5 these questions if he had anything to do with it? Wouldn't
6 he be afraid that someone would say, what are you talking
7 about? You are the idiot who shot it in the foot. You are
8 the one who screwed up the bombing.

9 I submit to you trying on pin the World Trade
10 Center bombing or say he had something to do with it,
11 blood-soaked hands, is trying to distract you from what Emad
12 Salem did. There's no evidence about it whatsoever. It is
13 a cheap shot.

14 Now, let's turn to the spring of 1993. The
15 spring of 1993, the first event we'll focus some time on is
16 the plot to kill president Hosni Mubarak of Egypt. When we
17 talk about the plot to kill Hosni Mubarak, the witness
18 Haggag provides a lot of the information concerning that.
19 So let's take a moment to talk about the witness Haggag.

20 Ms. Stewart told you that he as has an ax to
21 grind. That may well be true. But I will tell you he had
22 an ax to grind before the arrests were ever made in this
23 case. Haggag was someone who was close to defendant Abdel
24 Rahman. He lived in the same building. He got to know him
25 closely, and before the arrests were ever made, Haggag told

1 you he became upset. He viewed it as hypocrisy that Abdel
2 Rahman would be in favor of jihad and yet seek political
3 asylum. And when he spoke up, there was this coldness
4 between him and defendant Abdel Rahman. He told you he
5 started to write a book, "The Lies and Untruths of Omar
6 Abdel Rahman."

7 My point to you is this: He is not someone who
8 got caught and then said, well, now I have a bad view of
9 defendant Abdel Rahman and will testify against him. On
10 tape, in the argument happening way back in June 17, 1993 in
11 defendant Abdel Rahman's apartment, he already made clear
12 that he had an ax to grind.

13 You have learned that he reported information to
14 Egyptian intelligence, which in fact explains a lot of what
15 happened in this case. But I submit to you, he is Egyptian.
16 He found out people wanted to kill the president of his
17 country. He reported it.

18 He engaged in some awful activity. He engaged in
19 arson. You learned he pled guilty to it. He also engaged
20 in two kidnappings, getting back his own son and helping
21 someone else to get back their son so that they could go
22 back to Egypt and be raised there. I submit to you, I am
23 not going to make excuses for that conduct. You should
24 weigh that. But I will also tell you the defendant Haggag
25 and the witness Haggag, again, was someone that the people

1 embraced until he decided to come into a courtroom and
2 testify.

3 He's even been cross-examined on the fact that he
4 helped give information to Egypt about the fact that Mahmud
5 Abouhalima was over there -- as if it is a bad thing to
6 provide information on someone who just blew up the World
7 Trade Center.

8 Let's see what briefly happened during the spring
9 of 1993 regarding the plot to kill Mubarak.

10 You remember against this background that if one
11 thing in life is certain, it is that defendant Abdel Rahman
12 would like President Mubarak dead. He constantly refers to
13 Mubarak as an infidel and a loyal dog of America. He makes
14 no doubts about what he thinks should be done.

15 Government Exhibit 801T is the transcript of a
16 sermon called "Doubts About Jihad," and what he says in
17 there is quite explicit. He says: There is an individual
18 jihad, when the prince orders him, then he goes and does it.
19 This is a single work. And the assassinations, the
20 assassinations for the sake of rendering Islam triumphant is
21 a legitimate matter.

22 Then he went on after that session to say that
23 Sadat should have been eliminated, and his successor,
24 namely, Mubarak, is worse.

25 Ms. Stewart basically agrees. She asked on

1 cross-examination: "He basically said that it was
2 Islamically correct to get rid of Mubarak by any means
3 necessary, isn't that right?

4 Against this background, it left little to the
5 imagination of the people around defendant Abdel Rahman as
6 to what he thought should be done to President Mubarak.

7 Now, there came a time when Mahmud Abouhalima was
8 arrested in Egypt and surrendered to the United States.
9 That really ticked off Siddig Ali. Siddig Ali thought it
10 was a crime, an outrage that the president of Egypt would
11 surrender Mahmud to the United States. He went over to
12 Haggag, and he said he wanted to execute the desire of the
13 sheik and kill Mubarak. He indicated he had access to
14 information and the Sudanese officials in the mission. He
15 had the desire. He wanted the weapons. He wanted the
16 personnel.

17 He indicated that he was going to go to
18 Hampton-El, defendant Hampton-El for the weapons. He also
19 indicated that the people who would participate in the
20 actual operation included Tarig Elhassan and Amir Abdelgani.
21 Now Haggag told you that Siddig told him that he hadn't
22 advised him yet that he was going to use them. He would
23 wait until very close to the operation, and Haggag told you
24 that he went to Amir Abdelgani and checked with him. And
25 Amir Abdelgani basically said: Siddig hasn't asked me yet.

1 But I'm ready to do anything he wants.

2 They went to Clement Hampton-El, met at Court
3 Street in Brooklyn and asked him for machine guns, pistols,
4 and hand grenades. Haggag told you that they explained it
5 was for an Islamic operation. And Hampton-El initially
6 balked and said the government here is not that easy.

7 Siddig Ali pressed on, said it's Islamic, and we
8 need your help. We need you to get the weapons. And he
9 told you that Clement Hampton-El agreed to get the weapons.
10 Then what you learn was Haggag went and reported this
11 information to the Egyptian authorities. The next thing
12 that Haggag sees, the FBI is coming around asking him
13 questions.

14 Now he's concerned that he may be viewed as an
15 informant. He runs. He doesn't know what to do with the
16 FBI. He actually goes to see people at the mosque who refer
17 him to defendant Abdel Rahman, who tells him nothing good
18 can come from these people, the FBI. And then he runs and
19 tells Siddig: They've taken our pictures. They know what
20 we're up to, and we have to stop.

21 He also told you that he went to have a private
22 meeting with defendant Abdel Rahman. He was worried about
23 defendant Abdel Rahman. He wanted to make sure that
24 defendant Abdel Rahman trusted him. He didn't want to be
25 blamed, as someone figured out there was an informant. So

1 he went and he asked Abdel Rahman about the operation
2 against Mubarak, and defendant Abdel Rahman said: Depend on
3 God. Carry out this operation. It does not require a
4 fatwa. You are ready in training, but do it. Go ahead.
5 You've learned. It is important to know that when Haggag
6 became a government witness, there were a number of
7 debriefings, ten or twelve debriefings, that happened before
8 he revealed, talked about this private meeting with
9 defendant Abdel Rahman at which he was given his fatwa.

10 But I will tell you, you'll see in the CM's that
11 in some of the tape recorded conversations you'll find
12 corroboration that in fact Haggag had met with defendant
13 Abdel Rahman. You will see that Siddig Ali will complain --
14 the complaint that Siddig Ali felt that he had done most of
15 the work on the Mubarak plot, but that in fact Haggag had
16 gone to defendant Abdel Rahman to take credit.

17 You will see when they have that meeting in
18 defendant Abdel Rahman's apartment on June 17 that it's
19 quite clear that this is not the first time defendant Abdel
20 Rahman and defendant Haggag are discussing this plot.

21 In any event, the one thing I want to stress to
22 you is that defendant Hampton-El corroborates that this
23 whole episode took place. When he took the stand, he told
24 you, yes, there was a Court Street -- he won't say meeting,
25 he'll say conversation, because he didn't know it was going

1 to happen, so it doesn't count as a meeting. But he admits
2 he was speaking on the street with Siddig Ali and Haggag.
3 He admits that he was asked to provide weapons for an act
4 here in the United States. He says, if this is in the Koran
5 against the rules, we'll go to hell. If this is illegal,
6 we'll go to jail.

7 And Siddig Ali told him, no, this is an Islamic
8 operation. And he admits he said yes. He admits he agreed
9 to provide the weapons. And yet, what does he say. He says
10 in the end, but they never got back to me.

11 That's where he differs. And yet, when you
12 follow through with him, he even admits they got back to
13 him. Because later on he does say, well, of course they got
14 back to me when they told me that the FBI had our pictures.
15 That's the same account that Haggag gave, that Siddig Ali
16 gives on these tapes. What happened here is Siddig Ali went
17 to Haggag, Haggag told the Egyptians, the FBI came to
18 Haggag, and Siddig Ali went back, spread the word to Clement
19 Hampton-El, who had agreed to provide the weapons, that the
20 operation was off.

21 Let's talk about the bombing plot in the spring
22 of 1993. Before we talk about the bombing plot, this may be
23 a good time to talk about tapes for a moment. A lot of what
24 happened in the spring of 1993 is on tape. When we talk
25 about tapes, let's speak briefly about Mr. Ginsberg.

1 Mr. Ginsberg told you that he tells it like it
2 is. Then you learned that he has two guides -- one is for
3 the prosecutors; one is for the defendants. Tell it like it
4 is for either side.

5 He also told you at times -- he told you once,
6 for example, that he was asked once, isn't it a fact that at
7 one time you sat in a room and you made a tape recording of
8 two jurors after a verdict? He got outraged and indignantly
9 said: No, no. I think he said "no" three times.
10 Absolutely not.

11 Then a tape is played for him. Oh, I thought it
12 was only one juror. That's what he meant by absolutely not.
13 I submit to you that he's someone who is seeking to get an
14 edge. But I also submit to you it doesn't matter because
15 what did he tell you in the end about the tapes, about the
16 CM tapes? He told you that on those tapes he could find no
17 evidence of erasures, overrecordings, tampering on those
18 tapes. He told you if you took the tapes, the tapes like
19 Government Exhibit 311, the recording made in defendant
20 Abdel Rahman's apartment, like Government Exhibit 333, the
21 tape recording of Mohammed Saleh on June 4, 1993, if a
22 recording had been made in front of you, the jury, while you
23 watched, and no one tampered with it and the recording was
24 done, and then he was brought into the room and he checked
25 that recording, he would get the same results. No erasures.

1 In fact, one good indication that there's no
2 tampering on the CM tapes are the four defendants who
3 testified. Defendant Clement Hampton-El basically says, I
4 said those words, I didn't mean it. Tarig Elhassan tells
5 you, well, I said those words, and I heard what was spoken
6 to me, but I thought it was all pretend.

7 Fadil Abdelgani, states, well, those words may
8 have been said, but I didn't hear them. Victor Alvarez
9 says, well those words may have been said, but anytime
10 something incriminating happened, it happened while I used
11 cocaine, or maybe even crack for the first time.

12 People in those conversations testified about the
13 conversations. You can see the transcripts of the tapes
14 have not been tampered with.

15 I will make one more point with Mr. Ginsberg so
16 we don't have to come back to it. You saw there was a tape,
17 Khallafalla C, a tape recording of a call between Emad Salem
18 and Special Agent Nancy Floyd, and that Khallafalla C is one
19 conversation from the cassette.

20 Mr. Ginsberg came in and gave you his analysis of
21 that one conversation, and you saw, it was plain from the
22 conversation itself that there are two gaps in the middle of
23 the conversation. It seemed quite sinister. People are
24 talking, and all of a sudden, hiss, and it picks up again.
25 People are talking, and a longer hiss, it picks up again.

1 Yet the government went and put in the rest of
2 the tape, and you found that there was some 18 more hisses,
3 those erasures, gaps, whatever you want to call them. It
4 doesn't matter, soon they are intentional erasures. Someone
5 erased five points on a travel agency conversation. Someone
6 is giving them the 1-800 number and you hear the hiss.
7 Someone is calling with a beeper number, you hear the hiss,
8 and then he had to come back and get the last word -- he
9 tells you just this week I was in the hall looking at the
10 whole tape.

11 It wasn't until cross combination it was brought
12 out that he had examined the whole tape before. He had it
13 for months. He had done an analysis, but all that was
14 presented to you were the two gaps in that call.

15 MR. JACOBS: Objection. Objection.

16 I would like to be heard.

17 THE COURT: The objection is overruled.

18 MR. FITZGERALD: Moving on from Mr. Ginsberg to
19 Mr. Siddig Ali, Mr. Siddig Ali comes up on the tapes a fair
20 amount. I will point out to you that there are times when
21 Siddig Ali exaggerates, he talks on and on about the killing
22 of some guy Francis Dane which never happened. He talks
23 about -- exaggerates about his schooling, about his
24 training, about his background. But what I will submit to
25 you in this case is we are not asking you to judge the

1 defendants based on just the words of Emad Salem or Siddig
2 Ali on the tapes. Mostly they serve as narrators.

3 When you focus in on the tapes, watch how much of
4 the evidence depends on the words out of the own mouths of
5 the defendants, what they said, what they agreed to do. The
6 other part of it that is important is the words that are
7 spoken by Siddig Ali or Emad Salem make plain what is being
8 said to these people. Siddig Ali is talking about striking
9 America. That is important for you to know because there
10 are people in the room who know what the plan is about.

11 When we go through these tapes, don't be confused
12 into thinking that you have to buy onto every single thing
13 that Siddig Ali and Emad Salem say, because the heart of the
14 evidence comes out of the defendants' own mouths. The only
15 point we will ask you to rely upon with what Siddig Ali and
16 what Emad Salem say is when they're corroborating what
17 happened in front of both of them. Siddig Ali is not going
18 to lie to Emad Salem about a meeting they just attended.

19 The first conversation we'll focus on is really
20 Government Exhibit 306. What I will do here is I will just,
21 when we get to a part I'll spend some time on, I will try to
22 put a blowup up so we don't have fumble through all the
23 books.

24 In Government Exhibit 306, that's when Siddig Ali
25 explains defendant Abdel Rahman's system to Emad Salem. He

1 basically says, your dealings with the sheik should be only
2 in headlines. The details, he has nothing do with it. This
3 is the sheik's system. You ask him what is lawful and what
4 is forbidden. This is his system.

5 He continues on talking about what defendant
6 Abdel Rahman told him, Siddig Ali, about the United Nations,
7 the big house. He says that defendant Abdel Rahman said
8 it's a must, but, of course, the sheik is not going to stand
9 on podiums saying these words. And then Siddig Ali invites
10 Emad Salem, and this is the important point, to check
11 himself. He asks for him to speak to Abdel Rahman, "broad
12 spectrum, away from the house. Don't ask him inside the
13 house."

14 To Siddig Ali they're concerned about
15 surveillance there. You will see that coming up later.
16 While this is going on, you also saw in the recorded
17 conversations that Siddig Ali is the first person to propose
18 the idea of attacking the armory. He's also the first
19 person to propose the idea of attacking the United Nations.
20 While this is going on, you see that in fact Siddig Ali and
21 Emad Salem made a trip to see defendant Sayyid Nosair at
22 Attica. The person who wanted the jihad anew.

23 Now, I am not going to show you the videotape. I
24 don't want to take up too much time. But you may recall --
25 you can ask for the videotape. It's Government Exhibit

1 385 -- that during that videotape there are portions when
2 Siddig Ali gets up, leans over the table. Sayyid Nosair
3 whispers in his ear and he leans back. Siddig Ali gets up,
4 again leans over the table. Sayyid Nosair whispers in his
5 ear and gets back. Again Siddig Ali gets up; Sayyid Nosair
6 whispers in his ear and gets back.

7 Earlier than that you saw the gestures. Nosair
8 making gestures. Now, Mr. Stavis kept asking Mr. Salem --
9 he made the point in his opening, he made the point during
10 his cross-examination, we don't have an audiotape of what
11 was said during that meeting, and we certainly don't have an
12 audiotape of what Sayyid Nosair whispered in the ear of
13 Siddig Ali on that occasion.

14 He made the point during opening, during
15 cross-examination, that we have to take Emad Salem's word
16 for that, and even Emad Salem seemed to agree. We really
17 don't, because Emad Salem later explained while the tape
18 recorder was running what it was that he talked to Sayyid
19 Nosair about on May 20. That recording is on Government
20 Exhibit 311T.

21 During that conversation, Salem and Siddig Ali
22 are speaking. Siddig Ali reports that Sayyid Nosair
23 actually did not agree with the United Nations as a target.
24 Salem says: He did not agree on the United Nations.

25 Siddig Ali: He said forget it.

1 Salem: Why?

2 Siddig Ali: Why?

3 Yeah.

4 He said: Because, ah, that is, take
5 personalities, yeah, big ones, to barter with. That is his
6 opinion.

7 Later on Siddig Ali said: He told me Kissinger,
8 what do we do with him? He said you take him and barter
9 with him.

10 And he then went on to say: He said barter with
11 him, and they'll release all the brothers, huh?

12 Salem said: Who are Mahmud Abouhalima and
13 Mohammed Salameh?

14 Siddig Ali: Of course.

15 You have Siddig Ali when he doesn't know the tape
16 recorder is running telling Emad Salem what Sayyid Nosair
17 was talking to him about.

18 When Siddig Ali and Emad Salem came back from
19 Attica jail on May 21, 1993, Siddig Ali returned home, got a
20 telephone call from defendant Abdel Rahman and he said: I
21 just visited a brother in jail. He passed along the
22 following message, he's fine, and he sends his best regards
23 to you. He sends you his best regards. I mean, he sends
24 special greetings.

25 That's what leads into Government Exhibit 311,

1 the time when Emad Salem would go to defendant Abdel
2 Rahman's apartment, go in, meet with him alone after
3 convincing him that the kitchen was safe from monitoring
4 equipment, and make clear that what Siddig Ali and Salem
5 have been discussing is about violence, something that
6 Siddig Ali had already raised with defendant Abdel Rahman to
7 make clear for himself that Abdel Rahman says it's OK.

8 MR. FITZGERALD: Do you want me to continue,
9 Judge, until 3:30 or?

10 THE COURT: Please.

11 MR. FITZGERALD: OK. We will do this
12 conversation. But before we do this conversation, I want
13 you to appreciate how important this is. You were told that
14 defendant Abdel Rahman, his name meant servant of God. You
15 were told he was a shepherd of a flock. You were told he
16 had a sacred contract with America, that they believed in no
17 aggression. What do you think defendant Abdel Rahman will
18 say when someone proposes violence in America?

19 When the conversation first starts, early on,
20 Abdel Rahman is warning Salem to go visit Mahmud and ask him
21 about Siddig. Already the word has gone from Mahmud
22 Abouhalima back to defendant Abdel Rahman about the
23 questioning over in Egypt about that conversation about the
24 explosives in the car. Already the word has gone back to be
25 careful about Siddig, and defendant Abdel Rahman is passing

1 the word. He's trying to make sure that the inner circle is
2 OK.

3 Then when Salem was actually confused about what
4 happened, tells him that, you know, he doesn't think it
5 happened that way, that may be the car was bugged, defendant
6 Abdel Rahman says: He says that Mahmud had told him that,
7 that all except Siddig, and I told him in a certain
8 automobile and then he said, well, I am telling you what was
9 reported to me.

10 People are reporting back to defendant Abdel
11 Rahman on who they think the informant is. And then we get
12 to the part where the attack on the United Nations is
13 discussed. You will see here on Government Exhibit 311T,
14 page 6, Salem: Through my expertise I am doing my work. I
15 am preparing the work, and I went yesterday to Sheik El
16 Sayyid, and I asked him, he's going on.

17 Then he says: I wish to know in regards to the
18 United Nations, do we consider it the house of the devil,
19 because my strike is a devastating one and not a screwup one
20 like the one that took place at the Trade Center. We are
21 preparing for something big. Something big, if God is
22 willing, that will bring it upside down. So is this
23 considered licit or illicit?

24 Defendant Abdel Rahman: It is not illicit.
25 However, will be bad for Muslims.

1 Salem: Not illicit, however will be bad for
2 Muslims? We do it or --

3 Abdel Rahman: No.

4 Salem: Forget it.

5 Abdel Rahman: Find a plan. Find a plan.

6 Salem: Yes.

7 Abdel Rahman: Do inflict damage, inflict damage
8 on the American Army itself.

9 The person with the name the servant of God is in
10 his apartment, and someone is talking about doing something
11 bigger and more devastating than the bombing of the World
12 Trade Center and is his reaction, wait a minute, we are not
13 about violence, this is America, this is a sacred contract,
14 I'm the servant of God, get out? No. It is not illicit.
15 You are allowed to do it. You can go ahead and blow up the
16 United Nations, but it will put Muslims in a bad light.

17 This is a problem not because people are going to
18 be blown up, not because lives will be taken, because it
19 will be bad relations, bad press. Does he say that and then
20 say, so do nothing? No.

21 The person supposedly with the sacred contract
22 with America says: Find a plan to inflict damage, inflict
23 damage on the American Army itself. I will also point out
24 to you that in a different exhibit, Government Exhibit 478,
25 you heard someone ask defendant Abdel Rahman, was it

1 permissible to join the American Army even as a medic?
2 Defendant Abdel Rahman said no, you can't join the Army even
3 as a medic, because the US armed forces are the enemy of
4 Islam, and joining them is forbidden.

5 He's saying bombing the United Nations may look
6 bad, but you are allowed to do it. Being a doctor in the
7 American Army, that's a no-no. What he wants to do is to
8 direct this violence, direct it directly at the American
9 Army itself. They go on. He explains how it will be a
10 disadvantage for the Muslims. He says, Salem: So forget
11 about the United Nations.

12 Abdel Rahman: No.

13 Salem: We keep it in the Army?

14 Rahman: Yes. Keep it.

15 Now, it continues on. Salem then makes clear
16 what the next target is.

17 Yeah, well, Siddig suggested that the second
18 target will be the FBI's center, which is 26 Federal Plaza.
19 What do you think of this one?

20 Defendant Abdel Rahman again does not seem to
21 remember that sacred contract. He says: You can't attack
22 buildings in America. By God, I mean, wait for a while,
23 wait for a while. We will talk about this later.

24 Salem: Um, OK, fine.

25 Abdel Rahman: I mean, we will talk about it a

1 little later.

2 Salem: But we have prepared the thing now,
3 sheik.

4 Abdel Rahman: Never mind.

5 Then Salem says: Uh, we, uh, slow down a little
6 bit. Slow down a little then?

7 Abdel Rahman: Slow.

8 Next he says: Slow down a little bit.

9 And then he makes clear, he's not saying like,
10 slow, slow, slow, don't do it, he's saying, slow, slow,
11 slow, do it right.

12 Watch. Slow, OK.

13 Abdel Rahman: Slow down a little bit.

14 Salem: OK.

15 Abdel Rahman: Are you paying attention?

16 Salem: OK, sheik.

17 The man who, redacted, redacted, was training for
18 three years we don't want.

19 Salem: No, no. We will do a good job, God
20 willing.

21 Abdel Rahman: OK.

22 Salem: OK, sheik. May God bless you.

23 Those are the words he spoke in the kitchen.

24 Keep it away from the United Nations, put it right at the

25 Army itself. The FBI slow down. Do it right. Those words

1 are not words he wanted anyone but Salem to hear. He
2 whispered them. The last people he wanted to ever hear
3 those words are you. But you will listen to them right now.

4 Cue it up. You can listen on your headphones, it
5 will play out loud, but you will hear it much better on your
6 headphones, because it's whispering.

7 (Audiotape played)

8 MR. FITZGERALD: When we talk about
9 corroboration, that is what corroboration is. Someone tells
10 you he said the words, he whispered them in a kitchen. You
11 have it on tape. That is the side he never wanted people to
12 see. He wanted people to see that he had nothing to do with
13 Mahmud Abouhalima, and you will see it again and again.

14 Now, following this meeting, you will see that
15 there was actually some confusion between Siddig Ali, who
16 reported that the defendant Abdel Rahman told him that not
17 only was it OK, but they must do it. The one thing you will
18 see, you saw it from some defense witnesses, the fatwa has
19 different parts, a red light and a green light, you can do
20 it or you can't do it.

21 What was clear is there was no red light given on
22 the United Nations. It was a green light. It's not
23 illicit. It wasn't something like being a doctor in the
24 Army that you just couldn't do.

25 But there was also an advice element. Better not

1 to do the United Nations, go after the Army. Siddig Ali and
2 Emad Salem would compare notes, but later on you will see
3 that they would get together in Government Exhibit 639 and
4 defendant Abdel Rahman a week later would say, in essence,
5 the path is clear, go ahead.

6 Now, after this happened, the next important date
7 that we will focus on is May 27 and May 28. That is the day
8 that Fares Khallafalla and Amir Abdelgani first went to the
9 Queens safe house. Now, in his opening, Mr. Bernstein on
10 behalf of Amir Abdelgani told you that the story of Amir
11 Abdelgani was a story that -- "the basic common story of
12 many immigrants."

13 Someone who got dragged into something that he
14 shouldn't have gotten dragged into. He told you that once
15 he sort of figured out what was really going on, "He
16 couldn't really back away."

17 So you had this image of someone kept in the
18 dark, a basic, common immigrant getting dragged into
19 something he didn't want to do.

20 When Ms. Khallafalla opened, she said a lot of
21 things about Fares Khallafalla that you will see there is no
22 evidence for, but she told you that Fares Khallafalla was,
23 "Beginning to live the American dream. This man was like
24 any other young man that you know. He watched television.
25 Sometimes he even snuck a look at his roommate's Playboy

1 channel which the roommate had on subscription. He smoked
2 cigarettes.

3 Then she said: He later went, sort of cleaned up
4 his life, found Islam and Siddig Ali.

5 And then she said: When Fares would go pick up
6 Siddig, he would be quick to stash his cigarettes under his
7 seat, take a breath mint and switch the FM rock to AM news.
8 She told you that his jihad was his personal struggle to
9 stay in school and that basically he was trapped like a
10 porpoise or a dolphin in a fisherman's net.

11 THE COURT: Mr. Fitzgerald, if you could come to
12 a convenient break point in the next five minutes or so.

13 MR. FITZGERALD: Yes, Judge. Thank you.

14 What you will see when you play through May 27,
15 May 28, 1993, is that you will see that it is nothing like a
16 basic common immigrant getting dragged into something he
17 doesn't want to do. You will see that Fares Khallafalla is
18 not some helpless fellow, some dolphin or porpoise caught in
19 a fisherman's net.

20 The only net that Fares Khallafalla will be
21 caught in is the net of the evidence, the net of the
22 evidence that shows he's made clear to these fellows right
23 up front this was a bombing operation from day one. They
24 talked about America. You will see that in Government
25 Exhibit 370T, which is the early part of the video, when

1 they first come in, after it is explained what a hadduta is
2 and a lamp, things like that, they are told, Amir Abdelgani
3 and Fares Khallafalla are told that at zero hour certain
4 formalities are going to be followed, including not going to
5 the mosque frequently.

6 Well, before we break, I want you to think about
7 this: You have heard a lot about Bosnia, and whether people
8 really thought this was for Bosnia. Make no mistake about
9 it. There's a real tragedy going on in Bosnia, and a lot of
10 the people in this courtroom, the defendants included, were
11 very concerned about what happened in Bosnia. But what was
12 going on in that safe house was not about fighting in
13 Bosnia. It was about fighting America.

14 When they said at zero hour you are not going to
15 go to the mosque, what would that have to do with Bosnia?
16 If you are fighting over in Bosnia, and you are in the
17 Muslim side, why would you have to avoid the mosque before
18 you went off to do what you had to do? But in America you
19 don't go to the mosque. You don't want to be seen.

20 But it wasn't left vague. It went on in
21 Government Exhibit 320T. Fares Khallafalla was told by
22 Salem that they shouldn't keep stuff in the house. He made
23 reference to the fact that Mohammed Salameh left traces
24 behind.

25 Fares Khallafalla said: True talk.

1 Then I'll leave you with this one last page. On
2 page 6 -- now, remember, this is a conversation taking place
3 on the first day that Amir Abdelgani and Fares Khallafalla
4 are in the safe house.

5 Siddig Ali: God willing, you, God willing,
6 increase your wishes from God and pray istikhara. We will
7 come back to istikhara later. And ask God the almighty to
8 fasten steps and hearts. You the fastener of hearts, fasten
9 me on your religion.

10 Then it goes on. He says, the one billion
11 Muslims in the world did not see any action which strikes
12 America which is a hit, became the God of the infidels and
13 liars instead of God the almighty. So a million, millions,
14 force, we hit it one hit or more to show that it -- it goes
15 on.

16 Later on the same page you can see Amir Abdelgani
17 throws in a word. Khallafalla speaks. They are part of
18 this conversation. In this conversation that they are
19 present for and participating in, Siddig Ali says: And our
20 God, his holiness, accepts every good and faithful deed
21 which is jihad. The Islam, unintelligible, but we don't
22 come and do something which the people will forget tomorrow.
23 No. You want to hit something which will paralyze the
24 economy. You understand? Did you see how? You bring it to
25 the lowest level. But the operation which was executed by

1 the brothers, referring to the World Trade Center bombing,
2 this, huh, in spite of it's, has many balloons, how many
3 billions they lost in it and such things, but it was full
4 with errors. This was not about Bosnia, and you will see it
5 in the rest of the tape as well.

6 Thank you.

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

11 (The jury was excused)

12 MR. JACOBS: Your Honor, briefly?

13 THE COURT: Mr. Jacobs?

14 MR. JACOBS: Yes, your Honor. During
15 Mr. Ginsberg's testimony Mr. Fitzgerald asked the question,
16 you didn't tell us about the other erasures. I objected.
17 It was sustained by your Honor at that time. I think what
18 Mr. Fitzgerald has done, even though I think he is more
19 complimentary to Mr. Ginsberg than I expected --

20 THE COURT: His summation is not over yet.

21 MR. JACOBS: I know. I still think that he's
22 really commenting again on that point, and it think it
23 implies that defense counsel somehow withheld that from the
24 jury. That is the nature of my objection. I think when
25 your Honor sustained it during Ginsberg's testimony it was

1 because we only offered that one tape. No one was
2 withholding the rest of the tape.

3 I think Mr. Fitzgerald by implication is saying
4 somehow the defense lawyers withheld the rest of the tape.
5 I know --

6 THE COURT: And if he's saying that, then --

7 MR. JACOBS: I would request the government
8 correct it --

9 THE COURT: Wait a second. You certainly didn't
10 ask him about it.

11 MR. JACOBS: Pardon me.

12 THE COURT: You certainly didn't ask him about
13 it.

14 MR. JACOBS: Your Honor, we offered one tape.
15 They sent the tape down to Washington and came up with
16 nothing. So for me to get up here now to have to defend why
17 I withheld the rest of the tape from the jury that I didn't
18 offer, once it was offered, Mr. Ginsberg explained it. I
19 just don't want this jury to think that somehow I withheld
20 the rest of the tape from them. If we are going to get into
21 that, then why don't they tell the jury why the FBI didn't
22 examine the tape.

23 THE COURT: Mr. Jacobs, you can argue --

24 MR. JACOBS: I would ask the why the objection
25 was sustained.

1 THE COURT: You had your objection sustained
2 because he wasn't asked about it. It is not at all unfair
3 comment for him to point out that he wasn't asked about it.
4 When he had the witness on the stand the objection was
5 sustained because the witness obviously can't volunteer the
6 information. But it is perfectly legitimate, it seems to
7 me, for him to comment on the fact that you didn't bring it
8 out.

9 MR. JACOBS: How can I bring out something that
10 wasn't in evidence, the rest of the tape?

11 THE COURT: His point is that if there were
12 erasures all over the tape and Mr. Ginsberg had the tape for
13 several months and knew about it, then perhaps that might
14 have been brought out.

15 MR. JACOBS: All right. Well, if the government
16 wants to persist in that kind of argument to the jury, then
17 I assume that what was done with the tape is fair game. I
18 think it is an unfair argument that the government is
19 making.

20 THE COURT: Mr. Jacobs --

21 MR. JACOBS: I think it is unfair to imply
22 defense counsel somehow withheld those other erasures. If
23 the government wants to persist in that argument, so be it.

24 THE COURT: Mr. Jacobs, the sort of ominous "so
25 be it" --

1 MR. JACOBS: I think it is unfair to say that I
2 withheld it.

3 MR. McCARTHY: The tape was there, and it wasn't
4 brought out.

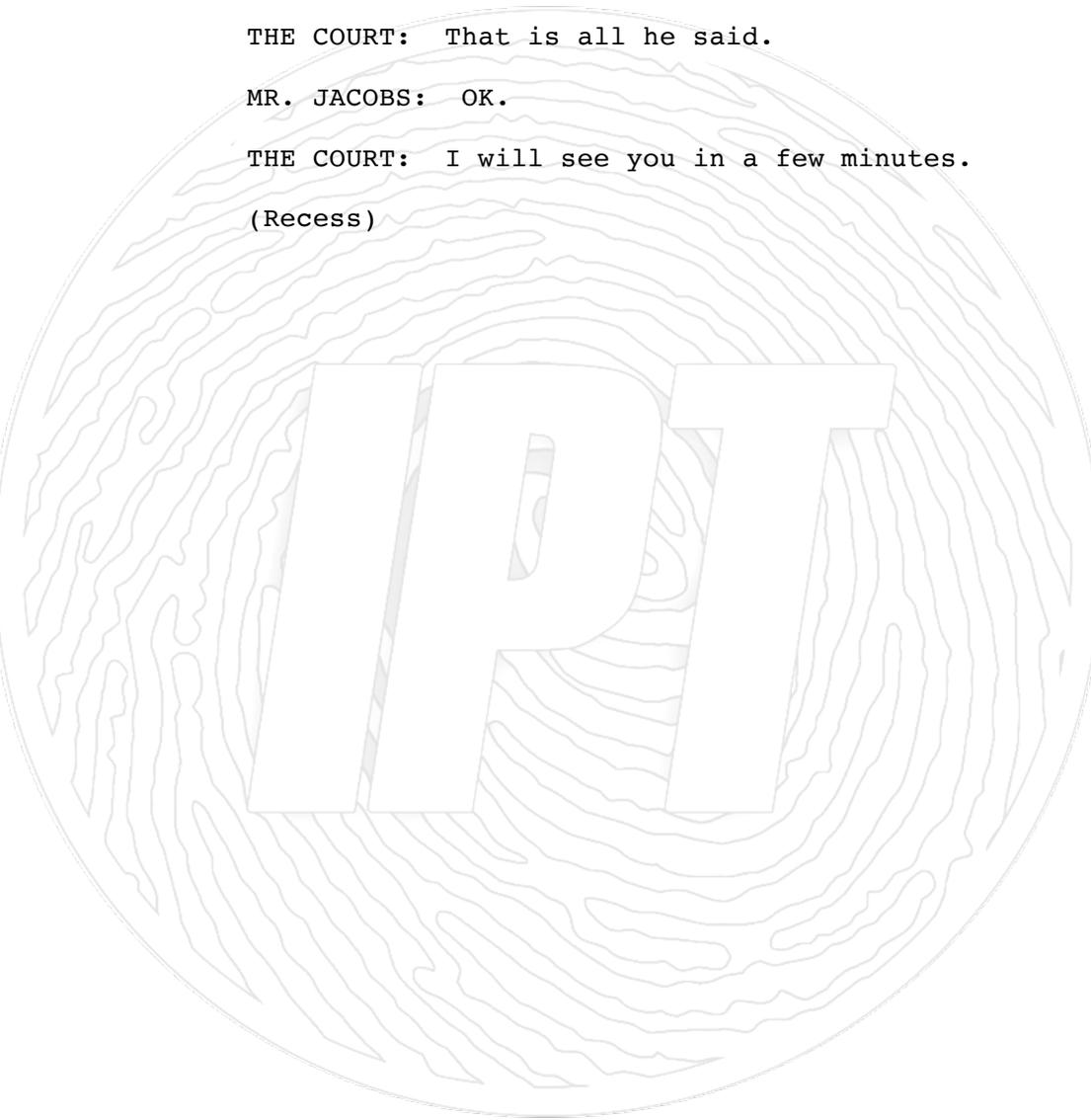
5 THE COURT: That is all he said.

6 MR. JACOBS: OK.

7 THE COURT: I will see you in a few minutes.

8 (Recess)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 (In open court; jury present)

2 THE COURT: Mr. Fitzgerald.

3 MR. FITZGERALD: Thank you, Judge.

4 When we broke, we were in the middle of the
5 meeting in the safe house on May 27 and 28 of 1993, the
6 first day that Amir Abdelgani and Fares Khallafalla were in
7 the safe house, and I told you that the image that Mr.
8 Bernstein portrayed to you of Amir Abdelgani in the
9 beginning was the basic story of a common immigrant. Ms.
10 Amsterdam referred to him, referred to Fares Khallafalla as
11 being like a dolphin caught in a fisherman's net. When you
12 look in these transcripts and see what it is they heard that
13 night and see on the blow-ups when you watch two sections of
14 video, I would like you to keep those images in mind and see
15 whether or not they hold up, and I think you will see that
16 in fact it was made plain to Amir Abdelgani and Fares
17 Khallafalla that the bombs were not bombs for Bosnia but the
18 bombs were for here.

19 I would also like you to think about the fact
20 that Emad Salem brought them into the safe house with
21 recording equipment out of his control. He was tricking
22 people, like bringing dolphins, poor little Flipper caught
23 in a fisherman's net. He is not going to bring them into a
24 safe house where he has no control over the recordings,
25 where they might blurt out bombs in America, we are here for

1 something else. What he did was he brought the people to
2 the safe house time and time again. You even saw during a
3 critical conversation that while they were all talking, Emad
4 Salem had his feet up on the bench and was snoring. Emad
5 Salem had nothing to worry about people blurting out about
6 something else going on.

7 Picking up with Government's Exhibit 320T, which
8 is the meeting of May 27 and 28, and the transcript from
9 page 10, you will see that Salem is talking about operating
10 the hadduta, and he says vocally, and Siddig Ali brings up
11 the beeper, or something, would it work with the beeper.
12 They are talking about using the beeper as a detonator
13 device.

14 He talks about, for example, Siddig Ali says but
15 he could adjust it on a certain frequency where it would not
16 ignite without this frequency. For example, frequency means
17 a certain strong frequency, unintelligible. If it was not
18 used it would not detonate. Fares Khallafalla says, hm,
19 means if you scream it would not detonate. He could adjust
20 it with this device which is connected to it. Finger
21 snapping. Detonate, for example, the phone rings in a
22 certain way, boom, if the phone won't ring, it would not
23 explode.

24 He is talking about using a phone to dial a
25 beeper to detonate. That is not something you do in Bosnia,

1 a conventional war. You don't drive a car to the other
2 side, run back, dial up a phone with a beeper. That's a
3 terrorist act.

4 Look down at the bottom of page 11. Siddig Ali:
5 We will make the three next to each other.

6 Fares Khallafalla says: Interesting
7 unintelligible.

8 Siddig Ali: No, here fine. While we are coming
9 here, there are two lanes. This, two lanes unintelligible.
10 You unintelligible the hadduta. When it reaches the
11 specified place, unintelligible, I have calculated as there
12 will be a mark here, unintelligible, or, for example, we
13 will count it on the, unintelligible. You drive in the
14 lane, unintelligible, then boom, good, unintelligible, you
15 pull the cover and open the door to get out. Before you get
16 out there is a bottom which you press and leave immediately,
17 unintelligible, then you will be out, otherwise you mess
18 everything up, open the door, get out, unintelligible, get
19 in the car.

20 Fares Khallafalla says something. Siddig Ali:
21 Tuk tuk tuk tuk, unintelligible, then it would be open, in a
22 hurry, your ride with him. Clapping of hands. Move.

23 Fares Khallafalla: And leave the car.

24 They are talking about driving a car in the
25 lanes, opening the door, pressing a button and leaving the

1 car behind. They knew what was going on.

2 I would like to play a brief video section to
3 show you also that that very first tape, the very first
4 meeting they time a timer and they watch, and watch as Fares
5 Khallafalla is happy as the bomb is going to explode, and
6 they say boom, and Amir Abdelgani and Fares Khallafalla are
7 sitting there with Emad Salem and Siddig Ali.

8 (Videotape played)

9 MR. FITZGERALD: That is Fares Khallafalla in the
10 orange shirt.

11 Same night, same safe house, same people. Siddig
12 Ali talking. Fares Khallafalla: When he is in the car,
13 where shall we be?

14 Siddig Ali: Yeah.

15 They continue on.

16 Then it goes down here. Siddig Ali: I
17 theoretically, I talk about some other things, theoretically
18 and not practically. Practically, we will do the big house
19 but theoretically there are three, the big house I will take
20 care of it, I.

21 Good, says Salem.

22 Siddig Ali: I and with, I see who, I and who, in
23 the practical there will be five minutes between each of
24 them.

25 Salem: God is great.

1 Siddig Ali: Boom. God, the whole world.

2 Salem: Will be paralyzed.

3 Siddig Ali: And after five minutes, the people,
4 uh, boom, God, God, God, is it believable and that's that.

5 It's there and there is nothing more, boom, what a heck,
6 that's it, this will drive the whole world crazy, this will
7 make all America on stand by. You see how, God willing.

8 They are talking about boom, boom, boom, five
9 minutes apart. The whole world, America will be on stand
10 by.

11 We will play that video very briefly.

12 (Videotape played)

13 MR. FITZGERALD: And you saw, on the cardboard,
14 the cardboard on which they were drawing lanes, traffic
15 going in different directions, Government's Exhibit 676, I
16 believe. I think you saw it better before, but you will see
17 there are arrows, one going this way, one going that way,
18 and you recall the conversation talked about lanes.

19 During that conversation, Amir Abdelgani asked,
20 regarding the button, if anything happens is there any
21 return?

22 Siddig Ali indicated that they will have a
23 machine gun and a handgun.

24 Amir Abdelgani also said: A car at least under a
25 fake name?

1 And Siddig Ali said: After 10 minutes, I will
2 be, unintelligible, ssh ssh.

3 And Amir says, the authorities talk together.
4 They are thinking about a bomb plan, when you are done you
5 have to run to the airport and worry about escaping
6 authorities.

7 They are talking about a terrorist plot.

8 The reason Amir Abdelgani and Fares Khallafalla
9 have to fight that conversation so very hard is, that's the
10 first time they are in the safe house. They knew what it
11 was about. They went ahead and took actions later on,
12 buying things, trying to buy things, scouting. They realize
13 that that one conversation alone can convict Amir Abdelgani
14 and Fares Khallafalla.

15 In fact, the next day, Government's Exhibit 321,
16 Amir Abdelgani talks to Emad Salem, and Emad Salem spells
17 out the conversation he had had with the defendant Abdel
18 Rahman in his apartment, and told him what defendant Abdel
19 Rahman had said about the United Nations, the American
20 military and the FBI, explicitly, and Amir Abdelgani's
21 reaction was not something like Abdel Rahman said that, the
22 sheik? He's a servant of God, he would never say that.
23 Amir Abdelgani said, all this talk in his house. He was
24 shocked that they could have the conversation in his house,
25 not that he would say it. He went on to say, we have to be

1 very cautious, to be careful and to keep away from the
2 sheik.

3 The next day, the following day is on May 29, you
4 have Government's Exhibit 323. I am not going to go through
5 it in great detail but that's the stalking trip, the
6 scouting trip. Siddig Ali, Emad Salem and Amir Abdelgani
7 get in a car and drive around New York looking at the
8 targets. Amir Abdelgani takes a look at the diamond
9 district and talks about attacking it. They talk about the
10 Lincoln, the Holland, the big house, and pushing Duane back
11 a little bit, Duane being a reference to Duane Street, or
12 the FBI.

13 During that conversation you paid attention, and
14 if you looked at it now, you would see that Amir Abdelgani
15 is giving observations on the traffic Friday, Saturday and
16 Sunday, in the Holland and Lincoln Tunnels, what lanes are
17 closed, how many lanes there are, and indicating that he is
18 looking for the middle of the tunnel and he can't swim. He
19 has been stalking the tunnels already, and if you look at
20 the conversation, it is clear that Amir Abdelgani is out
21 looking at the tunnels even when Emad Salem is not around.

22 That conversation is also important because in
23 the conversation, Government's Exhibit 323 takes place, the
24 recording, over two days, Saturday into Sunday morning. It
25 is clear that the scouting trip is made on Saturday because

1 they talk about the following day being Sunday. That is
2 important because of a conversation that does take place on
3 Sunday. Sunday, the day after Siddig Ali, Emad Salem and
4 Amir Abdelgani have been out scouting the targets, a phone
5 call takes place. This is a phone call involving defendant
6 Abdel Rahman, something over the phone, a window on his
7 world.

8 Defendant Abdel Rahman: Why didn't you attend
9 yesterday's meeting? Yesterday meaning Saturday, the day
10 Siddig Ali is out with others scouting the tunnels and the
11 targets.

12 Siddig Ali: I went on an errand, honorable
13 sheik, by God.

14 Abdel Rahman: What errand?

15 Defendant Siddig Ali: I went on a very important
16 errand, God willing.

17 Abdel Rahman: What?

18 Siddig Ali: I went on a very important errand,
19 by God.

20 Abdel Rahman: What? A third time.

21 Siddig Ali: I went on a very important errand,
22 by God, sheik.

23 Continues on: But I mean, our hearts were with
24 the brothers.

25 Siddig Ali: If it weren't for that, by God, I

1 would have been there, sheik by God. I'll tell your Honor,
2 God willing, when I see you later. I will tell you, I mean,
3 where I was later. I mean, God willing.

4 Siddig Ali can't say over the telephone he is out
5 scouting bombing targets. And you will see a little later
6 that day, May 30, 1993, when Siddig Ali and Emad Salem got
7 together with the defendant Abdel Rahman in the basement of
8 a mosque and had a conversation once again on tape. That
9 was Government Exhibit 742T.

10 May 30, 1993 was also important for a different
11 meeting that took place before the meeting with Sheik Abdel
12 Rahman at the mosque, and that was the meeting with
13 defendant Clement Hampton-El at 251 Rogers Avenue. If you
14 think back to the openings, Mr. Wasserman stood up before
15 you and told you that defendant Hampton-El had a reputation
16 as a neighborhood good guy. Good neighbor, solid citizen,
17 someone who steered the kids right. He also told you that
18 what happened on May 30, 1993, was a bull session. I submit
19 to you, he realizes that if you realized that what is going
20 on is real in that conversation, his client is convicted.
21 Defendant Clement Hampton-El has to have you believe that's
22 a bull session because he can't get away from his words
23 which convict him. And it was no bull session. Let's go
24 through the conversation.

25 First, in this conversation Clement Hampton-El

1 makes clear that he has a problem with America. He talks
2 about Egypt, America, Great Britain, Japan, France, Israel,
3 powers of kufar, kufar, meaning infidel. America, the
4 government story in the news media to justify their physical
5 attack on Muslims.

6 He also says, don't think you are so secure
7 because you run for America and tell yourself freedom in
8 that. There ain't no freedom in here. It's a jail for the
9 Muslims. This world here, it's a prison for us. So the
10 awakening has to be here. And he also says, like I told you
11 people, when they were praising America, yes, these are
12 enemies of Islam, enemies of Allah. I said, how can you
13 stand up here and talk about these people favorable?

14 By the time he got to the witness stand, that
15 context was completely different. He told you he was
16 talking about color TV and wall-to-wall carpeting and how
17 you can get trapped up in that, and that's what he meant by
18 America being a prison. He knows that you have to sit here
19 and decide whether he was waging a war against America and
20 he knows how damaging the words are on the page when he said
21 that his problem is with America and that America is one of
22 the enemies.

23 He went on in Government's Exhibit 325, and he
24 confirmed in some ways what had happened a year before.
25 Pages 40 and 41 of Government's Exhibit 325.

1 Emad Salem: That was my main concern. Remember,
2 we go back a year ago, I started a project, and you and
3 brother Ali Shinawy, we met and we talked.

4 Siddig Ali jumps in: Don't mention names,
5 brother. There is no need to mention names.

6 Stop for a moment. If there is a bull session?
7 What are the rules? Is there some sort of bull rule that
8 you can't mention names in a bull session because there are
9 bad consequences? No. When people talk about criminal
10 activity, secret criminal activity, then there are rules:
11 Don't mention names.

12 Salem: We met, we met.

13 Hampton-El: Unintelligible, I don't talk about
14 names.

15 Hampton-El doesn't want to talk about names
16 either. He is not following a bull session rule. He is not
17 playing Simon says. He knows that Siddig Ali and he have to
18 play by the rules. When you talk about crime, you don't
19 want to bring up names. He says, well, let me just say,
20 what me and the sheik, we haven't talked in a while but
21 there is a whole lot that we discussed previous. There's a
22 lot that I can't, blah, blah, blah, unintelligible. I am
23 not at liberty to get into this kind of talk. You know, you
24 surprise me.

25 He is cutting the conversation off.

1 Think about this. If Emad Salem had been
2 reporting conversations about getting guns from Ali Shinawy
3 or getting a gun from Dr. Rashid through Ali Shinawy, if he
4 is reporting talking about guns, is he going to walk in
5 wearing a device and start talking about something that
6 didn't happen? Ali Shinawy, he wasn't there, he is never
7 going to talk. He is never going to bring up a past meeting
8 where he is going to get blown away, saying you're making
9 this up. Clement Hampton-El won't talk about the past but
10 he continues, you know, you mention, say what, but anyway,
11 er, ah, put it this way, what do you need?

12 If we continue on to page 43, you will see on
13 page 43 that Salem talks about, very beginning he brings up
14 last year again, very important. That is why at the first
15 time one year ago when we were looking for this and you told
16 me it was available, you already had, unintelligible.

17 Clement Hampton-El: Unintelligible. These
18 brothers, they got 30 or 50 of these, unintelligible, C-4's,
19 unintelligible, M16's, AKK's, everything. Detonators,
20 bulletproof vests, they had everything.

21 Think about that for a moment. If Emad Salem is
22 making up a tale about what happened a year ago, telling the
23 FBI either talking about bombs and things, one, he is not
24 going to bring it up on tape for Clement Hampton-El to say
25 you're crazy, that never happened. What does he say? He

1 brings it up. At the first time one year ago you told me it
2 was available, and when he says it, what does Hampton-El
3 respond? He responds in a way that is clear that Hampton-El
4 knows what he is talking about and this happened. What does
5 he talk about when it is brought up? C-4, detonators,
6 everything. He knows that they spoke a year before and that
7 he had told Emad Salem that he had stuff available before it
8 was that Emad Salem parted ways with the FBI in the summer
9 of 1992. That is shown in this conversation. Hampton-El
10 doesn't deny it. He responds as if it happened.

11 You will also see that the conversation continues
12 on. He is explaining to Emad Salem why it was that he is
13 not in the same position he was a year ago. He talks about
14 the FBI caught them in Pennsylvania, when I was down there I
15 had access to it. Talks about people robbing banks and post
16 offices. In fact he says, if you follow it through in
17 detail he says these people are robbing banks and post
18 offices and buying jeeps. He was angry because he wanted to
19 be their emir but they weren't using all the money for
20 jihad. He is not complaining because people are breaking
21 the law. He is not complaining because they come to him,
22 the neighborhood good guy, and say we want you to be our
23 emir, he is complaining because some of the money is being
24 used for personal use, some of the money is going to wives'
25 clothes.

1 See at the bottom: If you are doing haram, you
2 can't go and rob a bank to buy yourself a new jeep, get your
3 wife new clothes. If you buy a jeep, the jeep has to be for
4 operations. The bank robbery is OK if the money is used for
5 jihad operations. If you buy a truck, it has to be for the
6 function of the jihad, not for pleasure. So Allah lock them
7 all up. The one brother, they were talking about giving 300
8 or 500 years, but he start telling on a lot of people. He
9 goes on to say that they are ignorant people, they are
10 young, they are robbing banks, they are getting caught.
11 They talk about the one brother who got caught, facing a lot
12 of years, and then he says, they promised him, they promised
13 to give him, like I said, 3 to 500 years, and his
14 father-in-law came to me, said he needed falooz, and, you
15 know, I threw a little something his way, and then he talked
16 on everybody. And goes on.

17 When Clement Hampton-El took the witness stand he
18 told you this was bull, they were some rumors, the stuff
19 about the father-in-law basically came off the top of his
20 head. We showed him a picture, 35135L. He said that is
21 Suliman El-Hadi, a Muslim brother I have known for 20 years.
22 He is asked, aren't you describing Suliman El-Hadi's
23 son-in-law? No, no, just made it up, the father-in-law is
24 just made up. What you learned from Agent Dressler was that
25 the son-in-law of Suliman El-Hadi, the friend for 20 years,

1 is Marcus Robertson, who was arrested in Pennsylvania. He
2 had some of the facts wrong. He wasn't speeding, he wasn't
3 shot. He was caught with some ammunition, not C-4, the
4 night of the arrest. He then became a cooperating witness
5 in charges involving a bank robbery and a lot of people in a
6 case not involving the people on trial. The situation and
7 the persons Clement Hampton-El is discussing are real, is a
8 person he had contact with. He knew the father-in-law, and
9 in fact when he saw Marcus Robertson's picture, he said I
10 could have had lunch with him. He is telling Emad Salem I
11 had access, people are in jail, it's tougher. He is
12 explaining why it is it is tougher this year, but what is
13 crystal clear at the very least is that he had this
14 conversation a year before back when Salem, Shinawy and
15 Hampton-El were talking about bombs in the spring of 1992.

16 He also talks about looking for detonators. Same
17 exhibit, pages 57 to 58. He says, Hampton-El: The
18 detonators. Well, this is something. Now, because I was
19 talking about using. Hampton-El: M80's and blockbusters.
20 Ah, there is one brother. Then there is an unidentified
21 voice. Mustafa comes in. So right now, 9:00, watch.

22 You don't know who the unidentified voice is. It
23 is someone present. Could be Siddig Ali, could be Clement
24 Hampton-El. It's hard to determine. But it doesn't matter.
25 Whoever spoke that word Mustafa is thinking there is a

1 brother, someone to approach about detonators, and what is
2 the name they come up with but Mustafa?

3 And who is Mustafa? Mustafa Assad. He is the
4 person that was supposed to go with Siddig Ali to see Sayyid
5 Nosair at Attica prison. He is the person, Mustafa Assad,
6 that Ali Shinawy said could help us on our bombing plan.
7 And he is the person that you will see in the telephone
8 calls, Clement Hampton-El reaching out to in the coming
9 weeks, trying to get things from him. That's Mustafa.

10 Then he also says he is going out to Baldwin, New
11 York. While I'm out there I am going to speak and I will
12 have some conversations with, unintelligible. While I am
13 out there I am going to speak with this one brother, and if
14 he is not able to do it himself, then I'll be the middleman.
15 Then I'll go see some people to get the detonators, get
16 many, you know, I'll get as many as possible. He is flat
17 out of green. I will get you the detonators, I will try
18 with the brother who is going to be involved -- which he
19 told you was Mikhail, the guy you saw in the surveillance
20 photographs. Someone else, maybe him, maybe Siddig Ali, is
21 bringing up Mustafa, and he is saying if the guy can't do
22 it, I'll be the middleman, I'll get the detonators.

23 What did Imam Wahhaj Siraj say when he took the
24 stand about Clement Hampton-El? He told you you can take
25 his word when he says he is going to do something. He told

1 you he is not a yes person. Clement Hampton-El had no
2 problem standing up to Imam Wahhaj when he did the
3 unthinkable and went to Congress. He could have told Siddig
4 Ali to get out of there but he didn't, because he didn't
5 want to. He agreed, he was part of this.

6 We will continue on with the same conversation.
7 Now you will see on page 78, it picks up and he is giving
8 them advice. He is advising them how to do this bombing
9 successfully, and he says: The best way to be successful,
10 because we are going into it, unintelligible, totally,
11 unintelligible. And it will make them ready for everything.
12 What would be fantastic is to do it and leave them in a ball
13 of confusion not knowing who did it. That's right. Let
14 them think others.

15 Hampton-El: Yes, you see, I've did things to let
16 them think, let them think it's kuhfars or drug dealers.

17 Got to leave something to let it, to throw them
18 off completely, have them think somebody else did this, or
19 let them make them think Yahood did it. You see, what you
20 have to do is distraction, deception, from here to there to
21 there. He goes on down below to say, that I will hear you
22 on the phone telling you something that, you know, some
23 Hebrew, you throw that in, too, you know what I'm saying?
24 Curse in Hebrew or Yiddish, then hang up.

25 What he is saying is, you can blame this on drug

1 dealers or Jews and you know, although he doesn't want to
2 say it from the witness stand, that that doesn't mean
3 Bosnia. Drug dealers are not getting blamed for what is
4 going on in Bosnia, Israel is not getting blamed for what is
5 going on in Bosnia, but when bombs are going off in New York
6 City, it is possible to blame drug dealers, it is possible
7 to blame the Jewish Defense League. In addition, yeah, when
8 that happens, something else simultaneously happens
9 someplace else. He repeats, I said, when that happens,
10 simultaneously, something is happening at the same time,
11 someplace else. He is telling them how to do it.

12 Same conversation, page 80.

13 Now they go on. He says deception to confuse to
14 deceive. Hm um, I hear you.

15 Siddig Ali: Someplace else, very important as
16 well.

17 Then he starts talking about the tunnel. It
18 takes calculation. Clapping in background, snapping
19 fingers. Break like straws. Boom, five minutes apart.

20 Here is a line that Clement Hampton-El and his
21 counsel have seized on. He says, with that you don't need,
22 unintelligible. He contends it could be me, could be it.
23 Write the word me in. It doesn't make a difference. If you
24 pay attention to this sentence, at the most he is saying
25 that you don't need him at the scene.

1 This is not an angry rejection, like: Oh, my
2 God, we had a bull session. Suddenly I realized this was
3 for real. This is not: This is make believe or this is
4 elsewhere, and suddenly I am offended. The tone is not at
5 all consistent with someone saying: No, I am against this.

6 In fact, the later behavior, the later statements
7 between Siddig Ali and Emad Salem, the later conversations
8 with Clement Hampton-El are entirely consistent with
9 Hampton-El never saying no. This is not a no. It may be an
10 attempt at a no. Someone later saying I wish it was a no.
11 But it isn't a no.

12 In fact, Mr. Wasserman in his opening said that
13 Clement Hampton-El -- let me find the quote. I don't want
14 to misspeak. But in his opening Mr. Wasserman said Clement
15 Hampton-El was, "Not so willing to say no when that would
16 have been the easiest way to handle everything."

17 I submit to you by the time defendant Hampton-El
18 hit that witness stand, by the time he heard the tapes, saw
19 the transcripts, and saw the evidence, he realized he was in
20 deep trouble. There was nothing in there, and he had to
21 find something. There wasn't a no in the beginning, and so
22 he seized upon this. You can listen to the tape. The tenor
23 does not change. He's still upward. He still calls Mustafa
24 Assad that night, and you will see in the later
25 conversations, he's still happy to go forward.

1 One other thing you probably never noticed in all
2 the time we went over this conversation, CM25, Government
3 Exhibit 325, Emad Salem hardly says anything. In fact, if
4 you went back just to listen to Emad Salem, every time he
5 talks, they basically tell him to shut up. This was Siddig
6 Ali and Clement Hampton-El talking. The other thing I will
7 say is, you will see that in later conversations -- you can
8 check it, Government Exhibit 315 -- the following day Emad
9 Salem and Siddig Ali discuss with each other how they are
10 happy with how the meeting went, how they are happy that
11 Clement Hampton-El, Dr. Rashid, agreed with their project.

12 If Clement Hampton-El is throwing a fit, saying:
13 Wait a minute, this ain't funny anymore, and says, no, what
14 in the world are Siddig Ali and Salem talking to each other
15 about the next day? They were both there for that
16 conversation.

17 Now, Clement Hampton-El would like you to believe
18 that someplace, someplace along the unintelligibles somehow
19 suddenly the conversation switched and he said, no, no, no.
20 Suddenly we are talking about a Serbian warehouse in Queens,
21 and Siddig Ali and Salem break down and say, you're right.
22 Those are not our targets. Let's switch the Serbian safe
23 house in Queens. Clement Hampton-El is stuck. He's stuck
24 because it was laid out for him explicitly on tape, this is
25 a bomb. He confirmed -- by the way, he answered questions

1 that he had talked about it before, and it's so explicit on
2 the tunnels that he's hoping that you will believe that
3 somewhere in the unintelligible was the resounding, "No,
4 that never happened."

5 May 30 is an important date in this case, not
6 only because of what it shows you about Clement Hampton-El,
7 but because that is the day early on -- you just saw the
8 exhibit where Siddig Ali and the defendant Abdel Rahman
9 spoke. Defendant Abdel Rahman said: Where were you
10 yesterday?

11 Siddig Ali says: Well, I'll tell you later.

12 Well, that later did come. Because that night,
13 May 30, 1993, after they left Clement Hampton-El at Rogers
14 Avenue, Siddig Ali and Emad Salem went to the Abu Bakr
15 mosque. They met with defendant Abdel Rahman. To
16 appreciate this conversation, you have to step back, throw
17 cold water on yourself and once again say: Who's there?
18 What are they doing and what did they know?

19 Well, who's there? Siddig Ali, Emad Salem, and
20 defendant Abdel Rahman.

21 Now, what does defendant Abdel Rahman know? He
22 knows that this is no joke. Sayyid Nosair used to report to
23 him back in Egypt in 1990. Sayyid Nosair in November of
24 1990 kills Kahane. Mahmud Abouhalima used to report to him.
25 He later denied knowing him, and he's involved in blowing up

1 the World Trade Center. Siddig Ali and Emad Salem have both
2 come to him about attacking the United Nations. He's urged
3 Emad Salem to go after the American Army.

4 Now, in a mosque, Siddig Ali is due for the
5 meeting where he's supposed to explain to defendant Abdel
6 Rahman where he was the day before, the day he was out
7 scouting the targets, the United Nations, the Holland
8 Tunnel, the Lincoln Tunnel, with Amir Abdelgani.

9 What does defendant Abdel Rahman say? Does he
10 say, uh, no, we can't do this anymore, enough is enough? We
11 can't talk about violence? No. He criticizes Emad Salem
12 only for talking to the sheik in his apartment. Let me put
13 the transcript up. You will recall from the testimony of
14 Emad Salem what happens is, Salem has a recorder with him.
15 It's on him. He's in the mosque. He doesn't feel
16 comfortable with the briefcase, so he uses a different
17 device.

18 Siddig is off with defendant Abdel Rahman
19 elsewhere in the mosque and he sees Siddig looks at him
20 angrily and then he calls him over. So the conversation
21 picks up when Emad Salem is joining Siddig Ali and defendant
22 Abdel Rahman, and they have been talking alone.

23 Siddig Ali: Come Emad. Get closer.

24 Salem says something: Sheik. Probably saying
25 hello.

1 Siddig Ali: We were talking, him and I, right
2 now.

3 Siddig Ali: So it's like I'm telling you, I
4 mean, I -- regarding your conversations with the sheik.
5 What did I tell you regarding the house? Not to, in the
6 house I mean.

7 Salem: In the house.

8 And he goes on.

9 Salem: Because the house is supposedly under
10 surveillance.

11 He's angry. Not that he brought up violence, not
12 that he wants to do violence, not that he discussed violence
13 with defendant Abdel Rahman, but that he did it in the house
14 and they could possibly be caught. That is the second
15 thoughts, getting caught. Not people getting killed.

16 Defendant Abdel Rahman: I mean, look, Sheik
17 Emad, you are dear, a friend and a brother. We, the sheik,
18 must remain a front for the Muslims, distant from all these
19 matters and should not be talked about even with me. Are
20 you paying attention? Are you paying attention? I mean,
21 meaning to let me just, to the call to God. He goes on to
22 say: Also, a, a, a, there are some things, coughs, for
23 spying that we uncover and some things that we don't
24 uncover. Are you paying attention? Thus, I want to remain
25 a front.

1 He's saying, we can find some bugs, we can't find
2 them all, but I can't be caught.

3 Now, what does he say about what these guys ought
4 to be doing? He's talking to the men who have told him they
5 are planning on carrying out a better explosion than the one
6 at the World Trade Center. Do you remember the last
7 conversation when he's saying that, you know, better than
8 the World Trade Center, Salem is saying, put my skills to
9 use.

10 Defendant Abdel Rahman: I want to remain in this
11 status. May God straighten your path and also the path to
12 God.

13 He goes on: The path to God, that is all right.
14 That is all right. The path, the path to God is obvious.
15 Whoever wants to make a good work for God, the path before
16 him is obvious. It does not need any consultation or
17 anything. The path to God is clear. I want to remain
18 distant. Even, even, from their spying. Even from their
19 spying. Meaning they could uncover five things and five
20 other things, we won't be able to uncover.

21 Just like he told Haggag about killing Mubarak,
22 he doesn't need a fatwa. He's saying the path to God is
23 obvious. What he's worried about is the path to himself,
24 someone tracing back the violent actions to him. He wants
25 to remain a front for the Muslims.

1 He continues, next page, page 4, all of this is
2 Government Exhibit 639-1 in evidence.

3 He says: I want to remain, remain. I want my
4 foot, to put my foot in, to be able to say, no, nothing
5 happened. But I am telling you, even here Siddig to tell,
6 Siddig will tell you that I don't want anyone to present to
7 me any subject of this kind so I can remain for the call for
8 God and remain in the front.

9 He wants to be able to say he had nothing to do
10 with it. He wants to be able to do what he did on the CNN
11 video, stand up, be called "Respected Dr. Abdel Rahman," and
12 deny knowing Mahmud Abouhalima.

13 In fact, he went on to say: I mean Siddig,
14 Siddig once stayed away for me for a while. When there was
15 something even from a distance, he stayed away from me.

16 Now, remember I told you earlier that the test
17 explosion was important. Because what happened in the car
18 between Siddig Ali and Mahmud Abouhalima back before the
19 World Trade Center bombing would eventually be known to
20 Haggag and to others, would become known to Egyptian
21 intelligence. They would question Mahmud Abouhalima about
22 it in Egypt, and the word would come back to defendant Abdel
23 Rahman. There was concern that how did that conversation
24 get compromised. And you know that in fact Haggag was a
25 person talking to Egyptian intelligence. You can appreciate

1 this conversation.

2 Abdel Rahman: Mahmud told Mohammed -- Mahmud
3 Abouhalima telling his brother -- and told Abdel Rahman --
4 referring to Haggag -- and Abdel Rahman told me. He told me
5 a month ago. He told me that, he told me that Siddig,
6 coughing, either informed the FBI or informed I don't know
7 who, until they interrogated Mahmud in Egypt.

8 Abdel Rahman: Mahmud told Siddig in a car about
9 these words and did not say it to anyone else. So how did
10 it reach Egypt? And that what caused thousands of question
11 marks.

12 He goes on and says: The second point, the
13 second point that Abdel Rahman -- referring to Haggag --
14 spoke of with respect to Mubarak, he said Siddig was the
15 only one who knew.

16 That conversation shows you two things. In fact,
17 Abdel Rahman's been kept informed about what Mahmud
18 Abouhalima was questioned about over in Egypt. They are
19 trying to figure out who the informant is, and Abdel Rahman
20 knows that that topic in the car isn't about Mubarak.
21 That's the second point. Again, indicating that he had
22 discussed Mubarak on a prior occasion with Haggag.

23 It goes on on page 7, Siddig Ali makes plain what
24 it is that is going on.

25 He says: The subject is -- so for the matter to

1 spread like that, Mahmud came to me to meet, and we sat in
2 front of the mosque downstairs. He requested from me in
3 writing that he has something he wants me to test it for
4 him. OK? So I said I will take the matter to the
5 appropriate people.

6 What's going on there, Siddig Ali is confirming
7 that this happened. There was this conversation in a car
8 with Mahmud, and who, of all people, but the so-called
9 servant of God is sitting down trying to figure out who had
10 compromised the inner circle. Who is giving up information
11 about when people talk about bombs for terrorist acts?

12 THE COURT: Mr. Fitzgerald, if you could come to
13 a break point in about five minutes or so?

14 MR. FITZGERALD: Yes, Judge.

15 THE COURT: Thank you.

16 MR. FITZGERALD: I will also refer you to page
17 12, same exhibit, 639-1. Emad Salem brings it up again to
18 confirm: All what I want to know, this kind of work is
19 religiously forbidden or permissible.

20 Siddig Ali cuts him off. He doesn't want him to
21 talk anymore. He's just yelled at him for talking in the
22 house before.

23 Defendant Abdel Rahman: But, by God, I want to
24 stay a front for the Muslims, and my position stays strong.
25 I just want to stay away from these things, and everyone

1 knows the way to Islam and to serve Islam. So the matters,
2 the matters, I mean, become clear now.

3 The man who stands on podiums saying jihad, is by
4 the sword, the cannon, the grenade and the missile, jihad is
5 fighting the enemies of Islam, America is the enemy of
6 Islam, is telling the people who want to blow something up,
7 everyone knows the way to Islam and to serve Islam. So the
8 matters, the matters, I mean, become clear now.

9 He's telling them go ahead and do it. Leave me
10 out. I want to remain a front for the Muslims.

11 This took place with defendant Abdel Rahman in
12 the basement of a mosque. I will pick up there tomorrow.

13 Thank you.

14 THE COURT: Ladies and gentlemen, we are going to
15 break for the evening.

16 Please leave your notes and other materials
17 behind. Please be particularly careful not to see, hear or
18 read anything about this case or any related matter and
19 please don't discuss it obviously. We will resume tomorrow.

20 Good night.

21 (Proceedings adjourned to Wednesday, September 6,
22 1995 at 9:30 a.m.)

23

24

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----X

3 UNITED STATES OF AMERICA,
4 v.

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

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

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

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

S5 93 Cr. 181 (MBM)

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

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

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

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

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

Defendants.

-----X

September 6, 1995
9:45 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

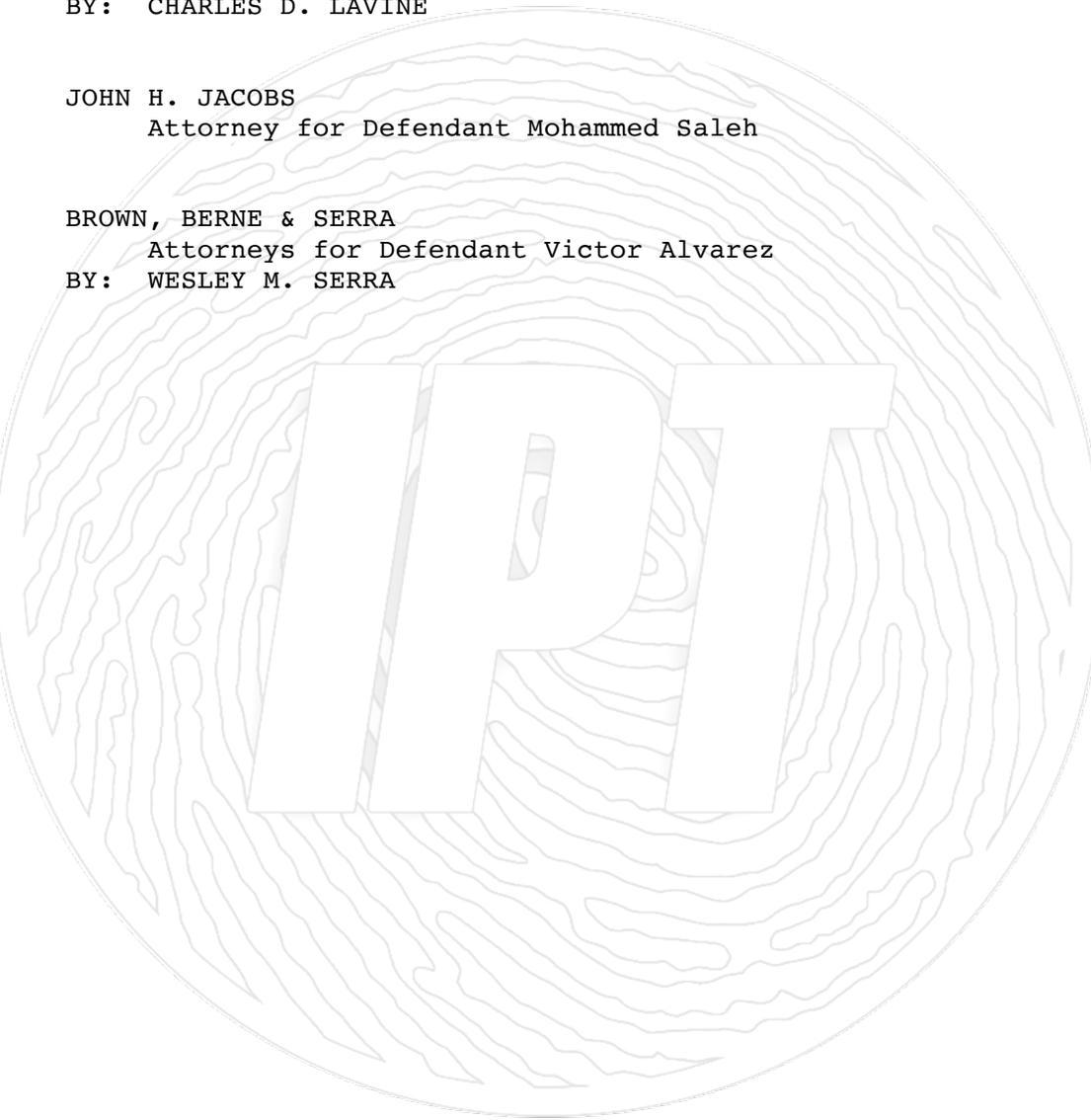
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Trial resumed)

2 (In open court; jury present)

3 THE COURT: Good morning, ladies and gentlemen.

4 JURORS: Good morning, your Honor.

5 THE COURT: Mr. Fitzgerald, ready to continue?

6 MR. FITZGERALD: Thank you, Judge.

7 Good morning.

8 JURORS: Good morning.

9 MR. FITZGERALD: When we broke yesterday, we had
10 just covered May 30, 1993. In fact, we had gone over the
11 meeting in the basement of the Abu Bakr Mosque, where
12 defendant Abdel Rahman had spoken to Emad Salem and Siddig
13 Ali and said that the path for someone who wants to do a
14 good work for God is clear, words to that effect, but that
15 he wanted to remain a front for the Muslims, and of course
16 you know that he had made clear just a week before when he
17 had been asked, if someone wanted to carry out a bombing
18 operation more devastating than the World Trade Center in
19 America against the United Nations could they do it, and he
20 said that was permissible, and even recommended directing it
21 more directly against the American army.

22 We are going to pick up today with another
23 important day, which is June 4, 1993, which is the first
24 meeting you will see between Emad Salem, Siddig Ali, and
25 Mohammed Saleh. When we cover that meeting, I would like to

1 take you again to last winter, to when the opening
2 statements were given, to remind you of what you were told
3 about Mohammed Saleh. Mr. Jacobs told you in his opening:
4 "The entire reason Mohammed is here today is because he
5 serviced the needs of a customer who came to his gas
6 station."

7 He then went on to describe Mohammed Saleh's
8 life, and he said, "It's not particularly exciting. It in
9 fact is very uneventful and commonplace. He is a man from a
10 Middle Eastern country who came to the United States to get
11 an education, and to open a business and support his family.
12 Thousands of other people have done it and continue to do
13 the same thing. He went to work every day. He paid his
14 taxes. He had a nice relationship with his neighbors. He
15 went to the parent/teacher conferences. He went to grocery
16 store. He did the same things that all of us do. There was
17 nothing unusual about his life. He is here today because he
18 sold gas. That's right."

19 The image you had there is John Q Public, coming
20 from overseas, trying to make a life for himself, all he did
21 was sell gas. Let's look at June 4, 1993. Because in
22 Government's Exhibit 333T, a tape recording of that meeting,
23 you see first at page 16 Mohammed Saleh, John Q Public, is
24 talking about three brothers who carried out what he called
25 the "highly respectable operation," talking about people who

1 had ambushed an Israeli bus full of soldiers, and 42 people
2 were killed and 7 wounded. That was the average ordinary
3 person doing the things that we all do, sitting around
4 talking about 42 deaths as a highly respectable operation.

5 Then at page 21 -- I will put this blow-up on the
6 easel -- Siddig Ali broaches with him what he wants to do.
7 He says: So, sheik, I am telling you, God willing, God the
8 almighty is a witness on what I am saying, we are coming,
9 aiming at an Islamic, very good action which will not, God
10 willing, effect any harm on Muslims because you, God
11 willing, you will not be connected with and you will have no
12 relation with it, and your name will not appear in it at
13 all. I am telling this, God willing. We ask God the
14 almighty to grant us success because we are talking about
15 people who deserve -- I mean that you know certain people
16 who have money have, unintelligible, and they want to
17 contribute, they want to pay for jihad's cause because the
18 jihad's issue came one of the closed subjects. We don't
19 want to stop, we want you to help us a little bit.

20 What does John Q Public say? Mohammed Saleh:
21 Are these jihad subjects for here or for Egypt or in -- the
22 point is.

23 Siddig Ali: Yes, yes, good.

24 Saleh is trying to figure out here or over here.

25 Mohammed Saleh: The projects, here or, uh.

1 Siddig Ali: Here.

2 Mohammed Saleh: Yes, means here.

3 Siddig Ali: It is the military.

4 Mohammed Saleh: These projects are a duty. The
5 people who will operate it, in it, must be knowledgeable.

6 Siddig Ali: Extremely.

7 That's a conversation he had on June 4, 1993,
8 three weeks before he provided the diesel fuel.

9 The conversation continued on, and in fact
10 Mohammed Saleh described at page 23 that: One time some
11 brothers of Hamas's young men told me we would like you to
12 get us a night radar. I tried places, by God, but I could
13 not get it. By God, I need it badly. The guys told me we
14 wish. I told them I am ready to buy it for you no matter
15 how expensive. I will deliver it to you.

16 We have heard about parent/teacher conferences,
17 the good relationship with the neighbors. Now we find out
18 that he is selling Hamas equipment like night radar. Siddig
19 Ali and Saleh went on. Siddig Ali invited Saleh to
20 participate in the actions and Saleh says, quote, page 25:
21 By God, brothers, these matters are highly required because
22 those ones are working and planning while we Muslims are
23 unfortunately asleep. Also, the issue is now a matter of
24 universal conflict, a conflict in which Muslims will remain
25 as stones, to be played with and kicked around everywhere,

1 and unfortunately, there is no Muslims to retaliate.

2 It goes on several pages later, and Salem says:
3 The mental, intellectual, physical, financial,
4 psychological. What are the capabilities which you able to
5 partake in?

6 Mohammed Saleh says: By God, brothers, I mean,
7 any, in any way one can provide, will not renege. I mean,
8 be it materially or physically or intellectually, I mean.

9 They are not talking about an order of gas here.

10 Then we get to page 51. On page 51 you will see,
11 Siddig's says: So if we were to ask you, sheik, based upon
12 what I know about you -- and let me stop there.

13 You will see in the Siddig Ali FISA wiretaps and
14 also in a phone chart that is in evidence -- I think it is
15 Government's Exhibit 522 -- that Siddig Ali was put in touch
16 with Mohammed Saleh by the people from the Sudanese Mission,
17 the same people Siddig Ali wanted to go to for the inside
18 information on the United Nations. You can read the phone
19 calls, the transcripts, Siddig Ali calling up Mohammed
20 Saleh, talking about Ahmed Yousef, isn't he a good brother.
21 And the phone calls, the phone traffic shows that Mohammed
22 Saleh was in touch with the people of the Sudanese Mission
23 long before he ever met Siddig Ali.

24 Siddig Ali: So if we were to ask you, sheik,
25 based upon what I know about you, what do you think? We

1 have pinpointed specific targets, unintelligible, OK.

2 He is talking about targets being pinpointed
3 quite explicitly.

4 He goes on to make clear, Siddig Ali: If we were
5 to ask you, if there were targets here now that are going to
6 be hit, to be hit, and it is well studied as a whole case,
7 what can you tell us yourself?

8 Mohammed Saleh: By God, this question needs some
9 thinking.

10 It is presented flatly to him. Targets have been
11 pinpointed. They are here, they are now, they are going to
12 be hit.

13 And he continues on. Mohammed Saleh, who earlier
14 talked about how Boutros-Ghali's murder is a must, says: I
15 don't just want to give you answers. I might have already
16 given you the answer about Boutros-Ghali and things of that
17 sort. An issue like this one requires more thinking.

18 We will see that later on in the transcript, that
19 thinking is going on.

20 This is the following pages of the transcript
21 just read to you from 51. This is 52 and 53 from
22 Government's Exhibit 333, and this is the part of the
23 transcript where they are telling him what the targets are,
24 and you can follow along and see that Siddig Ali didn't want
25 to say it. He starts to write it, and they are even worried

1 about a piece of paper that might be incriminating. Later
2 on Siddig will crumple it up, you will hear him crumple the
3 paper, gives it to Emad Salem, Emad Salem eats it, Mohammed
4 Saleh makes a joke about, you know, what if the ink is
5 poisonous. This is something they don't want heard. They
6 don't even want to leave a trace on a piece of paper.

7 Siddig Ali says: The Islamic authority, and we
8 asked, and we came up with specific results.

9 Salem: Meaning the blessings that exist.

10 Meaning he got approval from the Islamic
11 authority -- we know who that is.

12 Goes on here to say: What am I going to do?

13 Pause -- here is where it says no need to write. OK, there
14 is no need to, no, no name. They don't want to mention
15 defendant Abdel Rahman's name. That's it.

16 Siddig Ali: Look here, look here, uh, uh, not a
17 word.

18 Salem: No need to write, sheik. Salem: No need
19 to write.

20 Siddig Ali: What am I to do then?

21 If he can't write and he can't talk about this
22 very sensitive subject with this gas station owner, what's
23 he to do?

24 OK. Pause. Meaning all of this. Good. That's
25 first.

1 He has named the first target.

2 This is second.

3 Salem: No writing.

4 Siddig Ali: Hm, I'm gonna eat, my brother.

5 He is going to eat the piece of paper when they
6 are done so he can write it out.

7 Salem: Uh.

8 Mohammed Saleh: Hm.

9 Then he names the second and third targets, the
10 tunnels. He is writing them on a piece of paper and
11 indicating, and you can hear the words: For example,
12 unintelligible, this is two, three, OK. Two, three, between
13 what?

14 Salem: The states.

15 Two and three between the States are the tunnels
16 connecting New York and New Jersey.

17 Siddig Ali: Each and every one of these things
18 is not a joke.

19 Mohammed Saleh: Of course not.

20 Siddig Ali: Complicated. Things that are
21 complicated, that's not child's play.

22 Salem: Three targets, three serious acts, three
23 acts that are --

24 Siddig Ali: Big.

25 Salem: Not small.

1 Mohammed Saleh: Um.

2 Siddig Ali: Look. I look, I opened my heart out
3 to you, my brother, opened my heart. God willing, just
4 talking about these things will get us in deep trouble.

5 Mohammed Saleh: Yes, of course, indeed.

6 That's not a guy who is in this courtroom because
7 he sold gas.

8 Things continued on. You can see there Mohammed
9 Saleh making the reference about the poisonous substances,
10 because that's when Salem is eating the piece of paper that
11 is so incriminating.

12 A couple of pages later Salem says to Mohammed
13 Saleh: What are your capabilities, sheik? What are your
14 capabilities?

15 Mohammed Saleh: God willing, I shall press my
16 capabilities.

17 He knew that it was a strike, it was a strike
18 here for jihad and the targets had been made plain.

19 Let's move on from June 4, 1993. The next date
20 we will focus on is June 13, 1993, and we will focus on
21 Government's Exhibit 340 for just a second, 340T. That is a
22 conversation between Emad Salem and Fares Khallafalla.

23 Let's take stock of where we are with Fares Khallafalla.

24 Fares Khallafalla had been in the safe house on
25 May 27 and 28 of 1993. He had heard and seen a timer being

1 tested. There was talk about lanes, cars, opening hoods.
2 He was there for the part which you saw in the videotape.
3 You saw the transcript. Boom. Boom, boom. All America
4 will be on stand by.

5 Now on June 13, he goes with Emad Salem to buy
6 timers. Back last winter when this case opened, Ms.
7 Amsterdam told you a sob story of Fares Khallafalla's life,
8 with lots of details you never heard in the evidence. She
9 talked about how he had to go in a shopping area, I think it
10 was for his mother, to buy cotton sheets, and somehow Emad
11 Salem had gotten him to buy timers. When we look at the
12 transcript at page 8, Fares Khallafalla makes clear that he
13 had tried to buy timers the day before and was unsuccessful.

14 And then it is quite clear that he knew what the
15 timers were for. Page 19. Fares Khallafalla, he is talking
16 about being cautious. He wants to be careful, he wants to
17 actually stay away from Siddig Ali.

18 Khallafalla: Yes, I see him in the mosque. As
19 usual, I ask him what's up and that's all. But, for
20 instance, I don't go out of my way to visit him.

21 Salem: That's right, Fares. I like your way of
22 thinking and the way you are organized since the last time
23 we met. After you left I told Siddig that I like his way of
24 thinking and analyzing things and his suggestions. These
25 are the people whom we can depend on.

1 Khallafalla: We have to be cautious. If you are
2 going shopping for mom, you don't have to be so cautious.

3 Continue on. Salem starts talking about the
4 timer. They go on.

5 Khallafalla says: To be perfect and to control
6 it.

7 Khallafalla: To control the timer.

8 We continue on. Salem says: The most important
9 thing is the timing, adjusting the time. When you put the
10 timer and the hadduta in any place, this place must be
11 studied.

12 Fares Khallafalla: Yes.

13 Salem: How far you have to be from it.

14 Khallafalla: Yes, yes.

15 Salem: So that when the hadduta --

16 Khallafalla: Explodes.

17 They are trying to figure out how far you are
18 from the bomb when you use a timer to make it explode.

19 Let's move on to June 16, 1995. This is a
20 conversation -- I will be so bold to call it a meeting --
21 between Siddig Ali and Emad Salem and defendant Clement
22 Hampton-El, at the Farook Mosque. Let's take stock again of
23 where we are at.

24 The last time, Government's Exhibit 325, the
25 meeting on May 30 of 1993, Clement Hampton-El told you that

1 what they were talking about was so serious it scared him.
2 He just had to mention Mafia connections at the end, just to
3 let them know he would be able to take care of himself. He
4 couldn't even joke about these things. Of course, he never
5 picked up the phone, called the police or the FBI. But
6 these are the people coming back to him.

7 He told you on cross-examination when he was
8 asked if he had a meeting on this date, June 16, he said,
9 well, I was almost hijacked in a mosque. Almost hijacked in
10 a mosque.

11 When you go through the conversation, you will
12 see why he wants you to think he was hijacked, because he
13 has to squirm away from this conversation, because it
14 confirms that even though he wants to tell you that he is
15 saying absolutely not, at the end of the May 30 meeting he
16 is still saying yes.

17 Those are reminders. I will be back to them in a
18 minute. Here we go.

19 Siddig Ali: Unintelligible, anyway, all right, I
20 have business to take care of, unintelligible. Pause. Now,
21 unintelligible, first, we need a, unintelligible, we need,
22 unintelligible.

23 First reminder I will remind you of here, this
24 conversation is in English, and if you hear the initial tape
25 that was put in evidence, you can actually hear he says the

1 word detonator or detonators, and in fact Mr. Wasserman put
2 in an enhanced copy of the tape and in his transcript he
3 agrees that the word detonator goes there. So Siddig Ali is
4 saying, we need detonators.

5 Hampton-El: Um-hum. Yeah.

6 Siddig Ali: Whenever.

7 Salem: Three, please, before you leave.

8 Salem: Because I don't want to keep hanging
9 here. So we want to know.

10 And they go on.

11 Siddig Ali: You know what I'm saying.

12 And then Hampton-El; um-hum, I'm gonna call on
13 some people and see if it's possible. I'll know definitely,
14 inshallah, by tomorrow. I will give you a beep, affirmative
15 or negative.

16 The detonators have been brought up again and his
17 response is yeah, I'm going to call on some people tomorrow
18 and I will try to get you an answer.

19 Now my second reminder. If you look at the
20 defendant Clement Hampton-El's version, you will see that at
21 this point where he says where we're at, the word passports
22 appears in the transcript, and I submit to you if you listen
23 to the tape and you listen to it carefully, the word
24 passports is not there. The words you'll hear is where
25 we're at as far as to, and then he says where we're at, you

1 know what I'm saying.

2 (Continued on next page)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

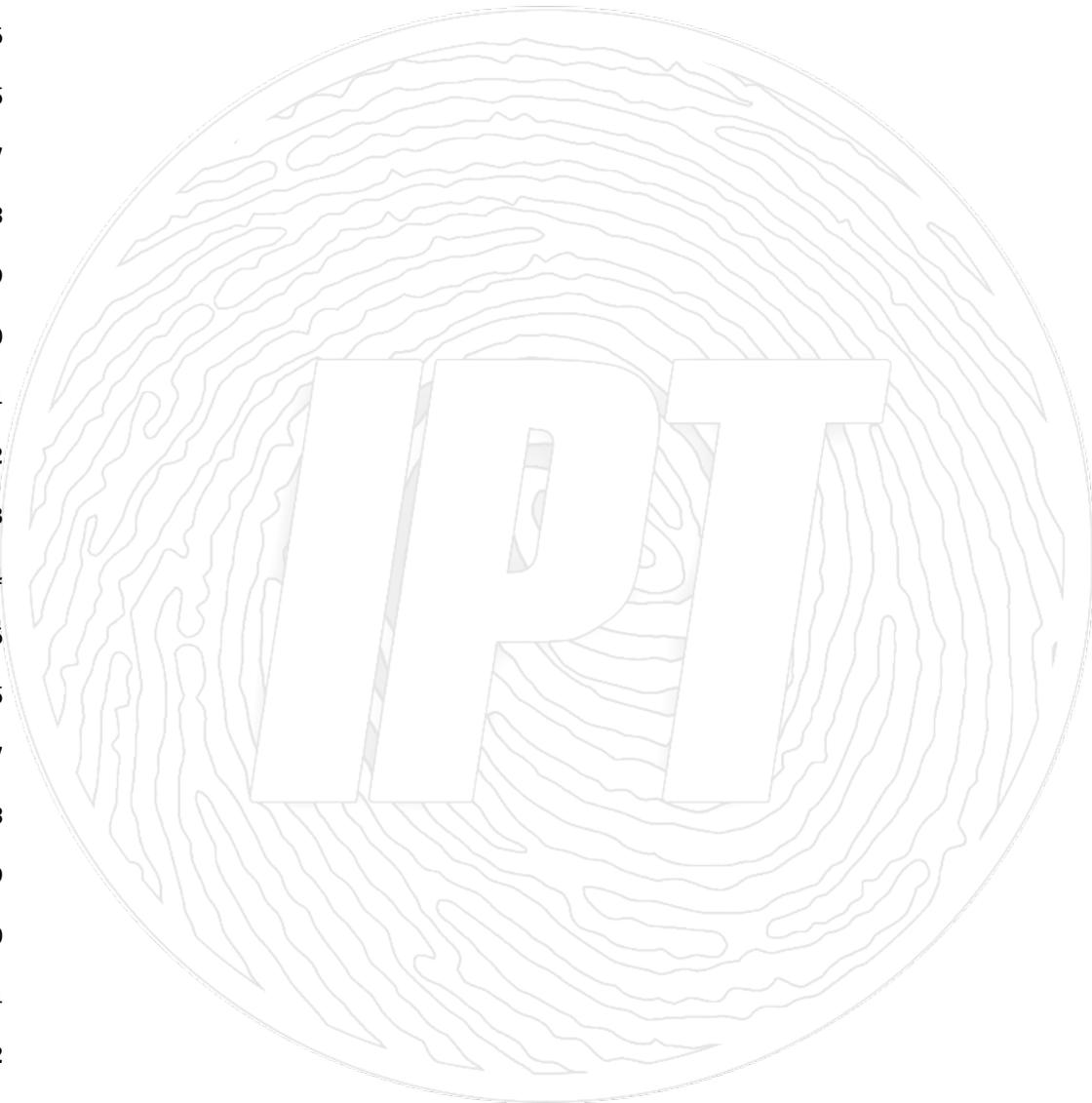
21

22

23

24

25



1 If you listen, you will hear the word "far" in
2 the middle of it, not "passports." In context it makes
3 sense: Just want to know where we're at, as far as to where
4 we're at.

5 The reason I point that out is you have to put
6 the word "passports" in there if you want to avoid what the
7 obvious conclusion is here -- we need detonators, I am going
8 to call on some people tomorrow. You want to insert
9 "passports" if you are Clement Hampton-El because this is a
10 very damning conversation.

11 I will also tell you of something else, the word
12 passports is not there. Even if it was, it would make
13 little difference, because he knows what they are about. He
14 knows they want to do a bombing operation here in America
15 and then head overseas. Whether he is giving them
16 detonators to blow the bombs up, or passports to help flee
17 the country afterward, he is still trying to help the
18 bombing operation.

19 You will see from the context who he is going to,
20 Mustafa Assad. That there are passports going on at this
21 time, but the detonators are the key. In fact, in all the
22 conversations during this time, you will never see
23 detonators ruled out by Siddig Ali and Emad Salem. They are
24 sitting around wondering, can he come up with the ball, can
25 he come up with the C-4.

1 Clement Hampton-El is trying to get detonators
2 and passports. Either way you will see he's guilty. He is
3 trying to make the bombing operation succeed.

4 Let's move on to June 17, the following day,
5 1993. This is a meeting I have actually talked about
6 somewhat already in my summation. That is the meeting on
7 June 17, 1993 in the apartment of defendant Abdel Rahman.
8 That is the meeting that happened after a press conference
9 that defendant Abdel Rahman gave about Mubarak. And after
10 the press conference, you may recall that Emad Salem, Siddig
11 Ali, and another fellow or two are sitting around and they
12 are complaining about Haggag. They are trying to figure out
13 who the informant is, and Abdel Rahman sends someone to go
14 get Haggag and bring him into the room.

15 Realize who the people are in the room. Siddig
16 Ali is someone who has gone to defendant Abdel Rahman before
17 to talk about his bombing plans. Emad Salem is someone who
18 has gone to defendant Abdel Rahman before to talk about
19 their bombing plans. They both went together on the day he
20 said the path is clear, and now defendant Abdel Rahman is
21 going to sit down with them to try to flush out the
22 informant in their inner circle, try to figure out who is
23 the leak in the inner circle of the jihad Army, because if
24 you have someone talking you may not succeed.

25 I think I'll quote for you I think probably for

1 the last time from Ms. Stewart's opening because she told
2 you something about what defendant Abdel Rahman's state of
3 knowledge in this case was. She told you --

4 MS. STEWART: Objection to that, Judge.

5 THE COURT: Overruled.

6 MR. FITZGERALD: "There is not even mere
7 association unless preaching before hundreds of people, some
8 of whom may contain a defendant or two, is association. Not
9 even knowledge without participation. Nothing. Nada. No
10 matter how hard they tried. We, Mr. Clark, Mr. Jabara and
11 myself, we defend an innocent man, wrongfully accused, and
12 the evidence will prove it."

13 Well, you will see in this conversation that they
14 went to defendant Abdel Rahman, and one of his roles was to
15 be the person who was giving information on who they suspect
16 were the informants. That was part of his job and he had
17 prior knowledge of what was going on. You will see from the
18 conversation these topics are not new to him.

19 Bear in mind, once again, that you now know more
20 than the people in the room there knew other than Haggag.
21 Because Haggag was talking to the Egyptian authorities,
22 Haggag knew that Mahmud Abouhalima had been arrested because
23 of what he said. Haggag knew how the Egyptian authorities
24 knew about that conversation between Mahmud Abouhalima and
25 Siddig Ali in a car about explosives before the World Trade

1 Center bombing.

2 You will see that there are two issues that have
3 raised suspicions -- first, Mahmud's arrest and questioning,
4 and, second, the fact that the FBI knew about the plot to
5 kill Mubarak. Because, remember, Haggag told the Egyptians,
6 the FBI came to visit him, and Haggag spread the word, "The
7 FBI's on to us."

8 After the press conference, after the cameras are
9 gone, after the ordinary citizens won't see what's
10 happening, defendant Abdel Rahman, Siddig Ali, Salem and
11 Haggag sit down to talk.

12 Siddig, page 47, brings up the subject of the
13 brother. There is no need no mention his name. Haggag told
14 you and the context is clear that the brother is Mahmud
15 Abouhalima.

16 It goes on. At page 55, there's a reference that
17 the brother told Haggag that "talks regarding dangerous
18 matters at certain locations" had been compromised, and then
19 they go on and make clear in context that also the Mubarak
20 plot had been compromised.

21 This is Government Exhibit 348T2, page 61.

22 Siddig Ali: We will see which of us who is more
23 truthful, if God permits.

24 Siddig Ali and Haggag are having a cat fight.

25 Haggag has basically accused Siddig of being an informant to

1 cover himself. Siddig Ali is thinking maybe Haggag is the
2 informant. Going back and forth, who's lying, who's telling
3 the truth.

4 Siddig Ali: First, the first thing I learned
5 that you, or that because of it, you had suspected, or it
6 was rather one of the reasons that led you to suspect was
7 the very special matter and which the sheik knows of. I had
8 told him about it. He knows about it and there is no reason
9 discussing it here.

10 Siddig Ali saying to Haggag, I know why you
11 suspect me, that special matter that the sheik knows about,
12 I told him about it.

13 So we are clear, that particular reference is not
14 to the explosives discussion before the World Trade Center,
15 but to the plot to kill Mubarak. If you read the pages
16 before and after, the context makes it clear. Later on in
17 that same conversation at page 68 Haggag says in front of
18 defendant Abdel Rahman that he heard from Mahmud and from
19 the sheik that what Mahmud had discussed with Siddig was
20 known to the FBI.

21 Think about this for a moment. They are sitting
22 down in a room having conversations where they are admitting
23 to knowing what is going on with Mahmud Abouhalima, what
24 happened before the World Trade Center bombing. Siddig Ali
25 is saying, hey, basically I talked to him about explosives

1 before the bomb went off. A remarkable conversation, and
2 the importance and the danger of this conversation was not
3 lost on the people in the room.

4 Page 79, Haggag says: We will all be accountable
5 for what we have said.

6 Defendant Abdel Rahman says: Wait. Is it going
7 to expose more than what has already been exposed?

8 He knows how much this conversation is laying
9 bare what happened.

10 The conversation continues on, pages 80 and 81,
11 Siddig Ali is talking about the captive brother again --
12 that's Mahmud -- and how he met with him a couple of hours
13 before his travel. Defendant Abdel Rahman is asking before
14 his travel, and he says yes. And he goes through the story
15 about how it was that he met with Mahmud, he gave him
16 letters to go to the Sudan, about the shot from the doctor
17 and then he learned later that he went to Egypt. At page
18 90, Haggag says, "These are very dangerous issues."

19 Defendant Abdel Rahman agrees. "Is there
20 anything else more dangerous than the already mentioned
21 ones?"

22 They all know that they are sitting down talking
23 about the workings of the inner circle of the people
24 involved in blowing up the World Trade Center and trying to
25 kill Mubarak.

1 At the end, they are fighting back and forth
2 about what the defendant Abdel Rahman said about Siddig to
3 different people. What did he say to some fellow. And
4 defendant Abdel Rahman says, I didn't speak bad about
5 Siddig. Then he says, "Even if I wanted, I would advise him
6 or tell him, 'Be firmly certain of the position. Don't do
7 anything, my son, until you know who the individuals that
8 are with you.'"

9 That's the type of advice he gives. He's not
10 preaching at a mosque among hundreds of people where he
11 doesn't know who's behind me and what they're up to. He
12 sits in rooms, talks about the inner secrets, he helps to
13 ferret out the informants. He gives advice. Don't work
14 with someone unless you are sure you can trust them.

15 There has been so much talk in this case about
16 tapes and so many different types of tapes that something
17 could be lost upon you here, which is that there are but a
18 few hours of tape of the defendant Abdel Rahman meeting in
19 private with Emad Salem. Not thousands of hours, but a few
20 hours.

21 What is remarkable is how much Abdel Rahman
22 admitted to and planned during those few hours. He sat in
23 the kitchen -- you heard the whispering yesterday -- and
24 urged someone to direct a violent attack right at the United
25 States. He met again in a mosque and said, the path is

1 clear. I must remain a front for the Muslims. And he sat
2 in a room trying to ferret out the informant so that the
3 plans would still succeed. So all on tape, and that is
4 devastating evidence before you.

5 Let's move forward two days to June 18, 1993.
6 June 18, 1993, Government Exhibit 763T is a call from
7 Mustafa Assad, and, by the way, you may see on the
8 transcripts Mustafa Assad is listed by the name Mustafa
9 Mohammed. There was evidence, testimony, that those are one
10 and the same people. That's Mustafa Assad calling up
11 Clement Hampton-El, the same Mustafa Assad who is supposed
12 to go with Siddig Ali and Salem to see Nosair in the summer
13 of 1992 when a bombing plan was underway, the same Mustafa
14 Assad that Ali Shinawy had told Salem had helped us making
15 bombs. The same Mustafa Assad that on May 30, 1993, when
16 Hampton-El is in Rogers Avenue, he says, I can go to one
17 brother, someone says, Mustafa, and they are talking about
18 detonators.

19 Government Exhibit 763T, June 18, Mustafa Assad
20 reports back to Clement Hampton-El: You're going to have to
21 wait. They told me they couldn't speed it up. It's
22 possible, but you've got to go through channels. Talking
23 about at least two days.

24 Clement Hampton-El had been in touch with Mustafa
25 Assad, and he was working on what it was he was supposed to

1 provide these people. That was detonators and passports.

2 Now, we arrive at June 19, 1993. That is another
3 very important day in this case because that is the first
4 appearance by defendants Victor Alvarez and Tarig Elhassan
5 in the safe house, but they are by no means the only people
6 to play an important role that day.

7 This is a day where the transcript, Government
8 Exhibit 352T, is quite a long one. I think it goes over 200
9 pages, and the meetings start out at Siddig Ali's apartment
10 in Jersey City. Then there is a drive in Salem's car,
11 people meet up in the vicinity of Atlantic Avenue in
12 Brooklyn, and then they head out to the safe house. You saw
13 that it is a combined transcript of all the various
14 activities of the day.

15 The transcripts start off with Amir Abdelgani in
16 Siddig Ali's apartment, the person who was portrayed to you
17 as having a basic story of a common immigrant. He has very
18 explicit conversations. In fact, Amir Abdelgani has
19 conversation after conversation after conversation that's
20 explicit.

21 At pages 10 through 13 of the transcript, he has
22 a very explicit conversation about tunnels, placing the
23 hadduta, timers, how the cars would work and how the cars
24 will be wiped down for fingerprints, showing you this is not
25 some military operation overseas, but a crime. He is

1 worried about fingerprints being lifted from the car.

2 At pages 14 to 16, Amir Abdelgani asks some
3 questions and discusses how the traffic will be, whether
4 it's busy on the weekend until 2 or 3 in the morning, "like
5 what happened yesterday." Because he had been looking at
6 the tunnels himself the day before. And lest there be any
7 doubt, Siddig Ali talks about fire and explosion in the
8 tunnel and the resulting water. And Amir talks, Amir
9 Abdelgani talks about the middle of the night. It just
10 keeps going.

11 Page 19, Siddig Ali talks about billions in
12 damage and the economy will come to a standstill. Page 21,
13 Amir Abdelgani describes the way the traffic goes in the
14 different lanes in the morning rush hour, because he is
15 paying attention to what's happening to the target of a bomb
16 he wants to place.

17 Page 22, he says, Amir Abdelgani, that maybe they
18 only need one bomb in the middle and says, "In the middle
19 the water comes in and will cover everything."

20 He's stalking a tunnel that links New York and
21 New Jersey and thinking it all through. He goes on in the
22 transcript to talk about three haddutas, five minutes
23 between cars, describing how the guy will have to close his
24 door and open the hood. The guy who is going to close the
25 door to the car and going to pretend to be disabled and open

1 the hood, meanwhile while the bomb goes tick-tick-tick in
2 the tunnel.

3 In fact, he's thinking about that and he's
4 thinking about himself. Pages 57 and 58, he's right in the
5 thick of a discussion with Salem and Siddig Ali about
6 blowing up the tunnels. He talks about leaving a sign in
7 the car warning of a bomb so that the tow truck will be
8 afraid to move it. They are not worried about the tow truck
9 driver. He wants to make sure that if the bomb doesn't go
10 off quick enough, no one takes the car and tows it out of
11 the tunnel where only maybe a couple of people might get
12 killed. He says, "Will three minutes be enough to get us
13 out from the dangerous place?"

14 He's thinking ahead to the mass murder that's
15 going to happen in the tunnels with the bomb. He just wants
16 to make sure he's not around once he pushes the button.

17 And he continues on, showing you that this is
18 criminal activity. He says, "Traces will be left behind.
19 Can it indicate that it was made of this, this, or that?"

20 Shortly after in the conversation in Siddig Ali's
21 apartment, Victor Alvarez enters. And shortly after that,
22 Fares Khallafalla enters. Before we turn to Victor Alvarez,
23 let's talk about Fares Khallafalla for a moment. Because
24 what you'll see Fares Khallafalla does for a good part of
25 June 19 -- and we'll come back too him later on -- is that

1 he is present for a conversation between Siddig Ali and
2 Alvarez that we'll talk about later, but a conversation that
3 makes clear this is a strike against America. After that
4 conversation, Fares Khallafalla goes out to buy fertilizer
5 with Siddig Ali. Let me show you how you figure that out.

6 At page 95 in the transcript, there are
7 directions, directions being given to go to a store to buy
8 fertilizer. During the directions you'll see references to
9 streets -- Church Street, White Street, Avenue of the
10 Americas. You may recall last week a surveillance agent
11 came in and he saw Siddig Ali and another man buying
12 fertilizer on June 19 at a location surrounded by those
13 streets.

14 At page 106 Siddig Ali has not yet left to go get
15 the fertilizer. He says, he will "go with Fares."

16 They still haven't left yet. They are both there
17 on the transcript and you get a sense of the time because at
18 page 109 someone asked Emad Salem the time and he says it's
19 10 to 4.

20 Then shortly thereafter, at page 112, Fares
21 Khallafalla says, "I will go home. Then we will go."

22 So Fares Khallafalla wants to go home first and
23 then he and Siddig Ali will go to buy the fertilizer. And
24 then you will see that at page 117, Siddig Ali splits up, he
25 leaves the conversation. He says good-bye to Salem and he

1 says he will go with Fares.

2 At this point there's no time in the transcript,
3 but you can see another 11 pages down they say it's 6:15
4 p.m., because between the 10 to 4 reference and 6:15 is a
5 lot closer to the four o'clock reference. What you have
6 here is Fares Khallafalla saying, I'm going. I'm going
7 home, then I will go with Siddig. And Siddig is saying I am
8 going with Fares and we are going to buy fertilizer.

9 What the agent told you, the agent stationed
10 outside Siddig Ali's apartment was that after 4 o'clock
11 Siddig Ali got into a van and in the van was a driver. This
12 driver was 6 foot 4, about 200 pounds and taller than Siddig
13 Ali. You saw Siddig Ali when he sat here. You have seen
14 all the defendants. The defendant taller than Siddig Ali is
15 defendant Fares Khallafalla.

16 He said that he followed the van with Siddig Ali
17 and the 6 foot 4 fellow, the fellow taller than Siddig Ali,
18 to 926 West Side Avenue. There was a stipulation in
19 evidence that Fares Khallafalla lives at 926 West Side
20 Avenue. Just like he said on the tape, he was going home
21 first.

22 The person went in, the tall fellow, and came out
23 of 926 West Side Avenue, got back in the van. He drove to
24 the nursery at Church Street and Avenue of the Americas.
25 That's when the surveillance person saw both fellows go into

1 the store and come out with five bags, and then when they
2 went off at a later location, 11th Street, the vicinity near
3 where Tariq Elhassan lives, the surveillance guy went up,
4 looked in the back of the van and saw bags of fertilizer.

5 You will also see in the transcript at page 157
6 Siddig Ali in the vicinity of Atlantic Avenue reunites with
7 Emad Salem and says, "We brought five." He's referring to
8 the trip they just took to buy five bags of fertilizer.

9 You will also see one page later, page 158,
10 Victor Alvarez and Fares Khallafalla are now sent to get
11 stolen cars. They'll go off and they will reappear in the
12 transcript later on.

13 June 19, not quite a month, but several weeks
14 after Fares Khallafalla heard about boom, boom, boom, on
15 America on Standby. After buying the timers on that day he
16 also went out, bought the five bags of fertilizer with
17 Siddig Ali, and he went out to buy stolen cars with Victor
18 Alvarez.

19 Let's talk about Victor Alvarez. I would like to
20 take you once again back to last winter to the openings to
21 tell you what you were told then about Victor Alvarez.

22 Mr. Serra told you, "So Victor Alvarez is told on
23 tape in English, and you will hear it, that this is about
24 jihad and the Philippines."

25 And he told you in his opening, and he apologized

1 to his client, that his client was stupid, stupid, stupid.
2 He painted a picture for you of a fellow who was stupid; who
3 was lied to about the Philippines and no one had the decency
4 to tell him what it was really about.

5 Let me give you his own words, talking about Emad
6 Salem: Do you think that someone working for the US
7 government might say to himself, you know, I am about to get
8 this poor guy into just a terrible, terrible situation,
9 charges with incredibly serious crimes, particularly for a
10 native-born American, and maybe I ought to tell him, look,
11 Mohammed -- referring to his Spanish, his name that they
12 used -- we're going to strike a mighty blow for Allah.
13 We're going to blow up this; we are going to blow up that.
14 You think that a human being, presumably born with a
15 conscience, referring to Emad Salem, those are his words,
16 referring to Emad Salem, might have felt compelled to clue
17 in someone that he knows is of limited abilities as to
18 what's going on.

19 He painted a picture for you of someone who just
20 wasn't told what was going on, in fact was lied to, led to
21 believe it was in the Philippines, taken advantage of. When
22 we walk through the transcript of June 19 and watch Victor
23 Alvarez, I want you to focus on a couple of things. How
24 directly are the questions put to Victor Alvarez? Also
25 focus on how his answers are clarified, made certain that

1 that's what he is talking about. I also want you to focus
2 on something else. While this is going on, in the room is
3 Amir Abdelgani and Fares Khallafalla. You'll see that it is
4 made clear to Alvarez that this is a strike against America
5 and those two fellows are sitting there. They knew long
6 before what this was all about. But don't for a moment
7 believe that they were fooled into thinking this was for
8 Bosnia. They are sitting there watching the very same
9 explanation.

10 Pages 83 to 84: Siddig Ali says to Victor
11 Alvarez: If we decide we want to do something, will you be
12 afraid to join us?

13 Alvarez gives a thoughtful answer. Alvarez says:
14 Only if it is for the sake of Allah and explain to me what
15 the cause and give me details and, you know, give
16 information why you want to do this, explain to me and who
17 is people is, whatever it is."

18 Alvarez is the one who had the decency to say, I
19 want to think about it. I want to know the information.
20 Most of the other defendants went "yes." Alvarez goes on
21 and says: Yes. Whatever it is, you know, I won't do
22 anything without "consulting" right now. We talk about it
23 and explaining and study the situation, then we do it.

24 And Siddig Ali says: That's it. Right. In your
25 mind right now in America, in America, right, in your mind,

1 what do you think a Muslim can do to strike back in America
2 in your opinion?

3 He's talking about America, not the Philippines.
4 Amir is there, Fares Khallafalla is there and certainly
5 Victor Alvarez is there. Then a conversation goes back and
6 forth about whether Victor Alvarez says well you can strike
7 back people who are hurting us and Emad Salem clarifies it
8 at page 88. He says to Victor, he summarizes what Siddig
9 Ali is saying, he says he understood that you were saying
10 you cannot attack physically unless you are being attacked
11 physically.

12 Alvarez: Sure.

13 Salem: That means brother Siddig is saying if
14 there is a physical attack here you will participate or not?

15 How much more plain can that be? Do you want to
16 do a physical attack? Yes or no.

17 Alvarez: Sure.

18 Salem: Sure, you will participate?

19 Alvarez: I will participate. Even, even.

20 Salem goes back to him: Will you participate or
21 not?

22 Alvarez: Sure. Of course.

23 Salem: That's what you want?

24 Siddig Ali: That's what I want to know.

25 Alvarez: I participate, of course.

1 We'll come back later on, and you'll see again it
2 is a teed up, placed like a golf ball on a tee for him: Do
3 you want to or not? You're sure? That we can understand.
4 He was not misled. People had a conscience. They told him
5 what it was about, he understood and everyone else in the
6 room understood quite clearly.

7 Let's talk more about Mr. Alvarez. Now that the
8 America question, the attack in America, the physical attack
9 was placed solidly before him, I submit you've seen a second
10 approach to dealing with that evidence.

11 The second approach is Dr. Roy Aranda. You saw
12 and her Dr. Roy Aranda testify. He told you that
13 Mr. Alvarez's judgment was significantly impaired. His
14 perception was impaired. His memory was impaired.

15 Particularly, his instantaneous memory was
16 impaired. You heard about lots of labels and past
17 experiences, but not examples in the transcripts, very few,
18 except the cheese example.

19 He told you that he did not base his conclusions
20 upon the transcripts. But he did base his conclusions in
21 part about these dots that Victor Alvarez drew, closed
22 circles, open circles. Dots. He based his conclusions in
23 part on the roots of a tree that Victor Alvarez drew.

24 He told you, he said that when it came to the TV
25 show that Victor Alvarez watched on the Discovery Channel,

1 if he had been watching the Boy Scout program, Victor
2 Alvarez would be a Boy Scout today. His scientific opinion
3 was, you flip the station somewhere else and Victor Alvarez
4 would be in the woods making square knots, pitching a tent.

5 And yet, when he was asked, isn't the best
6 evidence of whether or not someone understood what was going
7 on in the conversation a tape recording and a transcript of
8 that conversation? He says: Well, again, I can't fully
9 agree with that. I think that it is open to speculation.

10 He's trying to tell you that you can't figure out
11 from a conversation whether a person understands what's
12 going on when they act responsibly in a conversation.

13 Instead he wants to draw a tree. What did he say about the
14 tree? You have to listen to it one more time to really
15 believe he said that from the witness stand:

16 The drawing shows a lot. Clinically, there is
17 much significance here. But the way the particular picture
18 is executed, what you are seeing, the product is very
19 significant, as well. The long roots suggest the need for
20 grounding, a need for foundation, he needs to take hold of
21 himself. There is a man who does not have balance. He does
22 not have equilibrium. He needs foundation. He needs
23 grounding. You can see that in the roots here, the reaching
24 down. He wants to have some firm hold in his life. This
25 huge hole -- it is not a small hole. It's a huge hole that

1 penetrates almost from one side of the tree to the other,
2 trunk. Huge, very gaping hole. Represents trauma. This is
3 symbolic, representative of Mr. Alvarez's early traumatic
4 experiences or growing up in Calle. He was clearly
5 traumatized, emotionally scarred. We have talked about some
6 of the reasons -- abandonment, the rejection, the beatings,
7 the poor self-esteem because he's not very competent in
8 school.

9 Then he gets to the duck. This looks like a
10 little duck. Very innocuous animal. This is a helpless
11 bird. It is not an eagle. It's helpless. He is a helpless
12 little bird in this huge hole beside this tree, in a way
13 seeking to go back to the womb, going back to being
14 mothered, to be taken care of. This is his wish, to be
15 taken care of.

16 He'll speculate as to what he would do if he was
17 watching a CNN program on the Boy Scouts. He'll tell you
18 what the roots of a tree and a duck in a nest in a tree
19 mean, but he tells you that he can't quite agree with the
20 statement that you can figure out from a transcript what's
21 going on.

22 And when we go through the transcript you will
23 see that Victor Alvarez knew what was going on. You will
24 see in fact that Dr. Aranda told you that one of Victor
25 Alvarez's most serious impairments was his ability to engage

1 in logical calculated or rationale thinking.

2 You not only saw in the transcripts that Victor
3 Alvarez can do that, you saw it on the witness stand.
4 Victor Alvarez took the witness stand and testified in his
5 second language. Native-born Spanish speaker, he testified
6 in English, and he's cross-examined. The person who is
7 supposed to be memory impaired is telling you about a
8 meeting more than two years ago. It is a meeting he says.
9 I remember I was speaking to Siddig Ali -- conveniently not
10 on tape. I remember where I was, and I remember Amir
11 Abdelgani was back in the van.

12 This is a person going back two years ago who's
13 supposed to be memory impaired telling you where people are
14 positioned. When Mr. Khuzami asked him: Well, that meeting
15 you had two years ago -- and he corrected him twice. It
16 wasn't a meeting. It was a visit. He's testifying in a
17 foreign language drawing distinctions between a meeting and
18 a visit, much like he saw Clement Hampton-El do.

19 He says it was more than two years ago. Then he
20 gave a very calculating answer: Every time something on the
21 transcript came up, he said he used drugs before it. He
22 would give you self-analysis, and say: Well, I was there.
23 I had these problems on my mind. Because of those problems
24 I was using drugs. That's when I went to the bathroom and
25 used the cocaine.

1 I submit to you that there was no problem with
2 his memory. I submit to you that what he's doing is he's
3 trying to take a very damning conversation -- talking about
4 bombs, talking about things he did -- and walk away from it
5 by saying those are the times I used drugs.

6 Now, let's be clear about one thing: Victor
7 Alvarez is not a very bright person. He's not a rocket
8 scientist. No one is going to tell you otherwise. I will
9 credit that he is not as smart as the average person. But
10 he is not retarded.

11 The question before you is not whether or not he
12 is a smart person or a not-smart person. You are not going
13 to get a verdict sheet that says smart or not smart, stupid
14 or not stupid. He's not presenting an insanity defense to
15 you.

16 The question presented to you is guilty or not
17 guilty. The question to you is, did he know what he was
18 doing? I submit to you he knows right from wrong. It is
19 clear from the transcripts. It is clear from how he
20 testifies. Whether you are very bright, or average, with
21 less than average intelligence, you know right from wrong.
22 You are responsible for your consequences. If you break the
23 law, you want to kill people, you are going to blow them up,
24 it is not a defense to say you're not that bright, as long
25 as you understood what was going on.

1 I submit to you when you walk through the
2 transcripts, you will see precise lay that.

3 At page 98 Salem mentions that someone
4 contributed money to the plan or the project through Fares.
5 Victor Alvarez asked the right question: There is other
6 people that knows about this?

7 He's perceiving this quite well. If someone is
8 giving money to Fares, then someone other than Fares knows
9 there's something going on. He's worried. Who else knows
10 about that? That's logical, that's perceptive. That's
11 rational. He does not want to get caught at a crime.

12 Page 102, Siddig Ali tells Victor Alvarez that
13 the others are going to go to the Philippines later. But
14 that if the guy with the stolen cars talked to the
15 government, there will be a problem with Victor, who is
16 here, and Victor Alvarez indicates that he can try to change
17 his appearance.

18 He then says that he could get others to steal
19 the car. He knows exactly what the problem is, the problem
20 is getting caught, or getting stolen cars for a bomb, and he
21 doesn't want to deal with the consequences.

22 By 11 o'clock that night Victor Alvarez, Dr.
23 Aranda told you his instantaneous memory was impaired, had
24 already figured out when they asked him for stolen cars that
25 what they wanted was stolen cars. He already knew that he

1 knew a place where he could go arrange a deal. He found his
2 way there, struck a deal for stolen cars. Evidently, it
3 fell through, but he went. He knew what they wanted. He
4 agreed and he worked on it.

5 Victor Alvarez is the one who said to them: Can
6 everyone drive a stick shift? No one else thought to ask.
7 If you are going to have a bombing plot using stolen cars,
8 he's supposed to go get stolen cars, and he's thinking it
9 through. Well, can you drive a stick shift?

10 Then, at page 138 Salem showed Victor Alvarez the
11 timers and mentions that each mission is on a different
12 time.

13 Alvarez says: Whatever has to be done, I'm
14 there, unintelligible, anytime, any day.

15 Then you get to a critical conversation.

16 This is page 139, 140 of Government Exhibit 352T.
17 If you see, if you look here, down below, Alvarez says:
18 Now, unintelligible, fine, unintelligible, Arabic, God
19 willing, find a machine gun.

20 Salem: The machine gun, unintelligible. I want
21 a pistol.

22 Alvarez: I could borrow one.

23 Salem: How much?

24 Alvarez: I could borrow it from some friend of
25 mine.

1 And then what does Salem say? Yes, OK. That
2 will be good. Bring it. We'll keep it in the safe house
3 until the day of the operation. Then we can use it, and
4 then we can give it back, just for protection. God forbid
5 when we are moving the bomb, some police, stupid police
6 officer says, hey, show me your license or this or that, and
7 then saw the stuff in the car being, you know, you got it,
8 uh.

9 Alvarez: You have to be very professional,
10 brother.

11 Emad Salem wasn't keeping Victor Alvarez in the
12 dark. He asked him for a gun. He makes plain that's the
13 gun to be used against the police who might stop the car
14 with the bomb.

15 Victor Alvarez you saw later on went out and got
16 such a gun. I submit to you that Dr. Aranda would rather
17 deal with the roots of a tree and the duck in the nest than
18 face up to the fact that when Victor Alvarez had this
19 conversation with Emad Salem what was going on was made
20 plain. What was going on was understood by Alvarez, and he
21 followed through and he agreed.

22 Indeed, Alvarez did not stop, did not call 911.
23 A few pages later at 145 to 146 Alvarez suggests that they
24 should darken the glass. And then Salem says the cars will
25 only be driven for 45 minutes.

1 Alvarez is thinking ahead. He's thinking, well,
2 if we have a car, we're driving it in somewhere, into a
3 location with a bomb in it, why not darken the glass so no
4 one looks in.

5 I submit to you Victor Alvarez may not have had a
6 great life, and that's not good. A lot of people have not
7 had great lives. It is not an excuse to blow people up.
8 Victor Alvarez understood what he was doing. He understood
9 what this was about, and he decided to participate.

10 You will see then at page 158 in the transcript
11 that Fares Khallafalla, Amir Abdelgani and Victor Alvarez go
12 out to buy stolen cars using Emad Salem's car.

13 (Continued on next page)

14
15
16
17
18
19
20
21
22
23
24
25

1 MR. FITZGERALD: (Continuing) Fares Khallafalla
2 has come back from buying the fertilizer and he is off on
3 his next mission with Amir Abdelgani and Victor Alvarez to
4 get stolen cars.

5 Now you will see that Tarig Elhassan will enter
6 the picture. Tarig Elhassan will come in on June 19 to the
7 safe house, but very quickly he will make clear that he
8 knows exactly what is going on. At page 191, Emad Salem
9 asked Tarig Elhassan if he knows about, quote, the link or
10 Holland Tunnel, close quote, and Tarig says both. Salem
11 talks about an explosion and Tarig talks about pressing the
12 button on the car and meeting another person and another
13 car. He already knows exactly what is going on. He is just
14 not saying yes to the tunnels. He knows it's about a bomb,
15 he knows that the plan has been arranged. Press the button,
16 lock the door, open the hood, look like the car was stalled,
17 and get in another car and get yourself out of there.
18 Nowhere does it say anything about simulation or pretend or
19 make believe.

20 Now Fares Khallafalla would return. Fares
21 Khallafalla fresh from buying fertilizer, will come into the
22 safe house on June 19. Same exhibit, Government's Exhibit
23 352T, page 194.

24 Emad Salem: I removed the transformer from
25 inside. I will remove all of this and put it here so you

1 will have an idea, here, this is.

2 Khallafalla: Hey, God protect you.

3 Salem: And this one, uh, just to get an idea
4 what it is, this is a timer.

5 Khallafalla says something unintelligible.

6 Salem: Which will be connected with the bomb.
7 Say you want to pull the plug after one minute, which is not
8 time for you to run away. Then the bomb will go off.
9 Snapping fingers. Instead, unintelligible, in a separate
10 bomb, unintelligible. And we, I just, Siddig asked me to
11 set it for one minute. So we'll pull the plug and then
12 we'll count one minute. Then we'll see the red light go
13 off, means the bomb exploded, here it goes.

14 And then, with Victor Alvarez sitting there,
15 Fares Khallafalla sitting there, Salem actually works the
16 timer, counts up to 62. Those are fast, I'm fast. They are
17 waiting for the timer to go off to see whether the timer
18 would work and would be able to detonate a bomb, and it
19 does.

20 Khallafalla: God is great.

21 Alvarez: God is great.

22 THE COURT: At page 198 Victor says we'll try
23 from the cars and the barrels. Fares Khallafalla says the
24 size of the barrels that are needed. In fact if you would
25 look earlier in the transcript at pages 114 to 115 and again

1 now at pages 204 to 250, you will see that Fares Khallafalla
2 is trying to figure out, trying to determine whether they
3 ought to tell Mohammed Saleh, the gas station man, about
4 what is going on.

5 Remember, you know more now than Fares
6 Khallafalla did then. Fares Khallafalla wasn't there on
7 June 4, 1993, when Emad Salem and Siddig Ali had that
8 conversation, recorded on tape. We saw the transcripts.
9 They made the targets plain to him and they wrote it out,
10 when it was eaten and they talked about two between the
11 states. Fares Khallafalla doesn't know about this. You
12 will see Fares Khallafalla talking about the comment that
13 Saleh ought not to understand anything.

14 I submit to you, it is important not because it
15 indicates that Mohammed Saleh did not understand anything,
16 he already did. It shows you that Fares Khallafalla is not
17 some helpless dolphin in a fisherman's net. He is on the
18 inside. He is on the inside trying to figure out who else
19 ought to be let in.

20 Let's move forward to June 19. On June 19, a
21 series of four very revealing calls takes place. There is a
22 call at 11:04 p.m., a few minutes after 11 at night, and
23 that is when Siddig Ali calls defendant Clement Hampton-El
24 and Clement Hampton-El says, give me your phone number, I'll
25 call you back in five minutes. You remember, you also heard

1 that about 10 minutes later Clement Hampton-El called Siddig
2 back and said the man knew earlier, he forgot to call me,
3 these people supposed to be reliable.

4 Here it is: The man knew earlier, and he says he
5 forgot to call me. He knew since this afternoon. That's
6 why I haven't spoken to you, you know.

7 Hampton-El: All right, I'm, you know, I mean,
8 like these people supposed to be reliable. He is talking
9 about Mustafa Assad, the person who is supposed to be
10 reliable, which is why Ali El Shinawy wanted to bring him in
11 the spring of 1992, why he was supposed to go see Nosair at
12 Attica in July 1992, why it was on May 30 when someone said
13 there was a person and Mustafa's name came up.

14 Hampton-El continues: I'm going to, er, if you
15 can somebody else, Hamdi Allah, if not, I'm going to, you
16 know, keep an open ear.

17 People aren't coming through but he is going to
18 keep trying. But you also know that this conversation is
19 not bull, because in between those two conversations, you
20 actually had the phone calls where Clement Hampton-El
21 reached out for Mustafa Assad and he reached out in the
22 first call from Siddig Ali to Clement Hampton-El -- 760,
23 Government's Exhibit -- asking him, speaking to him and
24 Clement Hampton-El asking for five minutes. The call we
25 just examined was Government's Exhibit 769T, 11:14 p.m.

1 That is when he calls back and says people who were supposed
2 to be reliable couldn't come through.

3 In between are Government's Exhibits 767 and
4 768F. 767 is when Clement Hampton-El calls Mustafa Assad,
5 Mustafa Mohammed, and says give me a ring let me know
6 something. A few minutes later, Government's Exhibit 768T,
7 Mustafa Assad calls back and says I forgot about you, the
8 guy called me earlier, he told me no can do, bro'. Clement
9 Hampton-El said no problem, I'll just tell the people.

10 What you found out was that Clement Hampton-El
11 was calling Siddig Ali and Salem and said give me five
12 minutes, calls back and says he can't do it, because you
13 have the phone calls on Clement Hampton-El's telephone,
14 reaching out for Mustafa Assad to come through.

15 Let's move forward to June 20, 1993. June 20,
16 1993, there is a phone call from Tarig Elhassan to Siddig
17 Ali. Tarig Elhassan tells Siddig that he was with an
18 engineer who could give him information about the tunnels.
19 Tarig Elhassan knows exactly what's going on, wants to be
20 even more prepared, wants to have an engineer give advice on
21 how tunnels are built so he can figure out how best to blow
22 it up. The phone call from Tarig was Government's Exhibit
23 770T.

24 The next day, Government's Exhibit 363T, June 21,
25 is a meeting between Siddig Ali, Emad Salem, Amir Abdelgani,

1 and Tarig Elhassan. In the early part of that conversation,
2 Amir Abdelgani talks about letting cars pass you to detect
3 surveillance. It is interesting to note in light of the
4 testimony that you heard from the agents who followed Amir
5 Abdelgani on June 23 and how he was driving erratically, you
6 know that even two days before he was talking about doing
7 things to flush out surveillance. He is stopping, letting
8 cars pass him. This way he knows who is following him.

9 Page 12, Tarig Elhassan says: The operation of
10 blowing it up would do nothing because the bridge is a
11 suspended bridge. The cables which connects are very
12 strong.

13 Then he indicates that next Monday he will get
14 the information from the guy. There has been some
15 discussion of the George Washington Bridge. He is telling
16 them that bridges are a problem the way they are suspended,
17 and he is going to get more information on it.

18 Also on June 21, 1993, we head into another long
19 conversation, a very important tape, Government Exhibit
20 362T.

21 THE COURT: Mr. Fitzgerald, can you come to a
22 convenient break point in the next five minutes, please.

23 MR. FITZGERALD: Why don't I do it right there,
24 Judge.

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

1 break now. Please leave your notes and other materials
2 behind. Please don't discuss the case, and we will resume
3 in a few minutes.

4 (Jury excused)

5 (Recess)

6 (Jury present)

7 THE COURT: Mr. Fitzgerald.

8 MR. FITZGERALD: Thank you, Judge.

9 When we left off we were talking about June 19,
10 and June 19, the transcript Government's Exhibit 362T, is a
11 transcript of conversations taking place involving Siddig
12 Ali, Emad Salem, Amir Abdelgani, Fares Khallafalla, Tarig
13 Elhassan and Victor Alvarez.

14 Before we go through the conversation, I want you
15 to step back and take a look at the big picture, to remember
16 that Emad Salem, Amir Abdelgani, Fares Khallafalla,
17 defendant Elhassan and defendant Alvarez go into a safe
18 house with a recording equipment out of his control,
19 videotapes and audiotapes not on his person but being
20 controlled by someone else.

21 If Emad Salem had tricked people into thinking
22 this was Philippines, this was in Bosnia, this was
23 simulation, wouldn't he have to worry about someone blurting
24 it out? Wouldn't he have to worry about Fares
25 Khallafalla saying what are we talking about, the

1 conversation we are having makes no sense, this was going to
2 be bombs in Bosnia? Wouldn't he have to worry about Victor
3 Alvarez saying what are you talking about, if the bombs are
4 going off in the Philippines? Wouldn't he have to worry
5 that Amir Abdelgani would say something like gee, I feel
6 like I'm getting dragged into something I just really can't
7 back away from? Wouldn't he have to worry about Tarig
8 Elhassan saying why are we doing this? Simulation, why are
9 we obsessed with these details? Yet you see, he doesn't
10 worry about it and none of those statements are made. When
11 you go through the conversation that takes place on June 19,
12 it is clear that in everyone's mind there, these are bombs
13 in America, not Bosnia, not the Philippines, and not make
14 believe.

15 We will start with Tarig Elhassan. Page 5 of the
16 transcript, Salem asked Elhassan, he knows what the goals
17 are. Tarig Elhassan says: The two tunnels and United
18 Nations. And you won't be surprised to see, he talks
19 nothing about make believe, pretend or simulation.

20 Page 7, Tarig Elhassan continues, talking about
21 the weaker side in the whole tunnel is this place, with his
22 studies we will avoid any mistake or miscalculation. They
23 then go on to discuss, Siddig Ali, Emad Salem and Tarig
24 Elhassan, the big house, and the entry procedures for the
25 car, the way the car will get into the United Nations.

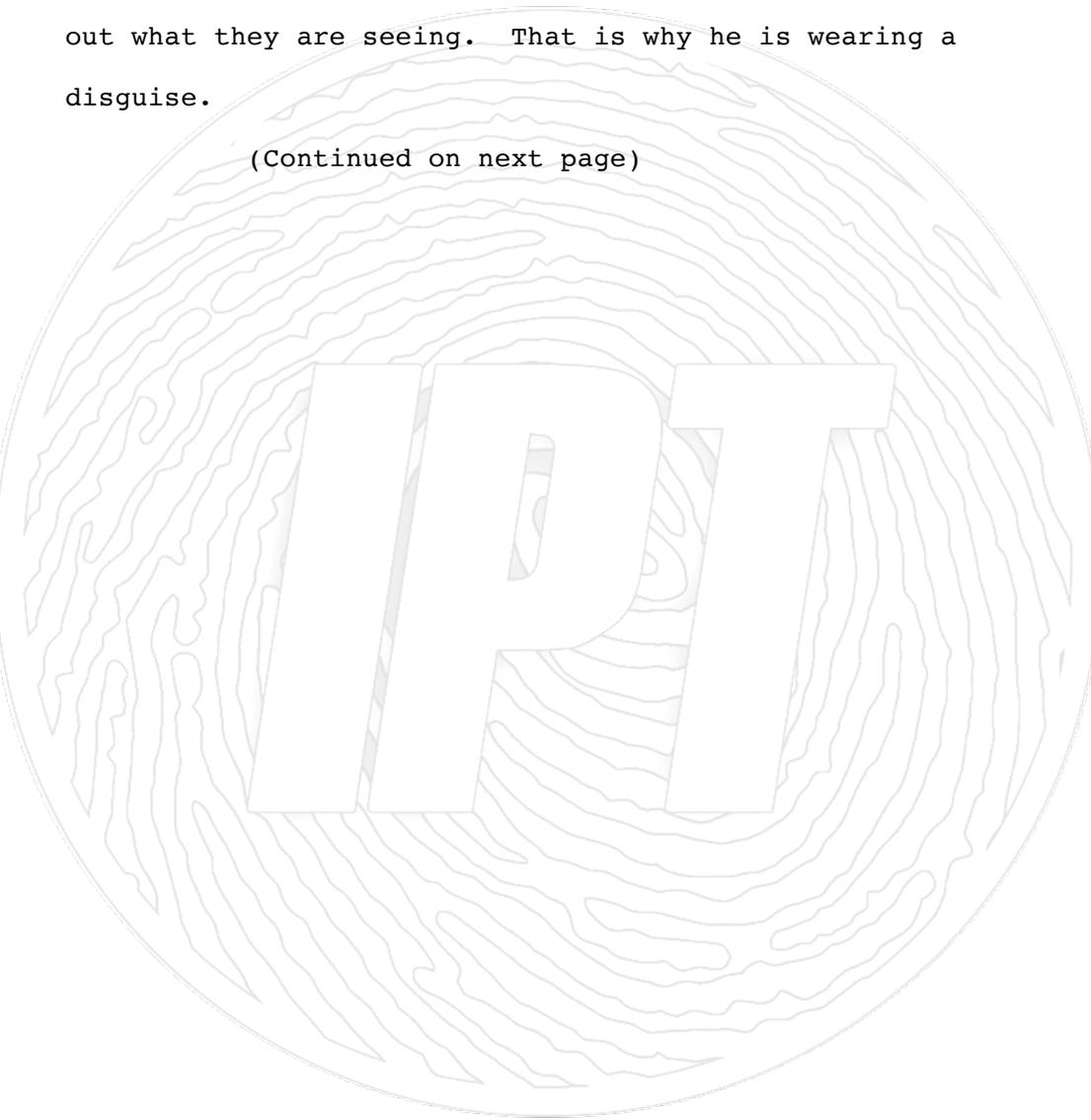
1 Then they have a discussion, including Tarig
2 Elhassan, about what will happen to the water level in the
3 streets when the tunnels blow up. They are trying to figure
4 out which is higher, the streets in the middle of the city
5 or the water outside when the tunnels blow up. And Tarig
6 Elhassan, when Salem says simply say that the tunnel will be
7 filled up with water, Tarig responds, it will break into
8 four or five pieces. He doesn't talk about simulation. In
9 fact, on the witness stand he told you he didn't know of any
10 tunnel in Bosnia that goes underwater. He was not talking
11 about a pretend bomb.

12 It goes on. They talk about the zero hour, the
13 zero hour, which was in American time, and Tarig says this
14 will be a good time, at 2:30 in the morning, because calling
15 God at that time will be effective. Tarig talks about using
16 a disguise. He is going to disguise himself as a sikh. He
17 says no, no, I am in the tunnel, I should do sikh. He says
18 he doesn't like sikhs, he is going to wear a disguise. Step
19 back, throw a bucket of cold water on yourself. Say to
20 yourself, why in the world am I wearing a disguise for
21 simulation exercise? I am going to get in a car, have a
22 pretend bomb, drive through the tunnel, look at the guy next
23 to me and go boom, and keep driving. Who would ever know?
24 Who would know that the day before someone drove through a
25 tunnel with a pretend bomb? Who is going to know to check

1 the videotape, let's see if we can catch those guys driving
2 past the United Nations, saying boom, boom, boom, with
3 pretend bombs? If Tarig Elhassan knows that it is a real
4 bomb, people will check videotapes, people will try to find
5 out what they are seeing. That is why he is wearing a
6 disguise.

7 (Continued on next page)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 You don't need a disguise when you are doing a
2 simulated exercise.

3 Tarig Elhassan at page 18 says that if the car
4 were here now, they could not touch it with their hands.

5 Siddig Ali says they will clean the car. And
6 Amir Abdelgani says, just in case, if it didn't blow up,
7 whatever reason.

8 Amir Abdelgani, Tarig Elhassan and Siddig Ali
9 were worried about fingerprints being left behind if the
10 bomb doesn't blow up. What sense does that make if Amir
11 Abdelgani thought that this was an operation in Bosnia?

12 The Serbian police aren't going to be pulling out
13 bombs over in Serbia and running it to the Serbian crime
14 lab. What sense does it make if Tarig Elhassan thinks this
15 is a simulation?

16 Does he think the stimulation police are going to
17 come along and fingerprint things?

18 This is real. This is a bomb. There were
19 forensics. Afterward, if the bomb doesn't go off, people
20 are going to be checking to see whose prints are on the car
21 with the bomb that didn't go off.

22 Siddig Ali responds at page 19: It is going to
23 blow up and destroy everything.

24 What does Tarig Elhassan say, but: Amen, my God.

25 At page 20, Siddig Ali is describing the

1 operation in detail and the lanes in detail and how they
2 will communicate by beeper and telephone and Amir Abdelgani
3 is worried that standing by the telephone will attract
4 attention.

5 Then, at page 22, you see that Victor Alvarez,
6 page 22 and page 23, Victor Alvarez enters the safe house,
7 and Fares Khallafalla also enters the safe house. If you
8 follow the conversation, what Victor says, what Fares says,
9 it will become apparent to you that Victor Alvarez and Fares
10 Khallafalla have been out looking for stolen cars for a
11 second time.

12 They continue talking. And here Siddig Ali says
13 to Victor Alvarez: If we got the cars, everything is all
14 ready. Giving an example, if we finally get the cars, what
15 are we going to do. We got the cars, everything is ready,
16 operation, for example, two days from now, everything is
17 clean, no problem, no traces when they go. It's clean. No
18 traces because the bomb is plastic. Someone corrects him
19 and says: Don't say bomb. Say hadduta.

20 Siddig Ali says to Alvarez does he want to leave
21 the country beforehand.

22 He says: "For me, for him, no problem. No
23 problem. For you, it's your country. You understand?"

24 Siddig Ali, making it plain again to Victor, when
25 these bombs go off, this is your country. You may not want

1 to be around.

2 Siddig Ali then talks in Arabic. He says: You
3 cannot imagine what is going to happen when it explodes.
4 Present for that conversation are Amir Abdelgani, Fares
5 Khallafalla and Tarig Elhassan.

6 Then Siddig Ali translates it into English for
7 Alvarez. He says that when this thing, popping sound, go
8 off, everybody will be nervous.

9 Then they talk about staying away from the
10 sheik's class, staying away from the class of defendant
11 Abdel Rahman. Well, if they're over in Bosnia, if they're
12 over in the Philippines to set up a bomb, they are already
13 away from his class. He's here in New Jersey. They are
14 thinking America.

15 You see that conversation, those conversations
16 from pages, those remarks on pages 34 to 42 Emad Salem says
17 nothing. In fact, you saw the videotape. He's got his feet
18 up on the work bench. He's snoring. Emad Salem has nothing
19 to worry about. He hasn't said things about the
20 Philippines, about Bosnia, or tricked people that he's got
21 to worry about them blurting it out on tape recorders out of
22 his control.

23 Then, on June 19, toward the end of the
24 conversation, Siddig Ali is telling the people gathered that
25 we have to be prepared to deal with questioning.

1 They are concerned about being questioned by the
2 authorities. Again, that makes sense if it is an operation
3 over here. Tarig Elhassan from the stand told you, well
4 they wanted to get out of there. So they just went along
5 with Siddig. He is the one in the conversation that said,
6 this is the part you should know now. They are trying to
7 make plain to everyone in this room, this is important, we
8 are going to face consequences. Let's make sure we are all
9 prepared. Let's make sure we are all willing.

10 Siddig Ali says: They will give you two choices,
11 talk or cut you to pieces.

12 Siddig Ali said: Your brothers outside work for
13 you. Now we will -- God willing, free Mahmud, Nidal, all of
14 them. That is Government Exhibit 362T at page 46.

15 Siddig Ali: You understand? This is true, man.
16 What happens, the trial is going to come, they are going to
17 find you guilty. You're already guilty, you pig, for being
18 Muslim. Your brother is outside, work for you. Now we
19 will, insha Allah, free Mahmud, Nidal, and all of them,
20 insha Allah, insha Allah.

21 Victor Alvarez: Insha Allah.

22 Tarig Elhassan, everyone in the room knows they
23 are talking about freeing Mahmud, Nidal, people in America
24 in jail for blowing up America.

25 I am sorry. I keep saying this is June 19.

1 Mr. McCarthy brings me up to speed. It is June 21, June 22.
2 I'm sorry about that. I'm sure it is not the first mistake
3 and it won't be the last. OK. When this topic is brought
4 up, what does Tarig Elhassan say? One thing we have to do,
5 we have to get the name of America. The people understand
6 America has to change.

7 Tarig Elhassan: They have to understand America
8 can break down, can come down, that's it.

9 Remarkable, every time they talk about what they
10 are doing, they are talking about America, striking back at
11 America. They are talking here about America breaking down.

12 I will just take a moment to play the audio
13 portion of that part of what happened June 21 and June 22.
14 I might suggest we will be playing it out loud, but it is
15 hard to hear so you might want to put your headsets on for a
16 brief instant. It is the last audio portion I will be
17 playing.

18 (Audiotape played)

19 MR. FITZGERALD: The conversation as it continues
20 on, Siddig Ali says: Never talk to them, not a word. My
21 lawyer, that's it. That's what's so beautiful about
22 America.

23 For a bombing in the Philippines, you are not
24 going to get an American lawyer. Over in Bosnia you are not
25 going to have an American layer. When it's explained right

1 then and there it's about America, Tarig Elhassan, Amir
2 Abdelgani, Fares Khallafalla, Victor Alvarez are there.
3 Then something very interesting happens. It is at page 48
4 of this transcript. Tarig Elhassan says that, "Any one of
5 you wanted to pull out, it's time for you to pull out now."

6 He offers a clear choice. You will see during
7 the conversation he's basically saying, look -- he's talking
8 mainly to Victor Alvarez, saying, look, you don't want to do
9 this, no hard feelings. In essence, no one will be mad.

10 During that conversation while that is going back
11 and forth, Fares Khallafalla thinks it is a joke. He makes
12 a crack, "I will give you my answer tomorrow." He, Fares
13 Khallafalla had given his answer a long time ago. He makes
14 the crack, I'll give you my answer tomorrow in Arabic. The
15 others tell him, this ain't a joke, don't make jokes. And
16 Fares Khallafalla apologizes because he's saying this in
17 Arabic, and then they continue on.

18 That portion of the conversation is very telling
19 about three different defendants in this courtroom. Let's
20 look at it from Tarig Elhassan's perspective. Why in the
21 world does he have to make sure that Victor Alvarez wants to
22 be part of it if it is just a simulation? He's just going
23 to go around driving a car, pretend bombing, why do you want
24 to make sure that he understands it's OK? If you don't come
25 along and pretend with us, we won't be mad.

1 No. He knows it is a real operation. He's
2 letting Victor Alvarez know: If you are up for it, fine; if
3 you are not, no hard feelings.

4 It also shows you Victor Alvarez. Once again, it
5 was made plain to him. He had a choice. He had a choice:
6 Do it or don't do it. It was clear this was a bombing in
7 America, and he was told: You don't have to do this if you
8 don't want to. And yet, you'll see, he went ahead, in the
9 coming days went ahead and was there the very night, mixing
10 the bomb. He was presented a choice again, and he chose to
11 join the conspiracy.

12 It also is very telling to you about Fares
13 Khallafalla. He's not Flipper caught in a fisherman's net.
14 He's sitting there laughing at someone that he'll have to
15 think about this.

16 I will move forward to later on, on June 22, and
17 that's when Siddig Ali and Amir Abdelgani picked up two
18 barrels filled with diesel fuel in a gas station in Yonkers
19 and they brought it down that day to the safe house.

20 Now we will actually move forward to June 23,
21 1993. I will talk to you briefly about Government Exhibit
22 776T.

23 776T is a transcript of a conversation on June
24 23, 1993 which is basically the last day when most of the
25 arrests were made early in the morning of June 24. It is at

1 5:15 in the evening. It is Clement Hampton-El speaking with
2 Siddig Ali and then Emad Salem.

3 And you'll see here Siddig Ali is trying to ask
4 him if there is anything. Emad Salem wants to be more
5 explicit. And Emad Salem talks to Clement Hampton-El and he
6 says: I don't know if we -- we was hoping for you to, you
7 know, Hampton-El, to come through.

8 Hampton-El knows what he wants. He's supposed to
9 be coming through. Hampton-El says: Man, I regretted that
10 I was unable to make it, you know.

11 He explains he's been busy. He's been working
12 around the clock.

13 He says: I've been doing like 16 hours a day
14 sometime. Then he says: Not at this time, akie.

15 Hampton-El: I have put some flyers out, but to
16 this time it's no results.

17 And you know he's put flyers out, you have heard
18 some of them. He's gotten in touch with Mustafa Assad.

19 Assad said he had to work through channels. Later he said
20 he couldn't come through. Hampton-El's not providing the
21 detonators isn't because he's not trying.

22 In fact, that night he's still saying: I put
23 some flyers out, but to this time, it's no results.

24 Inshallah, akie, I mean, this is a duty, you
25 know. This is, this is, Hampton-El. So, uh, like I say,

1 I'll continue.

2 That's the jihad reasoning still. It is a duty.
3 I have to keep trying. Clement Hampton-El to the very end
4 still wanted to provide detonators to persons in this
5 bombing conspiracy.

6 Now, earlier that day, June 23, 1993, Government
7 Exhibit 366. That is a conversation which captured Siddig
8 Ali, Emad Salem and Victor Alvarez talking. That's the
9 conversation when Victor Alvarez delivered the Uzi to Emad
10 Salem and Siddig Ali. If you remember, several days
11 earlier, Victor Alvarez was told, we need a gun, a gun to
12 use against the police, in case the police stop the car with
13 the bomb and the operation. Victor Alvarez knew what they
14 wanted. He knew they wanted a gun. He knew where to get
15 one and he went and got it.

16 That gun is Government Exhibit 675. This Uzi was
17 given over to Siddig Ali and Emad Salem on June 23, 1993.
18 When he gave it over, Alvarez said, "Watch my tools. Take
19 care of my tools. I have to return it when we finish."

20 He borrowed this gun from someone, and he wants
21 it back when they're done. He knows it's not going
22 overseas. He knows what he was told when he was asked for
23 the gun, to be used for car protection, to be used to
24 protect the bombing operation.

25 He offers Victor Alvarez to take Siddig Ali and

1 Emad Salem somewhere to show them how to work the gun. He
2 actually indicates he hasn't seen the gun. It was in a box.
3 He said, I haven't seen it yet. But he understands it's
4 full of bullets.

5 The gun is wrapped in a box. He hadn't checked
6 it out, but he knew it was a gun, and he was ready to
7 demonstrate how it works.

8 They took that gun. Victor Alvarez, when he
9 handed over that Uzi, he knew that this Uzi could be used
10 against the police officer while they were doing a bombing
11 operation in the United States while they were carrying the
12 bomb and he knew right from wrong. He knew that was wrong
13 and he decided to do it.

14 Now you will see Government Exhibit 369 is a
15 videotape, the last section of videotape I am going to play
16 for you. You are going to see that on that date, that
17 afternoon, after Siddig Ali and Emad Salem picked up the Uzi
18 from Victor Alvarez they took a car through the tunnel
19 because Siddig Ali wanted to film a videotape, a videotape
20 to show the tunnels, show the target, show where the bomb
21 will be placed and look for the equator, the part in the
22 middle of the tunnel.

23 They make jokes. They make jokes about how they
24 said "Have a nice day," if only the toll-taker knew what
25 they were up to, if only they knew what they were carrying.

1 They made a joke when the hazardous material sign was up
2 there, Siddig Ali saying, "Toys, toys, toys." What they are
3 laughing about is the Uzi they just got from Victor Alvarez.

4 (Videotape played)

5 MR. FITZGERALD: You will see that later that
6 day, you may remember from the final videotape, the
7 videotape made on June 23, that tape of cars driving through
8 a tunnel beginning with the Lincoln Tunnel, showing the
9 buses, showing the potential future victims of a bombing
10 plan, was in the safe house with Amir Abdelgani watching it,
11 Amir Abdelgani looking at the video, appreciating very much
12 what it meant, saying, "This is a weighty evidence." That
13 film was shot for Amir Abdelgani to look at. He looked at
14 it. He knew exactly what he was doing. It wasn't something
15 he didn't want -- it wasn't something he ever backed away
16 from.

17 Now I will move forward to later on in the day on
18 June 23, 1993, about 20 of seven in the evening.

19 That is when Siddig Ali called ahead to Mohammed
20 Saleh at the gas station -- Government Exhibit 793T, I'm
21 sorry, and the tunnel video was Government Exhibit 369.

22 In Government Exhibit 793T, Siddig Ali calls
23 Mohammed Saleh, who tells him that Amir Abdelgani has just
24 arrived in the red van.

25 Siddig tells Amir Abdelgani to have Mohammed

1 Saleh call ahead to the next gas station and have them wait.

2 And Mohammed Saleh gets on the telephone. He
3 says he'll call ahead to the other gas station, the gas
4 station that he rents space from or rents a pump and make
5 them wait. Then you saw the surveillance. You've seen the
6 photographs. You have seen the video, Government Exhibit
7 381A1 and 381B1, showing you clearly that on that date Amir
8 Abdelgani and Fadil Abdelgani picked up three barrels of
9 diesel fuel from Mohammed Saleh's gas station and brought it
10 into the safe house.

11 Way back in the winter, Mr. Jacobs stood up
12 before you and said his client's here simply because he sold
13 gas. He said to you, no tricks, no games. He said to you
14 his client gave nothing to the safe house. He said, "If you
15 find my client gave money to the safe house, convict him.
16 I'm telling you it never happened."

17 He said he gave nothing to the safe house, "Not a
18 dollar, a penny, zero."

19 You may remember he had the sign, he told you his
20 son had made it up at home, with this big zero on it. He
21 flashed it around and said the money man gave no money, no
22 tricks, no games.

23 Well, the money man gave no money. This is a
24 penny. He never gave a penny. What he gave was 255 gallons
25 of diesel fuel that he knew was for a bomb to be set off in

1 New York. He gave what the people building the bomb needed.
2 He gave them material, 255 gallons of diesel fuel. That
3 shows that Mohammed Saleh wanted this bombing operation to
4 happen.

5 I will move forward to Government Exhibit 383T2,
6 which is the videotapes from the safe house on the last
7 night, going into the arrests which were made early in the
8 morning. In the safe house that night were Siddig Ali, Emad
9 Salem, Amir Abdelgani, Tarig Elhassan, Victor Alvarez, and
10 Fadil Abdelgani.

11 We start off, again, we see Amir Abdelgani. He's
12 watching the video. He says it's a weighty evidence. Then
13 you have him after seeing the video having a very explicit
14 discussion about what he wants to do, Government Exhibit
15 383T2, pages 9 and 10.

16 Salem: Why sheik, the whole tunnel, four
17 minutes.

18 Remember, they've seen that videotape that you
19 just saw, the chilling videotape of people being filmed
20 having no idea that the people in the car behind them are
21 filming the tunnel they want to bomb.

22 Salem: You are going to leave it in the middle.

23 Amir Abdelgani: What about the other car?

24 Salem: The other car will be right beside you
25 according to the plan. The two cars will be entering on two

1 tracks.

2 Abdelgani: No, it got to be one, unintelligible,
3 one will be close, only one will be moving.

4 Follow through with, Abdelgani says:

5 Interrupting, a car will enter, it will stall. It will
6 stall to the right, unintelligible, until he gets out and
7 opens the hood. He closes the door first, unintelligible,
8 the doors before he gets out. He releases the hood from
9 inside before he leaves and activates the thing. The timer,
10 the distance will be big, distance between him and the other
11 car. It must be 30 seconds at least between him and the
12 other car. So there will not be enough time for us to do
13 all of these things, for the other car there must be so many
14 cars passed, many, until he can catch with it there must be
15 so many cars passing him, on and on. How are you going to
16 pass it? I don't think it will be the same track.

17 Then he says: There will be a space in between
18 them. You are in line, unintelligible. That means I'm not
19 going to hit the switch until I see my other car which is
20 going to take me.

21 Amir Abdelgani is watching that videotape and is
22 planning to be the man who is going to hit the switch on the
23 timer in the car that will blow up the tunnel.

24 He also indicates afterward that he knows there
25 might be surveillance cameras. He's worried. If you look

1 in the lower right corner: Is it possible, they can
2 certainly refer to the tunnels to see the man who done such
3 an act, unintelligible. Car, right.

4 He's worried later about being caught on
5 videotape. He's worried about his skin, no one else's.

6 The conversation continues.

7 Amir Abdelgani talks about needing five more
8 persons.

9 He makes reference to one of the persons to be
10 used will be Abu Zabiha, which would be the name of Fadil
11 Abdelgani. We'll come back later and talk about what it is
12 that Amir Abdelgani says about Fadil Abdelgani, and when you
13 sort it out, it becomes clear that Amir Abdelgani said Fadil
14 Abdelgani wants to be part of it, and it's clear in his mind
15 he will.

16 But, more importantly, it isn't what Amir
17 Abdelgani thinks but what Fadil Abdelgani knew, said and did
18 that will convince you he was a knowing, willing participant
19 in this plan.

20 Pages 37 to 38 of that same transcript, Amir
21 Abdelgani is worried about whether to use a string to set
22 off the timer for the bomb. He would rather use a switch.

23 He says: "It is better. It is a sure method.
24 This string could get cut or malfunction. What if it didn't
25 ignite? This is worrisome."

1 He's not worried about how to get out of this
2 conspiracy. He's worried about making sure the bomb goes
3 off.

4 Then you have a series of conversations where
5 Amir Abdelgani and Emad Salem are talking about other
6 people. You have heard reference to some transcripts where
7 it said Amir Abdelgani, his cousin has nothing to do with
8 this matter or nothing to do with that matter and clearly
9 he's referring to Fadil, and elsewhere he says Fadil is not
10 going to know.

11 I would like to take you through those four
12 pages. I think you see that when you put those
13 conversations in context, it is not what it appears to be.
14 What you will learn is they are talking about how different
15 roles were being assigned, and one of the things they have
16 to do is get stolen cars. One of the things they are
17 disappointed with is Victor Alvarez hasn't come through with
18 the stolen cars.

19 He came up with the Uzi. He went out to try to
20 get the stolen cars, but they haven't arrived. In fact, you
21 know that Amir Abdelgani with Fadil Abdelgani in the van was
22 out there on June 22 while Victor Alvarez went to the Bronx
23 to get a car. You will see in this conversation that the
24 people speaking are concerned about whether Victor Alvarez
25 is doing it right. They are thinking about, use Wahid,

1 Wahid Saleh to get stolen cars. They are making clear who
2 is going to know about the stolen cars. They are not
3 talking about who is going to know about the whole
4 operation.

5 Let me just walk you through that. 383T2, these
6 two pages will be 38 to 39.

7 OK. Here is Salem. They have been talking about
8 the switch, the battery, the wires, and then Salem says:
9 Where are the rest of the guys?

10 Siddig Ali: I told them until 12 o'clock, if he
11 didn't come.

12 Amir Abdelgani, referring to Mohammed, which is
13 the name they use for Victor Alvarez: Maybe Mohammed is
14 late. We should rely on God and go. That's it.

15 Siddig Ali: That's it. Drop it.

16 Amir Abdelgani: Unintelligible. Drop him.

17 Siddig Ali: Enough, enough, Mohammed.

18 Now you know they are not dropping him from the
19 operation, because that night he's mixing bombs in the safe
20 house. It becomes clear here.

21 That's it.

22 Siddig Ali: Because yesterday I came to know
23 that he was speaking with this man in the presence of El
24 Fadil, his cousin. His cousin has nothing to do with that
25 matter.

1 Now, you know that on the defense case an
2 alternative translation was put in -- nothing to do with
3 this matter.

4 Let's give him the "this." We will agree to the
5 "this." Assume it is a "this" from here on out. His cousin
6 has nothing to do with this matter. I will also agree that
7 when he says his cousin, he's talking about the defendant
8 Fadil Abdelgani.

9 Salem curses.

10 Siddig Ali: Isn't that what happened?

11 They're now describing what happened the night
12 before. Remember Fadil Abdelgani told you he was in the
13 van, Amir was in the van and Victor Alvarez was trying to
14 buy cars. What they are concerned about is the way that
15 Victor Alvarez is being sloppy about buying stolen cars. He
16 looks to Amir Abdelgani who was present that night.

17 Yes.

18 Siddig: Yes.

19 Amir: We are supposed to forget about him.
20 Moreover, I'm suggesting that you and I, I am going to do it
21 by myself because that Mohammed talks too much, as usual.
22 For example, yesterday, unintelligible --

23 Now, you know one thing for sure. Amir Abdelgani
24 is not going to do the whole bombing operation by himself.
25 He's talking about getting the stolen cars. He'll do that

1 by himself.

2 Salem: He himself without help.

3 Amir Abdelgani: That's it. He goes and steals
4 the cars.

5 He continues: And I, I took him and I told him,
6 man, oh, man, come along with us to check the prices and
7 maybe within three hours, and maybe he got scared. He was
8 supposed to go and arrange the meeting with the people and
9 discuss it with the seller for how much. He went over and
10 brought the thief in the car.

11 They are upset that he is connecting them to the
12 car thief. They are talking about the operation to get the
13 stolen car.

14 Siddig Ali: Suppose the thief had a pistol on
15 him? How are we going to escape from him?

16 Amir Abdelgani, evidently petrified of the South
17 Bronx, says: Yeah, the strange thing's that he wants to
18 take us to South Bronx because the thief told him that he
19 has a car there and come and get it. Thanks be to God we
20 did not go with him. He told me, come let us go there. I
21 told him, Mohammed, are you crazy to go to the South Bronx.
22 They will take this car from you, and they will take your
23 money and will take everything from you and tell you to get
24 lost.

25 He continues on: These thieves, as you know,

1 cannot be trusted because they, themselves, cooperate with
2 the police, yeah. I mean, if, for example, the police
3 learned that a particular number is stolen, they normally go
4 to the area where the thieves are and gather them and
5 question them, who among you stole this car?

6 This conversation about dropping Alvarez, about
7 Amir doing it by himself, about his cousin Fadil Abdelgani
8 having nothing to do with this matter, is about the stolen
9 cars, not about the bombing plan.

10 The very next pages, 40 and 41.

11 They continue talking. This is when they say --
12 well, OK, same conversation, just a page later.

13 Siddig Ali: No, no, no. Let us account for the
14 people who have knowledge of this.

15 Salem: Who? Talking about knowledge of the
16 stolen cars, who's going to get the stolen cars.

17 Siddig Ali: El Fadil. Amir Abdelgani, he's not
18 going to know.

19 Siddig Ali: Wahid, check.

20 Wahid, the car thief they'll always talk about,
21 saying, can we trust him to get the cars?

22 (Continued on next page)

23

24

25

1 MR. FITZGERALD: (Continuing) Amir Abdelgani:

2 There is no problem with Wahid because he is a thief.

3 Siddig Ali: There is no problem now, but how
4 about in the future?

5 They continue on.

6 Amir Abdelgani: This action is for the sake of
7 Allah, right? Thus, for this type of work you should
8 recruit clean people. Never mind about people who deal in
9 stolen cars, forget them completely.

10 Continue on, they are talking about Wahid, they
11 don't really like him, he is a stealer and thief and
12 counterfeit.

13 Siddig Ali says, basically, what do we do?

14 Siddig Ali: Do you have someone who can get cars for us?

15 Amir Abdelgani: You already spoke to him, that's
16 it, it's over.

17 Siddig Ali: Even if I didn't talk to him, do you
18 have somebody else?

19 Salem: There are no alternatives before you now,
20 and you will find yourself in need.

21 Continues on.

22 Siddig Ali: Had I brought an infidel,
23 unintelligible, and watch his tongue.

24 Amir Abdelgani: But we are not going to tell him
25 about the subject.

1 And finally: No, no, no, we don't want to tell
2 him about it, no, we won't have strong trust in him, he is
3 street smart but he is scared.

4 They are talking about what he had in the cars.
5 The point of the conversation is to show you they are
6 focusing on how to get the stolen cars in a way that doesn't
7 compromise them. Amir doesn't want to go to the South
8 Bronx. They don't want to be robbed, they don't want to
9 meet people, they don't want to be compromised. They talk
10 about Wahid and the stolen cars. So when you hear the part
11 in the transcript that says they have nothing to do with
12 this matter, it is about the car matter, not the bombing
13 plan. We will see very different evidence later on in a few
14 moments.

15 At the end of Government's Exhibit 383T2, that is
16 when you saw Tarig Elhassan, Fadil Abdelgani and Victor
17 Alvarez stirring bombs. You saw while they are mixing up
18 these bombs Amir Abdelgani is praying on the cardboard,
19 which is quite a metaphor for this case. Amir Abdelgani is
20 kneeling down praying in a room where bombs are being mixed
21 on a cardboard that has sketched on it arrows and lanes of
22 the tunnels that are going to be blown up.

23 If you look at the transcript of the conversation
24 while this stirring is going on, you will see references in
25 Arabic to big house, hadduta, timers, parking, locking,

1 getting out. And in English, the tunnels. I ask you to
2 think about how powerful evidence that is that you have
3 people caught on tape mixing bombs. You can get lost in the
4 evidence in this case sometimes, there is so much of it that
5 is so compelling. But they are caught redhanded, caught in
6 the act of stirring the bombs.

7 I would like to talk to you about Tarig Elhassan,
8 Fadil Abdelgani, and Victor Alvarez who testified before
9 you. No defendant has to testify. He has a constitutional
10 right not to testify. But they can do so and those three
11 people chose to testify, and you should evaluate their
12 testimony.

13 But I submit to you, when Tarig Elhassan hit the
14 witness stand, he obviously knew what the evidence was
15 before him. He knew what he did, he knew what the evidence
16 was. He has as big a motive as anyone in this courtroom to
17 lie to avoid conviction. The fact that he has a great
18 motive does not mean he is not capable of telling the truth.
19 You should bear in mind, just like with any other witness,
20 what his motives are. But examine what it is he does. He
21 gets on the witness stand, he knows what is in evidence, he
22 knows what is on the videotapes, he knows what is in the
23 transcripts, and he knows what is in evidence.

24 I submit to you he is in the position sort of
25 like a skier on the top of a mountain. Some of us know

1 about skiing, people with these funny names who go barreling
2 down the mountains and ski around the gates once every four
3 years. I submit to you when Tarig Elhassan gets on the
4 witness stand, he is like a skier with these flags, these
5 pieces of evidence that he has to ski around to try to prove
6 himself. Tarig Elhassan gets to the top and he looks down,
7 sees these flags and says, there is no way I am going to
8 make it. What is he going to say? Well, I can't say I
9 don't know anything about mixing bombs, they have me on
10 videotape doing it. I can't say I don't know the target, I
11 am discussing the targets on tape. I can't say I don't know
12 it's against America, I'm the one who is saying we have to
13 get the name of America, America must change. He knows his
14 words convict him totally. The only thing he has left to
15 say is that these words don't count, its pretend.

16 He gets to the top of the mountain and he says, I
17 know I came up here with my skis, but I never meant to ski.
18 He takes them off and walks down.

19 I submit to you his testimony to you that this
20 was all simulation is a crock. It makes no sense. He tells
21 you that he was thinking this was all pretend. Never once
22 do you see pretend, you never see make-believe, you never
23 see simulation on the skis. You never see him at 1:00 in
24 the morning saying gee, this is awfully late for
25 make-believe, can't we go home?

1 You do see evidence in the record that he knew it
2 was for real. What did he do? He worried about
3 fingerprints on a car. You don't worry about fingerprints
4 on a car that isn't going to be used to bomb something. He
5 brought gloves to the safe house, he wore the gloves. He is
6 worried about fingerprints.

7 He offered Victor Alvarez a way out. He said to
8 him, you don't have to do this, we won't be mad at you if
9 you don't do that. In fact, he said, if you don't want to
10 do this, we can change our plan. We can do something else,
11 we will go ahead, don't worry it about it, you will be OK.
12 Why in the world if this was simulation do they have to
13 change their plan? If you drive to the UN, through the
14 tunnel with a pretend bomb, go boom, boom, and Victor
15 decides he can't go, what are they going to do, drive by
16 Macy's?

17 Tarig Elhassan knew this was real. He sits up
18 there with his words on tape, he is on the videotape, he
19 tries to tell you it is simulation but it is not. Your
20 common sense tells you that Tarig else has knew what he was
21 doing.

22 The other thing that you know, he told you about
23 the film from Bosnia. You saw a pretty gruesome film about
24 what was going on in Bosnia. Make no mistake, what is going
25 on in Bosnia is terrible, and it is a tragedy. I submit to

1 you, it is offensive to put before you the carnage and
2 atrocities in Bosnia as an excuse to justify what somebody
3 wanted to do in this country, to commit another atrocity.

4 Let's talk briefly about Victor Alvarez. Victor
5 Alvarez took the witness stand and he knew what the evidence
6 was against him. He knew that someone went to him and said
7 we want the gun for a bombing operation to use against the
8 police. They talked about America, and he knows that he got
9 caught stirring a bomb on videotape. What does he tell you?
10 He shows you the calculated thinking that Dr. Aranda tells
11 you he is not capable of. Every time something important
12 comes up incriminating, he is on drugs. I happen to
13 remember that before the conversation about the gun I went
14 to the bathroom because of my problems and used the rest of
15 the cocaine, therefore I can't tell you what happened. Yet
16 somehow he managed to go out, get that gun and deliver it.
17 And then the night in the safe house, the night he was
18 caught on the videotape stirring fuel oil and fertilizer
19 together, what does he say? For the first time in his life
20 he decides to use crack cocaine. He is in the safe house,
21 not his own location. He is with people he understands to
22 be devout Muslims, to be firmly against drugs. He doesn't
23 want them to see him with drugs, yet he is going to go into
24 a bathroom, light up a crack pipe for the first time in his
25 life, not worry about smell, not worry about being

1 interrupted, and that will be his explanation for what it is
2 that he obviously did later.

3 He even knows that when he is arrested there is
4 no crack pipe on him, so he tells you, the guy who used to
5 do plumbing work, that he took the crack pipe and flushed it
6 down the toilet. I submit to you, he knows what is right
7 and wrong and he knows the evidence in this case, and he
8 knew that what he said and did and agreed to do and followed
9 through on is on tape and convicts him. He is trying to
10 make an excuse, I was on cocaine just the right amount of
11 times, I tried crack just the day I was caught mixing bombs
12 on videotape.

13 Then we get to Fadil Abdelgani. I submit to you
14 that he knows he has some things to explain away. He says
15 to you basically that sure, I went up to Yonkers, sure I got
16 diesel fuel, sure I went to the safe house, sure I went over
17 to the mosque, sure I came back, and sure in fact when I
18 returned I mixed the bomb. But I didn't know what I was
19 doing. I submit to you, I am not familiar with Shakespeare
20 so I am not going to quote Shakespeare, folks, but I wonder
21 if any of you might get this reference to Mr. Magoo. I
22 don't know if you remember the cartoon where this Mr. Magoo
23 used to drive a car and he had very bad vision. He had huge
24 glasses. He used to drive around. No matter what happened,
25 he always ended up in the right place and they ever knew how

1 he got there. He would drive off a cliff, land a boat, the
2 boat would pull in the car, get picked up by an airplane,
3 lifted up by a construction girder, and he would drive
4 around not knowing what was going on, and all of a sudden
5 his car would magically roll into the garage at night and he
6 would look up, here I am.

7 I submit to you that Fadil Abdelgani was not
8 Mr. Magoo. When he got in the car, picked up the three
9 barrels of diesel fuel on June 23, 1993, and went to the
10 safe house, he knew what was going on. And I will show you
11 that by walking you through what happened that night, and I
12 will show you that your common sense tells you that he saw
13 what was going on around him, and I will show you, proven by
14 the very videotape, and also shown by a transcript he didn't
15 think about.

16 MR. LAVINE: Your Honor, object.

17 THE COURT: If you can do it in five minutes you
18 can do it now. If you can't, do it after lunch.

19 MR. FITZGERALD: I can't do it in five, Judge.

20 THE COURT: Then we will break for lunch. Ladies
21 and gentlemen, please leave your notes and other materials
22 behind. Please don't discuss the case, and we will resume
23 after lunch.

24 (Jury excused)

25 THE COURT: Mr. Lavine, I caught that you said

1 objection but I suppose I didn't hear what it was that you
2 objected to.

3 MR. LAVINE: Judge, I believe that Mr. Fitzgerald
4 made a reference to my client testifying and not knowing
5 something, and I think he is referring to a transcript that
6 was presented to the jury on the government's rebuttal case,
7 and whether he knew about it or didn't know about it seems
8 not to be the issue. The issue now is, is that a fact in
9 evidence, and it is not a fact in evidence. It is not fair
10 comment to refer to that, to make any reference to that
11 before the jury.

12 THE COURT: Wait a second. I am not following.

13 MR. FITZGERALD: When he took the stand, he
14 indicated there were a number of things discussed on June
15 23, 1993, that were on the videotape but weren't showing up
16 in a transcript. The transcript was later put in which Mr.
17 Lavine brought out, which was done following his testimony
18 or done by Mr. Gamal Abdel-Hafiz, and in fact Mr. Lavine
19 called Mr. Yousry to dispute some of the points of the
20 transcript.

21 The point I was starting to make, inarticulately
22 and I was glad to stop, was that he was admitting to certain
23 things in the videotape which he knew were not incriminating
24 but he wasn't going to admit to others. So it is not the
25 knowledge of the transcript but knowledge of what he said

1 that night that he wouldn't admit to.

2 THE COURT: That it seems to me is fair comment.

3 Obviously you can rebut it when your turn comes.

4 Did counsel want to talk to me in the robing
5 room? I had understood that some counsel wanted to see me
6 in the robing room.

7 MR. STAVIS: Yes, your Honor.

8 THE COURT: I will see you now. Thanks.

9 (Pages 18787 - 18793 sealed)

10 (Luncheon recess)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

2 Time noted: 2:15 p.m.

3 (Jury present)

4 THE COURT: Good afternoon, ladies and gentlemen.

5 JURORS: Good afternoon, your Honor.

6 THE COURT: Mr. Fitzgerald.

7 MR. FITZGERALD: Thank you, Judge.

8 When we broke for lunch I started to speak to you
9 about Fadil Abdelgani and the absurd chain of events that
10 would have to happen for him not to know what was going on
11 on June 23, 1993 and made the literary reference to Mr.
12 McGoo.

13 I would like to pick up with the time of 5:45
14 p.m. on June 23 with Government Exhibit 777T. During that
15 exhibit, at page 8, that's when Amir Abdelgani is speaking
16 to Siddig Ali about getting directions to go to Mohammed
17 Saleh's gas station to get the diesel fuel.

18 During the conversation Amir indicates that Fadil
19 Abdelgani is going to go with him. Amir says, asks if it is
20 OK if Fadil goes with him, and the conversation goes as
21 follows:

22 Siddig Ali: Yes, if he wants.

23 Amir Abdelgani: I am afraid that the matter
24 would eventually become obvious to him if --

25 Siddig Ali: What?

1 Amir Abdelgani: If what is happening among the
2 insiders will be known to the outsiders.

3 Siddig Ali: What?

4 Amir Abdelgani: I mean, I already told you, I am
5 afraid that the matter become obvious to him. That what is
6 happening among the insiders will be known to the outsiders.

7 Siddig Ali: Of course.

8 Amir Abdelgani: That's it.

9 Siddig Ali: Yes. It is not a problem.

10 That tells you two things. At that moment, 5:45
11 p.m., Amir Abdelgani is reporting to Siddig Ali that Fadil,
12 he's worried that it will become obvious to Fadil. He
13 hasn't clued Fadil in as to what's going on totally. Fadil
14 he views as an outsider. Siddig Ali is saying it's no
15 problem. He trusts that Fadil Abdelgani will become an
16 insider.

17 What I will show you is the activity that happens
18 after that phone call. Because after that phone call is
19 when he will go, he will go pick up the fuel, Fadil
20 Abdelgani, he will go to the safe house, he will go through
21 the chain of events.

22 But bear two things in mind: That phone call was
23 also showing you that even Amir Abdelgani's thinking, wow, I
24 mean, if he comes along and sees the diesel fuel, it's going
25 to become pretty obvious after a while.

1 In fact, you know the day before, according to
2 Fadil Abdelgani's testimony, that's when he went downstairs
3 to see his cousin Amir in his pajamas and his slippers. He
4 got into the van because he couldn't just talk to him on the
5 street, and the next thing he found himself in Manhattan.
6 He is in Manhattan with his cousin Amir Abdelgani. He's in
7 his PJ's and his slippers and a strange man, Victor
8 Alvarez -- strange in the sense that he's new to him -- in
9 the back of the van, later goes to buy cars.

10 Now, he is going to get diesel fuel. So when you
11 think about Victor Abdelgani, a histopathologist, somebody
12 who studies hematology, he is going to go with his cousin to
13 pick up diesel fuel. Even Amir Abdelgani says it is going
14 to be pretty obvious.

15 What does Fadil Abdelgani want you to believe?
16 He wants you to believe that in the evening when he has
17 problems with his car, a car that will take two hours to
18 fix, and he has to be back because he earns his money, he
19 earns his living with that car, and because he's afraid if
20 the car is left on the street with the key above the wheel
21 it might be stolen, he looks at his cousin, Amir Abdelgani:
22 Look, can we be back in two hours? And Amir says: Yes.

23 And then we are off on the Mr. McGoo odyssey
24 because he gets in the van; he's driving in this van; it
25 leaves New Jersey, goes into New York, upper Manhattan or

1 the Bronx, heads to Westchester County, and they are up to
2 Yonkers. Along the way Fadil never asks: Where are we
3 going? What are we doing? How many stops? When do we get
4 back to my car?

5 OK. Maybe that could have happened that way.

6 Then they get to the first stop. Fadil Abdelgani
7 goes to get a slice of pizza and he comes back, and there's
8 his cousin, Amir Abdelgani, they are medical livery
9 business, they drive people to medical appointments, taking
10 three huge barrels out of a gas station. He's got two out,
11 and he joins in.

12 And he tells you he asks his cousin the obvious
13 question: What are you doing? What are the barrels for?
14 What does he say Amir Abdelgani say? I'll tell
15 you later.

16 OK. Maybe. Possibly.

17 They get in the van. Now they're leaving in the
18 van, and he doesn't say: Gee, you know, you told me I would
19 be back in Jersey in two hours. They have gone to the Bronx
20 and upper Manhattan, Westchester, Yonkers, loading up a van.
21 When do I go back?

22 He heads to the second station. At the second
23 station -- on the way to the second station he never
24 discusses it. Where are we going? How long? When do I get
25 back? What are the three 55-gallon empty drums doing in the

1 back of the van?

2 Then he gets to the second station, and he sees
3 his cousin pouring diesel fuel, he's having diesel fuel
4 poured into these three 55-gallon drums.

5 And he says -- well, he asks the obvious
6 question: What are you doing? His cousin Amir Abdelgani
7 would not talk to him.

8 You also heard that Fadil Abdelgani had asthma.
9 So while the three 55-gallon drums, well over a hundred
10 gallons of diesel fuel, is being poured into the barrels
11 inside the van, he has to clear out because of all the
12 fumes.

13 Does he say to his cousin: What in the world is
14 going on? I am due back for my car, where are we going?
15 Why are you choking me with these diesel fuels? No.

16 Now he's in the van, the van heads out of
17 Westchester, through the Bronx and Manhattan, or through the
18 Bronx to Queens. He's not saying: Stop, let me out go back
19 for my car. Where are we going?

20 Next thing he knows, he's at McDonald's. When
21 he's at McDonald's, who does he see but Siddig Ali.

22 Siddig Ali shows up and says: I'm not going to
23 hijack you. I'll talk to you and your cousin in the safe
24 house.

25 Does he say: Look, Siddig this is weird. I am

1 due back for my car. What's going on? My cousin, you would
2 think I could ask my cousin, but he's acting weird.

3 But, no, he goes with Siddig Ali. He enters the
4 safe house.

5 Now, on the way to Queens, he said that he talked
6 to his cousin, Amir Abdelgani, and Amir Abdelgani told him
7 that he was doing a favor for Siddig. Training. But he had
8 no idea what that was.

9 He also said that he didn't notice any strange
10 driving, only to stop and adjust the barrels. But you will
11 find out that Amir Abdelgani had a list of license plates on
12 his person when he was arrested. You know from the
13 transcript this morning that Amir Abdelgani knew about the
14 detective surveillance.

15 So there's Amir Abdelgani, driving three barrels
16 full of fuel oil, trying to avoid surveillance, but still
17 Fadil Abdelgani hasn't figured it out.

18 Now, they get in the safe house, and again, he
19 doesn't ask. He doesn't ask Amir Abdelgani: What are we
20 doing here? What are we doing with these people? What are
21 we doing with the fuel oil? When do I leave? When do I get
22 my car? May I go? He doesn't ask Salem and he doesn't ask
23 Siddig Ali.

24 But he does have a memory of the events from
25 having reviewed the tape. He remembers certain things that

1 were discussed. He remembered the discussion of his name,
2 Abu Zabiha. He remembers prayer. He remembers discussion
3 about coffee, washing the van, unloading the barrels,
4 discussion about wearing a watch on his right hand,
5 discussion about Pennsylvania, jokes about hair loss, a
6 broken piece of a van, and people saying mind if I sit down
7 with you. But bombs, never. Never anything about bombs.

8 But he gave you a clue then when he testified
9 because he told you that not every word that was said
10 appears in the transcripts. We will come back to that.
11 What he told you during that time that he was in the safe
12 house, it's not about bombs -- coffee, hair loss jokes,
13 prayer, Pennsylvania training.

14 Then he heads to the mosque. He goes to the
15 mosque with Siddig Ali in a van. And think about this.
16 Emad Salem told you from the witness stand that Fadil
17 Abdelgani had to go pray the ishtakara prayer, the prayer
18 you make before you make an important decision to know
19 whether you are doing the right thing or the wrong thing.
20 Fadil Abdelgani swore that he wasn't going to make ishtakara
21 prayer, and he had to. If he admits to you that he went
22 from the safe house to a mosque to make ishtakara prayer,
23 and then turned around and came back and stirred bombs, he
24 knows you will figure it out. He'll know that you know what
25 happened that day was he was presented with a choice. He

1 needed to make an important decision. He went, he prayed
2 the ishtakara prayer, and he came back.

3 You will see that that's what happened.

4 He says he's positive a hundred percent he did
5 not say that he needed to make the ishtakara prayer. He
6 told you he knew he was going to the Medina mosque because
7 he overheard Siddig Ali and Emad Salem talking about it.
8 Suddenly, he has no free will. He's going where the other
9 two people in the room decide he's going to go, just gets in
10 the van like Mr. McGoo, carried along for the ride.

11 On the way now to Manhattan, way overdue to
12 supposedly pick up his car, he's been to Yonkers, he's been
13 to a second gas station in Yonkers, he's been to McDonald's,
14 he's been to the safe house, he's been into the safe house,
15 now they are driving him to Manhattan.

16 He says now he tries to find out from Siddig Ali
17 what this is all about. What he says to Siddig Ali is that
18 Amir Abdelgani said it was about training. He says Siddig
19 laughs: That's what he told you?

20 This is the Siddig Ali who's supposed to be
21 duping people into thinking this is training. Siddig Ali
22 laughs at that explanation.

23 Now he gets to the mosque, and he tells you that
24 the only reason he went to the mosque was Siddig Ali and
25 Emad Salem talked about it and he was along for the ride.

1 He's got to explain why he ends up at the mosque when he's
2 going to make ishtakara preparer. Now he has to explain how
3 he ends up back at the safe house.

4 So what does he tell you? He tells you that when
5 he's in the mosque, Siddig Ali leans over to him and says:
6 If I'm not back later, you have to go to the Queens safe
7 house or go to the garage with Tarig Elhassan, with Tarig
8 and with a Spanish guy. He tells you that Siddig Ali told
9 him. He doesn't tell him no. He says he didn't have time.
10 People were praying.

11 Siddig Ali had enough time to lean over and tell
12 him: If I'm not back at a certain time, you're supposed to
13 take the van and go with Tarig Elhassan and a Spanish guy.

14 How long does it take to say no?

15 How long does it take to say no in Arabic? "La."

16 He didn't say it. He tells you he's now going
17 back to the safe house because he's been told by Siddig Ali
18 that's what he's to do. When he gets in the van he says
19 there's Tarig Elhassan, who also tells him the same thing.
20 You will see in a transcript later that in fact Siddig Ali
21 had called ahead and made an appointment for Tarig Elhassan
22 to meet. He's in the van with Victor Alvarez, who he last
23 saw the day before when he was in his PJ's and his slippers
24 while Alvarez is trying to get a car.

25 Does he look at Tarig Elhassan and say: What in

1 the world is going on here? My cousin is taking me here,
2 there, the Bronx, Yonkers, gas station No. 1, gas station
3 No. 2, McDonald's, safe house, diesel fuel, back to the
4 mosque. What's going on? Why don't you tell me?

5 No. They just shot the breeze, talked about
6 other things.

7 Then they get to the safe house. I want you to
8 think about this. Think about two things: Is it possible
9 he could have done this whole trip and never asked, never
10 been told what's going on, and is it possible that when he
11 gets to the safe house, the people let him in to watch them
12 commit a crime?

13 They are talking on a tape over and over: Let's
14 not leave fingerprints. Let's use disguises. Let's not be
15 seen in the tunnels. Who else knows? Should we let
16 Mohammed Saleh know? Should we let someone else know? Who
17 else knows?

18 And when Wahid Saleh shows up that night, Amir
19 Abdelgani wants to hide in the bathroom. When Wahid Saleh
20 shows up that night, Amir Abdelgani has the Uzi that Alvarez
21 has supplied. He sat there with it. They are concerned
22 about anyone finding things out. But Fadil Abdelgani just
23 walks in in the middle of it and all these people just sit
24 there and don't panic.

25 His story is he walks in, he has no idea what

1 this training is about, no idea what this fuel oil is for,
2 and he walks in, he's watching them doing what they're
3 doing. He won't admit he made the ishtakara prayer and
4 decided to join. When he's sitting there, he points at one
5 of the buckets, and he tells you that he said: What is
6 this? No one answered.

7 Can you believe that? All these people, paranoid
8 about surveillance, using codes, using beeper systems, code
9 names, codes for beepers, fingerprints, gloves, worried
10 about questioning, they are going to let someone, not
11 knowing what's going on, stand in the middle of them while
12 they're fixing a bomb and when he points out: What is this,
13 they all say never mind? We will just go ahead and commit a
14 crime and let him watch like an eyewitness. They weren't
15 worried that Fadil Abdelgani was going to go out and call
16 911 because he was one of them.

17 He also tells you that at one point in the video
18 he says what Amir is doing is he's asking me: What are you
19 doing?

20 I submit to you that Fadil Abdelgani had been
21 through all that, and if Amir Abdelgani turns around and
22 says what are you doing, I think Fadil would throw something
23 at him: What do you mean what I'm doing? I have no idea
24 what I'm doing? I left New Jersey hours ago and haven't
25 gone home. I haven't been back to my car. I have been to

1 Yonkers. I have been to one gas station. I have been to
2 another gas station. I have been to McDonald's. I have
3 been to the garage. I have unloaded barrels of diesel fuel,
4 even with my asthma. I have been to a mosque and prayed. I
5 have been sent back from the mosque and I am here. You're
6 asking me what I'm doing?

7 What else do you know?

8 He knows he's got to explain why it is that he's
9 actually mixing a bomb. He's mixing the fertilizer and the
10 fuel oil, and when there comes a time that there's a break
11 he goes off to the side with everyone else and he's back and
12 he does the same thing. He's got to convince you that he's
13 accidentally mixing a bomb.

14 He's Mr. McGoo. He knows it's fuel oil, and he
15 is putting that stuff in there. What is his story for that?
16 He tells you he sees everyone else mixing and he had nothing
17 to do, so he just grabbed something and started mixing the
18 bomb.

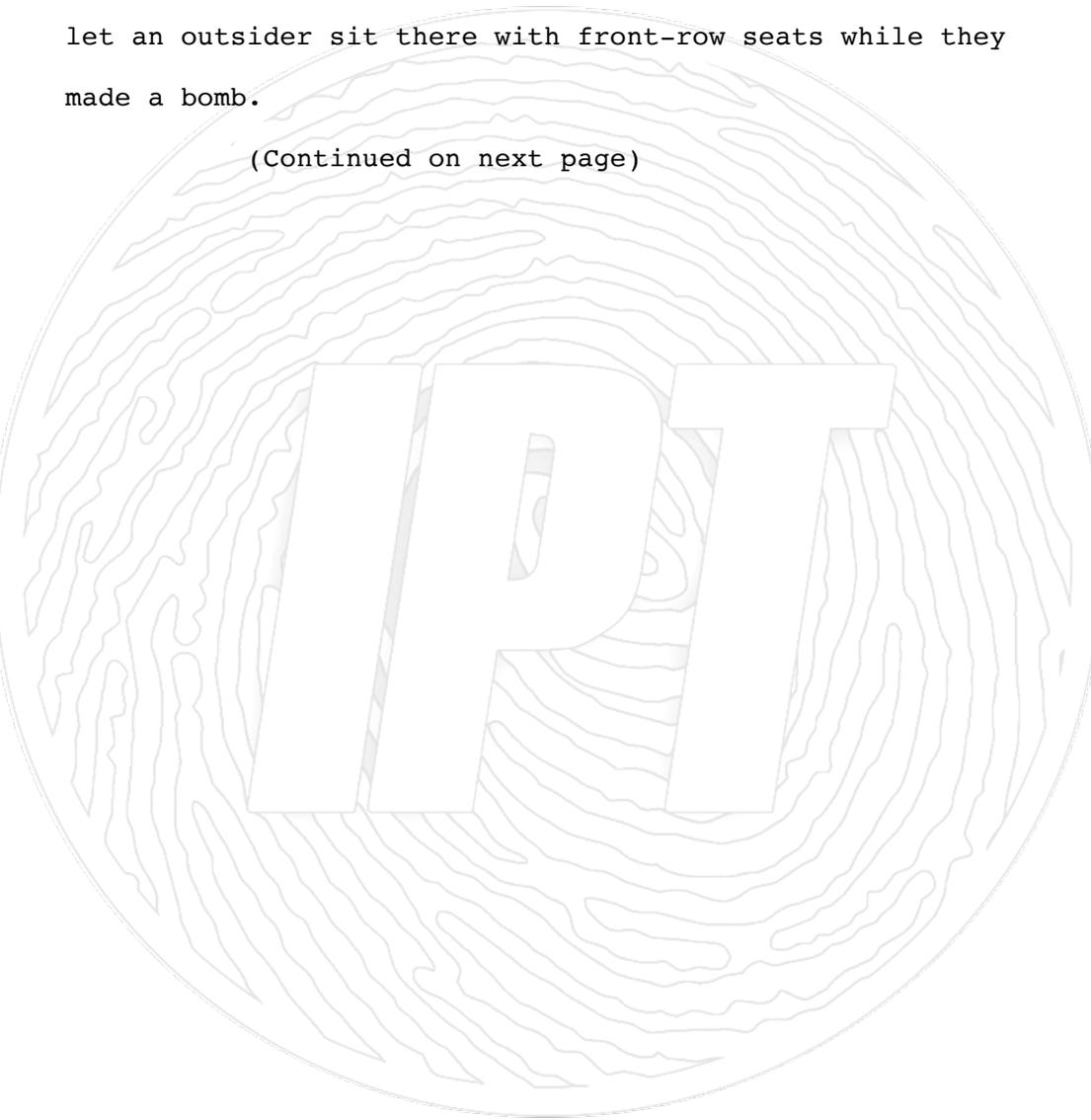
19 Mr. McGoo is now playing Simon Says. Someone
20 else mixes a bomb, I'll mix one, but I don't know what it
21 is.

22 What did he tell you? He didn't know what was on
23 the funnel. He didn't know what was on the bag of
24 fertilizer. He's telling you, histopathology, hematology,
25 someone who studies blood, didn't realize he was dealing

1 with fertilizer. I submit to you his story breaks down in
2 three ways. The first is common sense. He could not go
3 through all that and not figure out what was going on. Just
4 as importantly, the other people present weren't going to
5 let an outsider sit there with front-row seats while they
6 made a bomb.

7 (Continued on next page)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 MR. FITZGERALD: (Continuing) Secondly, if you
2 look at the videotape, and we will play it in a moment, it
3 is clear that he knew, he had to know, this was fertilizer.
4 He told you he never looked at the bag. Here is a man who
5 is mystified as to what is going on, sitting there mixing
6 things, and he is going to go to the fertilizer bag and not
7 take a look.

8 You know, we have the fertilizer bags in
9 evidence, Government's Exhibit 679A through H. You will see
10 there are several different types of fertilizer bags, but
11 when you watch the videotape and you watch Fadil Abdelgani
12 actually go over near the fertilizer bag, you will realize
13 it is one of the big bags. There is a little plastic bag,
14 that's not it, although it is clearly marked fertilizer.
15 There is a bigger bag that is pretty clearly garden food but
16 when you see Fadil Abdelgani bend over, it's not a short
17 little bag. It's one of the three identical big bags, the
18 Scott's Turf Builder bags.

19 When you watch the video, watch how when the
20 video starts you will see Siddig Ali take one of these bags,
21 walk it over and lean it against a barrel. You will see
22 Fadil Abdelgani walk over, and watch him not look at the
23 bag, and when you look at the bag, when he is at the bag you
24 will see him pick it up and you will hear him drop it a
25 little bit -- it's a heavy bag. You will see that he takes

1 a knife, some sharp object, and he slits it along. You will
2 see that the big bags look like they are cleanly cut. When
3 you look at the big bags, you will see that it doesn't take
4 a rocket scientist to figure out what they are. Scott's
5 Super Turf Builder. Turn it around. Fertilizes 15,000
6 square feet. Look at the top where it is cut. Fertilizes
7 15,000 square feet. Maybe he is looking at the other side.
8 Fertilizes 15,000 square feet, Super Turf Builder.

9 We will play the video, Government's Exhibit 383,
10 from the point, I think about five seconds or so before
11 Siddig Ali brings the fertilizer bag over to the barrel, and
12 you watch Fadil Abdelgani not look at the bag.

13 (Videotape played)

14 MR. FITZGERALD: That is Siddig Ali with the
15 fertilizer bag. That is Fadil just to the left of it. You
16 see the size of the bag.

17 Now he will not look at the bag.

18 You will see him cutting the bag, see him pick it
19 up and drop it. He will spend a lot of time not looking at
20 the bag.

21 Obviously, in the absurd nature of the story,
22 common sense tells you you don't bring in an outsider, put
23 him in the middle of the bomb plot and not explain what is
24 going on. He is looking at a big fertilizer bag and cutting
25 it open and it says fertilizer without even opening it.

1 You have further proof that he knew what was
2 going on, Government's Exhibit 381BT, a transcript from the
3 videotape when he was there in the afternoon, and he
4 remembers the hair loss jokes, questions about where you
5 wear your watch, on which wrist, and the name Abu Zabiha.
6 When you look at that transcript, you will see that there is
7 discussion in the safe house when he is there. There are
8 times when it is hard to see where he is but you will see
9 reflections in the van and people sitting together. There
10 are times when the conversation is unintelligible, but there
11 are indications that he is participating in the
12 conversation.

13 In Government's Exhibit 381BT, a transcript of
14 when Amir Abdelgani, Salem, Siddig Ali and Fadil Abdelgani
15 are in the safe house, you will see on page 8, Salem talks
16 about, they would have recognized the World Trade Center.
17 This person's fear is that this could start a fire and blow
18 up all the cars, that's all, because it is not to be loaded
19 in the car's gas tank. The man is afraid of having a fire,
20 meaning this man's knowledge won't let him realize that
21 these are bombs, or, unintelligible. That is Salem talking
22 to Siddig Ali.

23 Fadil Abdelgani is in the safe house. You will
24 see a bit later he says some unintelligibles, not on that
25 page, but it is clear a couple of things. They are not

1 clearing up the talk because Fadil Abdelgani is there, and
2 this stuff about the World Trade Center has been explained
3 over and over to Siddig Ali and to Amir Abdelgani.

4 If you continue on at page 9, Salem says, it was
5 correct at the World Trade Center. It would have leaned to
6 the right if it fell, it would have gotten the other one
7 one.

8 Four attributions down, Fadil Abdelgani says
9 something unintelligible. He is obviously present for this
10 conversation. He remembers coffee, he remembers
11 Pennsylvania, but not the World Trade Center.

12 Page 10, the conversation continues, and I have a
13 blow-up of that page. You will see on page 10, and that is
14 Government's Exhibit 381BT, Siddig Ali says: We need
15 people, unintelligible, we need drivers. One will be
16 standing, you know unintelligible, good. One to be from New
17 York City who is able to drive. Unintelligible, his car,
18 go, drive him home, pray at the mosque, unintelligible, God
19 willing.

20 What have they talked about time and time again?
21 Someone is going to go in with a car, someone else is going
22 to get out, get into someone else's car, and in fact in the
23 tunnel videotape which you saw a brief snippet of this
24 morning, they talk about how someone in New York named Singh
25 who lives in Manhattan will be the guy to pick people up

1 from in the tunnel. Right here Siddig Ali describes this,
2 the next words are unintelligible, but they are from Fadil
3 Abdelgani.

4 Siddig Ali says: No, unintelligible, the car.

5 Fadil Abdelgani: The car, something,
6 unintelligible.

7 Clearly Siddig Ali is talking about driving from
8 New York City the cars. That is where Fadil Abdelgani is.

9 It continues on. Siddig says as he is starting
10 to leave, says something to Salem, says I will keep working
11 on the type timers. There is a dispute on that language but
12 you will see most of the critical language is not disputed.

13 You will see on page 12 and 13, there comes a
14 point when Fadil Abdelgani has now left the safe house. At
15 page 12 and 13, Fadil Abdelgani has already left the safe
16 house. I want to make clear, he is not present for this
17 conversation, but now Salem and Amir Abdelgani will be
18 talking about him, and Amir is the one who is not afraid to
19 make clear to Siddig earlier that while Fadil didn't know
20 what was going on, it was going to become obvious to him.
21 Now Salem and Amir Abdelgani will talk, and Salem told you
22 that when they left Siddig Ali was going with Fadil
23 Abdelgani. Fadil Abdelgani was going to make the istikhara
24 prayer, the prayer to decide what he was going to do. What
25 is in the minds of not just Salem but Amir Abdelgani after

1 they have left?

2 Salem: Yes. Tell you what, sheik. Did you tell
3 this brother about the things we were intending to do,
4 meaning the targets?

5 Amir Abdelgani: No, not exactly.

6 Salem: What does not exactly mean? It means
7 either you told him or --

8 Abdelgani: I proposed to him -- no, I proposed
9 to him that someone will bring us the cars. After that,
10 there is someone else who will take the one who did the,
11 unintelligible, but took, it is possible to follow us with
12 this other car, unintelligible.

13 Salem: Um.

14 Amir Abdelgani: That is it.

15 Salem: And he agreed.

16 Amir Abdelgani: Yes, meaning that he became
17 comfortable with that.

18 Salem: But he is still telling you an hour ago,
19 I am still going to pray the istikhara prayers and see
20 whether I will come or not.

21 Amir Abdelgani, his cousin who had been with him
22 a large part of the day: Yes, so he is not comfortable yet.
23 He has to know, he has to do the istikhara prayer. He
24 cannot, the istikhara prayer, unintelligible.

25 Salem: Yes, sheik, but this way he knew

1 everything, he knew that we are doing so, he knew where our
2 house is.

3 Amir Abdelgani: It is not a problem.

4 Salem: And he knew what we got and --

5 Amir Abdelgani: It is not a problem. He, he is
6 exactly like me, exactly like me. He is my cousin and I
7 know him.

8 Hm. Abdelgani: Meaning that there is no fear.
9 One must do the istikhara prayer. Did you do the istikhara
10 prayer?

11 Salem: Of course, I did the istikhara prayer and
12 I asked the sheik.

13 Amir Abdelgani: One asked the sheik as well,
14 unintelligible, and pray the istikhara.

15 Now, a couple of points. It will come up later
16 but you will see, under the law there is no requirement that
17 a person know the specific targets to be guilty of a bombing
18 conspiracy, as long as they know that bombs were going to go
19 off you don't have to know exactly where they are going off.
20 But it is clear from this conversation that Amir Abdelgani
21 has made made to Fadil Abdelgani what is going on and Fadil
22 wants to go do the istikhara prayer.

23 I will also point out to you that Emad Salem
24 sitting there on June 23, 1993, is not going to make up the
25 story to Amir Abdelgani that Fadil Abdelgani is going to do

1 istikhara prayer. Whatever Fadil was going to do was
2 something that was arrived at when they were all present.
3 He said that, Amir would say, no, you're crazy, he is just
4 going home to get his car, what istikhara prayer? Emad
5 Salem confirmed it and so did Amir Abdelgani. He is saying
6 yes, of course, of course he went to do the istikhara
7 prayer.

8 You heard from a translator on behalf of Fadil
9 Abdelgani who challenged some of the words, but the words
10 not challenged included World Trade Center, bombs, drivers,
11 istikhara. Even when he disputed yes, and he agreed, he
12 didn't hear the word for yes, he didn't dispute the rest of
13 the sentence, meaning that he became comfortable with that.

14 Emad Salem then knew that Fadil Abdelgani was
15 going to make the istikhara prayer. He didn't know whether
16 he would come back or not, whether he would choose to join
17 the bombing plans. Amir Abdelgani confirms on tape that he
18 knew what just happened in front of him, which is that Fadil
19 Abdelgani went to make the istikhara prayer. Amir Abdelgani
20 was confident that Fadil would come back. Fadil was like
21 him. He knew his cousin, he would do this.

22 What you saw was, Fadil Abdelgani went to the
23 mosque and he came back, and when he came back he went up,
24 he grabbed the fuel oil, he grabbed a bag of fertilizer. He
25 knew what was in it, and he started mixing for a bomb. He

1 knew what he was doing.

2 You learned that some arrests were made that
3 night. After the arrests were made at the safe house,
4 agents went -- or actually, before the arrest of the safe
5 house, some agents had arrested Mohammed Saleh. Remember
6 Mohammed Saleh, John Q Public who is only standing on trial
7 before you because he happened to sell some gas to a
8 customer. Where was he when they arrested him? He was at
9 home. He was in his gas station uniform. Nothing wrong
10 with that. But how bizarre. Here he is your average guy,
11 goes to parent/teacher conferences, was taking a nap in the
12 middle of the day. He has the gas station uniform, the
13 uniform you wear when you work on cars, work with oil and
14 things like that, on the family bed, covers pulled up over
15 him. The agents come in and he doesn't move. He knew what
16 he had done that afternoon. He knew when agents arrived
17 that he was in trouble. And he proved that by lying.

18 Before I go through the lies that he told to the
19 FBI that night, you should bear in mind that when Haggag
20 testified, he told you that when he saw Mohammed Saleh after
21 the arrests, Saleh said look, I was always suspicious of
22 Salem, I was suspicious of Emad Salem and I asked Siddig Ali
23 about him, but Siddig Ali gave me the thumbs up. When he
24 got caught, he figured out right away it was Emad Salem. He
25 looked to push the blame on him and looked to protect

1 himself, Siddig Ali. He told the FBI that he knew Salem
2 from the jewelry business and believed he had serviced his
3 car. He is telling him that's how he knows him, not because
4 on June 4, 1993, Emad Salem came up and made clear they were
5 looking to bomb targets here in the United States, including
6 the tunnels between the states.

7 He told the FBI that two men came for diesel fuel
8 on June 22 in a van. But he was suspicious. He saw three
9 barrels in the van, saw they were from New Jersey, and he
10 refused to sell them any fuel. That was a lie. He said he
11 recognized one of the people, and you know that Siddig Ali
12 was one of the people that went on June 22, as a friend of
13 Salem. So this person to him is a friend of Salem, not
14 Siddig Ali the person that introduced him to Salem.

15 He describes June 23, when he said he saw two
16 different people in a van, and they had barrels in the van
17 again. He again wanted to buy fuel, and again he would not
18 sell. He told them to go buy it somewhere else. One
19 entered and used his phone. Then he said he received a
20 phone call from Salem, Salem asking why didn't you sell them
21 the fuel, and he said very busy, very busy, can't talk, hung
22 up the phone. And then Mohammed Saleh said, I'm not
23 involved in any sort of conspiracy, and that if we had,
24 referring to the government, had any evidence against him he
25 should go to jail. When Mohammed Saleh -- when the police

1 the federal authorities arrived at his home on June 23,
2 1993, he knew what he had done. He wanted to hide under the
3 covers, he wanted to lie about what happened. He knew that
4 he had joined. He hadn't given a penny but he had given
5 hundreds and hundreds of gallons of diesel fuel.

6 The following day was June 24, 1993. On that day
7 there was a search done of defendant Abdel Rahman's
8 apartment. I forgot and I am going to quote Miss Stewart
9 one more time. She told you in the opening statement that
10 there came a time, "In June of '93, one night at midnight,
11 the FBI, while he slept, broke down his door, and even
12 though they found him alone they handcuffed him. And you
13 will see from the photographs exactly how he was living."

14 Actually, you learned the week the evidence
15 started that the search occurred in the middle of the day.
16 No one put handcuffs on defendant Abdel Rahman. You saw
17 Special Agent Harlan Bell sitting on the couch, giving him
18 water. You did see how he lived. You saw that he had a
19 bulletproof vest in the apartment, sophisticated bug
20 detectors, and \$60,000 in cash.

21 You also saw a defense exhibit in this trial,
22 Exhibit Abdel Rahman DDT. I point it out to you because
23 basically it was written for you. When you look at
24 defendant Abdel Rahman's DDT, it is a speech given by
25 defendant Abdel Rahman where he says all sorts of nice

1 things. Peace, love and understanding is basically the
2 theme. It's like a Bambi speech. He says it would be their
3 duty to go out and fight in defense of Jews and Christians.
4 When you look at that speech, it makes no sense to you in
5 light of all the other things he said. Get to the end,
6 because then there is a question and answer session where he
7 refers back to the fact that his apartment had recently been
8 searched. That is the speech he wanted out there because he
9 knew the authorities were moving in, he knew people had been
10 arrested, and now he was changing his tune, trying to
11 pretend that he was something other than he was.

12 Then finally, early July 1993, Mohammed Saleh is
13 in jail, and he makes a phone call from jail to one of his
14 workers, Karim Chenane, one of the people who testified
15 before you. That is Government's Exhibit 289T.
16 Government's Exhibit 289T is Mohammed Saleh calling up one
17 of the people who works at the gas stations that had
18 provided diesel fuel, and he says, A, tell Aboubeker -- he
19 is another fellow who testified before you, the two guys
20 from Algeria who testified one afternoon.

21 Tell Aboubeker, A, Mohammed Saleh. The papers he
22 gave to Vinnie, it is better he tears them up.

23 Chenane: Tears them up?

24 Mohammed: Yes.

25 Chenane: OK.

1 Mohammed Saleh: Tell him this is a problem for
2 him and for him. OK? You understand?

3 Chenane: OK.

4 Saleh: And also tell him to be careful when he
5 talks, and to be a man.

6 Chenane: All right.

7 Saleh: I am telling this only to you, because
8 whatever is said comes back to me.

9 Mohammed Saleh knew what he had done and didn't
10 want anyone else, including you, to find out. He wanted the
11 receipts destroyed so you wouldn't know that he gave the
12 fuel oil to the bomb plot.

13 I would like to talk to you briefly about an
14 issue concerning Bosnia. You have heard a lot about Bosnia
15 in this case, and again I will say, there is no doubt that a
16 lot of the defendants were concerned about what was going on
17 in Bosnia. You don't have an either/or here. Just because
18 someone is interested in the plight of what is going on in
19 Bosnia doesn't mean they can't also at the same time be
20 working on a bombing plot in America. You will see
21 throughout the tapes, throughout the transcripts, that
22 people, when they talked about Bosnia, they believed in it,
23 they were concerned about it, but that wasn't what they were
24 doing in the safe house. They were angry at America. They
25 were angry at America and they wanted to strike at America.

1 In fact, you saw on that video yesterday, that
2 January 16 video, the defendant Abdel Rahman said, shake the
3 earth under their feet. People yelled out. That was a
4 video whose title was about the conference on Bosnia and
5 Herzegovina. When defendant Abdel Rahman was going on about
6 America he said, who was assisting the Serbs? Who was
7 providing them with weapons and food? Europe, and behind it
8 is America, were providing them with weapons.

9 The defendant Abdel Rahman, the Islamic
10 authority, is blaming the Bosnia situation on America. He
11 is giving the people another reason to strike back at
12 America, not a different choice.

13 I would like to take some time to talk about the
14 agents in this case.

15 THE COURT: Mr. Fitzgerald, do you want to come
16 to a break point in the next five minutes, please.

17 MR. FITZGERALD: This is probably it, Judge.

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

22 (Jury excused)

23 MR. SERRA: Mr. Alvarez would like to address the
24 court, I believe about his representation.

25 THE COURT: Mr. Alvarez has a lawyer. I am not

1 going to hear directly from Mr. Alvarez. I will see you ex
2 parte in the robing room if you want to tell me what it is
3 about.

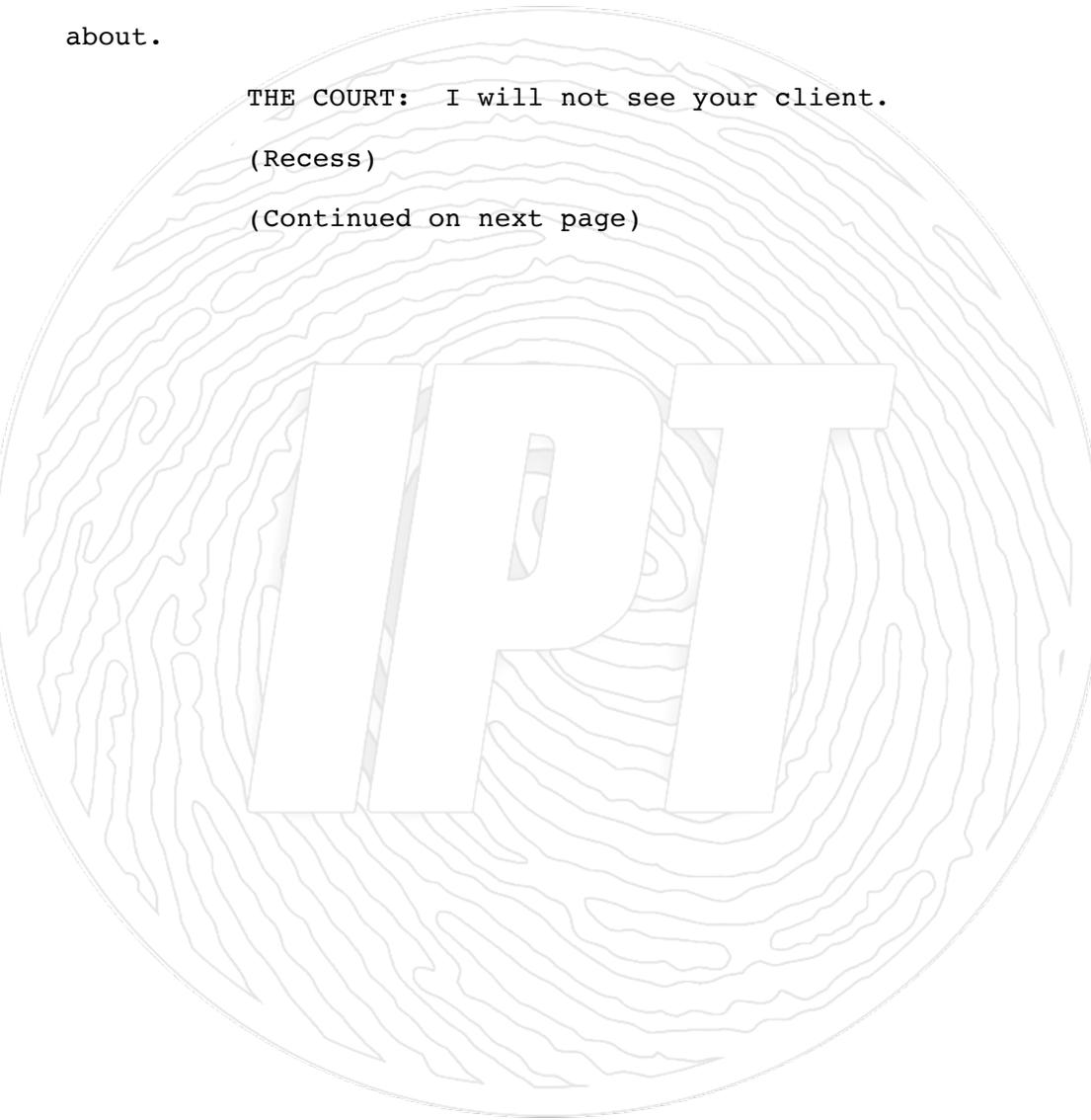
4 MR. SERRA: Your Honor, I am not sure what it is
5 about.

6 THE COURT: I will not see your client.

7 (Recess)

8 (Continued on next page)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 MR. SERRA: Your Honor, I believe I now know what
2 Mr. Alvarez wished. He wishes me to tell the court that he
3 wants to do his own summation.

4 MR. JACOBS: I didn't hear that, your Honor.

5 THE COURT: Mr. Serra has just advised me that
6 his client has decided that he wants to sum up himself.
7 Tell him no.

8 DEFENDANT ALVAREZ: Thank you very much.

9 MR. SERRA: Your Honor, Mr. Alvarez asks the
10 court for an explanation as to why he can't do his own
11 summation.

12 THE COURT: Mr. Alvarez will get his explanation
13 after we break for the day, not before.

14 (Jury present)

15 THE COURT: Mr. Fitzgerald?

16 MR. FITZGERALD: Thank you, Judge.

17 THE COURT: Are you ready to resume.

18 MR. FITZGERALD: Now, before I begin the next
19 section, Mr. McCarthy advises me that I made two mistakes.

20 First, when I spoke about Mohammed Saleh after he
21 provided the 255 gallons of diesel fuel over the course of
22 two days I spoke about him being arrested, and he was in his
23 bed, fully clothed, under the covers.

24 That was later in the evening. The oil had been
25 given earlier in the day. He was arrested that night, after

1 the oil had been provided, in his bed, not midday.

2 Second, with regard to Fadil Abdelgani, one
3 oversight. I should also point out to you that even though
4 later on in the transcript Amir Abdelgani and Emad Salem
5 were talking about ishtakara after Fadil Abdelgani left, if
6 you look, while Fadil Abdelgani is still present, in fact,
7 before the section I read to you about "we need drivers,"
8 you see that Siddig Ali is talking. He said: We will see
9 if there are preparations, unintelligible, first he said I
10 am with you, unintelligible.

11 Salem: Well what did he say? It is a long
12 unintelligible statement.

13 Then he says: Whether he wants or not, now he is
14 to go, pray and see. Go and invoke exalted God for
15 guidance. See if you want, unintelligible. That is while
16 Fadil Abdelgani is still there. After he leaves, Salem and
17 Amir Abdelgani are confirming that Fadil wanted to go to
18 pray the ishtakara prayer.

19 I told you before the break I wanted to talk to
20 you about some issues raised on the defense case about the
21 agents, about Emad Salem, and his tapes. Let's talk about
22 Salem's private tapes up front.

23 First, you learned that Salem was making private
24 tapes well before -- more than a year before, going back to
25 1991, long before May 7, 1993 when he signed the official

1 forms saying that he consented and he was going to go
2 through with FBI officials monitoring.

3 You learned that the people on the tapes included
4 people under investigation, agents, and many other people.

5 What you have also learned is that Salem, where
6 he is party to a conversation, one of the people who is
7 speaking, he can make tapes. There's nothing wrong with
8 that. He can make tapes, and they are his property.

9 The issue is, you have also learned that there is
10 a discovery obligation. That is, the government can get
11 tapes of, relevant tapes concerning people in a criminal
12 case. Those tapes are shared with the defense. It is
13 important to understand the difference between an
14 intelligence investigation and a criminal case. You have
15 heard about it during the trial, but it wasn't put together
16 in a neat form for you.

17 What you have to understand is that an
18 intelligence investigation --

19 MR. JACOBS: Objection. Objection, your Honor.

20 MS. AMSTERDAM: Objection.

21 THE COURT: May I see counsel at the side
22 briefly.

23 (Continued on next page)

24

25

1 (At the side bar)

2 THE COURT: Congratulations, Mr. Jacobs. You
3 finally got a side bar.

4 MR. JACOBS: Thank you.

5 Your Honor, I have no objection if the government
6 wants to refer to specific testimony --

7 THE COURT: What I want to know is where is this
8 going?

9 MR. FITZGERALD: We are going to say that an
10 intelligence investigation means they don't plan on making
11 arrests. Criminal cases mean there are arrests.

12 THE COURT: Where is that --

13 MS. AMSTERDAM: Where is that?

14 THE COURT: Will you please shut up. I am
15 allowed to say that at the side bar. There is a Supreme
16 Court case that says I can, as long as it is not in the
17 hearing of the jury. Now where is that in the evidence?

18 MR. FITZGERALD: Agent Anticev, I believe --
19 Mr. McCarthy can help me out, Agent Anticev testified -- it
20 was explained at different times in an intelligence
21 investigation there are no arrests. It was during Anticev
22 and Floyd -- that there were intelligence cases and criminal
23 investigations, and in intelligence cases there are not
24 arrests, they're gathering information. Criminal cases they
25 make arrests.

1 THE COURT: I believe Floyd did testify that
2 intelligence was a matter of gathering information, period,
3 not making arrests.

4 MR. JACOBS: Excuse me. I think the government
5 is certainly entitled to refer to the record if they are
6 going to make these arguments, but it is apparent to me and
7 I think all counsel that it sounded like Mr. Fitzgerald was
8 testifying. If he wants to refer --

9 THE COURT: That is why I allowed you to have the
10 side bar.

11 MR. JACOBS: I understand. I would request at
12 this particular point that the government be directed to
13 please refer to the exact record where they are making this
14 argument. It is a very important point, and --

15 THE COURT: Mr. Jacobs.

16 MR. JACOBS: That is my request.

17 THE COURT: I believe Agent Floyd testified about
18 the nature of intelligence investigations when she was
19 talking about the contact with Salem initially at the hotel.

20 MS. STEWART: I think the problem here is a
21 semantical one because I think what they are talking about
22 is gathering of information as intelligence, and what we
23 feel the jury is getting is foreign intelligence gathering,
24 in other words, FISA type stuff. You know what I am saying.

25 THE COURT: That is not the nature of his

1 objection.

2 MS. STEWART: That is my objection to it.

3 THE COURT: You are talking about something else
4 entirely. That I didn't get, and that objection, if that is
5 the objection, is overruled.

6 However, I want you to stick closely to what is a
7 legitimate inference from the record, what is in the record
8 and the legitimate inference from it, and don't start --

9 MR. FITZGERALD: Right. I used a bad turn of
10 phrase.

11 THE COURT: OK.

12 MR. JACOBS: Fine.

13 MR. FITZGERALD: I am trying to explain a
14 criminal case because a criminal case is where people are
15 going to be prosecuted, and that is where the discovery
16 kicks in.

17 MR. JACOBS: I think that is the point we need to
18 have the record on, and I don't think that was testified to.
19 That is the point, Judge.

20 THE COURT: That part was not testified to. I
21 don't know how you want to construct your argument, but you
22 can't construct it on that basis unless you are asking for
23 an instruction from me. You didn't get one at the time the
24 evidence was being offered.

25 MR. FITZGERALD: If I can have a moment with

1 Mr. McCarthy.

2 THE COURT: Sure.

3 (Pause)

4 MR. FITZGERALD: Judge, I don't think you will be
5 shocked that I don't think I am going to finish today. So
6 why don't I move to a different section.

7 THE COURT: Fine.

8 MR. FITZGERALD: Therefore, we can look at it so
9 we are all clear.

10 THE COURT: OK.

11 MR. JACOBS: Thank you.

12 THE COURT: OK.

13 (Continued on next page)

14

15

16

17

18

19

20

21

22

23

24

25

1 (In open court)

2 MR. FITZGERALD: May I proceed, Judge?

3 THE COURT: Please.

4 MR. FITZGERALD: OK.

5 I am going to move things along. I am going to
6 move to a different area and I will come back to that later.

7 Let me talk to you about the indictment in this
8 case. When you look at the indictment, you will see that
9 there are a number of charges or counts in the indictment.
10 The judge will explain the law to you, so, please, listen
11 carefully to him. Anything I say, please, I am trying to
12 give you an idea of what we have proven, but the judge's
13 job, and he will do it well, he will explain the law to you
14 thoroughly.

15 What I am going to do now is run through the
16 counts in the indictment, show you what the charges are
17 against each of the defendants, and show you how the pieces
18 of evidence, both testimony and exhibits, line up against
19 different defendants.

20 I will start by talking about Count One, the
21 seditious conspiracy charge. You will see that in Count One
22 the elements that need to be proven include that the
23 government has to prove that there is a conspiracy, which
24 you will learn is a criminal partnership or an agreement
25 among two or more persons, to either wage war against the

1 United States or to oppose the authority of the United
2 States by force.

3 The second element requires that the government
4 prove that conspiracy was either formed or pursued within
5 the United States.

6 The third element you have to find as to each
7 defendant individually, because each defendant is on trial
8 individually before you, is whether or not the government
9 has proven beyond a reasonable doubt that that defendant
10 joined the conspiracy.

11 Now, a couple of comments about the seditious
12 conspiracy, which, again, can be an intimidating word, but
13 it is an agreement to wage war against the United States.
14 It doesn't have to be the government, the judge will explain
15 to you, doesn't have to show that the people are agreeing to
16 try to overthrow the United States. You can exert pressure
17 in the United States. The World Trade Center bombing, that
18 single act wasn't designed to throw people out of the White
19 House, have armies come in and take over the government.
20 Instead, it was violence directed, trying to get America to
21 change its foreign policy. So in waging a war of terrorism
22 against the United States, you will see that a goal has to
23 be to change American policy. It doesn't have to be to
24 overthrow the government completely.

25 You will also see that the targets of the

1 campaign don't have to be government buildings or government
2 structures. People inflict such massive damages or civilian
3 casualties in the hope that that will change American
4 policy.

5 MR. STAVIS: Objection, your Honor.

6 THE COURT: It is my instructions on the law that
7 are going to govern, and the jury is going to be told
8 several times during my charge, as they have been told
9 already, that if any lawyer gives you any legal principle
10 that conflicts with my instructions, it is my instructions
11 that you will follow. However, he is entitled to argue how
12 the evidence fits the law that applies to each charge.

13 Go ahead.

14 MR. FITZGERALD: Thank you.

15 The other thing I should point out, though, is,
16 when you look at the evidence, you have to see that people
17 are actually attacking the government as the government.
18 Someone might want to attack Fort Knox because they don't
19 like America. Someone else might want to attack Fort Knox
20 just because they want to spend a lot of money. You will
21 see that the violence directed in this case is designed to
22 change the foreign policy of America, particularly in the
23 Middle East.

24 How do you find the first element?

25 How did the government prove that there was a

1 conspiracy, an illegal agreement, to wage a war of terrorism
2 against the United States?

3 I submit to you that you can see it from any
4 number of the conversations between Siddig Ali and Amir
5 Abdelgani.

6 The judge will tell you because Emad Salem is a
7 government informant he doesn't count as one of the two or
8 more people. The two people can't just be one person who is
9 a government informant to form a conspiracy. But you will
10 see even on the last day, when Siddig Ali is talking there
11 with Amir Abdelgani and they are agreeing that they are
12 going to put a bomb in a car in a tunnel between New York
13 and New Jersey, right there you see an illegal agreement, a
14 criminal partnership between two people, two
15 co-conspirators, Siddig Ali and Amir Abdelgani, to wage a
16 war of terrorism.

17 But there's other proof of the overall
18 conspiracy. I just wanted to show you right there you've
19 seen an illegal agreement.

20 The other exhibits I would cite to you are
21 Government Exhibit 76T -- that is the speech that was found
22 El Sayyid Nosair's home talking about blowing up the
23 touristic buildings, the high structures.

24 Government Exhibit 128, that was the telephone
25 call showing that in 1992, the fall of 1992, Sayyid Nosair

1 is saying, wait, what will happen in New York, let them
2 fight the believers. Showing that he's fighting the
3 government.

4 I would also cite to you all the evidence
5 concerning the World Trade Center bombing, including the
6 letter sent by Nidal Ayyad afterward, the letter from the
7 Fifth Liberation Army saying that America had to give in to
8 certain demands or the soldiers would keep on fighting.

9 I cite to you the statement by Sayyid Nosair on
10 March 5, 1993 up in Attica following the World Trade Center
11 bombing: The war will not end. The war will continue until
12 I am released.

13 I cite to you the evidence, lots of evidence you
14 have seen about the spring 1993 bombing plot, an attack
15 right at the FBI building, an attack on civilians in the
16 Holland and Lincoln Tunnels.

17 I cite to you Government Exhibit 311T, where
18 defendant Abdel Rahman, whispering in his kitchen, wants to
19 direct the violence right at the American Army.

20 I cite to you just three portions of three of the
21 transcripts we have talked about. I am going to try my best
22 not to be repetitive. You have look at Government Exhibit
23 320T. That's May 27 and May 28, when Amir Abdelgani and
24 Fares Khallafalla are in the safe house, they are talking
25 about, boom, boom, boom, all America on stand by.

1 I cite to you Government Exhibit 352T, where
2 Siddig Ali is making plain to Victor Alvarez: In your mind,
3 right now in America, in America, right, in your mind what
4 do you think a Muslim can do to strike back in America?

5 Also, I would cite to you Government Exhibit 362
6 and 362T. That is the tape you heard earlier today with
7 Tarig Elhassan saying: One thing we have to do is that we
8 have to get the name of America. The people understand
9 America has to change. They have to understand America can
10 break down, can come down. That's it.

11 I submit to you, when you see the evidence of why
12 people wanted to attack the United States, when you see it
13 quite clearly from one transcript alone that Amir Abdelgani
14 and Siddig Ali are in this agreement, you have a conspiracy
15 to wage terrorism against the United States.

16 You also have the second element right there,
17 that the conspiracy was formed or pursued within the United
18 States. There is Siddig Ali, Amir Abdelgani in Queens, in
19 the United States, pursuing the conspiracy.

20 Now, I submit to you you have to look at each
21 defendant and determine whether or not that particular
22 defendant joined the conspiracy.

23 I submit to you that when you join a conspiracy,
24 you become a member of a team. It doesn't matter whether
25 you are a major player or a minor player, you determine

1 whether you are on the team. It is not how much you
2 participated, but whether you knowingly joined, you joined
3 the agreement.

4 I'll go through with you, defendant by defendant,
5 how it is that the government has proven that each defendant
6 joined the seditious conspiracy charged in Count One.

7 In doing that, I should tell you I'm not going to
8 try and repeat everything I've gone over the last day and
9 earlier today. I am just going to refer you to different
10 exhibits and say when we talked about that, that's how it
11 lines up. I don't want to go over everything again. I
12 don't think you want me to either.

13 I will also put up charts which will show you the
14 key exhibits, the physical exhibits that line up and
15 corroborate this. They are not going to list the testimony,
16 just the list of items, but I think it will help us follow
17 along.

18 Now, I'll point out to you, you're looking at how
19 it is that you know that the government has proved beyond a
20 reasonable doubt that the defendant Abdel Rahman joined this
21 conspiracy to wage a war of terrorism against the United
22 States. Obviously, there is a lot of testimony by Emad
23 Salem and Abdo Haggag. Those aren't listed on this exhibit
24 list. It doesn't purport to be complete.

25 Let me go through the exhibits and tell you

1 basically what they refer to. Most of them have been
2 discussed already.

3 I would point out to you first that, among other
4 things, Haggag told you that Abdel Rahman said: Don't let
5 the water run. Attack military bases and steal banks. He
6 told you that don't let the water run meant don't do kid's
7 stuff. Don't just run up the water bill. Do something
8 real.

9 He said that Abdel Rahman talked about doing
10 something against the American government and the American
11 public. He told you that when someone called from overseas
12 and he said: When are we going to hear about jihad in
13 America? Defendant Abdel Rahman said: When these guys stop
14 living like a lady.

15 You heard corroboration of the witness Haggag
16 when a defense witness Imam Siraj Wahaj took the stand,
17 because you remember Haggag had told you that defendant
18 Abdel Rahman had talked about stealing banks. When imam
19 Siraj Wahaj was asked: Well, you never heard defendant
20 Abdel Rahman talk about stealing banks, you may recall his
21 face. He gave sort of a funny answer and went, (gesturing),
22 and he said: Well, be honest, I do remember something. I
23 don't think he was calling for robbing the banks, but I
24 think that maybe he raised the issue of the legitimacy of
25 robbing banks.

1 That was a defense witness telling you that
2 that's what he recalled Abdel Rahman raising.

3 I will also point out to you two exhibits which
4 didn't make the chart. I will give you the numbers and
5 point out why they show you that defendant Abdel Rahman
6 wanted to wage a war against the United States.

7 The first is Government Exhibit 801T. That is a
8 transcript of the speech called, "Doubts About Jihad."

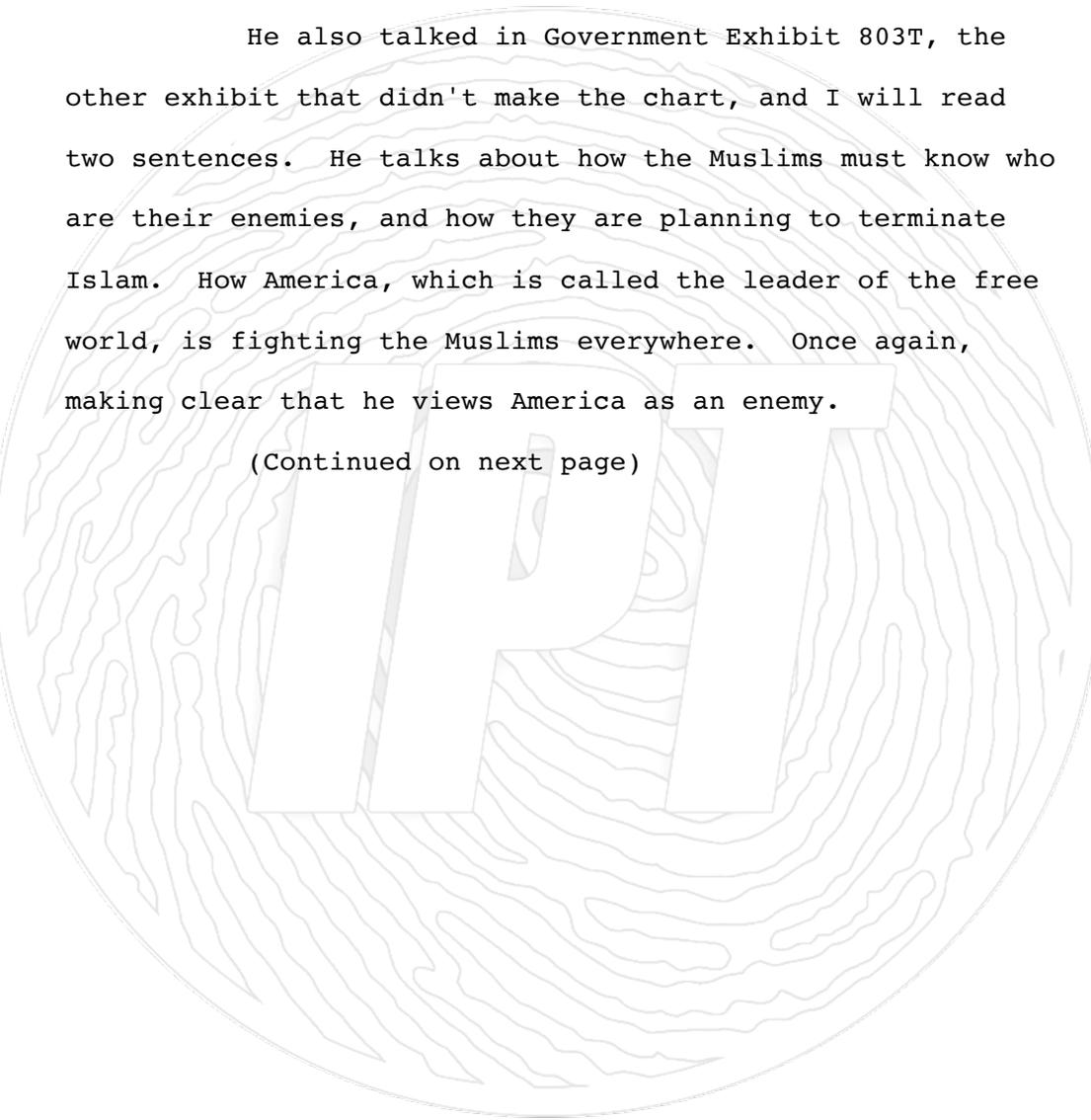
9 Listen to what defendant Abdel Rahman says. I
10 will just read you one paragraph.

11 "And they said that jihad means the meeting of
12 two armies. One Army confronts another. Two unequal
13 armies. Who said such thing? Who said so? Two equal
14 armies. If it is so, then there will be no jihad in all
15 those decades. Because we, no Muslim Army will rise up for
16 jihad for the sake of God. All the rulers are agents for,
17 are employees of America. Who were moving in its orbit. If
18 it is an Army which should do the jihad, then there will
19 never be jihad. They are saying the meeting of two
20 different armies. No Army from among the Muslim armies will
21 perform jihad. Then the claim of an Army is unfounded. As
22 a matter of fact, the proof that single work such as
23 guerrilla warfare and city battles. God has said: "And
24 prepare for them whatever you can of power." If power is in
25 the guerrilla warfare. There is power in city battles.

1 He is saying America is an enemy. We don't have
2 to wait for our Armies to be of equal size because we will
3 keep waiting. Go ahead, do public warfare, guerrilla
4 battles.

5 He also talked in Government Exhibit 803T, the
6 other exhibit that didn't make the chart, and I will read
7 two sentences. He talks about how the Muslims must know who
8 are their enemies, and how they are planning to terminate
9 Islam. How America, which is called the leader of the free
10 world, is fighting the Muslims everywhere. Once again,
11 making clear that he views America as an enemy.

12 (Continued on next page)



13
14
15
16
17
18
19
20
21
22
23
24
25

1 MR. FITZGERALD: (Continuing) You also see here,
2 Government's Exhibit 852T was a transcript showing that way
3 back in 1990, Mahmoud Abouhalima was reporting to defendant
4 Abdel Rahman and said everything begins and ends goes to the
5 sheik.

6 Government's Exhibit 550T is the video from
7 Denmark and in that video which I read to you yesterday,
8 that is when you heard that every conspiracy against Islam
9 and scheming against Islam, its source is in America. That
10 is when he twice referred to the operations in Beirut and
11 said if there were Muslim battalions to do five or six
12 operations to the Americans in surprise attacks, like the
13 one that was done against them in Lebanon, the Americans
14 would have exited and gathered their armies and gone back by
15 air and sea to go back to their country. That is when he
16 also said that the enemy who is at the foremost of the work
17 against Islam are America and the allies -- I am sorry. I
18 jumped one exhibit.

19 Government's Exhibit 451 is the one you saw
20 yesterday, about terrorize the enemy, shake the earth under
21 the enemy's feet, and where he made clear there are two main
22 enemies, the enemy who is at the foremost of the work
23 against Islam are America and the allies.

24 You also saw the phone chart we went through
25 yesterday, Government's Exhibit 508, showing you that

1 defendant Abdel Rahman was in touch with that phone number
2 over in Pakistan, the same phone number that showed up on
3 the inside of the bomb manual that Ahmed Ajaj brought this
4 to this country with Ramzi Yousef September 1, 1992, showing
5 you that defendant Abdel Rahman was part of the same
6 channel, part of the same group from where they came, and
7 they came into the United States. You saw in fact on
8 Government's Exhibit 508 the telephone of Mohammad Salameh
9 and Ramzi Yousef was used to contact the defendant Abdel
10 Rahman's telephone while they were here. I am not going to
11 run through the chart again, but that is the exhibit, 508.

12 You saw in Government's Exhibit 411 the CNN
13 interview by Bernard Shaw, the defendant Abdel Rahman took
14 to the public stage, became a front for the Muslims, and
15 lied, lied and said that he did not know Mahmoud Abouhalima.

16 The other exhibits you see here begin with
17 Government's Exhibit 311T, and that you can star, because it
18 is a very important exhibit. That is the transcript and
19 Government's Exhibit 311 is the tape recording of defendant
20 Abdel Rahman in his kitchen, talking to Emad Salem, when
21 Emad Salem makes clear that a violent attack, more violent
22 than the World Trade Center, is planned by him and Siddig
23 Ali. That is when defendant Abdel Rahman says look for a
24 plan to inflict damage on the American military. That
25 conversation alone clearly establishes that defendant Abdel

1 Rahman wanted to be part of a war of urban terrorism against
2 the United States.

3 Government's Exhibit 742T we went through
4 yesterday. That was the phone call on May 30, 1993 -- I
5 think I may have misspoke. Government's Exhibit 311 was May
6 23. Sorry. Government's Exhibit 742T is a phone call
7 between Abdel Rahman and Siddig Ali on May 30, where Abdel
8 Rahman said, where were you yesterday? And you saw from a
9 different exhibit that Siddig Ali was out with Amir
10 Abdelgani and Emad Salem scouting the targets, including the
11 United Nations and the tunnels, and where Siddig kept saying
12 I was on an important errand several times, and I will tell
13 you about it later.

14 That led into Government's Exhibit 639-1, the
15 tape recording of the May 30 conversation in the Abu Bakr
16 Mosque among Abdel Rahman, Siddig Ali and Emad Salem. And
17 that is when the defendant Abdel Rahman, who has already
18 told Emad Salem a week ago in Government's Exhibit 311 to
19 look to inflict damage on the American military. He was
20 aware that Siddig Ali and Emad Salem were planning bombings.
21 He says the path is clear. He who wants to do a work for
22 God, the path is obvious. I must remain at a distance, I
23 must be a front. May God facilitate matters for you.

24 And finally, we see Government's Exhibit 348T2.
25 That's the conversation we discussed earlier today, the

1 conversation in defendant Abdel Rahman's apartment where he
2 is sitting down with Siddig Ali, Emad Salem and Mr. Haggag,
3 trying to figure out who the informant is, trying to figure
4 out who gave up the Mubarak plot, who fingered Mahmoud
5 Abouhalima in Egypt, who told the Egyptian authorities that
6 Mahmoud and Siddig had discussed explosives prior to the
7 bombing of the World Trade Center.

8 You can see here lined up the exhibits proving
9 that defendant Abdel Rahman joined a war of terrorism
10 against the United States. I am not even counting the
11 testimony of Emad Salem. Not that it doesn't count. I have
12 gone through that with you before. You make the decision,
13 you see how well it is corroborated. But Government's
14 Exhibit 311T alone, a devastating piece of proof caught on
15 tape, defendant Abdel Rahman whispering in his kitchen to
16 attack the American military.

17 Turning to defendant Sayyid Nosair and looking at
18 the proof that he joined a conspiracy to wage a war of
19 terrorism, which is a separate charge from the charges
20 against him on the murder of Rabbi Meir Kahane, which I will
21 cite to you later, I would call to your attention
22 Government's Exhibit 76T, the speech about blowing up
23 buildings. I would cite to you something not in the chart
24 but the testimony that you heard about from Emad Salem, and
25 you actually saw the visiting records, showing that there

1 were trips to see Sayyid Nosair in Attica in the spring of
2 1992, when Nosair was talking about bombs, about prior bombs
3 he built, and saying I did my part, you do yours, and
4 wanting to start a bombing campaign with 12 bombs around New
5 York City. And a later trip with Sayyid Nosair still upset
6 that nothing has been done.

7 Then you saw Government's Exhibit 128. That is
8 the telephone call, September 1992. Sayyid Nosair. Wait
9 what will happen in New York.

10 You saw Government's Exhibit 508, the phone
11 chart, or the chart with different activity, showing people,
12 going to visit Sayyid Nosair at critical times, including
13 Mahmoud Abouhalima, going the month of the World Trade
14 Center bombing, going to visit Sayyid Nosair, an eight-hour
15 trip each way, on February 7, 1993. And Mohammad Salameh
16 going on February 13, 1993, to visit Sayyid Nosair in
17 Attica.

18 You also saw some other exhibits recovered from
19 various people. Government's Exhibit W90B, passport photos
20 of Nosair seized from Mohammad Salameh's briefcase in the
21 days following the bombing of the World Trade Center.
22 Government's Exhibit W90A1, showing that Salameh and Ayyad
23 had visited Nosair at different facilities.

24 You saw the passports, Government's Exhibit 135,
25 the fraudulent Nicaraguan passports seized from Ibrahim

1 El-Gabrowny at the time of his arrest.

2 You have also heard about Government's Exhibit
3 163R2T, which is tapes, multiple copies of tapes seized from
4 Ibrahim El-Gabrowny's apartment, the jihad anew speech, I
5 want to go out and jihad all over again, so outburst,
6 outburst, begin the jihad.

7 And finally, you saw the videotape, Government's
8 Exhibit 385, where Siddig Ali went up to Attica to visit
9 Sayyid Nosair in the spring of 1993, and you saw the
10 whispering.

11 I should make one point about that. You learned
12 from Government's Exhibit 311 on the transcript that when
13 Siddig Ali whispered to Sayyid Nosair that they were
14 planning an attack against the United Nations, Nosair
15 thought it would be a better idea to do something else. He
16 wanted to kidnap Nixon and Kissinger. I submit to you what
17 you will see is, these are people who were part of the same
18 agreement, part of the agreement to terrorize America, who
19 were disagreeing about the way to go about it. Mr. Stavis
20 told you in his opening that he would talk about
21 Afghanistan, Afghanistan, Afghanistan. That was not what
22 was on Sayyid Nosair's mind on May 21, 1993. He again is
23 saying let's take the violent activity away from the United
24 Nations and direct it at kidnapping Nixon, the former
25 President of the United States, kidnapping Kissinger, the

1 former Secretary of State of the United States. That's how
2 he wants to go about changing the foreign policy by
3 terrorism. Sort of like people sitting down with George
4 Steinbrenner, someone saying we are going to go out and get
5 a home run hitter, and saying no, we have enough hitters, I
6 want a pitcher. They are both on the same team, same
7 organization. They both want to win. They have different
8 ideas about how to achieve the same goal. The testimony you
9 have seen in this trial, the exhibits taken together show
10 you that Sayyid Nosair shared the same goal of trying to
11 terrorize America into changing its foreign policy in the
12 Middle East.

13 Defendant Ibrahim El-Gabrownny. How do you know
14 the defendant Ibrahim El-Gabrownny joined this agreement to
15 terrorize the United States? I submit to you, we reviewed
16 yesterday how Emad Salem had told you about what went on
17 with Ibrahim El-Gabrownny in the spring of 1992, how they had
18 discussions regarding bombings, high-powered explosives,
19 timers, remote control timers, and detonators. I submit to
20 you that you have seen corroboration of that, that Ibrahim
21 El-Gabrownny wanted to be part of a bombing campaign. You
22 have seen it in part by Government's Exhibit 132A, B and C,
23 because in May 1992, remember, Emad Salem reports to you
24 that Sayyid Nosair in Attica wants to use stun guns for
25 future operations, thought they would work better. Ibrahim

1 El-Gabrowny has two stun guns in his apartment in 1993, and
2 the receipt shows it is bought May 23, 1992, after that
3 conversation that Emad Salem told you about.

4 I point you again to Government's Exhibit 508,
5 the chart that was up yesterday. I won't go through it
6 again in detail. Remember that on February 24, 1993, an
7 unusual call from Nidal Ayyad, one of the bombers of the
8 World Trade Center, to Ibrahim El-Gabrowny, two days before
9 the bombing. February 28, 1993, another rare call from
10 Nidal Ayyad to Ibrahim El-Gabrowny two days after the
11 bombing.

12 El-Gabrowny II, the rental agreement Salameh used
13 to rent the Ryder van.

14 Salameh's license, Government's Exhibit 5H,
15 showing that Salameh had the license registered to Ibrahim
16 El-Gabrowny's address.

17 Government's Exhibit 135B to F, passport photos
18 of Sayyid Nosair, along with 133B, a photo negative of the
19 Nosair passport photo. And I suggest to you that what that
20 shows you is that at the time the World Trade Center is
21 being blown up, at the time that Mohammad Salameh is
22 concerned with blowing up the World Trade Center, he takes
23 the time out to go see Sayyid Nosair. He is involved in
24 these fraudulent passports which are to be used if they can
25 get another member of the jihad army out of jail. And right

1 in the thick of it is Ibrahim El-Gabrownny. He has the
2 passports, he has photos, he has the negative.

3 The final two exhibits I will draw your attention
4 to are Government's Exhibit 163R2T, the jihad anew speech
5 which Ibrahim El-Gabrownny had in his apartment, confirming
6 for you again that he is the eyes and ears of Nosair when
7 Nosair is in jail. Ibrahim El-Gabrownny is someone out on
8 the street who can get the word out for him, to urge the
9 campaign along.

10 Finally, in connection with the search of Ibrahim
11 El-Gabrownny's apartment, you have Government's Exhibit 150,
12 the envelope, the message. Nidal, important. We went
13 through it yesterday, how it was that that message had to be
14 left shortly after the bombing of the World Trade Center.
15 The envelope was mailed February 25. The message had to be
16 February 26 or after. That was found in a search on March 4
17 of 1993.

18 I submit to you, if you look at what Emad Salem
19 told you, the account he gave of Ibrahim El-Gabrownny's
20 activities in 1992 as corroborated by a lot of things, as
21 corroborated by what he told you about the meetings between
22 Shinawy, Hampton-El, and how later on those meetings would
23 be confirmed, and you look at what he told you and you look
24 at these exhibits, this corroboration, it lines up. It
25 shows you that Ibrahim El-Gabrownny wanted to join this war

1 of terrorism against the United States.

2 Let me talk to you about the evidence against
3 defendant Clement Hampton-El, and obviously an important
4 thing you ought to consider is Emad Salem's testimony
5 explaining to you what happened in June of 1992. The
6 meetings with Ali El Shinawy and with Clement Hampton-El at
7 the Abu Bakr Mosque and later how Emad Salem went and picked
8 up a gun from Ali El Shinawy, and he wasn't sure where the
9 gun came from, but Shinawy had said I have two sources for
10 guns, a Spanish guy with German pistols and Abdel Rashid.
11 Then when he gave him the gun, said the Spanish guy,
12 couldn't get the Spanish guy with German pistols. Salem
13 thought but did not know that the gun came from Abdel
14 Rashid, and you saw that the gun was actually traced back,
15 went to Cedric Pinckney, to Asim Mohammed, a close contact
16 of defendant Clement Hampton-El. That gun was Government's
17 Exhibit 391.

18 You have also seen, you have heard much
19 discussion about Government's Exhibit 325. That is the
20 conversation on May 30, 1993, at Rogers Avenue, one we have
21 talked a lot about. You have heard it played several times.
22 It makes quite clear that Clement Hampton-El knew what was
23 going on, knew there were bombing plans, and agreed to get
24 detonators.

25 The other exhibits you saw were 35155F and L, the

1 photographs of Marcus Robertson and Suliman El-Hadi.
2 Remember, when Clement Hampton-El was in the conversation on
3 May 30, explaining why it was that he could have had
4 explosives the year before and not have them now, saying
5 that people with C-4 got arrested, are in jail, people are
6 talking, there is a problem, and he told you that he heard
7 rumors but he made up this thing off the top of his head
8 about a father-in-law having a son. He admitted knowing
9 Suliman El-Hadi, knew him for 20 years, said he didn't know
10 his son-in-law, wasn't describing Suliman El-Hadi's
11 son-in-law. Then you heard the testimony about Marcus
12 Robertson arrested in Pennsylvania, pleading guilty to
13 charges involving bank robberies, the robberies of post
14 offices, and becoming a cooperating witness.

15 Other exhibits, Government's Exhibit 754T, which
16 is a conversation June 15, 1993, when Clement Hampton-El
17 reaches out for Siddig Ali and says he will meet with him on
18 Saturday but if you meet me before, please let me know. No
19 matter what the situation, you know, if you need, I'm gonna
20 always make myself available, you know. Just wanted you to
21 know that I haven't forgotten you. That's Clement
22 Hampton-El making himself available to the people he knew
23 from two weeks before wanted to carry out a bombing
24 operation.

25 Government's Exhibit 343, 344 and 343T, something

1 I discussed with you this morning, that is when they went
2 back to Clement Hampton-El in the basement of a mosque, and
3 they talked, brought up the subject of detonators again, and
4 Clement Hampton-El said, I'm going call on some people and
5 see if it's possible. I'll know definitely by tomorrow.

6 Government's Exhibit 763, that's when Mustafa
7 Assad, the people that people go to when they think about
8 bombs, the person Ali El Shinawy wanted to bring into the
9 bombing plan in 1992, the person who was supposed to go with
10 Siddig Ali to see Sayyid Nosair, the person, the name,
11 Mustafa, whose name is mentioned on May 30 when detonators
12 are brought up, that's him calling Clement Hampton-El on
13 June 18. You're going to have to wait, they told me they
14 couldn't speed it up. It's possible but you got to go
15 through channels, talking about at least two days. Showing
16 that Clement Hampton-El is in fact trying to come through,
17 he is reaching out to Mustafa Assad.

18 The next group, Government's Exhibit 766, 67, 68
19 and 69, and they were put together because they are the
20 series of four calls on June 19, 1993. Those are the calls
21 when Siddig Ali calls Hampton-El and says give me five
22 minutes, gets back to him 10 minutes later, and in between
23 you have him speaking to Mustafa Assad, Mustafa Assad saying
24 these people couldn't come through and then Clement
25 Hampton-El reports back, sorry, they couldn't come through,

1 they are supposed to be reliable. That series of four calls
2 shows you that the meeting back on May 30 is not BS. It's
3 not a bull session when he said he wanted to provide
4 detonators, he was trying.

5 Finally, Government's Exhibit 776T is something
6 we discussed earlier today. That's the night of the
7 arrests, when Clement Hampton-El agrees to meet Siddig Ali
8 and Emad Salem the following morning, and he is telling them
9 that he wasn't able to come up with anything yet but he has
10 put some flyers out, he is basically going to keep trying,
11 and he says, it's a duty, you know, I'll continue.

12 Amir Abdelgani. How do you know that he joined
13 this conspiracy to wage a war of terrorism? I could list a
14 lot of exhibits. We will just go through the ones on the
15 chart very briefly. 320T, that is May 27, May 28, in the
16 safe house with Fares Khallafalla and Siddig and Emad Salem.
17 That is the time when they are going boom, boom, boom,
18 Siddig Ali explaining all America on stand by.

19 Government's Exhibit 321T, that's the
20 conversation where at page 78, in that transcript Emad Salem
21 relays the conversation he had with defendant Abdel Rahman
22 about the UN, the American military and the FBI, and that's
23 when Amir Abdelgani says all this talk in his house, showing
24 you two things. First, that Amir Abdelgani obviously is
25 being told what this is all about, Salem is reporting to him

1 on the United Nations, the FBI. And secondly, that Amir
2 Abdelgani isn't shocked by defendant Abdel Rahman's answer,
3 just that he would give it in his house.

4 Government's Exhibit 322T, that's the chilling
5 transcript of a scouting trip, when Siddig Ali, Emad Salem
6 and Amir Abdelgani are going around stalking the targets.
7 They drive through the diamond district. Amir talks about
8 putting bombs there. They go past the United Nations, they
9 go past the tunnels.

10 You will see here on some of these exhibits, I
11 have put down key sections. I submit to you, all the pages
12 of the exhibits are in evidence, and they are in there for a
13 reason. I am not trying to tell you to ignore the other
14 pages. If you are trying to focus in on what the government
15 contends, some of the key sections showing the people
16 involved, go right ahead and look there. But all the
17 exhibits, the exhibits have a number of pages for a reason.
18 Feel free to look around and read in context.

19 In 352T, that was a conversation we discussed
20 earlier today, and a lot happened on June 19. I just remind
21 you that there were explicit conversations about tunnels,
22 haddutas, timers, prints, traffic in the tunnel, fire and
23 explosion in the tunnel, water caving in, five minutes
24 between cars, guys closing the door and opening the hood,
25 and that's when Amir Abdelgani asks, will three minutes be

1 enough? Will three minutes be enough for him to leave so
2 when a bomb goes off he's safe?

3 That is the same conversation where at page 84,
4 85, explaining to Victor Alvarez in front of Amir Abdelgani,
5 in your mind right now in America, what do you think a
6 Muslim can do to strike back in America? 362T, that's June
7 21, and a number of people are present, Amir Abdelgani
8 included, and there is discussion about fingerprints, cars
9 not blowing up, traces from a bomb, explosion to happen.
10 That is when Tarig Elhassan talks about how America has to
11 change.

12 381A, B, B1T, Amir Abdelgani delivering barrels
13 of diesel fuel from Mohammed Saleh's gas station.

14 Government's Exhibit 383T2, that's the last day,
15 when Amir Abdelgani is praying on the cardboard with the
16 targets, the lanes depicted, the lanes of the tunnels, the
17 arrows showing the directions. He prays on the cardboard as
18 his colleagues are mixing bombs nearby. That's the
19 transcript on which Amir Abdelgani says, I am not going to
20 hit the switch until I see my other car, which is going to
21 take me.

22 And you also see the tunnel video. Amir
23 Abdelgani is not in the tunnel video. You see him on 383T2
24 at the very beginning, watching the tunnel video, saying
25 this is a weighty evidence. The key exhibits you can line

1 up and see how Fares Khallafalla joined this war of
2 terrorism against the United States, again include 320T, the
3 time he is with Amir Abdelgani on May 27, the boom, boom,
4 boom, all America on stand by.

5 Government's Exhibit 340T, when Khallafalla and
6 Emad Salem go out to buy timers.

7 Government's Exhibit 352T, on June 19, and you
8 saw that Fares Khallafalla was present when Siddig Ali
9 explained to Victor Alvarez that this is a strike against
10 America. That's the day that the transcript combined with
11 the surveillance agent's testimony shows that Fares
12 Khallafalla went with Siddig Ali to buy fertilizer. That's
13 the transcript that indicates Fares Khallafalla and Victor
14 Alvarez went to buy stolen cars after Fares Khallafalla
15 was finished buying fertilizer. That's the transcript where
16 Salem is explaining how the timer is connected to a bomb,
17 and testing the timer to show how a bomb will go off.

18 And Government's Exhibit 362T, that's a
19 transcript from June 21, when in that transcript at page 22
20 and 23 it becomes clear that Fares Khallafalla and Victor
21 Alvarez are coming back from a second attempt to buy stolen
22 cars, and that is whether Fares Khallafalla is in the safe
23 house explaining, while Tarig Elhassan is explaining that
24 America can break down.

25 How do you know that defendant Tarig Elhassan

1 joined this conspiracy to terrorize the United States? You
2 know from Government's Exhibit 352T -- that is from June
3 19 -- where, for example, at page 191 Salem asked Elhassan
4 if he knew about the Lincoln or Holland Tunnel, and Tarig
5 said both. Salem talked about an explosion, Elhassan talked
6 about pressing the button on the car and meeting another
7 person in another car, showing you that he knew the targets
8 and the plan of operation for blowing up the tunnels.

9 Government's Exhibit 770T, telephone call to
10 Siddig Ali from Tarig Elhassan. He has just been talking to
11 an engineer from whom he can get some information about the
12 tunnels.

13 Government's Exhibit 363T, Tarig Elhassan talking
14 to Siddig Ali and Emad Salem, explaining about the problems
15 you would have with the bridge because they are suspended
16 from cables, indicating that he can get more information in
17 the future from this engineer.

18 Government's Exhibit 362T. That's when Emad
19 Salem, Siddig Ali and Tarig Elhassan are discussing what
20 happens when a tunnel blows up, what is the water level
21 compared to the street level, and Tarig Elhassan indicates
22 that the tunnel will break into four or five pieces. The
23 same we talked about earlier where Tarig Elhassan talks
24 about if the car were here they couldn't touch it with their
25 hands. Siddig Ali says we will clean it, and Amir Abdelgani

1 says just in case, if it didn't blow up for whatever reason.
2 People worried about a bombing plan and leaving
3 fingerprints. That is the conversation where Tarig Elhassan
4 makes plain when it is brought up that they want to free
5 Mahmoud and Nidal, Mahmoud Abouhalima and Nidal Ayyad, the
6 bombers of the World Trade Center, one thing that we have to
7 do, we have to get the name of America, people have to
8 understand America has to change, you have to understand
9 America can break down.

10 Finally the last night, Government's Exhibit
11 383T2, and Tarig Elhassan is caught stirring a bomb.

12 How do you know that Fadil Abdelgani joined this
13 conspiracy, recognizing joined this agreement to wage a war
14 of terrorism, to set bombs off against the United States?
15 You know at it first because you saw the surveillance
16 photographs of Fadil Abdelgani going up to Mohammed Saleh's
17 gas station, then to a different gas station that Mohammed
18 Saleh sent them, to pick up diesel fuel.

19 You see Government's Exhibits 381A1, B1 and B1T,
20 showing Fadil Abdelgani present and helping to unload the
21 barrels of diesel fuel. And you have seen from the
22 transcript 381B1T that it is clear that in the middle of the
23 day when the diesel barrels are delivered, Fadil Abdelgani
24 has to go make istikhara prayer, has to make a decision,
25 pray, decide whether he wants to join it or not. And then

1 you see that Fadil Abdelgani comes back, makes a decision,
2 comes back and decides he will join, and he proves it by
3 stirring the fertilizer and the fuel oil together, and
4 that's what we went through earlier today.

5 You also have against him and against all the
6 defendants on trial your common sense, because you know
7 there is no way he went through that chain of events that
8 day and didn't know what he was doing. There is no way his
9 coconspirators would let an eyewitness watch him mix a bomb
10 when you know what in fact happened is he went to pray the
11 istikhara prayer, made a knowing choice, and came back.

12 How do you know that defendant Victor Alvarez
13 knowingly joined, campaigned in an agreement to wage a war
14 of terrorism against America? You know it first from
15 Government's Exhibit 352T, that same transcript from June 19
16 we have talked a lot about, where Siddig Ali made it plain
17 to Alvarez, in your mind, what do you think a Muslim can do
18 to strike back at America, in your opinion? That's the day
19 he was asked to provide a machine gun, a machine gun to be
20 used against the police in case they were stopped in a car
21 and caught with a bomb. That's the day he watched the
22 timers be tested. That's the day that Victor Alvarez went
23 out to try to get stolen cars.

24 Government's Exhibit 362T, the transcript in
25 which bombs are mentioned, in which it is made plain to

1 Victor Alvarez that this is your country. He is given an
2 opportunity, if you want to leave the country first, for the
3 rest of us it's different but this is your country. And
4 toward the end when they are preparing people for
5 questioning, that's when Tarig Elhassan says in English,
6 America must change. And toward the end, that's when Tarig
7 Elhassan makes it plain to Victor Alvarez that he can back
8 out if he wants, he doesn't have to go through with this, no
9 one will be made, we'll change the targets. And you see, he
10 does it, because Government's Exhibit 366, that's the tape
11 recording of Victor Alvarez providing the Uzi he was asked
12 to provide for the bombing operation. That's earlier on, on
13 June 23, 1993. You have the Uzi itself in evidence.

14 And finally you have Government's Exhibit 383T2,
15 when Victor Alvarez is caught on videotape stirring the fuel
16 oil and fertilizer to make a bomb.

17 Finally, how do you know the defendant Mohammed
18 Saleh joined an agreement to terrorize the United States,
19 joined an agreement to set off bombs here? First as
20 background, you have Government's Exhibit 522, a chart of
21 telephone activity between Siddig Ali, Mohammed Saleh and
22 the people connected with the Sudanese Mission. It is not
23 listed here but you could go through Siddig Ali's FISA's.
24 If you read through them, it is clear that the people in the
25 Sudanese Mission have connected up Siddig Ali to Mohammed

1 Saleh. You have the key exhibit, Government's Exhibit 333T,
2 the meeting on June 4 of 1993, at Mohammed Saleh's
3 residence, where he asks here or in Egypt, and he is told
4 here, the meeting at which it is indicated that they have
5 pinpointed specific targets, where Siddig Ali says, targets
6 here, now, that are going to be hit, and then they have that
7 conversation, the conversation you have heard in which there
8 is talk about not saying things out loud, not writing it
9 down, and then they swallow the paper at the end, in which
10 you hear two between the states, and you hear the paper
11 eaten, and you hear three targets, three serious targets,
12 all making plain to Mohammed Saleh what it is they are
13 trying to do, and he agrees to help.

14 You have Government's Exhibit 793T. That is
15 Mohammed Saleh calling ahead to the other gas station to
16 make them wait.

17 Government's Exhibit 288, the series of
18 photographs showing Amir and Fadil Abdelgani picking up the
19 fuel oil.

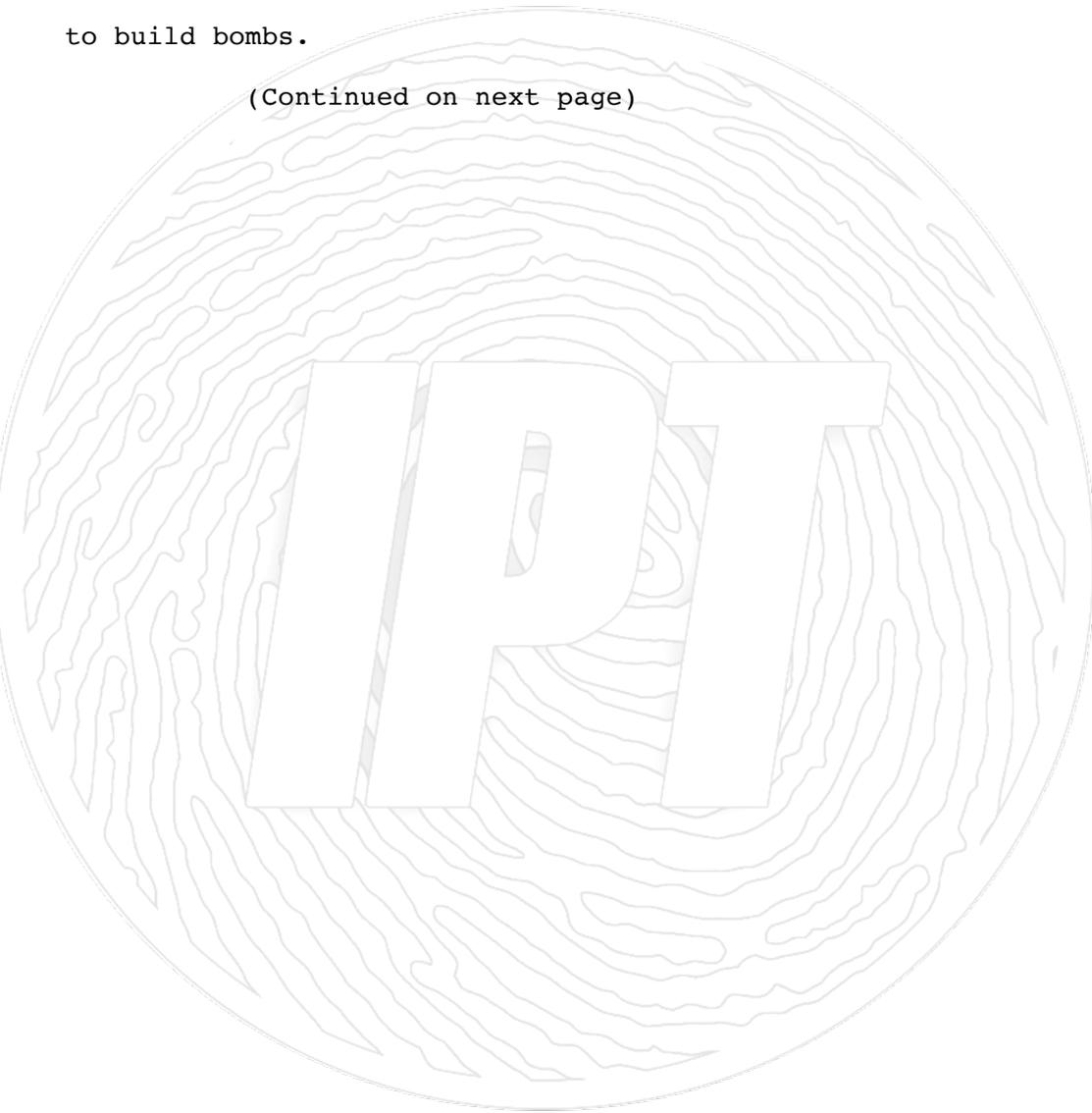
20 Two items you don't have on the exhibit list but
21 evidence you have heard of, you have heard about the arrest
22 of Mohammed Saleh fully clothed, lying under the covers
23 hiding. You heard about him lying that night to the FBI
24 agents, making up a story because he knew he was guilty.

25 And finally, you have an exhibit, Government's

1 Exhibit 289T, a call on July 5, 1993, Mohammed Saleh
2 realizing he can get caught for what he did, calling up an
3 employee to destroy the receipt, to destroy evidence that he
4 had provided 255 gallons of diesel fuel to people who wanted
5 to build bombs.

6 (Continued on next page)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 I would like to talk to you very briefly about
2 Count Five in the indictment. Count Five is the bombing
3 conspiracy.

4 I submit to you of all the reasons that you knew
5 all the defendants on trial joined the conspiracy to set off
6 bombs against the United States, you also know that same
7 evidence shows you that at the very least they knew there
8 was a bombing campaign. You will find out that the same
9 evidence that you have lined up for Count One will prove
10 Count Five.

11 The two things I will note is that a bombing
12 conspiracy as opposed to a seditious conspiracy, Count Five
13 as opposed to Count One requires an overt act. You will see
14 that there are a number of overt acts. They are concrete
15 steps taken in furtherance of the conspiracy. You only need
16 one, and it only has to be done by any member of the
17 conspiracy. You will see that all the overt acts listed in
18 the indictment have been proven.

19 You will also see, and the judge will explain it
20 in more detail, but I submit to you, there is no essential
21 element that requires that people agree upon the specific
22 targets if they agree to the bombing plan. If they agree
23 that bombs should be set, they don't have to agree on a
24 target. It is not an essential element of the offense.

25 I would like to talk to you about Count Six, the

1 attempted bombing. There you will see that there are two
2 elements. The first element is that, again, the defendant
3 you are considering intended to destroy by fire or
4 explosive, buildings, vehicles, or property in interstate
5 commerce. The second part you have to consider is whether
6 the defendant willfully took a substantial step in that
7 process.

8 With regard to Count Six, you will also hear from
9 the judge that there is a concept called aiding and
10 abetting.

11 He will explain that to you in a lot more detail,
12 but you will see that in if someone commits a crime and
13 someone else knowingly does something to help that person
14 succeed in committing their crime, they're guilty, too. I
15 submit to you that if you focus on this count, you will see
16 it is quite easy to see that each of the defendants charged
17 in that count are guilty of an attempted bombing.

18 One thing you should note right up front, in an
19 attempt, a lot of the evidence focuses on what is in
20 someone's mind. Did they attempt, did they try to carry out
21 the crime. You will learn that even if it, was impossible
22 for the crime to succeed, a person can be guilty of attempt.
23 Someone can pull out a gun that he doesn't know is
24 inoperable, it doesn't work, and pull the trigger at someone
25 and attempt to shoot him, and, yet, in the end, the crime

1 itself could never have physically been carried out because
2 the gun is defective. The reason I point that out is you
3 heard evidence that there was a problem with the materials
4 actually being used to make the bomb in this case. You
5 learned that the .6 ammonium nitrate was not enough. You
6 needed a lot more ammonium nitrate. They had high nitrogen
7 in the fertilizer, but not the right kind of nitrogen. But
8 using the amount of fertilizer and the content of the
9 fertilizer, you now know that this thing they were mixing,
10 in the state it was then, would not have blown up.

11 The important thing isn't whether or not it would
12 blow up, much like, it's not whether or not the gun actually
13 could work. It is what is up here. Has the person taken
14 the steps, taken enough steps to demonstrate that he wants
15 it to succeed? Is he attempting to carry it out?

16 The fact here is that everyone in the safe house
17 was relying upon Emad Salem's knowledge about bombs. Emad
18 Salem played the role of the bomb builder. The fact that he
19 did a lousy job of building the bombs doesn't mean that the
20 people who were trying, attempting to build a bomb aren't
21 guilty of an attempted bombing.

22 Let's go through, and I think you'll see that one
23 person who clearly committed an attempted bombing was Siddig
24 Ibrahim Siddig Ali. Rather than go through and figure out
25 who else by themselves committed an attempted bombing, I

1 think you'll see it's easier to analyze, to see who it was
2 that aided and abetted helped Siddig Ali commit the
3 attempted bombing.

4 Siddig Ali, the proof is clear here, that he
5 committed an attempted bombing: He made bombing plans. He
6 got approval from defendant Abdel Rahman. He went to the
7 safe house a number of times. He scouted the United
8 Nations. He scouted the tunnels several times. He scouted
9 the FBI building. He obtained barrels. He obtained fuel
10 oil. He obtained fertilizer. He conducted a test explosion
11 in Connecticut with Emad Salem. He arranged to obtain
12 timers. He obtained an Uzi. He took a video. He planned
13 for post-arrest questioning. He made efforts to get
14 detonators.

15 When you listen to the judge explain what an
16 attempt is, it will be quite clear in your mind that Siddig
17 Ali is guilty of an attempted bombing. The question is,
18 when you consider each of the defendants charged in this
19 count -- and not all defendants are charged in this count,
20 I'll go through that in a moment -- whether or not that
21 defendant knowingly helped Siddig Ali in a way that he
22 wanted Siddig Ali to succeed.

23 The defendants charged in this count are
24 defendant Hampton-El, Amir Abdelgani, Fares Khallafalla,
25 Tarig Elhassan, Fadil Abdelgani, Mohammed Saleh, and Victor

1 Alvarez.

2 I will go through with you quite quickly and show
3 you how it's clear that each of these fellows knowingly
4 helped Siddig Ali commit this attempted bombing.

5 Defendant Hampton-El agreed, he agreed to try to
6 get detonators, C-4 or hand grenades for Siddig Ali. That
7 was something Siddig Ali needed. He needed someone to work
8 on that so he could go do other things. He also said he
9 would try to get passports. He agreed to provide that
10 assistance. That was something Siddig Ali didn't have to
11 take care of. He even admits to you he tried to get those
12 passports.

13 I submit to you whether he's trying to get
14 passports when he makes the phone calls to Mustafa Assad or
15 trying to get detonators -- and I think the evidence shows
16 clearly he's trying to get detonators -- when he's doing
17 that activity, he's doing things knowingly trying to help
18 Siddig Ali's bombing plan succeed.

19 What did Amir Abdelgani do to help make this
20 attempted bombing succeed?

21 Amir Abdelgani did a lot of things. He went on a
22 scouting trip. He scouted the targets. He picked up oil
23 from Mohammed Saleh. He was there when they were mixing in
24 the safe house on the last night. Clearly, he was part of
25 the efforts to help Siddig Ali commit this attempted

1 bombing.

2 Fares Khallafalla. You saw what Fares
3 Khallafalla did. He bought timers. He bought fertilizer.
4 He twice tried to buy stolen cars. He was helping Siddig
5 Ali commit this attempted bombing.

6 Tarig Elhassan: Caught mixing the bomb.

7 Fadil Abdelgani: Delivering the oil; caught
8 mixing the bomb.

9 Mohammed Saleh provided oil twice.

10 All of those people helped Siddig Ali in the
11 attempted bombing, knowing what they were doing, trying to
12 make the attempt succeed.

13 Finally, Victor Alvarez. He provided the Uzi.
14 He made efforts to buy cars, was caught mixing the bombs at
15 the end. He, too, tried to make Siddig Ali's attempted
16 bombing succeed.

17 Let me talk to you quickly about two firearms
18 charges, Counts Fifteen and Count Sixteen. In Count
19 Fifteen, the only defendant charged is Victor Alvarez. He's
20 charged with shipping a firearm in interstate commerce.

21 You'll find that the two elements that the
22 government had to prove were that Victor Alvarez had
23 knowledge or reasonable cause to know about the bombing
24 conspiracy, and for all the reasons I went through why he's
25 guilty of the bombing conspiracy, that element has been

1 satisfied.

2 And, also, the government had to show that the
3 firearm was shipped in interstate commerce. Here it's
4 crystal clear. He gave the Uzi to Emad Salem and Siddig Ali
5 in New Jersey, and he saw it again in the Queens safe house,
6 so he knew from New Jersey to New York -- you know that it
7 moved.

8 I also submit to you you actually know precisely
9 when it crossed state lines because that Uzi was in the car
10 when the tunnel video was being filmed and they are filming
11 in New York and New Jersey. You actually have a film of the
12 weapon crossing state lines.

13 Victor Alvarez aided and abetted. He helped that
14 shipping of the firearm by providing the firearm to Siddig
15 Ali in New Jersey. He allowed Siddig Ali to transport it to
16 New York, and he clearly knew what it was being used for.
17 You heard it right on tape. He's told: We want the weapon
18 to be used for a bombing campaign. We want to use the
19 weapon against the police if they stop the car.

20 The second count, Count Sixteen, is also a
21 firearm charge against only Victor Alvarez. That charge is
22 using or carrying a firearm during a bombing conspiracy.

23 The elements, again, are whether or not the
24 underlying charged crime of violence was committed, this
25 being the bombing conspiracy, Count Five. I have reviewed

1 with you how the government proved that.

2 The second part is whether or not defendant
3 Victor Alvarez used or carried the firearm during and in
4 relation to the crime, used it or carried it during the
5 bombing conspiracy or aided and abetted someone else.

6 Again, aiding and abetting applies here. I
7 submit to you that Victor Alvarez aided and abetted the use
8 and the carrying of the firearm. He was told that the
9 firearm was needed for the bombing conspiracy. He gave it
10 in New Jersey and in fact it was brought to Queens, where it
11 was used and carried by Amir Abdelgani, and when Wahid Saleh
12 walked into the safe house, Amir Abdelgani grabbed the gun
13 and stood there and watched. You will learn from the judge
14 the gun doesn't have to be fired for the crime to be
15 committed.

16 What I will do now is I will move ahead to some
17 of the counts filed against defendant Ibrahim El-Gabrowny.

18 Counts Twenty and Twenty-One are assaults,
19 charged assaults by Ibrahim El-Gabrowny against a detective
20 sworn in as a special federal officer and an ATF agent.

21 Defendant Ibrahim El-Gabrowny is the only
22 defendant charged in those two counts. The government has
23 proven the four elements. The first element as to each
24 count separately is that the people who were assaulted,
25 Agent Burke and Detective Corrigan, were employed as federal

1 agents or officers.

2 You have learned that Special Agent Burke is a
3 federal agent with the Bureau of Alcohol Tobacco & Firearms.
4 You have also learned that Detective Corrigan is a New York
5 City police detective, but he's sworn in as a special
6 federal marshal.

7 The second element is that the people assaulted
8 not only have to be federal officers, but they have to be
9 assaulted during a time when they are engaged in the
10 performance of their official duties. They can't be off at
11 a ball game and get slugged and that would be an assault
12 against a federal officer.

13 You learned in fact that they were engaged in
14 their duties. They were in the area of Ibrahim
15 El-Gabrownny's apartment trying to execute a search warrant.
16 They were there to try to maintain perimeter security while
17 people were carrying out the search warrant.

18 You've learned, and the judge will tell you,
19 that what Ibrahim El-Gabrownny has to do to be guilty of this
20 charge is to assault or resist or oppose or impede or
21 intimidate or interfere. The government has proven that.

22 You have learned that Ibrahim El-Gabrownny slugged
23 one agent along his elbow and his jaw; slugged the other
24 agent at his chest, and they fell down, grappled on the
25 ground. That is assaulting, resisting, opposing, impeding,

1 intimidating, and interfering. Obviously he acted
2 willfully. That's the last element.

3 One other thing you should know: It doesn't
4 matter in this particular case, but the defendant when he
5 commits the crime of assaulting a federal officer doesn't
6 have to know that the person assaulted is a federal officer,
7 as long as the person assaulted is in fact a federal officer
8 engaged in their duties.

9 Here the people assaulted had identified
10 themselves, made clear to him that they were there to
11 execute a search warrant, but you don't even have to think
12 about the issue of whether or not Ibrahim El-Gabrownny knew
13 they were federal officers. They were federal officers, and
14 he assaulted them.

15 Count Twenty-Two is the charge against defendant
16 Ibrahim El-Gabrownny of assault during a search warrant. The
17 elements there, there are four of them:

18 First, the agents have to be authorized to
19 execute a search warrant. You have learned that.

20 You have to find, again, that they were engaged
21 in the performance of official duties regarding a search.
22 You'll learn when the judge explains to you and when you
23 compare it with what he tells you the legal requirement is
24 that these agents that were there to carry out the search,
25 and the rest of it is the same as the other charge. He did

1 assault, resist, oppose, prevent, impede, intimidate or
2 interfere, and do it willfully.

3 Count Twenty-Three is a charge against defendant
4 Ibrahim El-Gabrownny for possessing false identification
5 documents. Again, he is the only defendant in this count
6 you have to consider.

7 The charge is that Ibrahim El-Gabrownny knowingly
8 possessed five or more false identification documents. You
9 saw that, in fact, he had five false identification
10 documents for Sayyid Nosair. You know he knew he had false
11 identification documents. He knows who Sayyid Nosair is, he
12 sees the fake names, and in fact he he's got the negatives
13 of the photographs, so he knows a lot about what's going on.

14 The government also had to show -- the second
15 element -- that these documents were intended to be used or
16 transferred unlawfully. I submit to you that these
17 documents weren't for Ibrahim El-Gabrownny. They were to be
18 transferred to Sayyid Nosair when they could get him out of
19 jail. They were to be used for Sayyid Nosair to travel
20 under false pretenses, travel unlawfully. Common sense
21 tells you that the false identification documents were not
22 made for him. They were not in his name. He had to
23 transfer them, and they were to be used for an unlawful
24 purpose.

25 Finally, the third element in that charge is that

1 the possession or intended use of those documents was in or
2 affected interstate or foreign commerce. You will learn
3 that that includes travel. I submit to you your common
4 sense tells you that the precise reason to have these false
5 fraudulent passports is to use them for travel in or
6 affecting interstate and foreign commerce.

7 One more comment on the last counts, counts
8 Twenty-Four through Twenty-Eight against Ibrahim
9 El-Gabrownny, possession of false ID documents: You will see
10 that the counts, 24, 25, 26, 27 and 28, each count pertains
11 to one of the passports.

12 Again, you will see that as to defendant Ibrahim
13 El-Gabrownny the government had to prove that he knowingly
14 possessed a document for entry or stay in the United States,
15 and you know he did. He had the documents. He was caught
16 red-handed, and he had to know that they were procured by
17 fraud or unlawfully obtained. It's clear that they're
18 fraudulent documents unlawfully obtained because the way
19 they were be obtained, he obtained documents for Sayyid
20 Nosair in someone else's name.

21 Let me talk to you about the Kahane murder. Let
22 me review with you briefly how the government has proven
23 Sayyid Nosair guilty of Count Seven, the murder of Rabbi
24 Kahane.

25 Again, Sayyid Nosair in this count is the only

1 defendant charged. The government had to prove three
2 elements beyond a reasonable doubt: First, that Sayyid
3 Nosair murdered Rabbi Kahane; second, that he was a member
4 of a racketeering enterprise; and, third, that he did the
5 murder at least in part to increase or maintain his position
6 in the enterprise.

7 Let's talk about the murder. The government had
8 to show that Nosair intended to murder Rabbi Kahane and,
9 secondly, that he caused Rabbi Kahane's death.

10 I will do a very short review here. I think it
11 is plain to you by this point in the trial that there is
12 little doubt that El Sayyid Nosair is the murderer of Rabbi
13 Meir Kahane. You know it from the eyewitness testimony of
14 Ari Gottesman, from Irving Franklin, from Steven Hoffman,
15 and the testimony read to you of Franklin Garcia, the
16 cabdriver, and from Carlos Acosta, the postal police officer
17 who was shot, who testified from the witness stand.

18 You have a solid case proving that Sayyid Nosair
19 killed Rabbi Kahane based on the eyewitness testimony alone.
20 You also have the ballistics showing that all the bullets
21 involved came from the same gun. You know that the bullets
22 that matched the revolver found at Sayyid Nosair's side, the
23 revolver used to kill Kahane, were in Sayyid Nosair's
24 pocket.

25 You have the three confessions: Sayyid Nosair

1 telling Emad Salem up at Attica how he went into a room with
2 300 people and no one saw him. He told you how he was
3 running down the street shooting and that he could use stun
4 guns the next time. You heard it from Dr. Nunn, who asked
5 him how do you do it. He said: I had no choice. It was my
6 duty. You saw it in the speech, "Jihad Anew," where he made
7 clear that he had "jihaded" once before, and God had saved
8 his life so he could go out and do it again.

9 You saw the evidence that Sayyid Nosair was not
10 acting alone. You saw the Kahane video where Mohammed
11 Salameh and Bilal Alkaisi are seen in the room moments
12 before the murder. You saw the phone records showing
13 contact between those people, Sayyid Nosair.

14 You saw the evidence from the car, the stolen
15 license plate, the fingerprints. The car was missing for a
16 while. I submit to you that the only thing you have to
17 really focus on now is that Sayyid Nosair killed Rabbi
18 Kahane in furtherance of an enterprise.

19 Let me tell you what that enterprise is. The
20 enterprise was a jihad organization in the New York area.
21 It's what's called an association in fact. It is an
22 informal group of people. You don't have to get into a room
23 in a solemn ceremony, hand out uniforms, and say: We're now
24 an organization. People associated in fact, and you saw
25 that this informal organization included a number of people,

1 including Sayyid Nosair, Mahmud Abouhalima, Mohammed
2 Salameh, defendant Abdel Rahman, Siddig Ali, and others.
3 This loose organization, this informal association had to
4 have a common purpose. That common purpose here was jihad.
5 We all know that to the men in this room jihad did not mean
6 internal struggle. It meant fighting. Jihad was fighting,
7 was fighting the enemies of Allah.

8 I submit to you that you've seen ample proof of
9 this association during this trial, people working together
10 to carry out the goals of jihad.

11 I submit to you that what in fact you know is
12 that Sayyid Nosair carried this out in part because he
13 wanted to increase or maintain his position in this jihad
14 group.

15 You know that because what did he tell Emad Salem
16 in Attica? He said: I did my part. Why don't you guys do
17 yours. He's saying: OK. I've delivered. I'm someone.
18 Now someone else has to do something. Because he has
19 status. You know it from his "Jihad Anew" speech, because
20 he's out there telling people: I've done jihad. My life
21 has been spared. I want to do jihad again. Telling other
22 people: Outburst, outburst, outburst. Begin the jihad,
23 begin the jihad, begin the jihad.

24 He's telling people: Look, I've done it. You do
25 it, too. He's using his status as the murderer of Rabbi

1 Kahane to urge people to go forward. Just by the words that
2 he told Dr. Nunn -- I had no choice; it was my duty -- this
3 was a jihad killing. That is why Mahmud Abouhalima,
4 Mohammed Salameh, Siddig Ali and others would go to see
5 Sayyid Nosair in jail, because of the status he had as the
6 murderer of Rabbi Kahane.

7 THE COURT: Mr. Fitzgerald, if you could come to
8 a convenient break point within the next five minutes.

9 MR. FITZGERALD: This would be it, Judge.

10 THE COURT: This would be it?

11 MR. STAVIS: May I be heard at the side bar, your
12 Honor.

13 THE COURT: Come on up.

14 (Continued on next page)

15

16

17

18

19

20

21

22

23

24

25

1 (At the side bar)

2 MR. STAVIS: Mr. Fitzgerald was instructing the
3 jury concerning --

4 THE COURT: This is ridiculous. This can be
5 heard afterwards. Not now.

6 MR. STAVIS: I want to make sure the issue is
7 reserved. That is why I am doing it timely.

8 THE COURT: This can be done afterwards, not now.

9 (In open court)

10 THE COURT: Ladies and gentlemen, we are going to
11 break for the day. Please leave your notes and other
12 materials behind. Please do not discuss the case. Please
13 remember particularly not to see, hear or read anything
14 about this case or any related matter. We will see you
15 tomorrow. Good night.

16 (Jury not present)

17 THE COURT: Mr. Stavis?

18 MR. STAVIS: Yes, your Honor.

19 During Mr. Fitzgerald's summation, he was
20 instructing the jury on the law concerning the racketeering
21 element --

22 THE COURT: This was dealt with before. What I
23 told the jurors was that I will instruct them on the law and
24 that he was simply arguing the relationship of the evidence
25 to that law. As far as I could tell, I didn't hear any

1 obvious mistakes, but do go on.

2 MR. STAVIS: I heard some very obvious mistakes,
3 your Honor. I heard mistakes which diminished Mr.
4 Fitzgerald's burden of proof on the murder in aid of
5 racketeering count.

6 I object that he instructed the jury, but he
7 didn't instruct them about the interstate commerce
8 requirement. He did not instruct them concerning the
9 racketeering enterprise must be engaged in acts of
10 racketeering and what those acts of racketeering are.

11 Your Honor will recall that I objected at the
12 charging conference to the way your Honor is charging this
13 crime. It is a very specific crime. It is not just murder.
14 It's murder in aid of racketeering activity, and Mr.
15 Fitzgerald has diminished the racketeering element of that
16 crime and diminished his burden of proof.

17 That is why I asked your Honor at the time, so
18 that you could cure that right then and there, prior to the
19 dismissal of the jury.

20 THE COURT: Your objection borders on the
21 fatuous, Mr. Stavis. The interstate commerce part of it is
22 something that is very easy to prove, as you know, and is
23 something that I will instruct the jury on.

24 I will tell the jury at the beginning of the
25 session tomorrow, as I told them today, that when lawyers

1 talk about the law, all they are doing is comparing evidence
2 to what I am going to instruct them on, that it is what I
3 instruct them on that counts. To the extent you had an
4 issue which escapes me, you have preserved it.

5 MR. STAVIS: How about racketeering acts, your
6 Honor?

7 THE COURT: Mr. Stavis, sit down.

8 MR. STAVIS: Is that fatuous as well?

9 THE COURT: Mr. Stavis, I am here to listen to
10 your objections. I am not here to answer argumentative,
11 rhetorical, inane questions.

12 MS. STEWART: Judge, has there been a
13 reconfiguring of the instruction with regard to opinion
14 evidence, page 38 of your charge, with regard to conspiracy?
15 That was the one that Mr. McCarthy submitted some language
16 on and I submitted some language on. It had to do with --

17 THE COURT: You mean have I finished redrafting
18 it yet?

19 MS. STEWART: Yes.

20 THE COURT: No.

21 Now, what is the question behind the question?

22 MS. STEWART: Because I am summing up tomorrow.

23 THE COURT: OK.

24 MS. STEWART: If I could just have a look at
25 something, even a rough configuration of it before I --

1 THE COURT: You have had a rough configuration in
2 the sense that you have had a draft and we have talked about
3 the idea that's going to be conveyed. I don't know how
4 specific it has to be.

5 MS. STEWART: May I ask you this question.

6 THE COURT: Sure.

7 MS. STEWART: One of the main things we requested
8 is that it not refer specifically to Dr. Abdel Rahman.

9 THE COURT: It won't.

10 MS. STEWART: It will not?

11 THE COURT: You have my word. Unless -- sorry.

12 Unless you get up and tell them, which I don't
13 think you are going to do, that it is obvious that it
14 doesn't relate to him and that I do not intend to relate it
15 to him, in which case I am going to have to administer the
16 antidote for that. But it will not mention his name. OK?

17 MS. STEWART: OK.

18 THE COURT: Good.

19 Mr. Jacobs?

20 MR. JACOBS: Your Honor, I tried to look through
21 the record a bit on the question of the FBI.

22 THE COURT: You mean on the intelligence issue?

23 MR. JACOBS: Yes. I refer the government to July
24 6, at page 13620. There were some questions by Mr. Ricco
25 concerning intelligence gathering of Mr. El-Gabrownny. There

1 was no followup by either side.

2 THE COURT: Intelligence gathering --

3 MR. JACOBS: Taping.

4 THE COURT: -- of Mr. El-Gabrownny?

5 MR. JACOBS: Correct.

6 THE COURT: That has nothing --

7 MR. JACOBS: Well, I think if I --

8 THE COURT: That has nothing to do, as I
9 understand it, with the concept that Mr. Fitzgerald was
10 trying to convey.

11 MR. JACOBS: I think what Mr. Fitzgerald was --
12 maybe I'm wrong -- was going to try to argue was that the
13 FCI unit of the FBI, the Foreign Counterintelligence Unit,
14 operates under some other rules as far as taping is
15 concerned.

16 All I'm saying is he's perfectly free to use the
17 record to his heart's delight. The way he started the
18 argument was he sounded like he was testifying.

19 THE COURT: That is why we had the side bar. As
20 I understand it, the government is going to check on the
21 testimony. I don't think it is the testimony that you
22 referred to, but rather other testimony relating to the
23 general activities of Ms. Floyd's unit --

24 MR. JACOBS: The problem is that --

25 THE COURT: -- which is where I thought he was

1 going.

2 MR. JACOBS: So we are clear, in, I think, as
3 early as January 1992 Salem has switched over to the
4 terrorism unit, which is not an FCI unit, under Crouthamel,
5 and certainly at that point, since there is nothing on the
6 record about the difference in taping between the units, I
7 think the government has a problem trying to argue that.

8 THE COURT: Look, whatever problem they have in
9 trying to argue it, I am sure you will point it out when
10 your time comes to get up and argue.

11 MR. JACOBS: Well, I just don't want the
12 government to try to, on their own, testify to procedures
13 that are not in the record. That is all.

14 THE COURT: OK. Point made.

15 Mr. Serra, you wanted me to clarify for
16 Mr. Alvarez why it is he can't sum up other than because I
17 said so, which is, frankly, enough for him.

18 MR. SERRA: Mr. Alvarez asked the question, your
19 Honor.

20 THE COURT: All right. The answer is really
21 quite simple. You have a right to represent yourself under
22 the Constitution. However, you have to take advantage of
23 that right in a timely fashion. A timely fashion is
24 generally long before the trial. You can't wait until, not
25 only the 11th hour, but the 11th hour and the 59th minute,

1 when all that is left of the trial is to get up and deliver
2 a summation, and then assert the fact that you have a right
3 to represent yourself, because all that gives you the
4 opportunity to do is to get up and deliver an unsworn
5 statement to the jury without being cross-examined.

6 You are not the first defendant to have thought
7 of that. It was thought of by a gentleman whose name I am
8 he probably going to mispronounce, Cyphers, in United States
9 v. Cyphers, 556 F.2d 630, at page 634, (2d.Cir. 1977), and
10 by another man by the name of Wolfish, in United States v.
11 Wolfish, 525 F.2d 457 at pages 462 to 463, where the Second
12 Circuit pointed out that no defendant has a constitutional
13 right to deliver his own summation. You have taken
14 advantage of not only an able lawyer, but one of the most
15 able lawyers in this courtroom. You have worked with him
16 throughout this case, including the presentation of your own
17 case. For me to permit you at this point to sum up would be
18 a gross abuse of the right of self-representation. I am not
19 going to do it. For that reason, your application is
20 denied. I will see you all tomorrow at 9:30.

21 (Proceedings adjourned to Thursday, September 7,
22 1995 at 9:30 a.m.)

23

24

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

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

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

15 IBRAHIM A. EL-GABROWNY,

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

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

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

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

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

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

18 Defendants.

-----x

19 September 11, 1995
20 9:30 a.m.

21 Before:

22 HON. MICHAEL B. MUKASEY,

23 District Judge

24

25

26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

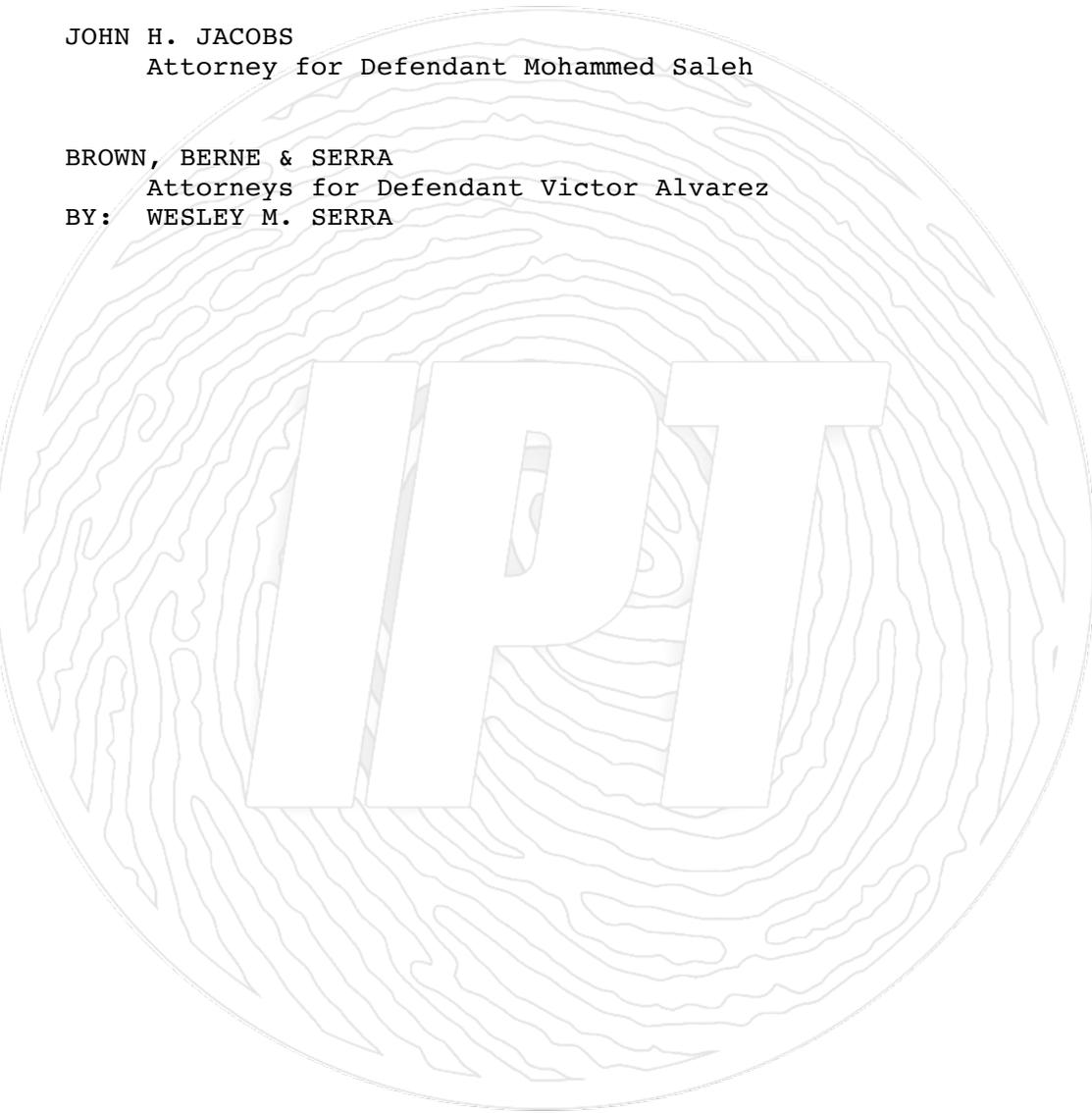
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Pages 19073 to 19077 sealed)

2 (In open court; jury not present)

3 THE COURT: Ready, Mr. Stavis?

4 MR. STAVIS: Yes, your Honor.

5 THE COURT: Good.

6 (Jury present)

7 THE COURT: Good morning, ladies and gentlemen.

8 JURORS: Good morning, your Honor.

9 THE COURT: You are now going to hear a summation
10 in behalf of Mr. Nosair from Mr. Stavis.

11 Mr. Stavis?

12 MR. STAVIS: Good morning, ladies and gentlemen.

13 JURORS: Good morning.

14 MR. STAVIS: Last Tuesday when we were here, Mr.
15 Fitzgerald was giving the closing arguments for the
16 government.

17 THE COURT: Mr. Stavis, you have to talk into the
18 microphone. Pull it towards you and maybe raise the
19 lectern, if you can.

20 MR. STAVIS: How's that?

21 THE COURT: That's fine.

22 MR. STAVIS: When Mr. Fitzgerald was giving his
23 closing statement for the government, he said that this case
24 is basically simple. He said that he didn't want you to be
25 confused and to think that the case was very complicated.

1 Ladies and gentlemen, after eight months, 150
2 plus witnesses, experts in all different fields, a thousand
3 plus exhibits, after translators on both sides battling over
4 the meaning of a single word, I do not agree that this is a
5 simple case. It is not simple at all. It is not simple,
6 and you may have been asking yourselves: Well, how does the
7 World Trade Center case fit in with all these guys here?

8 Mr. Fitzgerald tells you that that is simple. He
9 says it does.

10 You may be wondering what Afghanistan has to do
11 with this case. That is simple. The simple answer to that:
12 Nothing.

13 You may be wondering whether Emad Salem told you
14 the truth here. That's a simple answer to that one. Of
15 course, he did. He swore an oath right in the witness
16 stand, right over there. He told the truth.

17 You might be wondering why the FBI agents, the
18 case agents who were handling Mr. Salem came on to the
19 witness stand, swore an oath, and lied to each and every one
20 of you. There is a simple answer to that. They were caught
21 between a rock and a hard place Mr. Fitzgerald told you.

22 You may wonder what Sheik Omar Abdel Rahman's
23 speeches concerning Middle East politics have to do with
24 this case. That, too, is simple. They have to do something
25 with this case.

1 Ladies and gentlemen, this case is not simple.
2 There's nothing simple about it. It's complicated. It is
3 complicated because the government is trying to put together
4 things that just do not fit.

5 Now, when Mr. Fitzgerald was talking to you about
6 the evidence, he didn't talk about the defense evidence, and
7 there is a lot of it. I am going to go through it with you,
8 and it is going to take some time for me to do that.

9 You are all a very dedicated and diligent group
10 of people, and we've all been coming here to work in the
11 same office for all these months. I am going to ask you to
12 bear with me while I go through all of the evidence in the
13 case -- not just half the evidence.

14 When you discuss the evidence, when I discuss the
15 evidence, I am going to discuss not only the evidence and
16 the lack of evidence, but the quality of the evidence. All
17 of those are for you. You are going to be the ones who are
18 going to determine if this is a simple case or if it is a
19 complicated case.

20 Ladies and gentlemen, way back in February there
21 was a witness on the stand here named Ari Gottesman. He
22 gave me an answer to a question in cross-examination that
23 you may remember. That answer was: One man's terrorist is
24 another man's freedom fighter.

25 Ladies and gentlemen, the government says Sayyid

1 Nosair is a terrorist. The defense proved in this case that
2 he is a freedom fighter. His battlefield was on the other
3 end of the world. It was in Afghanistan. His weapons were
4 not only the guns and the rifles used at the Calverton
5 range, but the weapons manuals recovered from his house when
6 it was searched. I said to you in my opening statement that
7 Sayyid Nosair was on "Team America," and we all stand before
8 you this morning having proven that.

9 Now, the government didn't tell you about
10 Afghanistan. They just sort of gave it the brushoff. Why
11 is that?

12 Could it be that they didn't want you to know
13 that they are the ones who trained Sayyid Nosair for jihad
14 in Afghanistan?

15 The government didn't call the case agents who
16 are handling the case. They didn't call them so we did.
17 Could it be that the government was embarrassed by the lies
18 that they told?

19 The government didn't call Dr. Whitehurst during
20 that portion of the case when they were discussing and doing
21 something or other with the World Trade Center case. They
22 called somebody else. Why? Because Dr. Whitehurst was the
23 one who was pressured to change his findings. The
24 government didn't call Dr. Charles Hirsch, even though he is
25 the chief medical examiner of New York State, and you would

1 expect to find the chief medical examiner of New York City
2 or one of his assistants testifying in a murder case.

3 Now, why is that? Because there was no autopsy
4 performed with regard to Meir Kahane and because the
5 findings of Dr. Charles Hirsch contradict the key eyewitness
6 to that murder, Ari Gottesman.

7 The government didn't call Ehteshamul Haque, who
8 was an eyewitness to the shooting of Carlos Acosta. Why?
9 Perhaps then you would know of the tragedy of the shooting
10 of an unarmed man.

11 The government did talk a lot about the World
12 Trade Center case, and they put some pictures in, like this
13 one here with all the twisted metal.

14 Does it fit in the case? Does it have anything
15 whatsoever, was there any connection proved between that and
16 what Siddig Ali was up to in the spring of 1993?

17 The case is simple because the government wants
18 to make you think it is simple. The government wants you to
19 believe that this disparate group of men over here from all
20 different backgrounds who have in common only their religion
21 are a single terrorist cell, responsible for every act of
22 terrorism in the United States since 1989. And the
23 government wants you to think that it is all connected --
24 Rabbi Kahane, World Trade Center, bridges and tunnels.

25 But they didn't prove it, ladies and gentlemen.

1 They didn't prove that all of these men formed a single
2 group to wage what the government refers to as a war of
3 urban terrorism against the United States.

4 This is a land of freedom and opportunity, ladies
5 and gentlemen. What you have heard in this case shows you
6 that most of these men here came to share in that freedom
7 and in that opportunity.

8 Now, the first count in the indictment, ladies
9 and gentlemen, is called seditious conspiracy. We have
10 heard about jihad in America.

11 What seditious conspiracy means is jihad in
12 America and jihad against America. In lay person's
13 language, it's like treason. It's like going against your
14 country. It's not violence, but it's violence against, as
15 the judge will tell you, the United States functioning
16 through its government.

17 It is betraying your country, going against your
18 country, and for Sayyid Nosair, it's going against his
19 country.

20 There is an exhibit that is in evidence, ladies
21 and gentlemen, that I want you to think about when you think
22 about seditious conspiracy. It is Nosair MMM. It is a
23 certificate of citizenship for the United States of America
24 that belonged to Sayyid Nosair. It has the date on it of
25 September 27, 1989.

1 When you look at the indictment, you'll see that
2 this seditious conspiracy begins in 1989 and, if you
3 remember back, way back to February, the evidence at the
4 Calverton range was in July of 1989.

5 When you think about seditious conspiracy, when
6 you think about these treasonous acts against Sayyid's own
7 country, think of the fact that in the middle of that he
8 took time out to go into a United States courtroom much like
9 this one, across the river in Newark, New Jersey, put his
10 hand up, and take an oath of loyalty to the United States of
11 America.

12 That is the seditious conspirator. He didn't do
13 it the easy way. I did it the easy way. I was born in
14 Bronx Lebanon Hospital and I didn't have to go through
15 everything that you have to go through to get one of these.
16 He took the course; he took the test; he took the oath.

17 Now, the judge is going to tell you that
18 conspiracy means agreement. Conspiracy means each and every
19 man in this case is in agreement -- same purpose, same
20 objective, same agenda, each and every one of them. No
21 Afghanistan, no Bosnia, it is all U.S.A. It is all or
22 nothing.

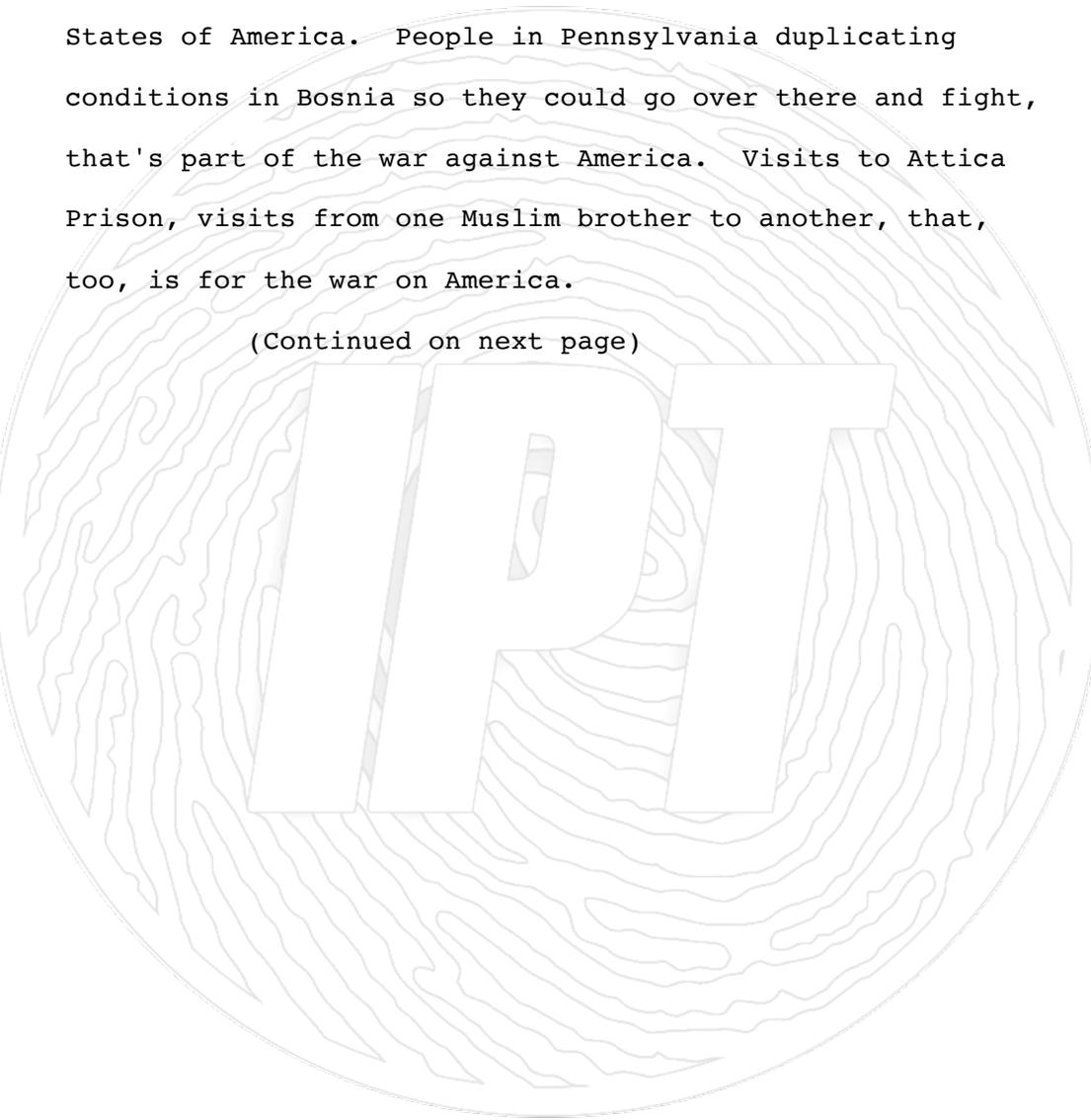
23 That is the prism that the government wants you
24 to view all of the evidence through. Everything that
25 happens here that was testified about -- every document,

1 every tape, every everything -- is all for this seditious
2 conspiracy against the United States of America.

3 People at the Calverton range in July of 1989
4 wearing Afghanistan T-shirts. That was against the United
5 States of America. People in Pennsylvania duplicating
6 conditions in Bosnia so they could go over there and fight,
7 that's part of the war against America. Visits to Attica
8 Prison, visits from one Muslim brother to another, that,
9 too, is for the war on America.

10 (Continued on next page)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



IPT

1 MR. STAVIS: (Continuing) There is a chart here,
2 if I find it. This is the sedition chart, ladies and
3 gentlemen, regarding Mr. Nosair, and number one on the
4 sedition hit parade is Government's Exhibit 76T, a notebook
5 taken from Mr. Nosair's home. In that notebook it says that
6 before announcing the establishment of the state of Ibrahim
7 in our holy land to break and destroy the morale of the
8 enemies of Allah, and this is by means of destroying,
9 exploding the structure of their civilized pillars, such as
10 the touristic infrastructure which they are proud of and
11 their high world buildings which they are proud of. Then it
12 says in the bottom of that second paragraph, this is to
13 repossess their sacred lands from the hands of the enemies
14 of God.

15 Doesn't sound to me like the United States of
16 America, and that is number one on the seditious conspiracy
17 hit parade, ladies and gentlemen.

18 Under the simple case formulation of Mr.
19 Fitzgerald, the holy lands referred to in Government's
20 Exhibit 76T are Jersey City, Brooklyn -- right here in
21 America. Anything to get you to believe that there is a war
22 on America.

23 Ladies and gentlemen, does it fit that there is
24 just one army here responsible for all these things, and
25 does it fit that there is just one goal and one objective?

1 The judge is going to instruct you at the end of
2 this case about something called multiple conspiracies,
3 where if the government alleges, as it does in Count 1 of
4 this indictment, one gigantic seditious conspiracy
5 responsible for everything, and then goes and proves a bunch
6 of other conspiracies that don't fit together, then they
7 have not proved the giant conspiracy that they have alleged.

8 The World Trade Center and Ramzi Yousef, who came
9 into this country in Kennedy Airport for a purpose, to blow
10 up the World Trade Center, no connection with him. He has
11 his own conspiracy. He blows up the World Trade Center with
12 Mohammad Salameh, Mahmoud Abouhalima, Nidal Ayyad.

13 But the government says that's simple. No one
14 here knows Ramzi Yousef, but they go to the same mosque in
15 New Jersey as Mohammad Salameh, therefore one giant
16 conspiracy.

17 Siddig Ali and Salem planning whatever they could
18 think of, it seems, that too is all part together with the
19 World Trade Center. The murder of Meir Kahane three years
20 before the World Trade Center, of course that is all part of
21 Siddig Ali and Salem, World Trade Center, Calverton range,
22 all one giant conspiracy that fits together simply.

23 Calverton range and Pennsylvania training.
24 Different people, different kind of training, four years
25 difference. But it's all the same, ladies and gentlemen,

1 under this giant seditious conspiracy. It all fits together
2 quite simply.

3 There was, if you can recall, testimony from a
4 guy named Garrett Wilson that in December of 1992, they were
5 making videos of him meeting with Clement Hampton-El in a
6 white car. They had a surveillance video of that that they
7 showed you. I am sure that that must fit in, too, with the
8 World Trade Center and Siddig Ali and Calverton range and
9 the murder of Meir Kahane, and maybe I will learn how on the
10 government's rebuttal summation. But, ladies and gentlemen,
11 that doesn't fit and that is more evidence that you saw
12 here.

13 How do we know that all these things fit
14 together? How do we know they are all related? The
15 government says so, the indictment says so. To put the
16 World Trade Center into the case, the indictment says, on
17 page 4, paragraph 6, that coconspirators Mahmoud Abouhalima,
18 Mohammad Salameh, Nidal Ayyad, Ramzi Yousef and Ahmed Ajaj,
19 among others, planned and carried out acts of terrorism,
20 including, among other things, bombings and murder.

21 So that's simple. They are in this case, they
22 are part of the same conspiracy because the government says
23 so.

24 Did you stop to wonder, ladies and gentlemen, why
25 the government spent all those weeks presenting to you

1 evidence of the World Trade Center bombing? There is a
2 fellow by the name of Frederick Ferby, very nice man who
3 testified that he was blown across the parking lot when the
4 explosion took place. No one here on trial is responsible
5 for that explosion, but you did see that. You saw the
6 photographs of the twisted metal in the wreckage. No one
7 here is responsible for the twisted metal and the wreckage,
8 but you saw them anyway.

9 After all these months, ladies and gentlemen, you
10 may be asking, what does the World Trade Center have to do
11 with this case? That's a rhetorical question, because there
12 is no answer, because I don't know, and I have been sitting
13 here eight months, too.

14 There has to be one agreement under this first
15 count seditious conspiracy, one agreement, not separate
16 agreements but one agreement that takes in the cousins
17 Abdelgani and the cousins El-Gabrownny. They are all
18 fighting for the same cause, all doing the same thing, even
19 though they never met each other, don't know each other, and
20 have nothing whatsoever to do with one another. Every act
21 has to be related. There has to be one target. That is the
22 target of the USA.

23 Some of these coconspirators in this target USA
24 are Ahmed Abdel Sattar, who works for the USA Post Office,
25 working for this one cause to bring down or to wage a war of

1 urban terrorism against the USA. Coconspirator Edward
2 Ferguson, works for the Transit Authority as a motor man,
3 getting you back and forth to work and where you have to go,
4 he, too, war of urban terrorism against the United States of
5 America. Ali Shinawy, who fixes the cars, the subway cars
6 for the Transit Authority, he, too, war of urban terrorism
7 against the United States of America. All these government
8 employees -- Mr. Nosair, New York City employee, department
9 of general Services, 111 Centre Street, right down the road.
10 Keeps the building heated in the winter and cool in the
11 summer, a government employee working together with everyone
12 else against the government.

13 Ladies and gentlemen, that is a fiction, what's
14 in this indictment. It's an absolute fiction that one group
15 came together for one purpose. I ask you to listen when the
16 judge instructs you about multiple conspiracies, and ask
17 yourselves, is it simple? Is there just one? Or is it
18 complicated? Is there more than one?

19 The government in the indictment has alleged a
20 jihad organization, and they have alleged one jihad
21 organization -- not more than one, not two, not three, not
22 six -- one jihad organization responsible for everything,
23 responsible for this war against the United States of
24 America.

25 I want to read to you from the indictment about

1 this jihad organization. On page 2 of the indictment, the
2 introduction section, there is a subtitle:

3 "The jihad organization in the United States.
4 From at least as early as 1989 and up until the date of the
5 filing of this indictment, a jihad organization (hereafter
6 the jihad organization) arose in the United States,
7 particularly in the New York City metropolitan area. As
8 this jihad organization developed, it pursued various
9 objectives in the United States, including the following:
10 The establishment of the United States as a staging ground
11 for violent actions against targets, both persons and
12 structures located in the United States and elsewhere, the
13 recruitment and training, including paramilitary training of
14 new members, and fund raising for jihad actions in the
15 United States and abroad. A principal objective of this
16 jihad organization was to carry out and conspire to carry
17 out acts of terrorism including bombings, murders and taking
18 of hostages against various governments and government
19 officials, including the United States government and its
20 officials."

21 That is the one jihad organization.

22 Then on pages 3 through 6, it identifies the
23 members of the one jihad organization. The sheik is the,
24 quote, emir or leader. Sayyid Nosair, quote, plays a key
25 role, close quote. He is like the general, I guess, in the

1 one army. Ibrahim El-Gabrownny, Sayyid Nosair's, quote,
2 trusted lieutenant. I could go through another 10 of these,
3 but the point is, one army, one leader, one general, one
4 trusted lieutenant, and one jihad organization.

5 I kind of thought it was one jihad organization,
6 from the indictment. Last Thursday Mr. Fitzgerald told you
7 in his summation:

8 "First you have to understand who defendant Abdel
9 Rahman is. If we are at the baseball game he is just not
10 any other guy in the spectator stands. Defendant Omar Abdel
11 Rahman is the head of the Islamic group called Gamat."
12 G-A-M-A-T.

13 That's another jihad organization. I don't know
14 much about it because I have been sitting here only for
15 eight months, but this is Gamat, jihad organization. Not
16 the one jihad organization alleged in the indictment.

17 Since Sheik Omar Abdel Rahman is the leader or
18 the commander in chief of this one single army, and Sayyid
19 Nosair is the commander or the general, you would think that
20 they would have to be in constant touch with each other.
21 The indictment goes back to 1989. You would think Nosair
22 and the sheik, Nosair and the sheik, Nosair and the sheik,
23 they are together in the mosque, they are on the phone.
24 They are here, they are at rallies, they are everywhere.

25 Ladies and gentlemen, not one witness ever came

1 here to say that they ever saw Sayyid Nosair, the general,
2 together with his leader, Dr. Omar Abdel Rahman. Plenty of
3 people hung around with Sheik Omar, and you heard about
4 them. Mr. Haggag spent a lot of time with Sheik Omar.
5 Siddig Ali spent a lot of time with Sheik Omar. But not
6 Sayyid Nosair.

7 I asked William Kunstler when he testified here
8 concerning the first trial in state court for the murder of
9 Rabbi Meir Kahane if the sheik ever attended the trial,
10 since the sheik is the leader of the jihad organization and
11 part of the jihad organization was murdering Rabbi Meir
12 Kahane. Under the government's theory, you would think that
13 the sheik would, if he couldn't come to trial, at least talk
14 to the lawyer after he got back from court, find out what's
15 the latest news. Mr. Kunstler told you that not only did
16 the sheik never attend the Nosair trial, but he never spoke
17 with or met Sheik Omar Abdel Rahman until years later.

18 Khalid Ibrahim who testified here never saw
19 Nosair, Sayyid Nosair, and Sheik Omar Abdel Rahman together
20 at either the El Salaam Mosque or anywhere else, and as a
21 matter of fact, on July 13, 1995, at page 14197 of the
22 record, Khaled Ibrahim him said on line 7:

23 "That was around, I would think it's 1990, maybe
24 in the summer, I remember at that time there was some
25 disagreement between him and the Sheik Omar, and he would

1 come to El Salaam Mosque less frequently, and then it came
2 to the point that he moved out of the Jersey City totally,
3 and he moved to Cliffside Park. To the best of my
4 recollection, that was in the summer of 1990."

5 How can you have, if you're just a piddly general
6 how can you have a disagreement with the emir or leader of
7 the jihad organization that you are pledged to? You can't,
8 ladies and gentlemen.

9 Mr. Fitzgerald told you about two telephone calls
10 that were made between Sayyid Nosair and Sheik Omar Abdel
11 Rahman back in 1990 when Sheik Omar Abdel Rahman was in
12 Egypt, and the first of those is Government's Exhibit 850T.
13 He talks about a newspaper that Sayyid Nosair was publishing
14 on, on page 2:

15 Nosair: Thank God, Sheik Omar. As for the
16 newspaper, I have finished preparing it, but our brother
17 insisted that we do it on the computer. So we sent it over
18 to the brothers in the state of, another state, to the state
19 of Boston so that they could print it on the computer. God
20 willing, it should be ready the next three days.

21 May God bless your efforts, says Sheik Omar Abdel
22 Rahman.

23 Sayyid then says: May God bless you. In New
24 Jersey, the mosque board of directors election is due. It
25 will be held on March 16. We tried to talk to the brothers

1 to nominate some of the brothers who are in charge of the
2 office, God willing. Yes, that is necessary, God willing.
3 God willing.

4 Sheik Omar Abdel Rahman: They are most worthy to
5 be elected.

6 Nosair: God willing. Do you have any
7 instructions to the brothers of El Salaam Mosque here?

8 Sheik Omar Abdel Rahman: Yes. Tell them to fear
9 God and seek his help, not to nominate anybody just out of
10 selfish reasons or of personal or any other purpose. The
11 goal of the nomination and election should be God. So you
12 select the most qualified and the most useful for the
13 Islamic call. Of course, you have to support the jihad
14 people, and those who are in charge of it. They are the
15 most deserving. No work will succeed without jihad in God's
16 ways. Jihad should be implemented in its essence as well as
17 in the purpose towards this subject. Therefore, the jihad
18 people are the most worthy of this.

19 When the government told you about this phone
20 call, it stressed that Mr. Nosair asks Sheik Omar if he has
21 any instructions for you us, and there is also another call
22 of the two calls, which is 851T, where Sheik Omar Abdel
23 Rahman asks on page 3:

24 Then your magazine has not been published yet?

25 Sayyid Nosair then says: Sheik Omar, this month

1 we had a failure to the computer. That is why we were
2 delayed in publishing the magazine. They are still trying
3 to repair it. Therefore we decided to print the magazine on
4 regular typing machines, typewriters, so God willing we will
5 finish it this week and we will distribute it at the end of
6 this week.

7 Ladies and gentlemen, they discussed the mosque
8 elections, they discussed some of the training that was
9 going on, and they discussed publishing the newspaper. That
10 was the newsletter that Khaled Ibrahim him told you about
11 when Mr. Nosair opened up the Jihad Office in Jersey City
12 and was doing a newsletter.

13 The phrase "do you have any instructions for us?"
14 Was seized upon by Mr. Fitzgerald as representing the
15 general speaking to the commander. Do you have commands or
16 orders for us? And of course Mohamed Yousry, our defense
17 expert translator, and even Mr. Gamal Hafiz, the
18 government's expert translator, told you that this is
19 classic Arabic speech.

20 You know that Arabic speech is not the same as
21 the way we speak. If a general says to a commander here
22 what are your orders, we know what that means. But you know
23 that the Arabic language is different. When you look at any
24 of these tapes -- but since I have 851T in front of me, you
25 have two pages of greetings on 851T.

1 Hello. Peace, grace and God's blessings be upon
2 you. Hello. yes, God's peace be upon you. And upon you,
3 too. Sheikh, is Sheik Omar available? This is Abu Abdallah
4 calling from New Jersey, America.

5 Excuse me?

6 This is Abu Abdallah calling from New Jersey,
7 America. Is Sheik Omar available?

8 Peace be upon you.

9 Sheik Omar comes to the phone.

10 May God's peace, mercy and blessings be upon you,
11 Sheik Omar. This is Abu Abdallah calling from America, from
12 New Jersey.

13 Sheik Omar: May God bless you, but your voice is
14 not clear.

15 OK, then, let me call you back.

16 Sheik Omar: Are you going to call me again?

17 Nosair: Yes, God willing.

18 Sheik Omar: Okay.

19 Sayyid: Peace, grace and God's blessings be on
20 upon you.

21 Sheik Rahman: Hello.

22 Peace be upon you.

23 May God's peace, mercy and blessings be upon you.

24 Mr. Nosair: How are you doing, honorable Sheik?

25 Sheik Rahman: Mr. Nosair, may God bless you.

1 May God bless you. How is your health now?

2 Sheik Rahman: How are you all?

3 Mr. Nosair: Fine, Sheik Omar, we thank God.

4 Sheik Rahman: May God strengthen you and watch
5 over you.

6 Mr. Nosair: May God bless you. What is the
7 news?

8 Sheik Omar: Thank God.

9 Mr. Nosair: Thank God.

10 Then they get down to business. I never had a
11 conversation like that.

12 (Laughter)

13 When all you have to show for contacts between
14 the general and the leader are two phone calls talking about
15 publishing a newspaper, talking about training camps, and
16 saying do you have any instructions for us, which was
17 explained to you, you don't have the connection, ladies and
18 gentlemen. You don't have the conspiracy.

19 Mr. Haggag told you when he testified here on May
20 3, 1995, at page 9918, he told you about those telephone
21 calls on line 8:

22 "Q Do you remember who it was that played the
23 tape in the mosque?

24 "A. Sayyid Nosair.

25 "Q Do you recall what was said on the tape,

1 what was the subject matter of the tape?

2 "A. It was request for the Sheik Omar ask him,
3 request, request it for the people in the mosque El Salaam
4 to vote for the people in the Jihad Office.

5 Those calls, which were tape recordings recovered
6 from Mr. Nosair's home, were actually used as campaign
7 documents in the mosque elections. Mr. Haggag told you
8 that, it's obvious when you read 850 and 851T, that that's
9 what they were.

10 Sheik Omar in that call is asking Sayyid Nosair
11 in the mosque elections to vote for people in the Jihad
12 Office. There was a jihad office, ladies and gentlemen. It
13 was a real jihad office, for the real jihad organization in
14 this case. There was a real jihad organization in this case
15 that we proved to you. It was a jihad organization, ladies
16 and gentlemen, that was not only lawful but morally
17 justified, and the name of that jihad organization is
18 Alkifah. The purpose of Alkifah here in America was to aid
19 the Afghani Muslims who were fighting the Soviet Union, and
20 after the Soviets left, the communists in Afghanistan. The
21 purpose of Alkifah was to help those Muslim brothers any way
22 that we could, whether it is giving them food, medical
23 supplies, helping the refugees, sending soldiers to fight in
24 the jihad, expediting their trips to Peshawar, Pakistan, and
25 then on to Afghanistan, helping the jihad, helping educate

1 the Muslim people who attended the mosques, with literature,
2 magazines, tapes, videos. That was what Alkifah did. That
3 was the jihad organization.

4 Ladies and gentlemen, if you look at Exhibit J1,
5 you will see a picture of the leader of the jihad
6 organization, Sheik Abdallah Azzam. That's Sheik Azzam
7 actually in Afghanistan, in that picture.

8 Sheik Abdallah Azzam was the emir of the jihad
9 organization. It was his idea that the fight of the Afghani
10 Muslims against the communists was the fight of every Muslim
11 in the world. I mean, why -- it's the Afghanis' problems.
12 The Soviet Union invaded their country, they want him out,
13 why should I as a Muslim, very comfortable here in America,
14 have anything to do with that jihad?. And it was the idea
15 of this scholar, Sheik Abdallah Azzam, that it was the
16 responsibility of every Muslim around the world to go and
17 fight the jihad in Afghanistan because every Muslim is a
18 brother, or a sister. There are no borders, there are no
19 countries. It's one religion, and it is the responsibility
20 of everyone to go fight the jihad in Afghanistan.

21 He was largely successful. Muslims from all over
22 went to Afghanistan, viewed it as their religious obligation
23 to fight the jihad in Afghanistan. Sheik Abdallah Azzam
24 said, go on your vacation, if you have one month's vacation.
25 If you have two weeks vacation, accrue your vacation for two

1 years and go for a month to Afghanistan. Go, go, pick up a
2 Kalashnikov and fight the communists. Defend your religion,
3 which was under attack.

4 You heard from Ali Shinawy, who took his vacation
5 time from the Transit Authority, went to Peshawar, Pakistan,
6 and then went inside Afghanistan to fight the communists.

7 Abdullah Azzam, the way he is dressed here in
8 this J1, looks like a fairly exotic figure or a remote
9 figure, but he came to America many, many, many times. He
10 came to America to tell the Muslims about the jihad in
11 Afghanistan, and that it was their duty. He came to the Al
12 Farook Mosque in Brooklyn, and there are two videotapes of
13 separate visits that he made to the Al Farook Mosque in
14 Brooklyn. Those are Nosair JJJ10 and 23. There is a video
15 of Sheik Azzam in Oklahoma, speaking to a conference. He
16 was here. He traveled to America all the time. And he
17 traveled to America because part of his jihad organization
18 was here in America. It had an office in Peshawar,
19 Pakistan, closer to the fighting. And you have heard about
20 the jihad offices here in New York and in the New York area.

21 If you look at the indictment, you will see that
22 one of the names used for Omar Ahmed Ali Abdel Rahman is
23 "the sheik." Ladies and gentlemen, Sheik Abdallah Azzam is
24 "the sheik."

25 (Continued on next page)

1 How can there be two sheiks? How can there be
2 two sheiks?

3 He is the emir, Sheik Omar Abdel Rahman. He is
4 the leader. He is the leader of the one jihad organization.
5 How can you have a different sheik? How can you have sheik
6 Abdallah Azzam? And how can you have coming out of Sayyid
7 Nosair's home all these videotapes -- I think Mr. Patel has
8 a couple more which we are going to be playing snippets
9 of -- all these videotapes of sheik Abdallah Azzam?

10 And where's the emir, or the leader, Sheik Omar
11 Abdel Rahman? Where are his videos? Where's his connection
12 to this?

13 It is a simple case, ladies and gentlemen. It is
14 simple because we don't have to ask the complicated
15 questions. We don't have to ask, under the government's
16 formulation, who sheik Abdallah Azzam is, why his tapes are
17 here, why he's coming to the mosques here in the New York
18 area.

19 Ladies and gentlemen, this is Government's
20 Exhibit 163R2, page 1, which is what Mr. Fitzgerald referred
21 to as the "Jihad Anew" speech. I want to draw your
22 attention to something in the "Jihad Anew" speech on page 1.

23 OK. I feel like I am on "Wheel of Fortune" now.

24 Here, on the bottom of page 1 over here: There
25 is no honor without Al-Jihad. As our honorable scholar,

1 Sheik Abdallah Azzam, may God rest his soul, whom they
2 killed, he said the Islamic nation will not awake and will
3 not arise except at the -- and I think it says something
4 about bombs and bullets -- sounds of bombs and bullets that
5 will awaken the people of this nation because this is the
6 only way.

7 This was a very, very important piece of
8 evidence. You heard Mr. Fitzgerald speak about it over and
9 over and over again, the "Jihad Anew" tape. As our
10 honorable scholar, Sheik Abdallah Azzam said. Now, that
11 should give you some pause, ladies and gentlemen. Because
12 you should ask: I thought our honorable scholar was Sheik
13 Omar Abdel Rahman? Isn't that what the indictment says?
14 Isn't he the emir or the leader? Isn't he the scholar?

15 Well, ladies and gentlemen, Sheik Omar Abdel
16 Rahman is a scholar. But he's not Sayyid Nosair's scholar
17 of choice, and he's not Sayyid Nosair's emir, and he's not
18 Sayyid Nosair's leader. Sheik Abdallah Azzam is.

19 Is it simple or is it complicated, ladies and
20 gentlemen? One sheik, one jihad organization? No, ladies
21 and gentlemen. That is not the evidence in the case.
22 That's not the proof.

23 The proof is there's more than one sheik here.
24 That's the proof, and the sheik of the videotapes recovered
25 from Mr. Nosair's home and the sheik of the magazines in

1 Mr. Nosair's home that are recovered, and the sheik of his
2 speeches to a Palestinian conference in Government Exhibit
3 163R2 are the words of a different sheik, are the words of
4 his leader, the leader of the jihad organization, that he
5 belonged to. Because he belonged to a jihad organization,
6 ladies and gentlemen of the jury. He was a card-carrying
7 member of a jihad organization, and he's proud of it.
8 Because that jihad organization did something that was not
9 only lawful, but something that was morally justified, and
10 they did it on the other side of the world.

11 That jihad organization was Alkifah, and this
12 man, Sheik Abdallah Azzam, stirred the hearts of Muslims
13 when he came to this country to the Al Farooq mosque, to the
14 Al Salem mosque, to the Islamic Center in New Jersey. He
15 stirred their hearts. He called them to action. People
16 like Khalid Ibrahim. People like Sayyid Nosair.

17 Khalid Ibrahim told you on July 13 of 1995 on the
18 witness stand, pages 14212 to 14213, about Sheik Azzam. He
19 said he talked about the latest developments of the jihad in
20 Afghanistan at that time, and he emphasized the importance
21 of Muslims knowing that it is incumbent upon them to support
22 that jihad in any way possible, and those of us who could
23 actually go over there to participate in the jihad, then we
24 should do that.

25 On the next page, 14213, this is how Khalid

1 Ibrahim was stirred to action by Sheik Azzam: After the
2 first lecture, I went home and I talked to my wife. I told
3 her that I'm convinced that it's the duty upon me to
4 participate in the jihad if possible and that I would like
5 to go.

6 You heard testimony about jihad offices in
7 Brooklyn at the Al Farooq mosque, or the Al Farooq mosque
8 was upstairs, the jihad office or the Alkifah, also known as
9 the Afghan Refugee Services office, was at 552 Atlantic
10 Avenue.

11 Khalid Ibrahim told you that the Jersey City
12 office at the El Salaam mosque was founded by Sayyid Nosair.
13 He founded the jihad office in Jersey City.

14 Introduced into evidence, ladies and gentlemen,
15 as Nosair Exhibit GGG is a certificate of incorporation for
16 the jihad office in Brooklyn. It has the seal of the
17 Secretary of State on the outside. And it has to, under New
18 York law, state the purpose for the formation of the
19 non-for-profit corporation.

20 And in Paragraph 3 on page 1 it says: The
21 purpose or purposes for which the corporation is formed are
22 as follows: To provide for the needs and welfare of Afghan
23 people, particularly the refugees due to the Soviet
24 invasion; assisting refugees to establish themselves in
25 life; in general, helping and caring of the Afghan people

1 everywhere.

2 Now, "jihad" is supposed to be a bad word, ladies
3 and gentlemen. It's supposed to be a word that strikes fear
4 into your hearts. That's why you saw the "Jihad Anew"
5 speech. "Oh, my God, Sayyid Nosair is going to do Jihad
6 Anew."

7 If the case is simple, jihad is bad, and that's
8 it. Black and white; good and bad. That's if the case is
9 simple.

10 Why did they go and incorporate the jihad
11 organization as a non-for-profit organization under the laws
12 of New York State? Why do you go and do that? If jihad
13 equals terrorism, which I submit to you is the simple
14 formula that the government would want you to accept, why go
15 to the Secretary of State of New York, why incorporate your
16 jihad organization?

17 If you look at this exhibit, the certificate of
18 incorporation, you will see one of the incorporators is a
19 gentleman by the name of Ali El-Shinawy, who testified here
20 before you.

21 You will see the address of this corporation, of
22 this New York State not-for-profit jihad corporation is 552
23 Atlantic Avenue, which is where they begin the surveillance
24 at Calverton, the Calverton range.

25 Now, in my opening, I spoke about "Jihad"

1 magazine. "Jihad" magazines; jihad T-shirts. I wasn't
2 kidding around because we have the stuff in evidence.
3 Nosair Exhibit J is the "Jihad" magazine, the cover of which
4 is J1 over there on the easel with Sheik Azzam.

5 K. That's the January '90 issue of "Jihad"
6 magazine. Take it in there with you to the jury room, and
7 you'll look at it, you'll look at the pictures, you'll see
8 it is a pretty slick publication, not like the jihad
9 newsletter which is sort of a mimeograph kind of thing, but
10 the "Jihad" magazine.

11 Nosair Exhibit K is "Jihad" magazine. By the
12 way, when you look at this, you will see on the top it's
13 written in English: "Al-Jihad No. 64, February 1990."
14 That's where you get the dates.

15 This one has Sheik Azzam on the back. That is
16 Nosair Exhibit K. It has Sheik Azzam on the back with a
17 Kalashnikov rifle slung over his shoulder going through the
18 snows of Afghanistan.

19 Here's the jihad newsletter, which is, I believe,
20 Nosair Exhibit N, which is not quite as fancy as "Jihad"
21 magazine. And it says on the top of this, "Report from
22 Abdallah Azzam, Emir, headquarters in Peshawar, Pakistan."

23 It says what the goals are: To assist and
24 support mujahideen, to support orphans and widows, to follow
25 news and developments in all aspects of jihad, to invite

1 people to the obligation of jihad by lectures, conventions
2 and publications.

3 You heard testimony about the jihad newsletter
4 from Khalid Ibrahim on July 13, 1995 over in the witness
5 stand.

6 Page 14217 of the record, I asked him: What was
7 the role of Sayyid Nosair with regard to the jihad office in
8 Jersey City?

9 The answer was: I think he founded it. He was
10 the main person in the office, and the people that were
11 working in the office were basically helping him.

12 "Q. What kind of work did Sayyid Nosair do in
13 the Jersey City office?

14 "A. They had a library or a bookstore, you
15 could say, where people could go in and read books or could
16 purchase books, Islamic books. They had a computer and they
17 were trying to publish a publication about jihad, something
18 like just a local newsletter you might say about jihad.

19 "What role, if any" -- I asked him -- "did Sayyid
20 Nosair have with regard to that newsletter that they were
21 trying to publish at the jihad office in Jersey City?

22 "A. He would ask people to write articles in
23 that newsletter, and he would bring some of the material
24 himself, and then he had someone put it together and type it
25 and have it printed and so on."

1 That's the newsletter, and that's the newsletter
2 and the publication that Sayyid Nosair was referring to in
3 Government's Exhibit 850 and 851T in evidence, the two phone
4 calls between him and Sheik Omar Abdel Rahman. I read to
5 you on the defense case Nosair HHHT, which was a pamphlet
6 that Ali Shinawy received from the jihad office when he was
7 getting ready to go and perform jihad in Afghanistan. And
8 it explains to non-Afghanis what the Afghani people are like
9 and what their approach is to the religion of Islam, and
10 it's basically telling them that there's beauty in
11 diversity, and they're a lot different from you and they
12 practice their religion differently from you, but it is one
13 religion and keep that in mind, and then they'll take you on
14 as their brothers.

15 These were pamphlets from the jihad office that
16 Ali Shinawy incorporated with the state of New York and that
17 he took with him when he went to do jihad in Afghanistan.

18 Last Tuesday I think it was Mr. Fitzgerald said
19 to you, on page 18558: Why don't we start at the very
20 beginning, which is the training in late 1989 and early
21 1990.

22 And he said: There, the photographs show the
23 story.

24 Well, the photographs do show the story, ladies
25 and gentlemen. And if you remember back to February -- I

1 think it was the first week that we were hearing evidence in
2 the trial, the snow was on the ground, it was cold out, a
3 guy named Special Agent Fogle came here to talk about
4 surveillance at the Calverton range.

5 He had the pictures of Sayyid Nosair and other
6 people, including Mohammed Salameh, Mahmud Abouhalima, and
7 Nidal Ayyad, out on Long Island at the Calverton range, I
8 suppose preparing for their war of urban terrorism, because
9 you can't terrorize unless you're trained to terrorize, and
10 that's what they were doing out in Calverton, I suppose is
11 the government's theory.

12 So they introduced their photographs, and then
13 when it came time for cross-examination, I started
14 introducing portions of the surveillance photographs that
15 they didn't show you. Now, the testimony there was that the
16 surveillance that day in July of 1989 started out at 552
17 Atlantic Avenue.

18 I started showing you the brothers starting out
19 for training in Calverton at 552 at Atlantic Avenue. And
20 there was a funny thing about that, because a lot of them
21 were wearing these T-shirts, had a symbol on the front, had
22 a symbol on the back, and they were wearing these T-shirts
23 while they were going to Calverton so they could be prepared
24 for their war of urban terrorism here in America.

25 The exhibit number is Nosair B. It is the Nosair

1 B series. I think it's about eight different photographs.

2 The guys are wearing the T-shirts while they are
3 going out to train, and Nosair C is the T-shirt. You might
4 have thought I was kidding around when I said there's jihad
5 magazines and jihad T-shirts, because, after all, we are
6 accustomed in this, from what we read in the papers, to be
7 frightened when we hear the word jihad. So why would anyone
8 wear a jihad T-shirt.

9 I think I'm showing you the Arabic side, and it
10 would do better to do the English side. It has this map of
11 Afghanistan, and it is says on the top: "Help each other in
12 goodness and piety. A Muslim to a Muslim is a brick wall."
13 And on the outline of the country of Afghanistan, it says
14 "Afghanistan," and then it says, "Service Office," and it
15 gives the address and telephone number, because if you're
16 waging a war of urban terrorism and you get lost or
17 something, you want the number to make sure you can get back
18 to where you came from. It's 552 Atlantic Avenue, Brooklyn
19 New York 11217. And the number is 718-797-9207. Now if
20 they had more presence of mind, they could have made up a
21 fancy number like dial 1-800 JIHAD, or something like that.
22 But, anyway, that was the number.

23 Now, while you are training for this war of urban
24 terrorism out in Calverton, why do you wear T-shirts with
25 the phone number of the jihad office and the address of the

1 jihad office? If you're doing something that's illegal, if
2 you're preparing for a war of urban terrorism on America,
3 why do you go and wear those T-shirts that identify you? It
4 is like putting a big thing on saying, "I am a terrorist.
5 Arrest me." If the case is simple, you don't even have to
6 answer the question because it just, it doesn't have
7 anything to do with anything.

8 If you want to think, if you want to think about
9 what the case is about, you say to yourself: Wait a second.
10 The government comes out of the box with the guys at the
11 Calverton range shooting rifles. And, if you look at the
12 indictment, on page 8, under the overt acts to this
13 seditious conspiracy, war of urban terrorism, Overt Act B:
14 "In or about July 1989, El Sayyid Nosair, Clement
15 Hampton-El, Mahmud Abouhalima, Mohammed Salameh, and Nidal
16 Ayyad, among others, participated in firearms training
17 sessions at a location in Calverton, New York."

18 The government has alleged that what occurred at
19 Calverton, New York was part of the war of urban terrorism.
20 It has been proven to you at this trial that it was part of
21 jihad in Afghanistan and that the activities were part of
22 the jihad organization that Sayyid Nosair was a
23 card-carrying member of, the Alkifah jihad organization.

24 If there was any doubt, any doubt about that, I
25 called -- I say "I." When I say "I," I mean -- first of

1 all, it is a only an accident if I say "I." I mean "we,"
2 because there's Mr. Patel, there's myself, there's Ms. Black
3 and there's Mr. Nosair. We called George Schmelzer, who
4 came in here, despite his Lyme disease and everything else,
5 and he told you what his range was about. He told you that
6 law enforcement people use it, that he has the rules and
7 regulations posted, that kids could shoot if they're over
8 14. If they're less, they have to stay in the car. And
9 that it is a legitimate public place. And I think he said
10 at one point: I'm not running a training camp or anything
11 like that. He said a lot of other things which you may
12 remember, but --

13 So this training that's in the indictment, the
14 training at Calverton, then you have to ask yourself: Well,
15 you have the training at Calverton and then like four years
16 later you have the training in Pennsylvania. And Mr. Haggag
17 told you that, he told you that on May 11, at page 10446 of
18 the record, he told you that the training in Pennsylvania
19 was designed to duplicate conditions in Bosnia for people
20 who are going to be going to Bosnia.

21 Now, if we have one giant, ugly jihad
22 organization, all with one purpose, to wage a war of urban
23 terrorism here in America, why did the government's witness
24 say that the training in Pennsylvania is for Bosnia, and why
25 is the training in Calverton in a public range coming from a

1 certified New York State not-for-profit corporation?

2 What do they have to do with one another?

3 You know, when it comes this training, this is
4 about it. I mean, at the beginning of the trial you had
5 Calverton; toward the end of the trial you had Pennsylvania.
6 There are different people; they're doing different stuff;
7 and they're doing it for a different reason.

8 Where's the connection that makes this one giant
9 jihad organization?

10 If the case is simple, ladies and gentlemen, then
11 it's just all connected because there's a very simple
12 formula, and it goes like this: Muslims plus guns equals
13 terrorism.

14 That's what the government wants you to believe.
15 Any Muslim with a gun that they had testimony about in this
16 trial is a terrorist, is doing terrorism, and is doing it
17 for a war against America. It is a simple formula. It is
18 one that I submit to you is not proved by the evidence in
19 this case. Muslim plus guns equals terrorism. Muslim plus
20 guns are in Calverton range for Afghanistan. Muslims plus
21 guns are in Pennsylvania training for Bosnia.

22 THE COURT: Excuse me, Mr. Stavis. Could you
23 come to a convenient break point?

24 MR. STAVIS: Yes, this would be it, your Honor.

25 THE COURT: Right now?

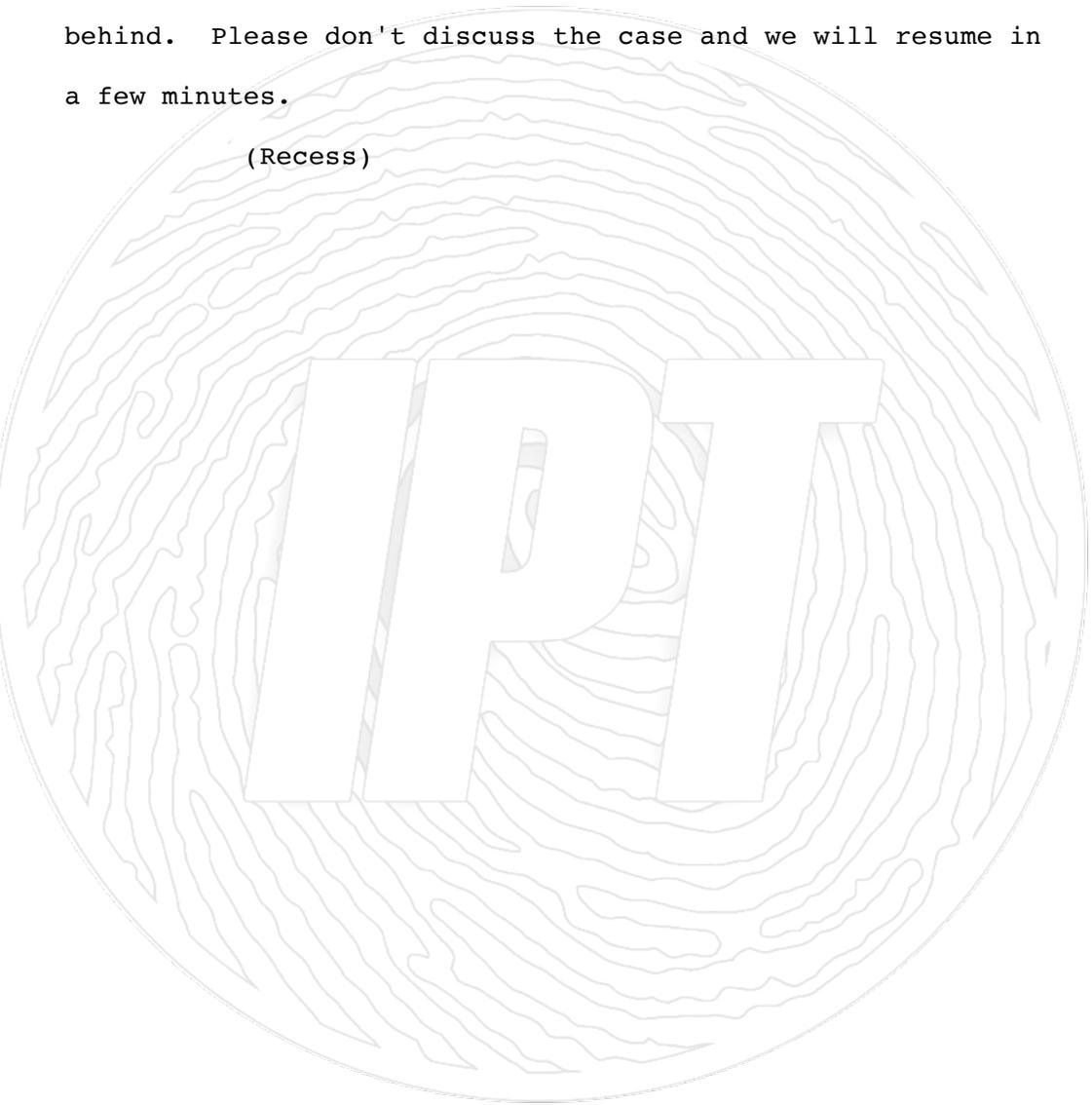
1 MR. STAVIS: Yes.

2 THE COURT: OK. Thank you very much.

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

7 (Recess)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 (Jury not present)

2 THE COURT: Mr. Stavis, do you know how long you
3 are going to be?

4 MR. STAVIS: Yes. I think I will go into
5 tomorrow morning.

6 THE COURT: Just for the purpose of organizing
7 your material, we are going to break at 4:30 today.

8 MR. STAVIS: Fine.

9 (Jury present)

10 THE COURT: Mr. Stavis.

11 MR. STAVIS: Thank you, your Honor.

12 I have been going on at some length about
13 Afghanistan, and the interesting thing about Afghanistan,
14 ladies and gentlemen, is, if you look in the indictment, you
15 won't see it. You won't see anything about Afghanistan in
16 the indictment. If you do look to pages 2 through 4, you
17 will see words like abroad, overseas, elsewhere, but you
18 won't see Afghanistan.

19 What is it, what is it about Afghanistan and all
20 this evidence about Afghanistan that makes the government so
21 afraid as to not put it in the indictment? Well,
22 Afghanistan proves that there was a different jihad, not a
23 jihad in America but a jihad on the other end of the world.
24 Afghanistan proves that there was no sedition, no seditious
25 conspiracy. Afghanistan proves that what Sayyid Nosair was

1 doing was not against America but was with America. Those
2 are embarrassing facts, ladies and gentlemen, but they are
3 facts. They have been proven. But then again, if you look
4 at the case as being something simple, you can ignore all of
5 those facts.

6 In telling you what the Afghanistan jihad of
7 Sheik Abdallah Azzam and Sayyid Nosair and others was about,
8 in telling you about that, I think the best thing to do is
9 to play you a small segment of a videotape, Nosair JJJ 24 in
10 evidence. It's a documentary called "Mirror of Afghan
11 Jihad," and it is narrated by Mr. Nosair's sheik, Sheik
12 Abdallah Azzam, the head of the jihad organization.

13 Mr. Patel, whenever you are ready.

14 (Videotape played)

15 MR. STAVIS: Here you see copies of the Koran
16 being burned, having been burned by the Soviet communist
17 forces, which the Afghan mujahideen rightly viewed as an
18 affront to their religion.

19 The voice you hear is the voice of Sheik Abdallah
20 Azzam.

21 I am going to play another segment of the mirror
22 of Afghan video for you.

23 In this segment you see the mujahideen with a
24 surface-to-air missile, to be used against Soviet and
25 communist aircraft. This video, Nosair JJJ24, was recovered

1 from Mr. Nosair's home when they searched it on November 6,
2 1990.

3 That's a surface-to-air missile held on the
4 shoulder of a mujahideen. The evidence at the trial was
5 that surface-to-air missiles were supplied to the mujahideen
6 by the United States.

7 Those were just a few scenes from the jihad in
8 Afghanistan, from Mr. Nosair's jihad. What I want to do
9 next is to play a portion of a videotape for you which is an
10 interview with Sheik Tamim Adnani. It's Nosair Defense
11 Exhibit JJJ34. It was also recovered from Mr. Nosair's home
12 on November 6 of 1990. Sheik Tamim Adnani, who can be seen
13 in this copy of Jihad Magazine -- by the way the large
14 Arabic says Jihad and at the top it says Al Jihad in
15 English. At the lower left hand corner you see Sheik Tamim
16 Adnani in Afghanistan.

17 Sheik Tamim Adnani was the trusted lieutenant to
18 Sheik Abdallah Azzam in the jihad organization, Alkifah --
19 that's the jihad organization that Mr. Nosair was a card
20 carrying member of. He was the number two person, and
21 fortunately for us he speaks English, and in the tape that
22 you are going to see he rather eloquently sums up what his
23 office did, the jihad office, the Alkifah office, the
24 Alkifah jihad organization, what they did in Afghanistan and
25 why they did it. Sheik Tamim Adnani in this tape, you are

1 going to see, is from Lawrence, Kansas, because Sheik Tamim
2 Adnani was someone also who toured the United States and
3 came here to raise the consciousness of Muslims about jihad
4 in Afghanistan and to recruit people to go to Afghanistan
5 and do jihad against the communists there.

6 Mr. Patel, if you are ready.

7 (Videotape played)

8 MR. STAVIS: In case you missed the last part of
9 that video, Sheik Tamim Adnani was saying how he admires the
10 freedom that we have here in the United States, the Islamic
11 centers that we have here, the lectures that he is able to
12 give such as the one you just saw, without interference.
13 And he said that here at least you can talk, "But, you know,
14 in other places in our own countries, even in Arab
15 countries, we cannot open our mouths."

16 Well, here in this country and one of the reasons
17 Sayyid Nosair adopted this country as his own and swore an
18 oath as a sit own of the United States of America, is
19 because of the freedom that we have here, the freedom that
20 allows him to practice his religion in any way that he sees
21 fit, the freedom that he has to have videotapes like the one
22 you just saw, the freedom that he has to read anything he
23 wants even if it's Jihad Magazine, the freedom to freely
24 associate with anybody that he wishes, without fear.

25 The reason that Sayyid Nosair became a citizen of

1 this country is because this country has been very good to
2 Sayyid Nosair. He met his wife here, he married, his
3 children were born here, and he raised them, he and his wife
4 Khadijah raised those children here in America. They went
5 to the mosque together as a family here in America. They
6 attended lectures concerning Islamic topics, Islamic
7 conventions here in America. Sayyid Nosair held a job as a
8 New York City employee right up the street, which happens to
9 be in America. He had the freedom to practice his religion
10 and he had the freedom to do jihad here in America. "Jihad
11 in America" is a simple kind of phrase that the government
12 likes to use because that's their whole case, and put them
13 away, they're doing jihad in America.

14 Sayyid Nosair was doing jihad in America, ladies
15 and gentlemen, and all the tapes and books and lectures and
16 training at Calverton, Long Island, were part of his jihad
17 in America. However, his jihad was not for America. His
18 jihad was in Afghanistan. He and Khalid Ibrahim told you
19 how they shared their dream together, Sayyid Nosair and
20 Khalid Ibrahim. They both had good jobs here in America,
21 raising their families. But the words of Sheik Abdallah
22 Azzam up here in J1, up on the board, those words stirred
23 them to action. They were a call to action, a clarion call,
24 and they wanted to go, and Khalid Ibrahim told you, they
25 wanted to go to Afghanistan together with their families, do

1 jihad and raise their families in a Muslim atmosphere.

2 Khalid Ibrahim got to go, he got the opportunity,
3 took his family there, and he told you about that, and I
4 will be getting into that in some detail. Sayyid Nosair was
5 prevented from going. So he opened the office, the Jihad
6 Office in Jersey City, and he distributed literature, he
7 trained other people in how to use rifles so that they could
8 go and fight. And he spread the word, the same word that
9 Sheik Abdallah Azzam -- and you might hear me mentioning his
10 name a lot and you will forgive me, but this sheik -- not
11 that sheik but this sheik -- was a very, very important
12 person in Sayyid Nosair's life, and was the head or the emir
13 of the jihad organization. And Sayyid Nosair was spreading
14 the word, the same way as Sheik Abdallah Azzam was, telling
15 other Muslim brothers from the El Salaam Mosque in Jersey
16 City, the Al Farook Mosque in Brooklyn, the Abu Bakr Mosque
17 in Brooklyn, hey, this may be on the other side of the world
18 but it's your duty, it's your obligation. That's how Sayyid
19 Nosair spent the jihad.

20 This man, ladies and gentlemen, in Nosair Exhibit
21 KKK-1, his name is Ali A. Mohammed, and Khaled Ibrahim him
22 called him Abu Omar, because that's what he called himself
23 when he was up here in New Jersey. And here in Nosair
24 KKK-2, here in Nosair KKK-2 is Ali Mohammed and colonel
25 Norvell B. De Atkine, who, you remember, testified here

1 before you. I think it was on July 13.

2 Ali Mohammed came here, or Abu Omar, as Khaled
3 Ibrahim him knew him, he came up here in the spring or early
4 summer of 1989, and introduced into evidence as Nosair LLL
5 are the army service records of Ali Mohammed, and if you
6 will permit me I will go through them with you for a second.

7 And what do these military service records tell
8 us about Ali Mohammed? They tell us over here that his date
9 of release from active duty was November 9 of 1989, many
10 months after he came to Jersey City to help train Mr. Nosair
11 and other Muslim brothers to go to Afghanistan. And we see
12 that the terminal date of his reserve obligation in the
13 United States Army reserve forces was a little over a year
14 ago, August 14, 1994.

15 We see that he was assigned to the Fifth Special
16 Forces Group, Airborne, Fort Bragg, North Carolina. Colonel
17 De Atkine testified here that the Special Forces are the
18 military personnel who train others.

19 You see here from this page, his NCO evaluation
20 report, that the name of the rater is Norvell B. De Atkine,
21 and that Ali Mohammed was specifically assigned to the third
22 battalion, first special warfare training group, and an
23 assistant mid-east seminar director, and that one of the
24 things he did was he cited videotapes, slides and view
25 graphs relating to the Middle East political environment,

1 history, culture, economy, armed forces and religions. His
2 area of special emphasis was preparation and presentation of
3 briefings to secure the assistance teams designed for
4 deployment to the Middle East. That is Nosair Defense
5 Exhibit LLL.

6 Khaled Ibrahim him told you that he attended a
7 class, one of the classes given by Abu Omar, or Ali
8 Mohammed, when he came up from Fort Bragg to Jersey City.
9 This was Khaled Ibrahim's testimony on July 13, 1995, at
10 page 14241, beginning at line 13. I asked Khaled:

11 "Q What kind of classes did he hold?

12 "A. Military classes.

13 "Q What were the specific topics of these
14 military classes held by Abu Omar?

15 "A. It was about navigating areas, like if you
16 are lost in a desert area or a jungle or you are part of a
17 group and you want to find your your way, how to use a
18 compass, how to find your way by looking at the stars and
19 survival things, and how to recognize some of the weapons if
20 you see them, like tanks, stuff like that.

21 "Q Where were these classes held?

22 "Q. In an apartment.

23 "Q Do you know whose apartment?

24 "A. Yes, it was the apartment of a brother by
25 the name of Abdel Aziz Hassan.

1 "Q Where was that located?

2 "A. On Harrison Avenue, in Jersey City.

3 "Q Did Sayyid Nosair attend any classes by
4 Abu Omar?

5 "A. Yes, he invited me to attends the class
6 and he attended himself.

7 "Q What if anything did Sayyid Nosair do with
8 regard to Abu Omar when he came to Jersey City?

9 "A. Sayyid is the one who introduced Abu Omar
10 to the rest of us and he was his host in Jersey City as far
11 as I could see.

12 "Q Did you see Abu Omar in the jihad office
13 in Jersey City?

14 A Yes.

15 "Q What is the first time you saw Abu Omar in
16 the jihad office in Jersey City? What year was that and
17 what time of year?

18 "A. It was 1989. I don't remember the exact
19 month, but it had to be in the spring or early summer of
20 1989, to the best of my recollection.

21 "Q You say it had to be. Why do you say
22 that?

23 "A. I remember that it was a time when I had
24 started my new job at John Brown in Stamford, Connecticut,
25 about Memorial Day of that year, and I remember it was

1 around that time. I don't remember if it was before or
2 after, but it had to be around that time.

3 "Q After Abu Omar left on that first visit,
4 did you notice anything different at the Jersey City Alkifah
5 office?

6 "A. Yes. I saw the manuals.

7 "Q I am showing you what has been marked as
8 Government's Exhibit 118 in evidence. I believe it is
9 stipulated with the government that this was a manual, a
10 document that was recovered from the home of Sayyid Nosair
11 on November 6, 1990. I ask you to take a look at
12 Government's Exhibit 118.

13 "A. OK.

14 "Q Have you seen that before?

15 "A. Yes."

16 I am now on page 14244 of the transcript.

17 "Q Where have you seen it?

18 "A. At Al Jihad Office in Jersey City.

19 "Q What is Government's Exhibit 118?

20 "A. It's a military manual about how to
21 recognize certain tanks and weapons, whether they are enemy
22 tanks or friendly tanks.

23 "Q What does it say on the front cover of
24 Government's Exhibit 118?

25 "A. United States Army, John F. Kennedy

1 Special Warfare Center.

2 "Q Did you have occasion to see manuals like
3 that prior to Abu Omar's visit to the Alkifah center in
4 Jersey City?

5 "A. I don't remember seeing any of these
6 before the visit of Abu Omar to Jersey City.

7 "Q I am showing you what is entered into
8 evidence as Government's Exhibit 77, also a document
9 recovered from the home of Sayyid Nosair on November 6,
10 1990. I ask you to take a look at that. On the front
11 cover, what does it say on the front cover of Government's
12 Exhibit 77?

13 "A. Afghan Refugee Services Inc., 2824 Kennedy
14 Boulevard, suite number 4, Jersey City, New Jersey."

15 I am now on page 14245 of the transcript.

16 "Q Is that what you have been referring to as
17 the Jersey City jihad office?

18 "A. Yes.

19 "Q What is that document?

20 "A. It's a document that tells you how to make
21 explosives and some kind of improvised weapons and
22 explosives.

23 "Q Had you seen that document in the Jersey
24 City jihad office?

25 "A. Yes.

1 "Q Did you have occasion to see that
2 document, Government's Exhibit 77, in the jihad office in
3 Jersey City, prior to Abu Omar's first visit to the jihad
4 office?

5 "A. No.

6 "Q I am now showing you what has been entered
7 into evidence as Government's Exhibit 78. Is that something
8 that you have seen before at the Jersey City jihad office?

9 "A. Yes.

10 "Q What is depicted in Government's
11 Exhibit -- what is Government's Exhibit 78?

12 "A. It's called explosive traps, and it shows
13 you how to make, you know, boobytraps which have explosives.

14 "Q Did you have occasion to see a booklet
15 like this in the Jersey City jihad office prior to the visit
16 of Abu Omar to the Jersey City jihad office?

17 "A. No."

18 Ladies and gentlemen, if you look at the
19 indictment under overt act D on page 9 -- and you are going
20 to have the indictment. I keep going back and forth to the
21 indictment. You are going to have it. You don't have it
22 now in the books that you open and close but you are going
23 to have it when you go back into the room back there to do
24 the work, to do the hard roll-up-your-sleeves work. You are
25 going to have the indictment with you and it is very

1 important that you look at it and that you read it, and that
2 you hold the government to what they have said in the
3 indictment when you consider the evidence and the charges
4 against these men.

5 Overt act D on page 9 has its own subheading.
6 The subheading is, "Nosair possesses bomb formulas and other
7 materials," and I quote from it:

8 "On or about November 5, 1990, El Sayyid Nosair
9 possessed, among other things, formulas and manuals for the
10 construction and detonation of bombs, including formulas for
11 the production of lead azide, a detonating material, and
12 video and audiotapes of documents about jihad including
13 documents about the destruction of symbolic statues, tall
14 buildings and buildings of political significance."

15 Let's talk about the few of these bomb manuals
16 and materials that the government says are part of a war of
17 urban terrorism against the United States. The first is in
18 evidence as Government Exhibit 118. It is marked on the
19 front Airborne, United States Army, John F. Kennedy Special
20 Warfare Center. This came out of Mr. Nosair's home when
21 they searched it on November 6, 1990, and it came from the
22 person who was working for the United States Army, John F.
23 Kennedy Special Warfare Center at Fort Bragg, North
24 Carolina, and that person is Ali A. Mohammed, Sergeant
25 Special Forces, United States.

1 If you remember Colonel De Atkine, he is retired
2 but when you are a colonel, it's not like being a Kentucky
3 colonel but they keep calling you colonel. It's like
4 professor or something like that. Colonel De Atkine
5 testified here on the 13th, and the guy was straight out of
6 central casting, I guess that's how to put it. He was
7 wearing his West Point ring and he looked every bit the
8 military man that he was.

9 He said something, or he identified Government's
10 Exhibit 118, which Ali Mohammed brought up here to New York
11 when he was training people for the supposed war of urban
12 terrorism. He identified it as an enemy weapons guide. I
13 will give you the page. I asked him on page 14177 about
14 this, Government's Exhibit 118. I said what is it? He said
15 there is what we call an enemy weapons guide, which enables
16 our troops to know the bad guys from the good guys.

17 "Q When you say the bad guys from the good
18 guys, what are you referring to?

19 "A. This is primarily, this is Soviet
20 equipment. This is a guide of Soviet equipment.

21 "Q Turning your attention to the first page
22 of that exhibit, what is written on that first page?

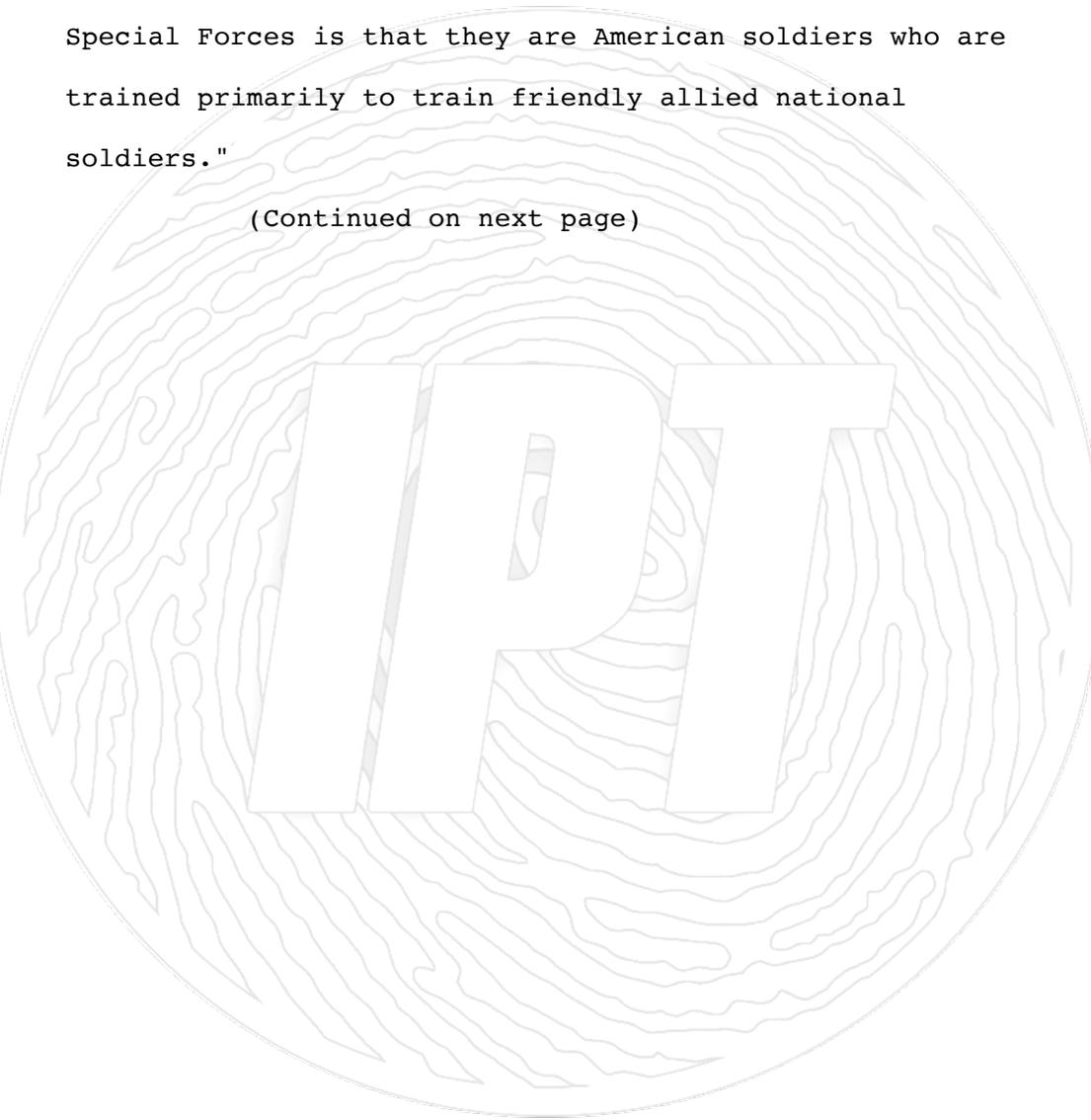
23 "A. It says United States Army, John F.
24 Kennedy Special Warfare Center."

25 It is marked inside Special Forces Airborne,

1 which Colonel De Atkine told you the Special Forces are the
2 trainers for the army. He told you -- I got rid of this
3 transcript too fast. He told you on page 14166 of the
4 record -- this is Colonel De Atkine -- "My knowledge of the
5 Special Forces is that they are American soldiers who are
6 trained primarily to train friendly allied national
7 soldiers."

8 (Continued on next page)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



IPT

1 I don't think that the U.S. Army sends people up
2 here from --

3 MR. McCARTHY: Objection.

4 THE COURT: Sustained as to what you think.

5 Go ahead.

6 MR. STAVIS: I submit to you, ladies and
7 gentlemen, that the United States Army does not send --

8 MR. McCARTHY: Objection. There is no
9 evidence --

10 THE COURT: May I see you at the side.

11 (Continued on next page)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (At the side bar)

2 THE COURT: The objection is to the US Army
3 sending somebody?

4 MR. McCARTHY: Correct.

5 There is absolutely no evidence that the United
6 States Army sent Ali Mohammed to New York. There is none.
7 When he put in the military records, I made this argument to
8 the court. There is no evidence whatsoever. He wants to
9 argue from military records that the guy was on active duty
10 and then was in the reserves after 1989, and that the United
11 States Army was sending him from Fort Bragg to --

12 THE COURT: He can argue that it is an inference
13 that he was on duty at the time. You can argue that it is
14 not.

15 (Continued on next page)

16

17

18

19

20

21

22

23

24

25

1 (In open court)

2 THE COURT: The objection is overruled.

3 Go ahead, Mr. Stavis.

4 MR. STAVIS: I submit to you that the United
5 States Army does not send or did not send Sergeant Ali
6 Mohammed up to here to train Mr. Nosair and other Muslim
7 brothers to wage a war of urban terrorism against the United
8 States of America.

9 Now, you didn't hear anything about Government's
10 Exhibit 118 when Mr. Fitzgerald was summing up that the case
11 is so simple. But if the case is so simple, then what is
12 Sayyid Nosair, the man who keeps the courthouse, the state
13 courthouse down the road heated and air conditioned, what is
14 he doing with the U.S. Army guide to, on the first page,
15 recognize friendly and threat armored vehicles and aircraft.

16 If you want to look at the case as simple, ladies
17 and gentlemen, you don't have to ask questions like that.
18 You can just shove it over to the side. But if you want to
19 look at the evidence in the case, then you ask, why does he
20 have Government Exhibit 118. The answer to that is as plain
21 as the nose on my face, because this was for jihad, because
22 this, Government Exhibit 118, was for jihad in Afghanistan
23 where they do have Soviet armor, and you do have to know
24 what the Soviet armor looks like, not here in America,
25 ladies and gentlemen, but way, way over there on the other

1 side of the world.

2 One of the other documents identified by Khalid
3 Ibrahim is marked as Government Exhibits 77 and 77T. It is
4 marked from the Afghan Refugee Services, Inc. office on page
5 1. That is the office for Mr. Nosair's local jihad
6 organization. That is a branch office of Sheik Azzam's
7 international jihad organization. It talks about improvised
8 weapons and explosives, how to make explosives for
9 Afghanistan where the people have to, by use of their
10 ingenuity, fight the mighty Soviet Army with whatever they
11 could have, even if it was sticks and stones. They could
12 make their own bombs; make their own pistols; make their own
13 booby traps, and that's what Government Exhibit 77 and also
14 Government Exhibit 78 is about. Here's Government Exhibit
15 78 -- explosive traps. All were recovered from Mr. Nosair's
16 home on November 6 of 1990.

17 Government's Exhibit 124, the testimony that I
18 read from Khalid Ibrahim before said that he got -- one
19 course that he took from Ali Mohammed was about map reading,
20 and here is Government's Exhibit 124, 18th Airborne Corps,
21 Noncommissioned Officer Academy, land navigation, map
22 reading, compass course and patrolling, and the map on the
23 front is a map of Fort Bragg. That is Government's Exhibit
24 124.

25 Ladies and gentlemen of the jury, if the case is

1 so simple and if you believe it's so simple, I have to
2 commend to your attention Government's Exhibit 117.
3 Government's Exhibit 117 is a JCS warning order, cable from
4 the JCS, Washington, D.C. JCS. As Colonel De Atkine told
5 you, is Joint Chiefs of Staff. That's where this warning
6 order came from.

7 That is where the warning order came from, the
8 Joint Chiefs of Staff in Washington, D.C., you can see from
9 the front cover. Some of the places that it went to are the
10 White House situation room, Washington, D.C., Secretary of
11 State, Washington, D.C., and the DIA, Washington, D.C.,
12 Defense Intelligence Agency. It's marked on the bottom,
13 "top secret for training, otherwise unclassified."

14 I suppose there is a simple explanation for that
15 in this simple case. Because, hey, Sayyid Nosair was paling
16 around with somebody from the Joint Chiefs of Staff, and
17 they just gave it to him, and that's the end of that. You
18 don't have to think about it.

19 There is no simple explanation for this. There
20 is a complicated explanation for this. It gets back to Ali
21 Mohammed.

22 Ask yourself, ladies and gentlemen, what is the
23 guy who does the heating at the courthouse down the street
24 doing with the Joint Chiefs of Staff cable that goes out to
25 the White House situation room, that goes to the Secretary

1 of State, and that goes to the Defense Intelligence Agency,
2 Government Exhibit 117? What is he doing with it?

3 Now, I am no expert at things like Government's
4 Exhibit 117, so while I had Colonel De Atkine here, I asked
5 him about it.

6 He said, on page 14184: The op plan -- that's
7 what he called it. "Op" being short for operations -- would
8 be restricted to probably those who are playing in the roles
9 of various people during the planning session.

10 And this is Mr. McCarthy's cross.

11 He then asks, "And is it a fact, is it not, that
12 with respect to the op plan, the amount of that information
13 that would be distributed at the time of the op plan, the
14 number of copies of that op plan that would be distributed
15 at the time of the exercise would vary depending upon how
16 large exercise was, correct?"

17 "A Yes, sir.

18 "Q And those operational plans would be held,
19 treated as if they were classified while the operation was
20 going on, correct?"

21 "A That is correct.

22 "Q But once the operation was over, they are
23 no longer treated that way?"

24 "A They are no longer treated as classified.
25 They are treated as something we should put back together

1 and keep out of the public, yes."

2 So we learned that right now, sitting here in
3 1995, this Joint Chiefs of Staff document is no longer
4 classified.

5 Does that answer the question, ladies and
6 gentlemen of the jury, of what Sayyid Nosair is doing with
7 it? Does that answer the question, ladies and gentlemen of
8 the jury, of where this comes from? It doesn't.

9 One more item that I want to bring to your
10 attention is Government Exhibit 108, the World Fact Book.
11 If you look in the upper left-hand corner, and I am going to
12 bring it around, it has the symbol, and then it says Central
13 Intelligence Agency. This is a manila folder.

14 The other thing, ladies and gentlemen of the
15 jury, is what is Mr. Nosair doing with the videotape of Ali
16 Mohammed and Colonel De Atkine? I just want to play a short
17 portion of that videotape, which is Nosair Defense Exhibit
18 JJJ-1, the video of Ali Mohammed.

19 (Videotape played)

20 MR. STAVIS: Ladies and gentlemen of the jury, I
21 asked Colonel De Atkine when he was testifying here on July
22 13, at page 14171 of the record: Did you know if copies
23 were made of this tape?

24 "A I had no knowledge of that.

25 "Q Do you know if the tape was distributed?

1 "A. I did not distribute any tapes, and I have
2 no knowledge of it being distributed.

3 "Q. Were you the person who was responsible
4 for the making of these videotapes?

5 "A I was coresponsible. I was working with
6 another major, and we decided together to do this, and so we
7 shared responsibility for making this.

8 "Q. What organization is the owner of that
9 videotape?

10 "A The United States Army."

11 There's only one way to get a video -- actually,
12 there are several ways. Colonel De Atkine could have given
13 it to Sayyid Nosair or Ali Mohammed could have given it to
14 Sayyid Nosair. It came from Ali Mohammed, ladies and
15 gentlemen, a person who in the more than two days of
16 government summations you heard absolutely nothing about.
17 That tape shows that Ali Mohammed came here, as Khalid
18 Ibrahim said, to train these Muslim brothers for
19 Afghanistan.

20 Now, Colonel De Atkine was here, and he's from
21 Fort Bragg, North Carolina, and Ali Mohammed from Fort Bragg
22 North Carolina. So we have Ali Mohammed in Fort Bragg,
23 North Carolina. Ali Mohammed comes to Jersey City --

24 THE COURT: Mr. Stavis, could you come to a
25 convenient break point.

1 MR. STAVIS: Yes. This would be it, your Honor.

2 THE COURT: Right in the middle of the sentence?

3 MR. STAVIS: Mid-sentence.

4 THE COURT: OK. Ladies and gentlemen, please
5 leave your notes and other materials behind. Please don't
6 discuss the case, and we will resume this afternoon.

7 (Jury not present)

8 THE COURT: Two small questions.

9 Ms. Stewart?

10 MS. STEWART: Yes, Judge.

11 THE COURT: In a letter dated September 3 that
12 you sent me about the charge --

13 MS. STEWART: Yes.

14 THE COURT: -- in the last paragraph, there
15 appears the following, and I don't understand it. That is
16 the reason for my question. "Also, we inadvertently
17 overlooked a request that you instruct the jury in the use
18 of hearsay evidence as that applies to conspiracy and
19 substantive charges. I believe it is particularly crucial
20 with regard to the solicitation counts."

21 There is language in the charge about what
22 hearsay they can use, provided that it is in furtherance and
23 so on, but if you had something else in mind, could you get
24 it to me.

25 MS. STEWART: I must have missed it, Judge.

1 Could you direct me as to where that is located so I can
2 review it?

3 THE COURT: I think you will find it is on page
4 36. It is called acts and declarations of co-conspirators.

5 MS. STEWART: I will take a look at it, Judge.
6 Thank you.

7 THE COURT: Also, Mr. McCarthy, you wrote a
8 letter on September 2. I am not asking you whether you have
9 a complete recollection of it, but at the bottom of page
10 1 --

11 MR. McCARTHY: Of all my letters, your Honor?

12 THE COURT: At the bottom of page 1 and the top
13 of page 2, you proposed language for inclusion on page 105
14 of the charge. The language you proposed for inclusion is
15 the language that's there.

16 MR. McCARTHY: Could I see what you are referring
17 to?

18 THE COURT: Sure.

19 MR. McCARTHY: I think it's close, but it's not
20 quite, if I remember it right.

21 Yes, Judge. This was about trying to drop the
22 word "intent" which was in the court's charge so that we
23 didn't lead the jury to believe that transferred intent
24 applied to anything other than the maintain-or-increase
25 prong as opposed to the standard intent prong. I think --

1 THE COURT: I will reread it.

2 MR. McCARTHY: OK.

3 THE COURT: Thank you.

4 MR. McCARTHY: Sure.

5 THE COURT: See you this afternoon.

6 MR. JACOBS: Your Honor, just --

7 THE COURT: Yes.

8 MR. JACOBS: On the issue of entrapment, I think
9 your Honor asked, you wanted to know which defendants were
10 going to be arguing it at some point. The only question I
11 have for your Honor is, I certainly have no objection to the
12 entrapment charge as your Honor has drafted it, the only
13 question is that if a defendant is going to elect to argue
14 both, that if he's not entrapped, then he didn't commit the
15 crime under Matthews. I don't know if your Honor has any
16 language or any intent to tell the jury that the defendant
17 can argue both. That was the question I have.

18 THE COURT: Since you didn't propose any
19 language, I obviously don't have it. It is a permissible
20 argument for you to make. I thought I had been asked in
21 connection -- I am not sure if it was the entrapment charge,
22 to make it clear that that is one defense among others. It
23 is not the only defense for any defendant.

24 MR. JACOBS: I am not sure if separate language
25 is needed or not, but I will go back and take a look. I

1 certainly want to argue both. I just want to make sure I
2 can get a clarification that we are certainly permitted to
3 do so. Obviously, I think we are.

4 THE COURT: You are permitted to do so in the
5 sense that nobody is going to sit you down, and I will give
6 the entrapment charge notwithstanding the fact that you
7 argue that he didn't commit the crime. On Matthews, You
8 didn't submit a request for that charge. Do you have one?

9 MR. JACOBS: On the entrapment I have no
10 objection to your Honor's language. I have nothing on
11 Matthews in particular.

12 THE COURT: Or in general, I gather.
13 Why are we having this discussion?

14 MR. JACOBS: I wasn't sure -- as the safe house
15 defendants begin their summations, I thought there was some
16 question on your Honor's part as to which safe house
17 defendants are going to be --

18 THE COURT: That was answered at the charging
19 conference. I have a list of defendants who are arguing
20 entrapment.

21 MR. JACOBS: OK.

22 THE COURT: Thank you.

23 (Luncheon recess)

24

25

1 AFTERNOON SESSION

2 2:05 p.m.

3 (Jury present)

4 THE COURT: Good afternoon, ladies and gentlemen.

5 JURORS: Good afternoon, your Honor.

6 THE COURT: Mr. Stavis, you may continue.

7 MR. STAVIS: Thank you.

8 Good afternoon, ladies and gentlemen.

9 JURORS: Good afternoon.

10 MR. STAVIS: Before we broke for the lunch break,
11 we were talking about this fellow over here, Ali Mohammed,
12 and we were talking about the fact that Colonel De Atkine
13 had testified before you here, about how Ali Mohammed worked
14 for him at Fort Bragg at the John F. Kennedy Special Warfare
15 Center, and that fact is also in defense LLL, the service
16 record that I showed you before.

17 What I was telling you was, if you envision it as
18 a triangle, it goes something like this: You got Fort
19 Bragg, North Carolina, then Jersey City, then Afghanistan.
20 That was proved to you here on the witness stand. Colonel
21 De Atkine gave you the Fort Bragg part of the triangle.
22 Khalid Ibrahim gave you the Jersey City part of the triangle
23 and testified here about how Ali Mohammed trained him,
24 Sayyid Nosair and other Muslim brothers for Afghanistan in
25 Jersey City. You also had Ali Mohammed's materials which we

1 were going over right before the lunch break. Then Khalid
2 Ibrahim completed the last leg of that triangle in
3 Afghanistan.

4 I want to read to you the portion of Khalid's
5 testimony from July 17, 1995, from the witness stand right
6 over there, where he testified about meeting Abu Omar, the
7 man he knew as Abu Omar and we know as Ali Mohammed, in
8 Afghanistan.

9 As a matter of fact, if you will permit me, let
10 me get out the map of Afghanistan, where Khalid identified
11 some of the areas. The map is Nosair Defense Exhibit NNN in
12 evidence. I am reading from Khalid Ibrahim's testimony,
13 page 14291:

14 "Q Where did you go when you returned again
15 to Afghanistan?

16 "A. It was not too far from where the camp was
17 again, in the mountains around Khost."

18 That's K-H-O-S-T. I will try to show you on the
19 map where that is.

20 "Q When you returned to Afghanistan in the
21 fall of 1992, did you see anyone that you knew?

22 "A. Yes.

23 "Q Who was that?

24 "A. Abu Omar.

25 "Q Please explain the circumstances under

1 which you saw Abu Omar.

2 "A. I was working on the translation of that
3 book and then one day he showed up. It looked like he had
4 come from someplace else, I mean like overseas, maybe, and
5 he was there to train some of their people, some of their
6 commanders.

7 "Q How do you know that?

8 "A. Because he trained them. I saw the place
9 where they were training."

10 Moving on to page 14292.

11 THE COURT: Mr. Stavis, if you are going to read
12 questions and answers, please specify question, answer,
13 question, answer. Otherwise the reporter has a difficult
14 time rendering what it is that you are reading.

15 MR. STAVIS: Thank you, your Honor.

16 "Q Describe the training area where you saw
17 Abu Omar in the fall of 1992.

18 "A. It was a camp and it was in a mountainous
19 area and that's all. I don't know how to describe it.

20 "Q At the time that you returned to
21 Afghanistan in the fall of 1992, did you see any United
22 States military equipment?

23 "A. Yes.

24 "Q What kind of United States military
25 equipment did you see?

1 "A. I saw a Stinger missile.

2 "Q What is a Stinger missile?

3 "A. It is an antiaircraft missile that you
4 fire from the shoulder. You put it on your shoulder and you
5 fire at an enemy aircraft."

6 You may recall, ladies and gentlemen, that Ali
7 Shinawy testified that when he was doing jihad on his
8 vacation in Afghanistan, he, too, saw U.S. ordnance and
9 ammunition while he was there. Other people who testified
10 about the jihad in Afghanistan included Clement Hampton-El,
11 who went there and was wounded, a fellow by the name of
12 Namallah Abdullah, who testified to you about the bombing of
13 villages.

14 The jihad in Afghanistan was real, ladies and
15 gentlemen of the jury.

16 There is something else that is real in this
17 case, and that is Nosair Defense Exhibit 000. It is a
18 stipulation signed by the United States, and it says on page
19 2:

20 "From shortly after the start of the Soviet
21 invasion of Afghanistan in 1979, through September of 1991,
22 the United States, through one of its intelligence agencies,
23 provided economic and military support to the Afghan
24 mujahideen through a third country intermediary. Beginning
25 in 1987, the American military support to the Afghan

1 mujahideen included Stinger antiaircraft missiles."

2 The stipulation, which is signed by the
3 government, was not mentioned by the government in their
4 simple recitation of what the evidence is about in this
5 case, ladies and gentlemen. They are the ones who signed
6 it; we signed it as well. We are mentioning it, and they
7 didn't, and we are mentioning it for a very important
8 reason, ladies and gentlemen.

9 When I said in my opening, when we said in the
10 opening that Sayyid Nosair was on team America, this
11 stipulation shows it, ladies and gentlemen. This gentleman
12 right over here, this United States citizen was on the same
13 side as the United States of America in the jihad in
14 Afghanistan. They were working for the same purposes: to
15 throw the communists out of Afghanistan. The United States
16 of America supported the Afghan mujahideen, and part of that
17 support, ladies and gentlemen, was supporting people who
18 were going to go to Afghanistan. Part of that was being on
19 board for Mr. Nosair's jihad, the jihad that the same
20 government that signed this stipulation here now says was a
21 war of urban terrorism against the United States of America.

22 Ladies and gentlemen, the evidence in the case,
23 the evidence that you heard is that Sayyid Nosair's jihad
24 was in Afghanistan. The U.S. was happy that his jihad was
25 in Afghanistan because it was the same jihad that the United

1 States of America was a participant in, according to the
2 stipulation signed by the same government that is now saying
3 that Sayyid Nosair and everything that he was doing was for
4 some war of urban terrorism. It is not true, ladies and
5 gentlemen. You have the proof. The proof shows what the
6 real story is, and it is not simple, it's complicated. But
7 the evidence is there, and I hope that when you retire to
8 deliberate on this case you think about the position of the
9 United States then, and the position of the United States
10 now. Urban terrorism, ladies and gentlemen, and a war of
11 urban terrorism, is apparently in the eyes of the beholder.

12 The war in Afghanistan, ladies and gentlemen, was
13 part of the jihad, and Sheik Azzam -- let's get him back --
14 Sheik Azzam said to his followers, including Sayyid Nosair,
15 that the next jihad was in Palestine. Palestine is viewed
16 by Sheik Azzam and his followers in his jihad organization
17 as being a place where Muslim holy places are desecrated by
18 an invading force and where Muslim peoples are oppressed.
19 You may not agree with those beliefs and with those
20 opinions, but those are the opinions of this man Sheik
21 Abdallah Azzam, and those are the opinions of this man,
22 Sayyid Nosair.

23 In Nosair Exhibit JJJ24T in evidence, what that
24 is is a translation of that video that we saw this morning,
25 "Mirror of Afghan Jihad." On page 9, Sheik Azzam said, and

1 I quote, "Palestine occupies a prominent place in the hearts
2 of the Afghan mujahideen. They say oh God grant us jihad in
3 Afghanistan and martyrdom on the territory of Palestine.
4 When I ask them do you want to go to Palestine, they would
5 weep in yearning for Al Aksa Mosque and eagerness to see the
6 place to which the messenger, peace be upon him, made his
7 ishra, nocturnal journey, from Mecca to Jerusalem, most of
8 them would say, from Kabul to Jerusalem."

9 Mr. Nosair shared those opinions, ladies and
10 gentlemen. Mr. Nosair read as much as he could about
11 Palestine, attended lectures about Palestine, went to
12 conferences about Palestine.

13 I went to show you Government's Exhibit 163R2.
14 This is a government exhibit, and it is Mr. Nosair
15 addressing a conference for Palestine. He says over here:

16 "We know that this is a conference for Palestine.
17 The Muslim brothers must realize that the entire Palestine
18 and each inch of it is a Palestinian land. We will not
19 relinquish one inch of Palestine."

20 You heard testimony that this particular tape,
21 Government's Exhibit 163R2, multiple copies of it were found
22 in the home of Mr. Nosair's cousin and brother Ibrahim
23 El-Gabrownny. That is because this was used to be
24 distributed, ladies and gentlemen. It was used to be
25 distributed for conferences on Palestine and to be used to

1 raise funds for the Palestine jihad, that was going to be
2 the next jihad Afghanistan, according to Sheik Abdallah
3 Azzam.

4 I am now going to play you a portion of a
5 videotape. You have seen one portion of it already this
6 morning. It is Nosair Defense Exhibit JJJ-1. It is the Ali
7 A. Mohammed video. But pay close attention to what
8 Mr. Mohammed says about Palestine on that video.

9 (Videotape played)

10 MR. STAVIS: Didn't that sound a lot like one of
11 those speeches that you heard from Sheik Omar Abdel Rahman?
12 Those were the opinions of sergeant Ali A. Mohammed, United
13 States Army Special Forces, and they sounded like the
14 opinions held by people like Mr. Nosair, people like Sheik
15 Abdallah Azzam. You may not agree with them, you may
16 disagree vehemently with them. But they are their opinions
17 nonetheless, and in this country, in this free country that
18 you heard Sheik Tamim Adnani talk about on the video this
19 morning, it is your right to hold such opinions.

20 Getting back to this 163R2, the government says
21 that this is one of three confessions to Meir Kahane's
22 murder, that in this tape in which Mr. Nosair was trying to
23 raise funds for his defense committee, he actually confessed
24 to the murder of Meir Kahane. Let's look at this and see if
25 we can find a confession lurking somewhere in there.

1 "God the almighty with his own power and grace
2 will facilitate for the believers to penetrate the lines, no
3 matter how strong they are, and the greatest proof of that
4 what happened in New York. God the almighty enabled his
5 extremely brave people, with his great power to destroy one
6 of the top infidels. They were preparing him to dominate,
7 to be the prime minister some day. They were preparing him
8 despite their assertion that they reject his agenda and that
9 he is a racist, and that he is a racist, and all of that."

10 Ladies and gentlemen, if there is a confession to
11 the murder of Meir Kahane lurking somewhere in there, I
12 submit that you can't find it. It is a comment on what
13 happened and it is a comment to how people like Ali Mohammed
14 or Sayyid Nosair viewed Meir Kahane, and it was used to
15 raise money.

16 I want to now put back up on the board
17 Government's Exhibit 76T, which is the, we will call it the
18 state of Ibrahim notes that figured so prominently in Mr.
19 Fitzgerald's summation.

20 (Continued on next page)

21

22

23

24

25

1 I am reading now from Government Exhibit 76T.

2 Before announcing the establishing of the state
3 of Ibrahim in our holy land, immediately before that, to
4 break and to destroy the morale of the enemies of Allah, and
5 this is by means of destroying, exploding the structure of
6 their civilized pillars, such as the touristic
7 infrastructure which they are proud of and their high world
8 buildings which they are proud of and their statues which
9 they endear and the buildings in which gather their heads,
10 their leaders, and without any announcement of our
11 responsibility as Moslems for what has been done, and,
12 therefore, the enemies of God will be busy in rebuilding
13 their infrastructure and rebuilding their morales, and they
14 will not care much about what goes on around them more than
15 their care about rebuilding their morale. And, therefore,
16 the chance will be available for the Moslems to repossess
17 their sacred lands from the hands of the enemies of God, the
18 traitors and the hypocrites who will be at this moment in a
19 very psychological weakness from what they see around them,
20 and this is because the forces on which they were depending
21 were crushed into pieces and are in a tragic collapse.

22 Now, we are talking about, as it is clear from
23 this exhibit, we are talking about the holy land, and we are
24 talking about sacred lands. And, just in case there was any
25 ambiguity about that, on page 4 of 76T, which wasn't blown

1 up, or photographically enlarged, they say, that means -- or
2 Mr. Nosair says in this notebook, in this seditious war of
3 urban terrorism in America notebook, he says: That means we
4 will pursue in two parallel efforts. Either we change our
5 holy land or any other Islamic country, because once the
6 change starts by the believers in one Islamic land, that
7 becomes their holy land out of which they will start their
8 purifying process of all Moslem countries. All the Moslem
9 countries are considered holy land for us, and especially
10 the hejas, Saudi Arabia and Jerusalem.

11 Now it is clear that they are talking about
12 Palestine here when they are talking about the holy lands
13 which are defined in what I just read to you. When you are
14 talking about the touristic infrastructure, Israel has a
15 tourist industry and they are talking about their high world
16 buildings. We have had high world buildings here in New
17 York City since the turn of the century.

18 So it is clear they are talking about Palestine.
19 Now, I want to read to you what Mr. Fitzgerald told you in
20 his summation about this exhibit and how he explained it. I
21 am on page 18579, this was last Tuesday. He is describing
22 what you can see, read and understand with your own eyes.

23 This is a quote from Mr. Fitzgerald: "What he is
24 saying is we've got to take back the holy land, or we've got
25 to distract, we have to blow up buildings. The buildings

1 are not in the holy land. You don't do a distraction by
2 attacking the target. You don't attack a land to distract
3 it. You attack the forces upon which they depend. The
4 forces on which they were depending is America. In his
5 view, Israel depends on America. You blow up tall
6 buildings, you distract, you break the morale. The forces
7 upon which is Israel depends are distracted. Then you can
8 make your move."

9 To Mr. Fitzgerald, the holy land is here in
10 America. Jersey City is holy Muslim land that we have to
11 take back. Brooklyn is holy Moslem land that we have to
12 take back.

13 Take this, 76T, into the jury room when you
14 deliberate in this case. Read it as many times as you have
15 to read it and see if you can figure out how in the world
16 Mr. Fitzgerald can say that this is talking about the United
17 States of America. It is talking about a jihad in
18 Palestine. It is talking about an armed struggle in
19 Palestine, on the other end of the world. That's clear to
20 anyone who can read. Saying that this, Government's Exhibit
21 76T, is talking about America and the United States, I was
22 thinking of an analogy that I could use.

23 What that's like, saying that this document,
24 which is so clear that it's dealing with Palestine, is
25 really dealing with the United States, it's kind of like,

1 ladies and gentlemen, urinating in a glass, marking it
2 "World Trade Center," sending it to the FBI lab in
3 Washington and then saying that it proves something.

4 Now, that testimony should ring a bell. That was
5 the testimony of Dr. Frederick Whitehurst. The testimony of
6 Dr. Frederick Whitehurst talked about how you can twist
7 results, how you can twist findings so that they fit neatly
8 into your theory of the case. And that's what is being done
9 with this exhibit, ladies and gentlemen.

10 I would like to read to you a portion of
11 Dr. Whitehurst's testimony which demonstrates the twisting
12 that was going on with him and the twisting that's going on
13 with this exhibit. I am reading now from Dr. Whitehurst's
14 testimony on August 14, 1995, page 16345:

15 "Q There came a time, however, that Mr. Corby
16 told you that he had been instructed by people senior to him
17 that you were going to have to change your reports, correct?

18 "A Mr. Corby had me come into his room one
19 day and told me that they -- I don't know who 'they' were --
20 that they want me to take statements out of my report, and
21 he showed me the statements they wanted me to take out of my
22 report and they were marked, highlighted with yellow
23 highlighter.

24 "Q. Would I be correct in stating that during
25 that period of time every one of your reports was either

1 changed outright by higher-ups to support a theory of guilt?
2 Would that be correct? That was one of the things that was
3 done?"

4 I am now on page 16346, and the answer is:

5 "Not every one of them.

6 "Q. Some of your reports?

7 "A. I was at times left with that impression.
8 There was a great deal of pressure put upon me to bias my
9 interpretation of the data.

10 "Q. In support of a theory of guilt, correct?

11 "A. In support of the theory of the presence
12 of urea nitrate and other things that would have supported a
13 theory of guilt, yes.

14 "Q. There came a time, did there not, that you
15 wrote a memo to the section chief, John Hicks asking to be
16 advised as to the FBI's policy regarding concealment of
17 evidence from the court, correct?

18 "A. Yes.

19 "Q. Your answer is yes?

20 "A. Yes, I did.

21 "Q. Would I be correct in stating that many of
22 your reports were returned to you with suggestions that
23 slanted the conclusions against the defendants in the World
24 Trade Center case?"

25 On page 16347:

1 "A That was the reason I wrote the memo
2 requesting that Mr. Hicks clarify our position on biasing
3 reports. I wanted to know if by not biasing my reports I
4 was breaking any federal law or FBI regulation. It was such
5 a strong pressure, I thought, maybe I'm wrong about this.
6 Maybe there's a reason that I am supposed to bias my
7 reports. I didn't know what it was. That memo I never
8 received an answer from.

9 "Q. The pressure that you felt was from
10 members of the FBI, agents within the FBI?

11 "A. That is correct.

12 "Q. Would I be correct in saying that you were
13 criticized openly for the wording of your reports and told
14 that your reports could hurt the prosecution's case?

15 "A That's correct.

16 "Q. Did there come a time when you were
17 actually physically confronted by a field agent by the name
18 of Don Haldimann?

19 "A. That's correct.

20 "Q. And this person was not a scientist,
21 correct

22 "A He told me he wasn't.

23 "Q. He was a case agent attached in some form
24 to the bomb squad?

25 "A I understood that he was the chief bomb

1 technician in New York. I don't know what his position was
2 actually.

3 "Q Where did this meeting take place, sir?

4 "A It was at a Christmas party in the
5 explosive unit area of the FBI laboratory.

6 "Q What did he say to you?

7 "A. He had concern about the wording of my
8 reports and what he referred to as glitz, that is,
9 G-L-I-T-Z, and that my inclusion of all of these qualifying
10 statements would cause a problem for the prosecutorial team
11 and that it didn't matter anyhow because the prosecutors
12 were going to circumvent my testimony by finding another
13 expert to testify in the manner that they wanted.

14 "Q Just so I am clear, sir, you never had any
15 conversations with any of the prosecutors -- withdrawn.

16 "At that point, at the Christmas meeting, none of
17 the actual prosecutors in the World Trade Center were
18 present?

19 "A Correct.

20 "Q And you subsequently did meet them,
21 correct?

22 "A That's correct.

23 "Q. Would I be correct in saying that you felt
24 no pressure from the lawyers on the prosecution team?

25 "A. No pressure whatsoever.

1 I am on page 16349:

2 "Q But the statements by Mr. Haldimann you
3 felt were a pressure upon you to conform your results and to
4 not hurt the prosecution, correct?

5 "A. I knew they were a pressure on me."

6 Now, I would like to read what last Thursday Mr.
7 Fitzgerald said about the pressure placed on this FBI
8 scientist to make findings that were consistent with a
9 theory of prosecution.

10 Page 18909: "In the end, their efforts worked.
11 The reports were corrected, and he felt comfortable with
12 what was in the reports that went out once they were
13 corrected."

14 Ladies and gentlemen, Dr. Whitehurst was not
15 about urea nitrate. Dr. Whitehurst was not about the
16 outcome. Dr. White Whitehurst was not about the final
17 report. Dr. Whitehurst was about twisting findings.
18 Dr. Whitehurst was about deception. Dr. Whitehurst was
19 about duplicity. Dr. Whitehurst was about making something
20 seem like it's something else. Dr. Whitehurst was about the
21 integrity of the system.

22 Dr. Whitehurst is analyzing paint chips as we
23 speak. That's his job now for the FBI. No longer is he the
24 head bomb guy. He is a paint chip analyzer in training.
25 The man who had the courage to stand up and say: Don't

1 twist the facts. That's not fair. Don't make them seem
2 like they're something that they're not. If that's the way
3 to win a case, I don't want to win. Because by making the
4 facts seem like something that they're not, you can have the
5 wrong result in a case.

6 Now, that is what is happening with this exhibit
7 here where the holy land and the sacred lands and the holy
8 places are used in this chart here as the No. 1 evidence
9 regarding Count One for Sayyid Nosair. Evidence of
10 sedition, seditious conspiracy, Count One. Conspiracy to
11 wage a war of urban terrorism against the United States,
12 76T.

13 You know what we'll call that, ladies and
14 gentlemen. We will call that pulling a Whitehurst. The
15 government is pulling a Whitehurst on you with that exhibit,
16 Government's Exhibit 76T.

17 Mr. Nosair's interest in Palestine included an
18 interest in the Jewish perspective on Palestine. If you are
19 a truly educated and thoughtful person, you don't only read
20 what confirms what you already know, but you read everything
21 you can from every different perspective, and that he did.

22 Government Exhibit 128T is a conversation that
23 Mr. Nosair had with his wife that that was picked up on tape
24 from Attica Prison, and on page 2 of that, of Government
25 Exhibit 128T, Mr. Nosair says, "Khadijah" -- that's his

1 wife's name, "I want you to buy weekly the "Jewish Press,"
2 OK?

3 Mrs. Nosair: You know, I thought about that
4 before, because you --

5 Mr. Nosair: Yeah.

6 Mrs. Nosair -- told me.

7 Mr. Nosair: Yeah.

8 Mrs. Nosair: But I don't have anywhere to get
9 it.

10 Nosair: Khadijah, any newsstand, my love.

11 Mrs. Nosair: Not here.

12 Mr. Nosair. Yes. OK. Do you remember,
13 Khadijah, you remember that Korean store on the corner of
14 Sip Avenue and Kennedy.

15 Mrs. Nosair: OK. That's a stand.

16 Mr. Nosair: The newsstand.

17 Mrs. Nosair: Uh-huh.

18 Mr. Nosair: The one behind the Christian
19 Egyptian store.

20 Mrs. Nosair: Garden State News.

21 Mr. Nosair: Yeah.

22 Mrs. Nosair: Uh-huh.

23 Mr. Nosair: They sell it, my love.

24 Mrs. Nosair: Ah, do they?

25 Mr. Nosair: Every Wednesday.

1 Mrs. Nosair: Oh, all right.

2 Mr. Nosair up at Attica was getting copies of the
3 Jewish Press. He was an avid reader of the "Jewish Press"
4 before he went to Attica, and in that much touted telephone
5 conversation that he had with Sheik Omar Abdel Rahman,
6 Government's Exhibit 850T, he says to Sheik Omar: "Talking
7 about the Jewish migration Sheik Omar, according to a weekly
8 newspaper called the 'Jewish Press' a minimum of 1,000
9 Russian Jews migrate daily from Russia to Israel. This is
10 what they themselves say about the migration of Jews to
11 Palestine. Meanwhile the heads of our states are like
12 sitting ducks. They don't do anything at all about this
13 situation."

14 Mr. Nosair was interested in all perspectives of
15 Palestine. You heard testimony from Dr. Mehdi, who
16 testified on behalf of Mr. El-Gabrownny that he used to go on
17 the same TV programs as Rabbi Meir Kahane. You want to know
18 everything that's going on. You want to know what the other
19 side is doing. Now, there is an example, there is an
20 organization known as Klan watch. And what they do is they
21 watch what the Ku Klux Klan is up to. That is their sole
22 reason for being. It doesn't mean that they're sympathizers
23 with the Klan. It means that they want to see what they're
24 up to.

25 Now, was this compelling interest in Palestine

1 that led Sayyid Nosair to the lecture given by Rabbi Meir
2 Kahane on November 5 of 1990?

3 Now, Mr. Fitzgerald last Tuesday, he said, well,
4 quoting: "Now, the Kahane murder is not a murder mystery.
5 There's no doubt who killed Rabbi Kahane. It's not a
6 whodunit."

7 Case closed. Why argue about it? I mean I have
8 to be up here for a while, so why should I even waste my
9 time talking to you about that?

10 Well, Mr. Fitzgerald, let's look at the videotape
11 that the state jury looked at during Mr. Nosair's first
12 trial and that Mr. Fitzgerald told you was taken only
13 moments before the murder of Rabbi Meir Kahane.

14 THE COURT: Mr. Stavis, may I see you at the side
15 before you show this.

16 MR. STAVIS: Yes.

17 (Continued on next page)

18

19

20

21

22

23

24

25

1 (At the side bar)

2 THE COURT: It is nowhere in this record that the
3 state court jury saw that tape. If you refer to the state
4 court trial again in the way that you just did, and which I
5 take to be a completely hypocritical attempt to introduce a
6 subject that I directed you not to introduce, I am going to
7 cut your heart out right in front of that jury, do you
8 understand me?

9 MR. STAVIS: Yes, your Honor.

10 THE COURT: Good.

11 (Continued on next page)

12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 (In open court)

2 MR. STAVIS: Mr. Patel, whenever you are ready.

3 We are going to see the end of the videotape
4 which is Government's Exhibit 5 here now.

5 (Videotape played)

6 OK. Hold it there. I don't know which monitor
7 you are looking at. See this man over here, ladies and
8 gentlemen of the jury, look at him, look at him carefully
9 and look at the man who is sitting at the table here and
10 watch what this man does.

11 Go ahead, Mr. Patel, please.

12 (Videotape played)

13 OK. Let's just roll that one more time, please,
14 Mr. Patel.

15 (Videotape played)

16 THE COURT: The man is turning to leave out the
17 book door moments before Rabbi Kahane was shot and murdered.

18 Ladies and gentlemen, it is in evidence. It is
19 Government's Exhibit 5. You can look at it. You can look
20 at it over again. You can look at it over again after that.
21 You can keep looking at it. Mr. Nosair was walking out the
22 back door moments before Rabbi Kahane was shot and murdered.

23 Look at it, ladies and gentlemen. You can have
24 any of these exhibits played in the jury room. Look at that
25 one, and you'll see Mr. Nosair. You will see him as sure as

1 I'm standing here in front of you, ladies and gentlemen.

2 Now, at the end of my summation I am going to sit
3 down, I am going to sit down and Mr. McCarthy is going to
4 stand up. I don't know what he is going to say, but
5 remember what I'm saying, which is that you watch that for
6 yourself, and you'll see -- if Mr. McCarthy wants to say
7 this is probably somebody else, some other bearded gentleman
8 looking just like Mr. Nosair, the government is the one
9 who's telling you that other people in that same room are
10 precisely who they say they are, including a person whose
11 face we can't even see, and you know Mr. Nosair, right over
12 there on the left, when you see him because you, ladies and
13 gentlemen, have been looking at Mr. Nosair for eight months,
14 every single day, except Fridays.

15 And, while we are at it, can you just run it from
16 the end one more time, Mr. Patel.

17 (Videotape played)

18 Let's look for Ari Gottesman in this video taken
19 moments before the shooting of Rabbi Kahane. That's Stephen
20 Hoffman. Could you just back that up a little bit, Mr.
21 Patel.

22 This tall fellow is Stephen Hoffman, who
23 testified here back in February, you might recall. He's
24 there.

25 Look for Ari Gottesman. Where's Ari? The final

1 moments, ladies and gentlemen. There's Stephen Hoffman on
2 the left.

3 OK. Thank you.

4 Now, Ari Gottesman, ladies and gentlemen, is the
5 witness that Mr. Fitzgerald said last Tuesday was,
6 "unshaken" on cross-examination.

7 Is that right? Can you remember back to February
8 when the snow was on the ground? Do you remember Ari
9 Gottesman who thought that every Arab was a terrorist? Do
10 you remember the arrogance of that young man?

11 Well, if you don't, I am going to read from his
12 testimony for you and that will bring it back a little bit.

13 This is February 8, 1995, page 2642:

14 "Q In the snippet of the videotape that you
15 viewed before, do you recall the part where Rabbi Kahane was
16 talking about the concept of transferring Arabs? Do you
17 recall that on the snippet that you watched this morning?

18 "A. Yes.

19 "Q. What is or what was Rabbi Kahane referring
20 to at the meeting you attended? What does that mean,
21 transferring Arabs?

22 "A. Rabbi Kahane believed that it had been
23 made quite obvious since 1947, and even before that, the
24 Arabs were not happy living together with the Jews, and that
25 his proof for that were the numerous terrorist attacks that

1 had been engaged upon by Arabs upon Jews throughout the
2 history of the development of the State of Israel. And
3 because of that, he felt that it was in the Jews' best
4 interests that the Arabs should go back to other Arab
5 countries, the same way that the Moroccan Jews and the
6 Yemenite Jews and Syrian Jews and Jews from all over the
7 Arab world had been expelled and had to go to Israel.

8 Q And was that concept of transferring Arabs part
9 of the political platform of the Kach party in addition to
10 the Old Testament that you referred to?

11 "A. That is clearly stated in the Old
12 Testament.

13 "Q Is your answer to my question yes?

14 "A. You asked if it was in addition. I'm
15 saying it's not in addition.

16 "Q You are saying it's all the same thing?

17 "A. No. I am saying that you stated that was
18 in addition to the Old Testament. The answer is no to that.
19 This was part of the Old Testament.

20 "Q. Was it part of the Kach party's platform?

21 "A Yes, it was."

22 I am now on page 2645.

23 "Q. Mr. Gottesman, before the break we were
24 talking about the concept of transferring Arabs, and I
25 believe your answer was something about the Arabs not being

1 happy in Israel. Was that your answer?

2 "A. May have been.

3 "Q According to your answer, was that the
4 Arabs were not happy in Israel, who made that determination
5 that the Arabs were not happy in Israel?

6 "A. I would say the Arabs made that
7 determination.

8 "Q And how did they make that determination?

9 "A. By engaging in acts of terrorism against
10 women and children, against schoolchildren no more than the
11 age of seven years old by blowing up schools, by blowing up
12 school buses, by, most recently, by the incident in Beth
13 Shear'im where they set up two bombs, one in which to injure
14 people, and the second was timed to go off five minutes
15 later so that all those people that went over to help would
16 also be injured, which resulted in over 22 deaths and a
17 number of other people being wounded. Putting a bomb on a
18 bus in the middle of Tel Aviv, the middle of -- be like
19 putting a bomb on the bus in the middle of Manhattan and
20 blowing it up. There are many, many times when they've
21 expressed their, their unhappiness.

22 "Q. Now, is it the platform of the Kach party
23 to transfer all the Arabs out of the State of Israel,
24 Mr. Gottesman?

25 "A. Well, that's not an easy question to

1 answer either.

2 "Q. Why don't you give it a shot.

3 "A. What's the -- what Kahane has stated
4 sometimes in his speeches is that he wants them all out.

5 "Q. So when you say that the Arabs, that under
6 the Kach platform the Arabs are unhappy, that's the
7 determination, or that was the determination of Rabbi Kahane
8 that the Arabs were not happy, is that correct?

9 "A Yes.

10 "Q. That wasn't the Arabs saying, we're not
11 happy, transfer us out of our land, was it?

12 "A Well, the Arabs made their intentions
13 quite clear. They landed a group of terrorists on the beach
14 after the PLO had formally renounced terrorism, and they
15 tried to attack people that were on the beach bathing and
16 suntanning throughout any -- no question that they have
17 constantly reaffirmed the fact that they're not happy."

18 They're all terrorists, ladies and gentlemen,
19 when you're Ari Gottesman. They. They are all terrorists.

20 The man did not give you a fair, unbiased account
21 of what occurred in the Marriott D ballroom because he was a
22 true believer. He believed in the things that he said from
23 the record that I just read to you, and he became very
24 angry.

25 Page 2739 of the record, line 19, February 9,

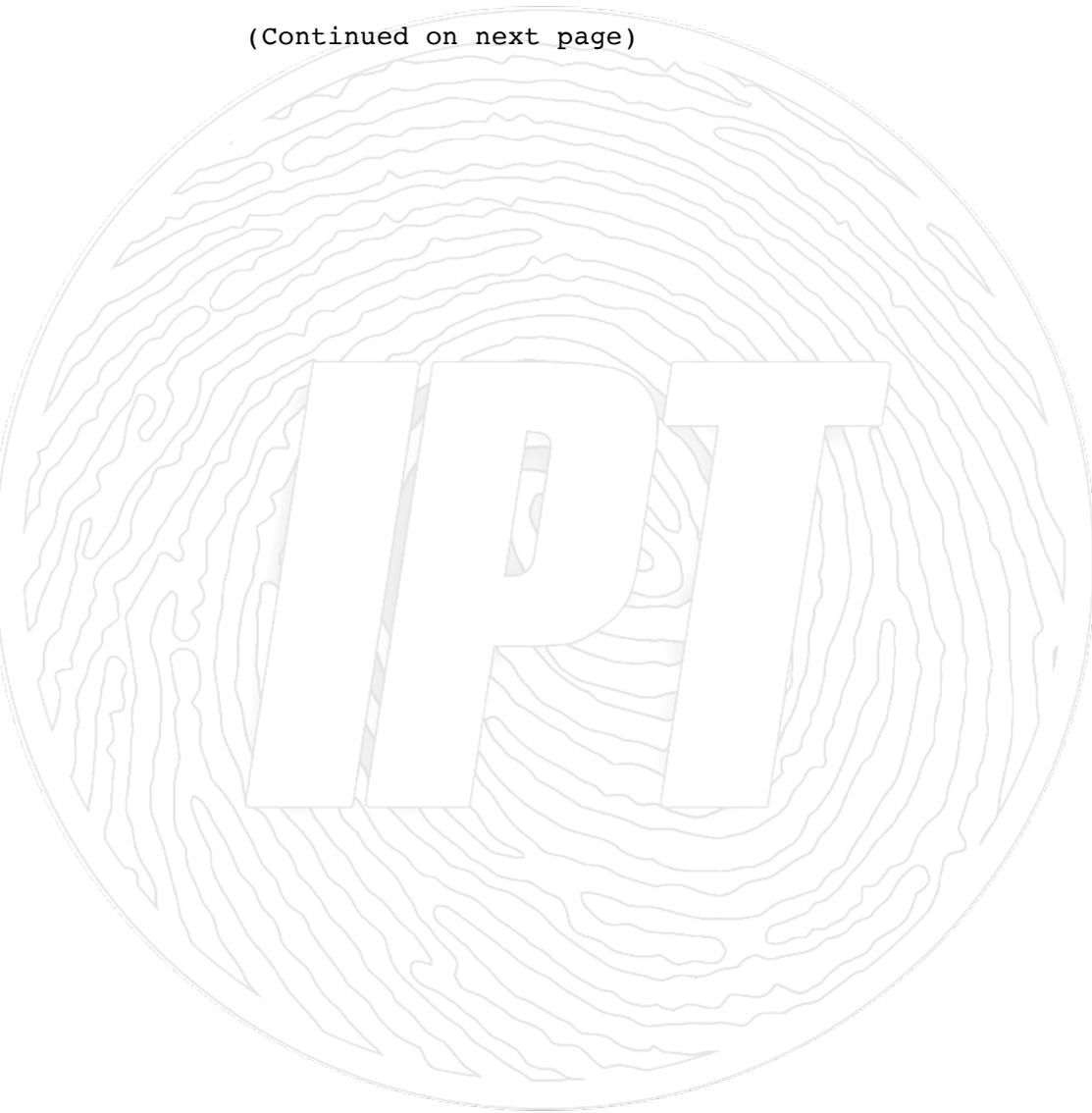
1 1995:

2 "Q. When you learned of the verdict in the
3 state trial, did that make you angry, Mr. Gottesman?

4 "A. Yes."

5 (Continued on next page)

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 MR. STAVIS: (Continuing) He was the one who may
2 have said something like -- that's his testimony on page
3 2740 -- get the Arab. He testified at page 2628 on February
4 8, "After the shots rang out, a majority of the people were
5 on the floor. There was panic and people were screaming."

6 Ladies and gentlemen, I submit to you that along
7 with the rest of the people in the Marriott D ballroom after
8 the shots rang out, Ari Gottesmann was on the floor also.
9 He hit the deck. When he testified to you, he didn't say
10 that he saw Sayyid Nosair shoot Rabbi Meir Kahane. He
11 didn't say that. He said that he picked him up when he was
12 on the wall. He couldn't say that he saw him shoot,
13 because, ladies and gentlemen, I submit to you that Shalom
14 Gubin and five other people were around to contradict him.
15 But once everybody hit the deck, then he was free --

16 MR. McCARTHY: Objection.

17 THE COURT: Sustained and stricken. There is no
18 evidence of that in the record, Mr. Stavis, any
19 contradiction that you just mentioned.

20 MR. STAVIS: OK. Once on page 2628 where
21 Mr. Gottesmann says the people were on the floor -- and I am
22 submitting to you that he also was on the floor -- once that
23 happened, he was free to say whatever he wanted.

24 I want to read to you from something else he said
25 in his testimony, and let's see if it makes sense. Page

1 2572, line 6:

2 "Q What did you do, Mr. Gottesmann, after you
3 saw Mr. Nosair moving up the aisle?

4 "A. Moving down the aisle.

5 "Q Excuse me.

6 "A. He went down the aisle, the side aisle
7 along the wall. I went down the center of the room
8 following him.

9 "Q In what motion was Mr. Nosair moving down,
10 up the aisle?

11 "A. He was moving quickly, a little bit
12 hunched over, a little bit, in a bit of a crouch like this,
13 and moving along the wall.

14 "Q Did you see the gun, a gun in his hand as
15 he was moving down the aisle?

16 "A. No, I did not."

17 Ladies and gentlemen, ask yourselves how you
18 could see someone moving away from you toward the back door,
19 crouching down, how you can see their face. How can you do
20 that? Does that make sense? Someone is trying to get the
21 hell out of the room on the far wall, crouched down, moving
22 away from him. Where are you going to see that man's face?

23 Ladies and gentlemen, Dr. Hirsch, who I called --
24 forgive me, I am up here too long -- who we, the Nosair
25 defense called on our case, proves that Ari Gottesmann did

1 not see the shooting. It proves it. I need another easel,
2 and then we are going to show you some testimony here.

3 MR. McCARTHY: Your Honor, may I move my position
4 for a moment?

5 THE COURT: Yes.

6 MR. STAVIS: Ladies and gentlemen, here is Ari
7 Gottesmann's testimony on the left-hand side, from page 2654
8 of the record. Here on line 19 -- I am sorry. I must be in
9 your way.

10 "Q How far was the gunman from Rabbi Kahane
11 when he shot Rabbi Kahane?

12 "A. About the distance that I was."

13 THE COURT: You have to talk into the microphone
14 in order for the translators to hear you, Mr. Stavis.

15 MR. STAVIS: I will go back to line 19.

16 "Q How far was the gunman from Rabbi Kahane
17 when he shot Rabbi Kahane?

18 "A. About the distance that I was.

19 "Q Five to 10 feet?

20 "A. Approximately."

21 You may remember, ladies and gentlemen, I asked
22 Dr. Hirsch, who was the chief medical examiner for New York
23 City -- he is the top pathologist, the top autopsy person
24 for New York City, and he testified that he has a staff of
25 about 30 people, 30 pathologists who perform autopsies and

1 who part of their job is to testify in criminal trials. I
2 asked him about something called stippling, which an
3 old-fashioned way of discussing that is, it is like powder
4 burns that adhere to the skin around a gunshot wound. It is
5 little particles of gunpowder that adhere to the skin around
6 a gunshot wound. Here is Dr. Hirsch's testimony from page
7 13743 of the record:

8 "Q Dr. Hirsch, I am going to ask you a few
9 questions about the stippling pattern, and if you wish to
10 refer to your report, you may. If we view the stippling
11 area as a clock, Dr. Hirsch, how far was the stippling in
12 the 12 o'clock position?

13 "A. Above the gunshot perforation in a 12
14 o'clock position, the stippling extended 3 and a half
15 inches.

16 "Q How far did the stippling extend in the 3
17 o'clock position?

18 "A. That's backward an inch and three quarters
19 to the back of the neck.

20 "Q And how far did the stippling extend in
21 the 9 o'clock position?

22 "A. Two and a half inches where it was
23 terminated by his beard.

24 "Q The 6 o'clock position, the stippling
25 extended on the collar, right?

1 "A. Yes, sir.

2 "Q That made precise measurements difficult?

3 "A. There was no attempt made to measure how
4 far down his collar it went.

5 "Q Dr. Hirsch, based on these dimensions and
6 the moderately dense gunpowder stippling that you saw, do
7 you have an opinion regarding how many inches separated the
8 muzzle of the .357 magnum from the entrance wound?

9 "A. I have such an opinion.

10 "Q How many inches was it?

11 "A. It is my opinion that it was several
12 inches."

13 Why is this blown up here, ladies and
14 gentlemen -- excuse me, photographically enlarged -- because
15 on page 2654, Ari Gottesmann said 5 to 10 feet and on page
16 13744, the expert, the expert pathology pathologist, the
17 chief medical examiner for New York City, said several
18 inches. You could say 3 feet, 4 feet, it's not such a big
19 deal. You can say 3 feet to 5 feet. Five to 10 feet or
20 several inches. Five to 10 feet is what this exhibit is
21 taking up in this courtroom, ladies and gentlemen. Inches
22 is real close, and the scientific evidence, the evidence
23 from the expert chief medical examiner -- he wasn't retained
24 as an expert, he told you, he just works heading the office
25 of chief medical examiner for New York City, and he said it

1 was several inches, and that is why I submit to you, ladies
2 and gentlemen of the jury, Ari Gottesmann did not see, Ari
3 Gottesmann did not see the actual shooting of Rabbi Meir
4 Kahane, and Ari Gottesmann did not see Sayyid Nosair in the
5 Marriott D ballroom, he couldn't have. That's too big.
6 That's too big a discrepancy, ladies and gentlemen.

7 You can have the testimony read back to you, take
8 it to the jury room, discuss it amongst each other. Ari
9 Gottesmann, the only eyewitness to right after the shooting
10 of Rabbi Meir Kahane, the fellow who Mr. Fitzgerald said was
11 absolutely you know shaken on cross-examination, could not
12 see the shooting of Rabbi Meir Kahane.

13 Mr. McCarthy, are you under there?

14 THE COURT: Mr. Stavis, would this be a
15 convenient point to take a break?

16 MR. STAVIS: Yes, your Honor.

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

21 (Recess)

22 (Continued on next page)

23

24

25

1 (Jury present)

2 MR. STAVIS: May I proceed, your Honor?

3 THE COURT: Go ahead, Mr. Stavis.

4 MR. STAVIS: Thank you.

5 Ladies and gentlemen, I want to talk a little bit
6 about Irving Franklin now.

7 Now, Ari Gottesman testified that Irving Franklin
8 was in a bear hug with the man he said was Sayyid Nosair and
9 then a gun went off and sparks flew between them.

10 On page 2573 of the record Ari Gottesman says: I
11 followed him down the center aisle while he was moving along
12 the wall. I moved down the center aisle and I was just
13 about to turn. I just turned at the end of the room --
14 well, as I was moving down the center aisle, he was grabbed
15 by an old man in a bear hug. And I turned the corner of the
16 back of the chairs and I was about a step and a half from
17 running and jumping on him as well when the gun went off a
18 second time. I saw sparks fly from between the old man and
19 Nosair."

20 Now, that's the same thing that Irving Franklin
21 says about how he was wounded. Irving Franklin testified
22 the next day, that was February 9, 1995, at page 2802, line
23 22. This is a question to Irving Franklin. If you
24 remember, Irving Franklin is the elderly gentleman who was
25 wounded in the leg, and he came here and he testified to

1 what happened. He couldn't identify the gunman.

2 If you recall, there were no questions to even
3 ask him on cross-examination.

4 Anyway on page 2802 of the record:

5 "Q What did you do immediately after you
6 heard the guns?

7 "A I turned toward the front of the room and
8 I saw this individual running down the aisle towards me. He
9 was" -- I'm now on page 2803 -- "by that time he was about
10 five feet away from me and crouched in a running position.
11 I grabbed him by his two arms and held onto him. He -- we
12 turned to the right, and he tried to get free, but I held
13 onto him. He dragged me a little. He pulled me a little,
14 and he shot me because he couldn't get away. And he
15 continued to -- this time he dragged me because my foot
16 folded over onto me, and I was falling down. He dragged me
17 outside the door, and he got himself free and ran off. And
18 I fell to the ground."

19 I don't think, ladies and gentlemen, that there's
20 any question from the man who was actually wounded
21 describing it to you that he was locked with the gunman in
22 an armhold and the gun went off between the two men. So
23 there's no question about that.

24 Now, let's read, or allow me to read the
25 testimony of unassailable eyewitness Stephen Hoffman, who we

1 saw in the video. This is from February 9, 1995, page 2756.

2 This is Mr. Hoffman's eyewitness description of
3 what went on:

4 A. I noticed this man running outside towards
5 the exit. He was medium build. He had a brown sweater on
6 and he had a beard. It happened very quickly, but it seemed
7 like he was wanting to run out. Again, I was standing right
8 at the doorway, the exit or entrance, and the man that ran
9 out turned. He was outside the room, and there was another
10 gentleman standing right before me, an elderly man. And as
11 the first man that was exiting the room stopped, turned
12 around, he faced me, I saw him lift his hand, he had a
13 silver gun in his hand, and he lifted it up and he pointed
14 it at myself and the elderly gentleman and I saw him fire
15 it."

16 Now let's go on to 2789, continuing with
17 Mr. Hoffman's testimony, line 17:

18 "Q You started to leave the room, is that
19 fair to say after you went up and talked to the rabbi?

20 "A. Yes

21 "Q And you were going out to look for your
22 wife?

23 "A Yes.

24 "Q And as you were approaching the exit, you
25 were standing behind an older gentleman?

1 "A That's correct.

2 "Q. And you saw someone run past the older
3 gentleman?

4 "A Yes.

5 "Q. And he ran out of the room?

6 "A Yes.

7 "Q. About one to two feet out of the room?

8 "A Yes.

9 "Q. He was about four to six feet away from
10 the old man?"

11 I will read that one again.

12 "Q. And he was about four to six feet away
13 away from the old man?

14 "A Approximately.

15 "Q. And he turned?

16 "A Yes.

17 "Q. And he -- you saw a gun in his hand?

18 "A. Yes.

19 "Q. Silver gun?

20 "A. Yes.

21 "Q. And he raised it?

22 I will ask that one again

23 On page 2790:

24 "Q And he raised it?

25 "A Yes.

1 "Q. And you saw the gun go off?

2 "A Yes."

3 Ladies and gentlemen, the victim of that attack
4 said that he was in a bear hug when the shots were fired.
5 He was there. He knows. He suffered those wounds. That is
6 Irving Franklin that I am talking about.

7 Mr. Hoffman said that the gunman was out of the
8 room, four to six feet away, turned, and fired at
9 Mr. Franklin.

10 I don't know who it was who said that facts are
11 very stubborn things. Those are two completely different
12 versions of what occurred. There's no way to reconcile it,
13 ladies and gentlemen. No way to put them together. There's
14 no way to say after reading that testimony, well, maybe
15 Hoffman was just, I don't know, he just a bad angle or
16 whether there's a struggle between the two of them, like
17 Franklin says, and Gottesman says, too, or there's the
18 gunman turning from a distance and firing at Mr. Franklin.

19 Ladies and gentlemen, Stephen Hoffman could not
20 have seen what occurred. Stephen Hoffman was there in the
21 room, but he didn't see what occurred, not if he testified
22 that the gunman turned from four to six feet away and fired
23 at Irving Franklin. Irving Franklin was shot -- as he told
24 you, he's the one who suffered the wounds -- he was shot in
25 a struggle. Somebody's not telling the truth, ladies and

1 gentlemen. That person's name is Stephen Hoffman.

2 Stephen Hoffman, like Ari Gottesman, was a true
3 believer. He told Mr. Patel when Mr. Patel was questioning
4 him how he would cut out articles about Mr. Nosair and keep
5 them, send them to his friends. He was personally close to
6 Rabbi Kahane. Rabbi Kahane was converting Mr. Hoffman's
7 wife to Judaism.

8 I submit to you that he, like Ari Gottesman, and
9 like Ari Gottesman said about other people, hit the floor
10 when the shots went off.

11 So what is he doing here? And why, of all the
12 people in the room that you see in the video, why did the
13 government pick Ari Gottesman and Stephen Hoffman? Why did
14 they pick them?

15 I submit to you, ladies and gentlemen, that these
16 two men were the true believers. They want to see
17 Mr. Nosair convicted of these crimes, and they're willing to
18 say what it takes to see that that happens.

19 There is important evidence concerning Irving
20 Franklin. We told you in our opening that it was physically
21 impossible for Mr. Nosair to have shot Irving Franklin. Mr.
22 Fitzgerald said last Tuesday and I quote: "Well, you could
23 listen all day as carefully as you would like. You heard no
24 evidence, no medical evidence."

25 Let's talk about the medical evidence, ladies and

1 gentlemen. What we have here is a chart in evidence from
2 Irving Franklin's medical records. Irving Franklin's
3 medical records are Government Exhibit 24 in evidence. And
4 this particular photographic enlargement of one of those
5 medical records is Nosair Defense Exhibit DDD. I am going
6 to show it from a distance, and then I'll get up close and
7 we will make sure that you see it. You see here on this
8 figure the bullet wound entry for Mr. Franklin is on the
9 right outer thigh.

10 And the exit wound is on the right inner thigh.

11 Let me explain a few things. Mr. Franklin
12 testified, again, I just read it a second ago, on February
13 9, 1995 on the witness stand page 2802:

14 Q. What did you do immediately after you
15 heard the guns?

16 "A. I turned toward the front of the room and
17 I saw this individual running down the aisle towards me, and
18 he grabbed the man by the arms.

19 And Ari Gottesman described it on page 2574, line
20 3:

21 "Q Can you describe the struggle that you saw
22 between Mr. Nosair and the old man.

23 "A. The old man grabbed Mr. Nosair out like
24 this with his arms, and he was holding him with his arms.

25 "Q. When you say 'out like this,' can you

1 describe that to the jury.

2 "A. He had picked up his arms and he put them
3 in a bear hug wrapped around Mr. Nosair.

4 "Q. When was it that you heard a shot at that
5 point?

6 "A. When they were struggling.

7 "Q. Do you know where the shot came from?

8 "A. Yes. It came from between the two men."

9 So the two men, the gunman and Mr. Irving
10 Franklin, they're together face-to-face in a bear hug in a
11 struggle.

12 I want to take this again so that it is real
13 close and you could see that the entry wound is on the right
14 outer thigh and the exit wound is on the right inner thigh.

15 Now, ladies and gentlemen, when you are
16 face-to-face in a bear hug, what hand do you use to make a
17 wound on the right outer thigh of the person that you are
18 face-to-face with? Your left hand, right? I said, "right."
19 Correct? You use your left hand.

20 Now, if Mr. Patel would be so kind, we'll make it
21 very clear. OK. Now, the wound is on the right thigh of
22 Mr. Patel.

23 THE COURT: Mr. Stavis, I don't want to
24 complicate your life any further, but you are going to have
25 to use the microphone if you want the translator to hear.

1 MR. STAVIS: I think I can hold it between my
2 teeth, Judge. Susan will hold it. Ms. Black will hold it.

3 OK. Now, this is a situation that was testified
4 to by Irving Franklin, the bear hug, face-to-face, grabbing
5 the man. OK?

6 The wound is on the right outer thigh, over here,
7 going to the right inner thigh. This is my left hand.
8 That's the only way to do it. The right hand, even for a
9 lesser person, can't reach around to get to the outer, outer
10 right thigh, and the inner hand, even if it could get
11 through in between, cannot, unless you're ambidextrous,
12 twist back like this in order to make the
13 outer-thigh-to-inner-thigh wound.

14 Thank you very much, Mr. Patel.

15 So, ladies and gentlemen, the gunman is
16 left-handed. As a matter of fact, Ari Gottesman on February
17 8, 1995 in that chair right over there at page 2663, line 14
18 was asked -- just let me -- Ari Gottesman says he chases the
19 gunman outside, and he has an encounter with the gunman
20 outside. He sees Mr. Acosta get shot.

21 At 2663, question of Ari Gottesman:

22 "Q When the gunman pointed the gun at you
23 outside on Lexington Avenue, Mr. Gottesman, he pointed that
24 gun at you with his left hand, is that correct?

25 "A. That is correct."

1 More confirmation that the gunman was
2 left-handed.

3 Now I am going to ask Mr. Patel if he would be so
4 kind as to play Nosair Defense Exhibit CCC, a videotape that
5 was made at Attica Prison. That is Lieutenant George, and
6 he is handing a piece of paper to be signed by Mr. Nosair.
7 Mr. Nosair is now reading the piece of paper.

8 (Videotape played)

9 He is now picking up a pen. Would you hold that
10 right there, Mr. Patel? What hand is he using to sign that
11 piece of paper, ladies and gentlemen? He's using his right
12 hand.

13 Ladies and gentlemen, Mr. Nosair, the man who is
14 accused of shooting Irving Franklin, Meir Kahane, Carlos
15 Acosta, is right-handed. You can see it in Nosair Defense
16 Exhibit CCC. It is right there for you to see, ladies and
17 gentlemen.

18 I think Mr. Patel and I just made absolutely
19 crystal clear, based on the wounds of Irving Franklin, that
20 the gunman, whoever he is, had to have been left-handed.
21 Mr. Nosair's right-handed.

22 Just let the tape run, please, Mr. Patel.

23 (Videotape played)

24 When you consider the fact that Mr. Nosair is
25 right-handed, there is a piece of evidence, a piece of

1 testimony from Detective John Solowsky, who was a ballistics
2 expert, and he testified on page 3337 of the record that a
3 right-handed person cannot fire a powerful gun like a .357
4 magnum with his left hand because of the recoil.

5 Ladies and gentlemen, you are about to, give or
6 take a week, deliberate on this case. Take the chart in
7 there with you, DDD, Nosair DDD. Take CCC, the videotape
8 that you just saw. That proves that Mr. Nosair is
9 right-handed. Try your own Stavis/Patel demonstration and
10 you'll see, ladies and gentlemen of the jury, you'll see
11 Mr. Nosair could not have shot Irving Franklin, a
12 right-handed person could not have shot Irving Franklin.
13 Please, ladies and gentlemen, I urge you, go back there and
14 see for yourself.

15 You also heard at the trial from Mr. Ehteshamul
16 Haque concerning the shooting of Carlos Acosta. When last
17 Thursday Mr. Fitzgerald was giving the closing arguments for
18 the government he said, and I quote: "He is running along,"
19 referring to Mr. Nosair, "sees the uniform of Postal Police
20 Officer Carlos Acosta, and what does he do? Someone who is
21 trained in firearms, trained in shooting guns, he pulls his
22 gun at pointblank range, very close, pulls the gun and
23 shoots right at Carlos Acosta, a bullet whizzing by Carlos
24 Acosta's head."

25 I submit to you, ladies and gentlemen, that that

1 does not make sense. I submit to you, ladies and gentlemen,
2 that if you're trained in firearms and you shoot somebody at
3 pointblank range that the bullet does not go whizzing by
4 that person's face. Not if you're trained in firearms, not
5 if you're at pointblank range. It doesn't make sense.

6 Now I would like to read what Ehteshamul Haque
7 had to say about that incident out on the street on November
8 5, 1990.

9 Here's Mr. Haque and what he said on July 25 of
10 1995 about what he saw just a few feet away from him that
11 evening.

12 Page 15021:

13 "Q I would like to direct your attention to
14 shortly after 9 p.m. on the evening of November 5, 1990.

15 "Were you working at that time?

16 "A. Yes.

17 "Q. Where were you working at that time?

18 "A. 48th Street and Lexington Avenue.

19 "Q. Were you driving a cab at that time?

20 "A. Yes.

21 "Q. Mr. Haque, could I ask you to step down
22 and approach what I have set up, which has been marked
23 Government's Exhibit 4, with a plastic overlay which has
24 been marked Government's Exhibit 4A.

25 "Mr. Haque, could I ask you to draw on

1 Government's Exhibit 4A with the Magic Marker in your hand
2 how you got on to Lexington Avenue, just with a dotted line.

3 "A. From Park Avenue making a right turn over
4 here.

5 "Q. Did your cab come to a halt at some point?

6 "A Yes.

7 "Q Why was that?

8 "A A gentleman flagged down the cab.

9 "Q Where did the cab come to a halt?

10 "A. Right here.

11 "Q. Why don't you draw a box to symbolize the
12 cab and just write "taxi" inside. That was directly in
13 front of the post office.

14 "A Yes.

15 "Q What were the lighting conditions in the
16 area that evening?

17 "A Streetlights.

18 "Q Were there any lights outside the post
19 office?

20 "A. No.

21 "Q. When you came to a halt outside the post
22 office, can you tell the ladies and gentlemen of the jury
23 what happened.

24 "A. A gentleman flagged down the cab over
25 here, so I pulled over right near the car. Then I observed

1 one gentleman running straight across, diagonally,
2 empty-handed, nothing on his hand. Another gentleman right,
3 right behind this man, No. 1, person No. 1, another
4 gentleman chasing him with a gun on his hand, and there,
5 approximately three to five feet, there are three other
6 people right behind man No. 2.

7 "Q. The man No. 1 was running in what
8 direction?

9 "A. Direction towards the post office.

10 "Q. How was he running?

11 "A. He was running particularly for his life,
12 trying to get away from the gunman.

13 "Q. How far was man No. 2, how far behind man
14 No. 1 was man No. 2?

15 "A. Approximately five feet, five to six feet.

16 "Q. Was there anybody by the post office?

17 "A. The postal police officer.

18 "Q. Was there anything obstructing your view
19 of the postal police officer?

20 "A. No

21 "Q. Did the postal police officer have
22 anything in his hand?

23 "A. A gun.

24 "Q. When you first saw the postal police
25 officer, was the gun in his holster or, or in his hand?

1 "A. On his hand, in his hand.

2 "Q Could you indicate, just point with your
3 hand where the entrance to the post office is.

4 "A. Right here.

5 "Q. Where is the sidewalk?

6 "A. This is the sidewalk.

7 "Q. Did man No. 1 ever get to, to the
8 sidewalk?

9 "A. Yes, he did.

10 "Q. What happened when he got to the sidewalk?

11 "A. The man No. 1 got shot

12 "Q. Who shot man No. 1?

13 "A. Postal police officer.

14 "Q. Was that the only shot you heard that
15 evening or saw that evening?

16 "A. No.

17 "Q. What was the first shot that you saw fired
18 that night?

19 "A. I saw a flash, flash of light going out
20 and directly hitting man No. 1, which unarmed person.

21 "Q. Who fired the first shot?

22 "A. Postal police officer.

23 "Q. Did anyone fire a shot after the postal
24 police officer fired?

25 "A. Man No. 2 fired back.

1 "Q. Was man No. 2 on the street or on the
2 sidewalk?

3 "A. On the sidewalk.

4 "Q. Could you indicate where man No. 1 was
5 with a '1' when he was shot.

6 "A. This is man No. 1

7 "Q. Where was man No. 2 when he fires at the
8 postal police officer?

9 "A. Directly behind him, behind the man No. 2.

10 "Q. After these shots, were there any other
11 shots fired that night?

12 "A. Yes.

13 "Q. What did you see?

14 "A. After the second shot, after the fire is
15 being returned from man No. 2, postal police officer fired
16 back again. At that particular point, I ducked down inside
17 my cab for my own safety.

18 "Q. What did you see on the street just before
19 you ducked down?

20 "A. Man No. 1 fell down on the ground.

21 "Q. What happened to the postal police
22 officer, sir?

23 "A. He also falling down to the ground

24 "Q. Did you see any blood around where man No.
25 1 was?

1 "A Yes, I did."

2 Ladies and gentlemen of the jury, Mr. Haque came
3 here, he testified to you that he never met Mr. Nosair
4 before, never spoke to Mr. Nosair before, doesn't know
5 Mr. Nosair. By the way, that testimony about him not
6 knowing Mr. Nosair is on page 15019 of the record.

7 He testified that he had a security clearance
8 which he referred to as a TSC from his work that he did on
9 the Patriot missile system, from the work that he did,
10 ladies and gentlemen, for this government.

11 He had TSC, top security clearance. Check page
12 15018 of the record. Mr. Khuzami showed him some things,
13 showed him this, showed him that, but no matter what he
14 showed him, the man knew what he saw out on the street
15 November 5, 1990 between Carlos Acosta and the man he
16 wounded. The man he wounded was Sayyid Nosair. Mr. Haque
17 knew what he saw.

18 THE COURT: We are going to break here, Mr.
19 Stavis.

20 Ladies and gentlemen, please leave your notes and
21 other materials behind. Please don't discuss the case, and
22 we will resume tomorrow morning.

23 Also, please don't see, hear or read any report
24 about this or any related matter. Please be particularly
25 careful to do it in these days.

1 Thank you. Good night.

2 (The jury was excused)

3 (Proceedings adjourned to Tuesday, September 12,

4 1995 at 9:30 a.m.)

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



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, S5 93 Cr. 181 (MBM)

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

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

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

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

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

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

18 Defendants.

19 -----X

September 12, 1995
9:30 a.m.

20 Before:

21 HON. MICHAEL B. MUKASEY,

22 District Judge

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorneys for Defendant Tarig Elhassan

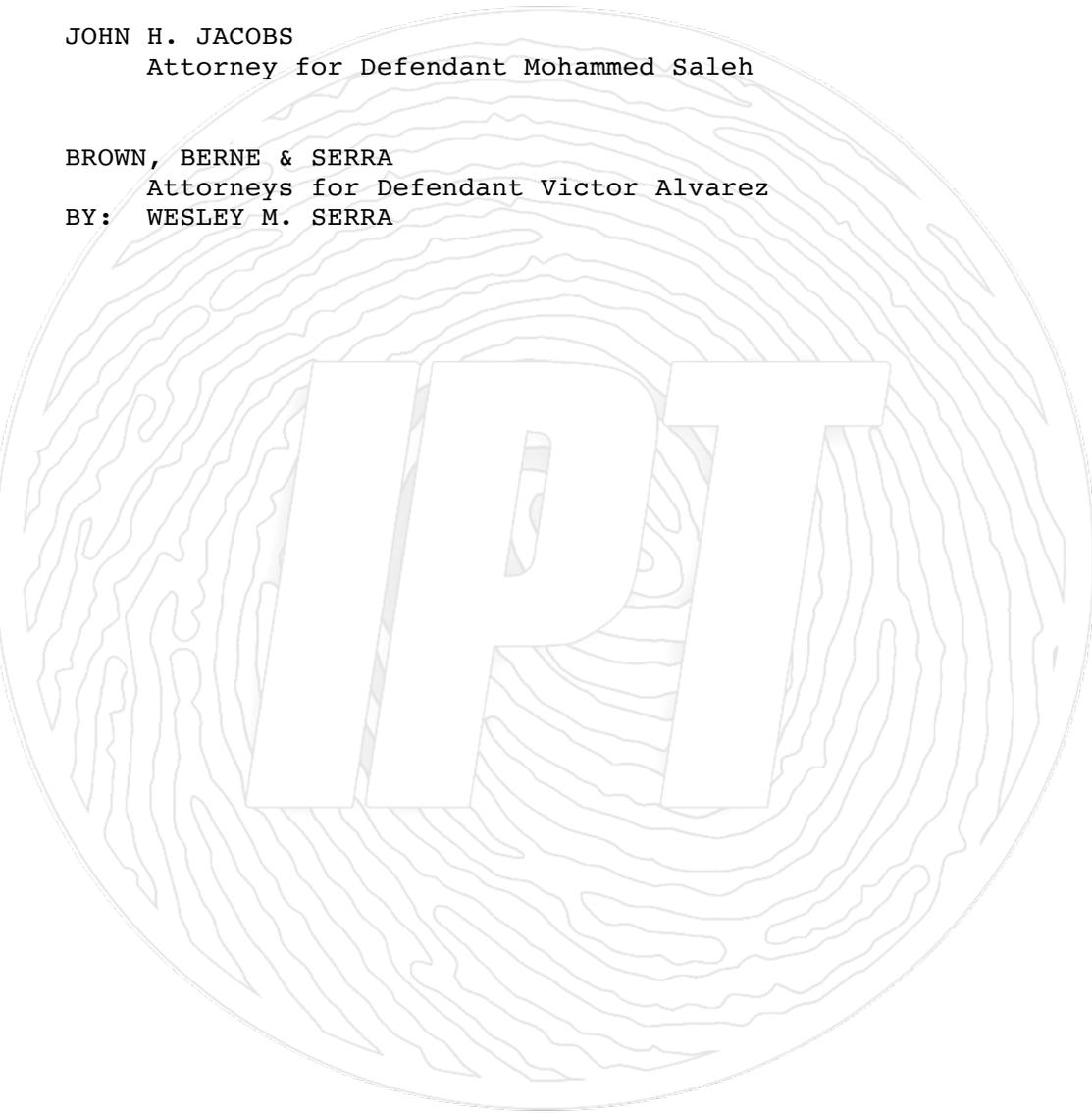
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (In open court; jury not present)

2 THE COURT: Is Mr. Patel here?

3 THE DEPUTY CLERK: Yes, he is.

4 THE COURT: May I see Mr. Stavis, Mr. Patel, and
5 the government briefly at the side.

6 MR. WASSERMAN: Your Honor, may I make one
7 request.

8 THE COURT: Sure.

9 MR. WASSERMAN: I will have to leave at some
10 point, and Ms. Stewart will cover for me, and it is OK with
11 my client.

12 THE COURT: Is that satisfactory, Mr. Hampton-El?

13 DEFENDANT HAMPTON-EL: That's all right.

14 THE COURT: Thank you very much.

15 MR. WASSERMAN: Thank you.

16 (At the side bar)

17 THE COURT: I know this is not as easy as it
18 looks, and I know that it is hard to estimate, but do you
19 have any idea of how close we are to --

20 MR. STAVIS: Yes, your Honor. I told -- rather,
21 Mr. Patel and I spoke to Ms. Schwartz last night after we
22 were doing a little cutting and paring and things like that.
23 I expect to be finished by the afternoon break.

24 THE COURT: That is not -- all right. Look,
25 there are times when less is more.

1 MR. STAVIS: I certainly understand that, your
2 Honor. But, as you can see from the way the summation has
3 proceeded, it's very factually oriented and I am moving
4 through a mass of material over a very long trial.

5 THE COURT: I know that. I sat through it. The
6 jurors sat through it, too, and there comes a point where
7 you are not doing yourself any favors.

8 (Continued on next page)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 (In open court)

2 (Jury present)

3 THE COURT: Good morning, ladies and gentlemen.

4 JURORS: Good morning.

5 THE COURT: We will continue with Mr. Stavis's
6 summation on behalf of Mr. Nosair. Go ahead.

7 MR. STAVIS: Thank you, your Honor.

8 Good morning, everyone.

9 JURORS: Good morning.

10 MR. STAVIS: Yesterday afternoon before we broke,
11 I was talking to you about Mr. Ehteshamul Haque, who came
12 here --

13 THE COURT: Let's not relive yesterday.

14 Please move on. Thank you.

15 MR. STAVIS: And I was, I wanted to read his
16 redirect examination because, if you recall, he stuck to his
17 story. He stuck --

18 THE COURT: Mr. Stavis, you made that point
19 yesterday. Please move on.

20 MR. STAVIS: On the record of July 25, 1995, on
21 page 15052 of the record, line 9 he was asked --

22 THE COURT: Mr. Stavis, I will not permit you to
23 read the redirect testimony. Please move on to something
24 else. Thank you.

25 MR. STAVIS: Ladies and gentlemen, Mr. Haque

1 spent nine and a half hours at the 17th Precinct that
2 evening telling the detectives what he saw, exactly what he
3 saw, and that is exactly what he told you here when he
4 testified.

5 Now, Mr. Fitzgerald last Tuesday was talking
6 about David White, who testified on the rebuttal case, and
7 Ehteshamul Haque. He said, I think it is fair to say that
8 neither of them had a great view or a great recollection of
9 the incident. So what he's doing is he's lumping them
10 together and saying they both had a lot of problems, ladies
11 and gentlemen.

12 Well, that may be fair to say for David White,
13 but it's not fair to say that for Ehteshamul Haque. You
14 might remember David White, because it's been a long trial,
15 but that was only about two weeks ago that he testified on
16 page 18260 about the "'hopperesque' light that was emanating
17 from the cab." Do you remember that one? About the
18 lumbering gate of the man he saw coming across the street
19 who had a conservative male "do."

20 In describing Carlos Acosta he didn't remember a
21 uniform on the man that he said on page 18265 was perched in
22 the shadows. He didn't remember the year, didn't remember
23 the place, didn't tell or go to the police that night. He
24 contradicted Carlos Acosta, who said on page 2905 of the
25 record and 2917 of the record that there were people running

1 in the street. Mr. White said when he testified here on
2 August 30 at pages 18264 to 65 of the record, that there
3 were no other people running.

4 Mr. White was the one who told you, and I'm
5 holding up Government Exhibit 6U1, about the scaffolding on
6 the street. If you look at the photograph taken that
7 evening, you'll see that there was no scaffolding. I don't
8 think -- ladies and gentlemen, I submit to you, you cannot
9 put David White and Ehteshamul Haque together and say they
10 both had problems with their perception. They were both
11 there that night, yes. Mr. Haque drove Mr. White home in
12 his cab before going back to the scene and then going to the
13 precinct for nine and a half hours.

14 They were both there. It is Mr. White, I submit
15 to you, ladies and gentlemen, who had the problems with his
16 perception. When Mr. White was asked if he had a security
17 clearance -- which was to compare the two men, because, if
18 you recall, Mr. Haque had a TSC, top security clearance, for
19 his work on the Patriot missile program. He said, I don't
20 even know what that is.

21 So Mr. Haque was there; Mr. Haque told you what
22 he saw; and what he saw was an unarmed man, Sayyid Nosair,
23 being shot by Mr. Acosta. Now, there's something at this
24 point that I want to make very, very clear to each and every
25 one of you. Carlos Acosta did not lie to you. He did not

1 do that. No one can say that he did. What Carlos Acosta
2 did do that night in the darkness, with people running all
3 over the place, confronting him in a split second was make a
4 mistake. He shot the wrong running man. He shot Sayyid
5 Nosair.

6 That is a mistake. That is a human mistake. If
7 you remember Mr. Carlos Acosta's testimony at 2891,
8 Mr. Nosair brought a lawsuit in federal court against
9 Mr. Acosta for that mistake. Why, then, does Carlos Acosta
10 come here and tell you what he told you? It is because,
11 like we all would do, he wants to believe that he did the
12 right thing. He doesn't want to live with the tragic
13 consequences of the mistake, the human mistake that he made
14 on the night of November 5, 1990, confronted on that dark
15 street with the people running at him.

16 I want to show you a photograph that is
17 introduced in evidence, ladies and gentlemen. It is
18 Government Exhibit 6A. You don't have to look in your
19 books. I will come around with it. It a photograph of
20 Mr. Nosair lying, wounded, on the street that you have all
21 seen before.

22 I submit to you that this photograph is very
23 important for the following reason: You see all the people
24 standing there while Mr. Nosair lays, bleeding, wounded from
25 a gunshot to the neck, on the ground. The person who took

1 this photograph and the other people in this photograph had
2 a decision to make: Do I take the photograph, or do I try
3 to assist the bleeding wounded man on the ground? They
4 opted for the photograph, ladies and gentlemen.

5 I submit to you that is a metaphor for what
6 happened in this case. The Arab's shot; case closed. I
7 don't want to know anything about it. If you want to see
8 what should happen when someone is wounded, here's
9 Government Exhibit 6C, which shows people trying to save
10 Meir Kahane's life. Look at them both together, ladies and
11 gentlemen.

12 It can certainly be said, ladies and gentlemen,
13 that they didn't care if the wounded Arab lived or if he
14 died. They didn't care about him. Because the case was
15 closed. They had their man.

16 This callousness, ladies and gentlemen, was
17 evident the next day during the search of Mr. Nosair's home
18 when Government's Exhibits CC2 and CC1 were seized as
19 evidence from Mr. Nosair's home, a Raggedy Ann Coloring Book
20 and a Rainbow Brite Trace and Color. They didn't care about
21 him. They didn't care anything about him.

22 The photograph that I just showed you, ladies and
23 gentlemen, is in fact the photograph -- before I showed you
24 the photograph -- is in fact the photograph of Mr. Nosair.
25 He is the one who was shot that evening. He is the image

1 that Ari Gottesman had for what happened in the Marriott D
2 ballroom.

3 That's how the mind works, ladies and gentlemen.
4 It was Sayyid Nosair on the ground. It was not Sayyid
5 Nosair running in the ballroom. But when you want to
6 believe, when you are the true believer that Ari Gottesman
7 was, you take the face of the man you know did it, because
8 he's on the ground, shot, and you put it in the ballroom.
9 That's what happens. That's what happened in this case.

10 Since they got their Arab and he was laying on
11 the ground, bleeding, they didn't need to investigate in the
12 case. They didn't need to do an autopsy. Dr. Hirsch came
13 here on July 10 and he told you that a homicide is a death
14 at the hands of another, and in ten or less cases out of the
15 thousand or more autopsies he's performed was there no
16 autopsy in a homicide case.

17 It's very rare, but they didn't need to do one in
18 this case, ladies and gentlemen, because they had their Arab
19 and they didn't need to investigate.

20 They called here -- instead of calling Dr. Hirsch
21 or Dr. Vernard Adams, which is the person the evidence shows
22 looked at the body of Meir Kahane, they called Dr. Basil
23 Michaels, a surgical resident at Bellevue. And I asked him
24 on February 15, 1995 at page 2993 if he performed an autopsy
25 when he put his finger in the bullet wound.

1 He said: I think I could argue that I did an
2 autopsy. Well, we had Dr. Hirsch here, who is the chief
3 medical examiner of New York City, so I asked him at page
4 13735 in the record if putting a finger in a wound
5 constitutes an autopsy and, of course, it doesn't. He told
6 you what an autopsy entails. That is not what was done in
7 this case.

8 They didn't care because they had their Arab.

9 Talking about no investigation, ladies and
10 gentlemen, and having their Arab, let's look at what they
11 did do. On February 16 of 1995 one of the detectives who
12 came here, I know it was a long time ago, his name was Ralph
13 Rinaldi, he was a detective assigned to the crime scene
14 unit.

15 He told you that his crime scene unit vehicle
16 included fingerprint powder, lifting tape to lift the
17 fingerprints off, and what he called a GSR test. GSR
18 standing for "gunshot residue." It is the test that you
19 apply to somebody's hands to see if they have recently fired
20 a gun because the gun, as he explained, emits certain gases
21 and powders, and his testimony about that is at pages 3129
22 through 30. And a very interesting series of questions were
23 posed to him about his investigation in this case. That is
24 on page 3132:

25 "Q The purpose of going out to do a crime

1 scene, crime scene unit, is to investigate what happened, is
2 that fair to say?

3 "A. I am not comfortable with the term
4 'investigate what happened.'

5 "Q. You were a detective, right?

6 "A. That is correct.

7 "Q. You weren't just there picking up pieces,
8 you were there to do an analysis, is that fair to say?

9 "A. No, that is not fair to say.

10 "Q. So when you were there that night on
11 November 5, you were just picking up the pieces?

12 "A. I was recovering evidence at the time."

13 I am only a detective is what detective Rinaldi
14 said. I am not there to investigate. I am us just there to
15 collect things.

16 That, too, is a metaphor for this case, ladies
17 and gentlemen. They had their Arab, and they didn't need to
18 investigate. When Ari Gottesman was here on February 8, he
19 told you something that was very telling, and that went all
20 but ignored. At page 2648, I asked him the following
21 questions:

22 "Q. And Rabbi Kahane, you described him as a
23 former member of the Israeli Parliament this morning, didn't
24 you?

25 "A. Yes, I did.

1 "Q He was thrown out of the Israeli
2 Parliament, wasn't he?

3 "A. Yes, he was.

4 "Q. Why was he thrown out of the Israeli
5 Parliament?

6 "A. Because they were afraid of him.

7 "Q. Were they afraid of him?

8 "A. The statistics had it in the next
9 elections he would have gotten approximately 13 seats up
10 from the single seat that he had. Nobody believed that he'd
11 be able to get even one seat. And when they saw that he got
12 one seat or more, people, both from the left and from the
13 right, that were willing to then turn around, and from the
14 religious parties as well were then willing to turn around
15 and give their support to him.

16 "Q. Why are they afraid of him?

17 "A. They were afraid of him because he was a
18 threat to their political power. If he got 13 seats, he
19 would have controlled the major block in the government and
20 that would have given him a lot of sway over the
21 government."

22 Ladies and gentlemen, Meir Kahane was a very,
23 very controversial figure. There were many people who were
24 not Arabs who were afraid of him, who feared him, who,
25 ladies and gentlemen, hated him.

1 Now, I told you in the opening statement that I
2 cannot solve for you exactly what happened on November 5,
3 1990. Ari Gottesman told you that there was a motive for
4 people who were not Arab. On July 10, right over here, you
5 heard from Mary Lynn Lentz. At pages 13778 through 13781
6 and 13783 through 13784 she told you about, she called it
7 the strange telephone call that she received the afternoon
8 of November 5, 1990.

9 She was the banquet manager at the Marriott and
10 had rented the ballroom out to a group called -- "The Jewish
11 Idea" was the name of the group, and she testified that she
12 was dealing with a woman by the name of Sharim Levine.
13 Didn't know anything about Rabbi Kahane coming to the
14 Marriott and she's the one who booked the event. But she
15 didn't know anything about Meir Kahane coming there. But
16 she received this strange telephone call inquiring about
17 Meir Kahane's security. She knows who Meir Kahane is. She
18 said, "Well, let me get back to you." Click. The phone
19 hung up.

20 She called the security. She called the general
21 manager and she testified about all this up here on the
22 witness stand. When she goes back, she leaves work, she
23 comes back, after the shooting (snapping fingers) that's the
24 telephone call that I got. That's what she said.

25 The EMS Lieutenant Howe, Howe, who testified here

1 on July 6 told you something else that was very important.
2 Something else that, if you're investigating a case, instead
3 of just collecting evidence, you might want to investigate.
4 If you are investigating and you're not just satisfied with
5 your Arab on the street, you might want to investigate what
6 Lieutenant Howe told you.

7 At page 13713 of the record:

8 "Q Did something unusual happen almost
9 immediately after that?

10 "A. Shortly after that, yes. As I was
11 assisting EMT Cusack in cutting the patient's clothes off so
12 we could perform effective CPR and apply mask trousers, a
13 gentleman knelt beside me. What appeared to have been a gun
14 was placed in my ribs with the words, just do what she says
15 and save his life.

16 "Q You see say a gun was placed in your ribs?

17 "A. Yes. What appeared to me to have been a
18 weapon."

19 That's the second weapon in the Marriott D
20 ballroom on the evening of November 5, 1990. That's thrust
21 into Lieutenant Howe's ribs while he is trying to work on
22 Meir Kahane.

23 If you remember from way back, we have our famous
24 model over here. I will just clear it off because I want to
25 make a point about it. Can everyone see?

1 Here is the Morgan D Room where this murder took
2 place. The testimony was that here on the far side was
3 where the lectern was that you saw in that video,
4 Government's Exhibit 5, that we played for you yesterday.

5 And the testimony was, by Ari Gottesman, that the
6 gunman went up this hall here and out this far exit where
7 Irving Franklin was. You see from the model, ladies and
8 gentlemen, -- actually, you see from the model that the exit
9 that was closest to the lectern was right over here. And
10 what the model shows us is that that exit goes through here
11 and out into the same hallway, that the far exit that
12 Gottesman said the gunman took goes out to the same hallway.

13 Now, near that exit is this hallway here, which
14 leads to a separate exit, which I am going to show you now.

15 There's the staircase right there, which goes
16 down one level, down this way, down this staircase and out
17 onto 49th Street over here. This was the quickest, cleanest
18 escape route for an assassin who was here toward the front
19 of the Morgan D Room out to 49th Street.

20 We brought Thomas Farrelly from the Marriott D
21 room to talk to you about this route, which I will call the
22 quick route, and we also brought Robert Aaonsen of security
23 at the Marriott to tell you about the camera, the video
24 camera that was here at the employee -- it's called the
25 employee entrance on 49th Street, the video camera that

1 could have captured an assassin. He said that it was taped
2 over and they never had the tape.

3 What's the point, ladies and gentlemen? No
4 fingerprints were taken on any of those alternative route
5 doors. No investigation was done because, as Detective
6 Rinaldi said, they were just there gathering evidence.

7 Am I standing before you saying that this is
8 definitely the entrance and the exit that the assassin used?
9 No, I'm not, ladies and gentlemen. I wasn't there. It may
10 in fact have been. The point is, nobody bothered to look.
11 They had their Arab, and they didn't want to look. They had
12 their Arab and they didn't want to investigate.

13 Mr. Nosair ultimately became the target of
14 surveillance, taping of telephone calls, opening of his
15 mail, prison cell searches, subpoenaing of witnesses who
16 visited him in prison. Ladies and gentlemen, after the
17 state trial there was a campaign to get Mr. Nosair. They
18 wanted him very, very badly.

19 William Kunstler testified to you on July 11 of
20 1995, and I asked him a very simple question: How many
21 people were on trial in the state trial? He said to me, at
22 page 13817 of the record: "There was only one, Mr. Nosair."
23 There was only one, one lone gunman.

24 Ms. Black, if you are ready.

25 Ms. Black is now going to play a tape of

1 Government's Exhibit 128, which is the call that you heard
2 in the rebuttal case between Mr. Nosair, Sayyid Nosair and
3 his wife, Khadijah Nosair. Listen carefully to what
4 Khadijah Nosair says.

5 (Tape played)

6 Now, in this case, ladies and gentlemen, we have
7 what I refer to as the group theory, the new and improved
8 group theory. The theory on this trial is that Mohammed
9 Salameh and someone named Bilal Alkaisi were in the Marriott
10 D ballroom on the evening of November 5, 1990, doing
11 something. I don't know what, but doing something. That's
12 what they showed you, the government showed you on
13 Government's Exhibit 5. And being there when Mr. Nosair,
14 according to the government, murdered Rabbi Meir Kahane.
15 And Mohammed Salameh, you will remember, is the fellow who
16 would be convicted of bombing the World Trade Center. Now
17 we have this new and improved group theory.

18 Now, I am going to go back to the indictment for
19 a second, which is something that I suggest or recommend to
20 you when you're deliberating over these charges.

21 On page 34 is where we have Count Seven, Murder
22 of Meir Kahane, it doesn't mention anything about Mohammed
23 Salameh.

24 MR. McCARTHY: Objection.

25 THE COURT: Sustained.

1 The indictment is not a recitation of all the
2 proof in the case. Please proceed.

3 MR. STAVIS: Why is it so important, ladies and
4 gentlemen, that Mohammed Salameh be in the Marriott D
5 ballroom on the evening of November 5, 1990? The reason is
6 the charge in this case in Count Seven is murder in aid of
7 racketeering activity. And I want to read the charge to
8 you.

9 On page 34, Paragraph 32:

10 At all times material to this indictment, the
11 jihad organization described in paragraphs 1 through 12 of
12 this indictment, which paragraphs are incorporated and
13 realigned herein, constituted an --

14 THE COURT: Realleged. Go ahead.

15 MR. STAVIS: -- constituted an enterprise, as
16 that term is defined in Title 18, United States Code,
17 Section 1959(b)(2), that is, a group of individuals
18 associated in fact, which enterprise was engaged in and the
19 activities of which affected interstate and foreign
20 commerce.

21 Paragraph 33: From at least as early as 1989 and
22 up until the date of the filing of this indictment, the
23 above-described enterprise and its members and associates
24 engaged in the following acts of racketeering as defined in
25 Title 18, United States Code, Section 1961(1).

1 The enterprise and its members engaged in
2 murders, arsons, kidnappings, extortions, obstructions of
3 justice and criminal investigations, and interferences with
4 commerce and conspiracies and attempts to do the same,
5 including the activities set forth in Paragraphs 1 through
6 12 and Count One of this indictment.

7 Paragraph 34: From in or about mid-1990 through
8 November 5, 1990, in the Southern District of New York and
9 elsewhere, the defendant El Sayyid Nosair, for the purpose
10 of maintaining and increasing his position in the enterprise
11 described in paragraphs 32 and 33, which paragraphs are
12 incorporated and realigned herein --

13 THE COURT: Realleged herein.

14 MR. STAVIS: -- unlawfully, willfully and
15 knowingly murdered Meir Kahane in violation of the laws of
16 the state of New York.

17 Ladies and gentlemen, the charge in Count Seven
18 is murder in aid of racketeering activity. The charge is
19 not just murder, but murder in aid of racketeering activity,
20 and the racketeering "group" under the "group theory" is
21 this jihad organization.

22 Now, I had a lot to say about this jihad
23 organization and that jihad organization yesterday. But
24 under this count, under Count Seven, it's the jihad
25 organization that the government alleged, the one where

1 Sheik Omar Abdel Rahman is the emir, the one where Sayyid
2 Nosair is the general, the one where Ibrahim El-Gabrownny is
3 the trusted lieutenant, not the Sheik Azzam jihad
4 organization that was proved to you, but the other jihad
5 organization that the government is alleging existed. That
6 is a part of this.

7 Now, the court is going to instruct you that if
8 you do not find that the government has proved beyond a
9 reasonable doubt that the jihad organization described in
10 Count One existed, then you cannot find Mr. Nosair was a
11 member of that organization, and you must find him not
12 guilty of the crime charged in Count Seven.

13 If, ladies and gentlemen, after viewing
14 Mr. Nosair in Government Exhibit 5, the videotape that
15 night, leaving the room moments before the murder, after
16 considering the medical records and the video that
17 Mr. Nosair could not have killed -- could not have tried to
18 kill or shot Irving Franklin because the gunman was
19 left-handed and he is right-handed, if after you consider
20 Dr. Hirsch and his testimony about the wound and the
21 position of the gun inches from the entrance wound, if after
22 all that you decide that the government has proven beyond a
23 reasonable doubt that Mr. Nosair murdered Meir Kahane, you
24 must find him not guilty if you do not find the jihad
25 organization alleged in Count One of the indictment.

1 MR. STAVIS: (Continuing) Ladies and gentlemen,
2 this explains why, why they need, the government needs you
3 to believe that the man, the stocky, bearded man in the
4 video Government's Exhibit 5, is Mohammad Salameh. What is
5 the evidence of that, ladies and gentlemen? The
6 fingerprints of Mohammad Salameh are found in Mr. Nosair's
7 car along with the fingerprints of Nidal Ayyad. Mohammad
8 Salameh, Nidal Ayyad, convicted terrorists, bombers of the
9 World Trade Center. Also a fellow by the name of Bilal
10 Alkaisi. His fingerprints are found in the car. On
11 February 22, on the witness stand, a detective named
12 Fernando Duran -- if you are keeping score it is page 3551
13 of the record -- he said that fingerprints stay there for an
14 indefinite period of time. The government did not prove to
15 you when or how or even why the fingerprints of those
16 people, who the evidence has shown are friends of Mr.
17 Nosair's, who the evidence has shown attended the El Salaam
18 Mosque in Jersey City, the government hasn't proven that to
19 you, but they want you to make the leap from those
20 fingerprints to the video and say that is Mohammad Salameh,
21 the bearded, stocky guy that you see in the video.

22 When William Kunstler was here on July 11, I
23 showed him the photograph recovered from Ibrahim
24 El-Gabrownny's apartment after his arrest. That is
25 Government's Exhibit 146A. And the man in the middle

1 between these two men was the man that the government is
2 claiming is Mohammad Salameh, bomber of the World Trade
3 Center. So I asked Mr. Kunstler about that, because he is
4 the one who told you on July 11 that he asked to have that
5 photograph prepared from the video, the video being
6 Government Exhibit 5. And he identified that man as a
7 Kahane supporter who was attending the trial and who he
8 wanted to speak to. That's at pages 13822 through 13823.
9 The government's version of that photograph, taken probably
10 a split second later, is Government's Exhibit 5C. Here you
11 see, in a clearer fashion, that bearded, stocky gentleman
12 that the government is now claiming and alleging was
13 Mohammad Salameh.

14 Ladies and gentlemen, compare that stocky guy
15 with, in this exhibit, Government's Exhibit 218B, with this
16 guy on the right, on the far right, who has been identified
17 to you as Mohammad Salameh, this slight, slender man that we
18 know is Mohammad Salameh. That picture was taken at the
19 Calverton range in July of 1989. The government gave you
20 this photograph, 5E, as a comparison. Take a look at that
21 man, ladies and gentlemen. Play the video, take it with you
22 into the jury room, take the photographs with you, and you
23 will learn that that man, like William Kunstler told you,
24 was not Mohammad Salameh.

25 I want to play Government's Exhibit 5 again for

1 you, and have you focus in on it. If Mr. Patel would assist
2 me.

3 Back it up again, please. Let's watch the man
4 that the government was claiming was Mohammad Salameh, and I
5 am going to ask Mr. Patel to stop -- not there -- there.
6 OK. The man with the skull cap is Steven Hoffman. Steven
7 Hoffman testified before you on February 9, 1995. I will
8 ask Mr. Patel to back it up again, and let's watch what
9 Steven Hoffman does -- hold on one second, Mr. Patel,
10 please. Let's watch what Mr. Hoffman does in the Marriott
11 ballroom in connection with the man that the government is
12 now alleging is Mohammad Salameh. Go ahead, please, Mr.
13 Patel.

14 There is Mr. Hoffman, you see him turning his
15 head, looking at the man who the government is claiming now
16 to be Mohammad Salameh, watching him leave out the back,
17 having his attention and just watching him leave out that
18 back door. He looks right at the man that the government is
19 now claiming was Mohammad Salameh.

20 Can you start it over and then just run it
21 through, Mr. Patel. Thank you.

22 Steven Hoffman was on the witness stand -- I've
23 gotten used to this microphone. Steven Hoffman was on the
24 witness stand February 9, 1995. Steven Hoffman is in the
25 Marriott D ballroom on November 5, 1990. Steven Hoffman

1 watches the man who is now claimed by the government to be
2 Mohammad Salameh, and on February 9 he stood up there with a
3 golden opportunity to ask him, Mr. Hoffman, you were there
4 on November 5, 1990. You're on the video. You're looking
5 at the man that we now claim to be Mohammad Salameh. Tell
6 me, is this, Government's Exhibit 5E, the man that you saw
7 in the Marriott D ballroom -- a question, ladies and
8 gentlemen, that was never asked. Why? Because the man in
9 the Marriott D ballroom that they are now claiming is
10 Mohammad Salameh was, as Mr. Kunstler told you, just another
11 supporter of Rabbi Meir Kahane. You know, Rabbi Meir
12 Kahane's supporters wear beards, too, ladies and gentlemen,
13 and that bearded, stocky man was not Mohammad Salameh.

14 Remember the fingerprints in the car, because
15 that's the jump-off point for our theory number two, the
16 group theory, and a fellow by the name of Bilal's
17 fingerprints are found in the car, and the government did a
18 comparison of Government's Exhibit -- Government's Exhibit
19 5F is a photograph of the man known as Bilal Alkaisi. The
20 government takes Exhibit 5D, a photograph of a man on your
21 right-hand side of this photo, your far right, whose face
22 you cannot even see, and that is the man that they say is
23 Bilal Alkaisi, and they brought a marshal onto the witness
24 stand named Brian Semenza, who you see here sometimes, and I
25 did a cross-examination with him where I said does the man

1 appear to have a nose -- you might remember that -- does the
2 man appear to have two eyes? This is the comparison, in
3 order to get this fellow by the name of Bilal Alkaysi into
4 the Marriott D ballroom, this, ladies and gentlemen, is what
5 the government is pinning their hopes on under the number
6 two group theory.

7 MR. McCARTHY: Objection to the theory.

8 THE COURT: Overruled. It is argument. You can
9 respond to it.

10 And there is another thing, because what started
11 with this, the fingerprints in the car, there was Nidal
12 Ayyad. His fingerprints were recovered from the car, you
13 might remember, and he is a World Trade Center bomber.
14 Ladies and gentlemen, they couldn't even find someone in
15 that video, Government's Exhibit number 5, to even say was
16 Nidal Ayyad. I mean, if under theory number two, the group
17 theory, Ayyad is in the fingerprints, Ayyad is in the group,
18 why did they not even tell you that somebody in the ballroom
19 is also Nidal Ayyad? They couldn't even find anyone. They
20 went so far as to tell you a man whose face you couldn't see
21 was Bilal Alkaysi, and they couldn't even get that far with
22 Nidal Ayyad.

23 And there is another problem, ladies and
24 gentlemen, another problem with this group theory that the
25 government is working on now: What did these guys do? You

1 saw in the video the person that they claim is Mohammad
2 Salameh, who Hoffman is looking at is walking out the back
3 door moments before the shooting. So what did he do?
4 What's his role under the new group theory? What's his
5 function? Under the group theory, when Sayyid Nosair got
6 tangled up with Irving Franklin, did the person that they
7 say is Mohammad Salameh jump on Irving Franklin and try to
8 free his jihad brother? Did the person that they now claim
9 is Mohammad Salameh chase Ari Gottesmann and tackle him to
10 make sure that his jihad brother Sayyid Nosair got away?
11 Did Mohammad Salameh shoot at anybody to make sure that his
12 jihad brother Sayyid Nosair got away? Did he clear a path
13 for his jihad brother Sayyid Nosair?

14 Ladies and gentlemen, did Ari Gottesmann, who
15 says he yelled "Get the Arab," did he scream "Get the
16 Arabs," since there were so many jihad brothers in the
17 Marriott ballroom?

18 No, ladies and gentlemen. It's an example of
19 twisting the facts to fit a theory, in this case the number
20 two group theory. It's an example, yet another example in
21 this case of what I have referred to as pulling a
22 Whitehurst. And I don't mention that to say something bad
23 about Special Agent Whitehurst, who had the courage to stand
24 up to the pressure from the FBI to conform his findings to
25 their theory. I am not saying something bad about him. But

1 when I say pulling a Whitehurst, I mean pulling what the FBI
2 pulled on Whitehurst. I am talking about twisting facts to
3 fit your theory. In this case it's the number two, the
4 group theory.

5 Another example, the car was moved under this
6 theory. Where was it moved? It was moved to 831 Second
7 Avenue, not far from the Marriott, where it started getting
8 tickets, 9:30 in the morning. A woman by the name of Ada
9 Ramos testified about that on February 22, and if you are
10 keeping score her testimony is at 3570 to 3571.

11 Now, you move your car from one block to another,
12 what does that have to do with the jihad murder that
13 occurred in the Marriott D ballroom? What does that have to
14 do with it? If a car is used in a crime, you don't move it
15 a block away, you don't move it two blocks away, you move it
16 200 miles away, that's what you do. What was this to move
17 the car?

18 And they get the movement of the car from a
19 detective by the name of Jose Rosario, who was on the night
20 shift and went looking for the car and didn't find it. I
21 see. So he didn't find it, therefore it wasn't there. I
22 think it makes sense that he missed the car, ladies and
23 gentlemen.

24 Let's talk about the notebook a little bit.
25 Peter Belcastro was the FBI's fingerprint expert who

1 testified before you on the 22nd and the 23rd of February,
2 and he told you about a notebook, Government's Exhibit 54,
3 that was in the trunk of the car, had 97 fingerprints in it,
4 54 fingerprints of Bilal, 25 fingerprints of Mohammad
5 Salameh, 2 fingerprints of Nidal Ayyad. And on page 3656, I
6 asked the important question: How many of the 97
7 fingerprints belonged to El Sayyid Nosair? Answer, zero.
8 Zippo, zilch. It wasn't his book. It belonged, based on
9 the fingerprints, to the guys whose fingerprints were in it,
10 the friends of Sayyid Nosair, the guys from the mosque who
11 had a different agenda, the guys who became terrorists, the
12 guys who bombed the World Trade Center.

13 We call that, ladies and gentlemen, guilt by
14 association. They are terrorists, and so is he. That's
15 what the government would want you to believe.

16 Ladies and gentlemen, proof beyond a reasonable
17 doubt is something other than the company that you keep.
18 It's proof, it's evidence of what you do, not what the
19 people undo.

20 I think a very good example of that was, Miss
21 Stewart called a witness by the name of Hisham Hamawy -- did
22 I pronounce that right? -- and he was called on July 25.
23 There was a cross-examination on July 25, which I think is
24 very telling when you talk about guilt by association. Mr.
25 Fitzgerald asked Adam Hamawy. You may remember, Adam Hamawy

1 was the young man in medical school who traveled with Sheik
2 Omar Abdel Rahman to the conference in Detroit, in the van.
3 Mr. Fitzgerald asked him on page 15083:

4 "Q You mentioned that you went with a
5 schoolmate by the name of Nidal.

6 "A. Yes

7 "Q And you attended Rutgers University?

8 "A. Yes.

9 "Q Did you also know another person by the
10 name of Nidal who attended Rutgers University?

11 "A. No.

12 "Q Did you know a person by the name of Nidal
13 Ayyad?

14 "A. No, I don't.

15 "Q You have never spoken to him?

16 "A. Never spoken to him."

17 What if he had? What if he and Nidal Ayyad were
18 at Rutgers University at the same time? Nidal Ayyad bombed
19 the World Trade Center, Adam was going on to medical school.
20 But look at the company that he keeps. Guilt by
21 association, ladies and gentlemen.

22 I want to go back to Emad Salem and his testimony
23 of March 22, 1995, at page 5662. Question. This is Emad
24 Salem talking about a conversation with Clement Hampton-El,
25 Dr. Rashid.

1 "Q Did the topic of El Sayyid Nosair come up?

2 "A. Yes, sir.

3 "Q What did Hampton-El have to say on that
4 occasion at Rogers Avenue about El Sayyid Nosair?

5 "A. He said 'Do you know that the day of
6 killing Kahane I supposed to be the second man over there,'
7 and I said really."

8 Let's put up a number three, the Dr. Rashid
9 second man theory. So now Dr. Rashid was supposed to be the
10 second man at the Meir Kahane murder, at the Meir Kahane
11 assassination, at the Meir Kahane jihad act of terrorism.
12 He was too busy that night. He couldn't make it. He
13 couldn't make it to the political assassination. He
14 couldn't make it to the act of terrorism. Maybe he had a
15 dentist appointment, I don't know.

16 But the point is, ladies and gentlemen, the
17 Dr. Rashid second man theory actually hearkens back to the
18 number one lone gunman theory, because there was supposed to
19 be a second man in the Marriott ballroom, but he couldn't
20 go. So there was only one man there, under the Dr. Rashid
21 second man theory, and under the Dr. Rashid second man
22 theory, that one man was Sayyid Nosair. But that's
23 inconsistent with the number two group theory that has all
24 these other guys, Mohammad Salameh and Bilal Alkaisi, there.

25 But there is yet a fourth theory. I am up to

1 four. There is a fourth theory of what occurred in the
2 Marriott D ballroom, and that one comes from Mr. Haggag, on
3 May 3, on the witness stand, page 9993:

4 "Q Mr. Haggag, did Rashid describe to you the
5 mistake that Mahmud the red had made when he was talking to
6 you that day?

7 "A. Yes.

8 "Q What was that?

9 "A. He waited at the wrong place. While he
10 was waiting for El Sayyid, El Sayyid jumped in another taxi.
11 Mahmoud was supposed to wait for him in a taxi, but he stood
12 at the wrong place."

13 So that's number four, is the Mahmoud Abouhalima
14 wrong taxi theory.

15 The number four Mahmoud Abouhalima wrong taxi
16 theory contradicts number two, the group theory, in this
17 simple case, because under the group theory Mohammad Salameh
18 and Bilal Alkaisi and Nidal Ayyad, whose fingerprints are in
19 the car, are supposed to drive the get-away vehicle, being
20 the car that their fingerprints were in. So now we have
21 them not driving the car but Mahmoud Abouhalima, also
22 convicted in the World Trade Center bombing, Mahmoud
23 Abouhalima driving the taxi, and the wrong taxi. That's the
24 fourth theory, ladies and gentlemen, and it contradicts the
25 group theory. The case is so simple that we have four

1 different theories for what happened in the Marriott
2 ballroom on November 5, 1990.

3 The point here, ladies and gentlemen, is that
4 this was not an open and shut case. You wouldn't have four
5 different theories in an open and shut case. You wouldn't
6 have Dr. Hirsch's testimony about the wounds. You wouldn't
7 have Irving Franklin and the left hand and the right hand.
8 You wouldn't have Government's Exhibit 5 with Mr. Nosair
9 turning to leave the room if it was a simple case. You have
10 four different theories, and, ladies and gentlemen, you do
11 not find proof beyond a reasonable doubt on four different
12 theories. You find it based on the evidence, and the
13 evidence does not prove that Sayyid Nosair murdered Rabbi
14 Meir Kahane.

15 THE COURT: Ladies and gentlemen, we are going to
16 break now. Please leave your notes and other materials
17 behind. Please don't discuss the case, and we will resume
18 in a few minutes.

19 (Jury excused)

20 THE COURT: I would like to see Mr. Patel,
21 Mr. Stavis, Ms. London and Mr. Lavine in the robing room
22 with the government. Also Mr. Villanueva.

23 (In the robing room)

24 THE COURT: You had estimated that your summation
25 would be how long?

1 MR. LAVINE: I am thinking about an hour or so,
2 maybe an hour and a half at the most.

3 THE COURT: Would there be any prejudice of
4 you -- I will ask the same of you, Ms. London -- if I were
5 to change the order of your two summations, such that yours
6 would come before Ms. London rather than after?

7 MR. LAVINE: Could you give me an idea of when?
8 Are we talking about this afternoon?

9 THE COURT: No, no, no, not at all.

10 MR. STAVIS: I would note my objection for the
11 record.

12 MR. LAVINE: I didn't mean it that way. I just
13 meant if I could get some advance notice, I am sure.

14 THE COURT: That would be down the road a good
15 piece, probably Thursday.

16 MR. LAVINE: I am sure I could.

17 THE COURT: Also, Mr. Villanueva, your colleague,
18 whose absence I envy --

19 MR. VILLANUEVA: So do I.

20 THE COURT: -- said he was down for two hours.

21 MR. VILLANUEVA: Yes.

22 THE COURT: I assume he doesn't want to do one
23 hour today and one hour tomorrow.

24 MR. VILLANUEVA: I am not sure. He is outside,
25 your Honor.

1 THE COURT: Why don't you talk to him.
2 Understand that in no event am I going to punish him for
3 another lawyer's inability to control himself. However, if
4 he can do an hour today and another hour tomorrow, that is
5 fine.

6 I am going to tell Mr. Stavis that under no
7 circumstances, none, zero, zilch, to quote your summation,
8 are you going to be permitted to get up tomorrow. So that
9 whatever you are doing out there, you better complete it
10 today because there are no circumstances under which you
11 will be allowed to rise tomorrow. You understand that?

12 MR. STAVIS: Yes, your Honor.

13 MS. LONDON: Your Honor, I am a little confused
14 as to why the court wants Mr. Lavine and me to exchange
15 places, but before that, is the court aware that Mr.
16 Bernstein and Ms. Amsterdam go before Mr. Lavine and I?

17 THE COURT: Yes. I am just looking at the
18 possible jigsaw puzzle that is going to arise because of
19 what is going to happen and happening today. His summation
20 is billed to be shorter than yours. It might conceivably
21 fit into a slot that would open up that would not
22 accommodate yours.

23 If you could talk to him and let me know.

24 MR. VILLANUEVA: Yes, your Honor.

25 THE COURT: Understanding that I am not going to

1 make him pay the price, and make that clear to him.

2 MR. VILLANUEVA: I will.

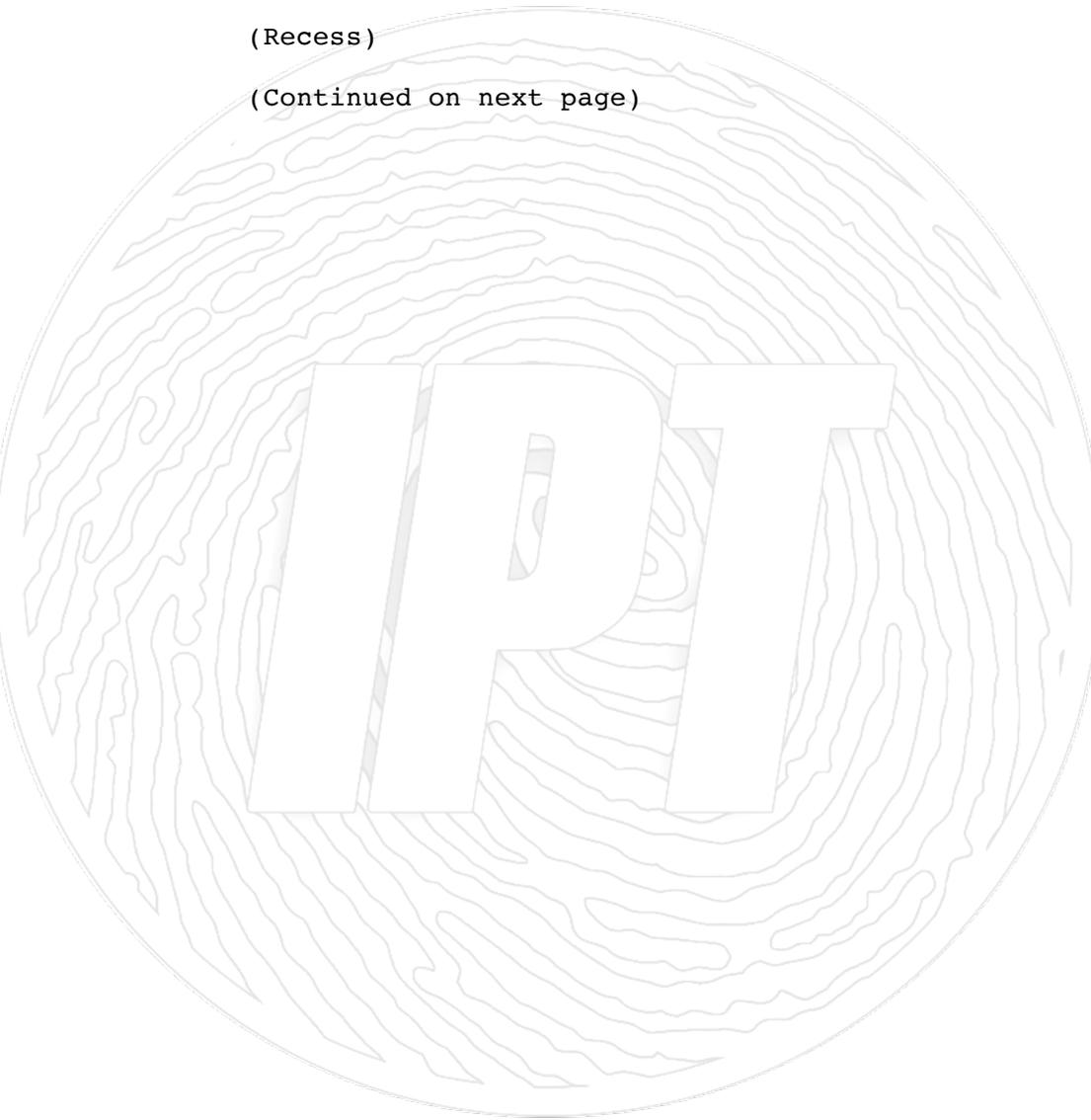
3 THE COURT: Thank you.

4 MR. VILLANUEVA: Thank you.

5 (Recess)

6 (Continued on next page)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 (In open court; jury present)

2 THE COURT: Go ahead, Mr. Stavis.

3 MR. STAVIS: Thank you, your Honor.

4 THE COURT: Excuse me, counsel. Can we please
5 come to order. Thank you.

6 MR. STAVIS: Ladies and gentlemen, Mr. Fitzgerald
7 told you in his closing arguments about three confessions to
8 the Meir Kahane murder.

9 The first of the confessions was the confession
10 to Dr. Craig Nunn, who testified here, who said that
11 Mr. Nosair told him, or Mr. Nunn, being aware of the
12 notoriety of the case asked Mr. Nosair, "How could you do
13 that?" And Mr. Nunn testified to you that Mr. Nosair said
14 to him at that time, "I did my duty."

15 Well, Mr. Nunn was -- Dr. Nunn was kind of like
16 Rip Van Winkle. Instead of falling asleep for 40 years, he
17 fell asleep for four years. Didn't have much significance
18 to it, what's now called a confession, so he didn't tell
19 anybody. He didn't tell the police. And, as he watched the
20 newspapers and TV through the state trial, he didn't tell
21 the prosecutors. A year goes by, two years goes by, and
22 Dr. Nunn woke up from his nap and he came before you.

23 Interestingly, Dr. Nunn says that Mr. Nosair told
24 him, "I did my duty," of course not, "We did our duty."
25 That would be No. 2 over here under the group theory.

1 In any event, Dr. Nunn tells you that out of all
2 the people in the world El Sayyid Nosair chose him to
3 confess to. I submit to you, ladies and gentlemen, that
4 what Dr. Nunn said happened never occurred. He watched the
5 TV, he read the newspapers, he treated Mr. Nosair when he
6 was at Bellevue Hospital. And he came and he made himself
7 into a star here on the witness stand.

8 The second of the three confessions comes from
9 Mr. Salem, without a tape and without corroboration, and
10 that's what occurred at Attica Prison, and I am going to get
11 to that shortly.

12 And the third of the three confessions is this,
13 Government's Exhibit 163R2. Now, the government is offering
14 this as a confession, and we've gone through it already, but
15 I want to go through it in terms of it being what the
16 government alleges it to be, a confession.

17 THE COURT: You did that yesterday.

18 MR. STAVIS: But there is a different point that
19 I wish to make, your Honor.

20 THE COURT: You are going to make one point that
21 you didn't make with regard to it yesterday, and then you
22 will move on. We are not going to redo yesterday.

23 MR. STAVIS: You see here, ladies and gentlemen,
24 the greatest proof of what happened in New York City.
25 Mr. Nosair is not confessing to anything. At the bottom you

1 see again, "Our honorable scholar, Sheik Abdallah Azzam."
2 Which gets us back, ladies and gentlemen, to the jihad
3 organization. Here's the honorable Scholar Sheik Abdallah
4 Azzam, the head of the jihad organization of which
5 Mr. Nosair was a card-carrying member, the head of the
6 Afghan jihad organization. That is what Mr. Nosair is
7 talking about in this confession, in this, Government's
8 Exhibit 163RT2, the speech to the Palestinian conference
9 which the government is now telling you was a confession. I
10 think that you can read it for yourself. If you believe
11 that it requires analysis, you could take it back to the
12 jury room, read it a hundred times, read it ten times, read
13 it one time, you won't see a confession in there.

14 Now, concerning the jihad organization, there was
15 a very important question that Mr. Fitzgerald asked when
16 Khaled Ibrahim was on the witness stand on July 17 of 1995.

17 At page 14337 Mr. Fitzgerald asked Khaled
18 Ibrahim:

19 "Q Is it fair to say that attending a lecture
20 of Rabbi Kahane would have nothing to do with the training
21 in Connecticut you had for Afghanistan?

22 "A. Yes."

23 Now, what's so significant about that?

24 From Mr. Fitzgerald's own question he gets an
25 answer that attending a lecture by Meir Kahane is not

1 related to the jihad organization, either this jihad
2 organization with Sheik Azzam that was proven here before
3 you, or the jihad organization that the government is trying
4 to tell you existed here with Sheik Omar Abdel Rahman as the
5 leader and El Sayyid Nosair as the general, even though they
6 had nothing to do with one another.

7 It is important, ladies and gentlemen. It is so
8 important because the charge here is murder in aid of
9 racketeering activity. Even if you take away the medical
10 records and the video of Sayyid Nosair in the Marriott
11 ballroom, there has to be the jihad organization -- not the
12 sheik Azzam jihad organization, Alkifah, but the one single
13 jihad organization that the government is telling you
14 existed. If it doesn't exist, then Mr. Nosair must be found
15 by you, and you'll hear the judge charge you on this, he
16 must be found not guilty. There is not proof beyond a
17 reasonable doubt that Mr. Nosair murdered Rabbi Meir Kahane.

18 William Kunstler told you how the Muslim
19 community came together around the Nosair trial. Dr. Mehdi
20 told you the same thing. Imam Siraj Wahaj told you that.
21 Khaled Ibrahim told you that story of how he waited up at
22 night with the crowbar because he wanted to protect his
23 brother Sayyid's family from any harm. The trial raised the
24 consciousness of the entire community, the entire Muslim
25 community.

1 That was not an accident, ladies and gentlemen.
2 It took hard work to do that. The one who did the hard
3 work, who raised the consciousness of the community is this
4 gentleman here, Ibrahim El-Gabrownny, who dedicated his life
5 to this cause, to his cousin, El Sayyid Nosair.

6 It is very, very important to understand why the
7 Muslim community, the decent people in the Muslim community
8 rallied around the cause of Mr. Nosair. They did it not
9 because they believed that he murdered Rabbi Meir Kahane. I
10 am not telling you that Rabbi Meir Kahane was popular in the
11 Muslim community by any means, but they did it because they
12 believed their brother was being falsely accused, and Emad
13 Salem on March 29 of this year -- and not on July 17.

14 I asked Emad Salem about that on page 6156. I
15 asked him:

16 "Q To your knowledge, when the El Sayyid
17 Nosair defense fund was doing its work, it appealed to that
18 sense of community in Muslim people, is that fair to say?

19 "A. I am sorry. When you say 'appeal,' I
20 didn't get the meaning, sir, please.

21 "Q It played on the sense of community in a
22 Muslim people have for one another?

23 "A. Yes, sir.

24 "Q. And it said, help your brother, El Sayyid
25 Nosair?

1 "A Yes, sir.

2 "Q. It said, your brother, El Sayyid Nosair,
3 is in trouble, right?

4 "A. Yes, sir.

5 "Q. It said, your brother, El Sayyid Nosair,
6 has been falsely accused of a crime, isn't that what it
7 said?

8 "A. Yes, sir.

9 "Q. Would it be fair to say that the Muslim
10 community rallied around Mr. Nosair?

11 "A. Yes, sir."

12 They rallied around him because they believed in
13 his innocence and they wanted to see that he received a fair
14 trial.

15 The Muslim community includes all kinds of
16 people, ladies and gentlemen, people with all kinds of
17 occupations, people who do all kinds of work and people who
18 think all different kinds of ways.

19 Some people in that community, ladies and
20 gentlemen, believed that Mr. Nosair was guilty, and some of
21 those people even admired Mr. Nosair for that. Some of the
22 deranged people in the community, and I'm speaking, of
23 course, of people like Mohammed Salameh, Nidal Ayyad and
24 Mahmud Abouhalima. People that you heard a lot about at
25 this trial, people who were terrorists, people who would

1 kill innocent men, women, and children, people who would
2 blow up the World Trade Center. Those people looked up to
3 El Sayyid Nosair because they thought, and they thought
4 wrongly, that he was guilty. But it was the hard-working
5 and decent people who supported El Sayyid Nosair; supported
6 him, thought he was railroaded, gave to the defense fund,
7 attended the trial.

8 Now the government has focused its attention on
9 Salameh, Ayyad and Abouhalima, people who had their own
10 agenda. They have chosen to focus, out of an entire
11 community, on the rotten apples in the community.

12 That's what they've done. They haven't focused
13 on the hard-working Muslims who saw adversity, and where
14 those hard-working Muslims saw adversity, another Muslim by
15 the name of Emad Salem saw advantage.

16 And where those hard-working and decent people in
17 the community saw oppression, Emad Salem saw opportunity.
18 El Sayyid Nosair became the meal ticket for Emad Salem. It
19 was his entree into this case, and his long, and, I would
20 submit to you, sordid relationship with the Federal Bureau
21 of Investigation.

22 Now, when John Anticev testified here before you
23 on July 5 when he was called as a witness, he told you
24 something that was very, very important about how Emad Salem
25 got into this case. I am going to read to you from page

1 13479:

2 "Q And then you approached him with regard to
3 becoming a confidential informant with regard to working
4 with you and Louis Napoli, is that right?"

5 From John Anticev:

6 "A Nancy Floyd came to my squad area and
7 approached me and said that she had a source that was
8 working for her who is Egyptian and expressed an interest in
9 helping out with terrorism matters.

10 "Q. When you say 'expressed an interest,'
11 meaning Emad Salem had expressed an interest?

12 "A Yes."

13 Look at what Emad Salem said on March 7 in this
14 trial on page 4602 and you don't see him saying anything
15 about I, Emad Salem, being the one who expressed the
16 interest in helping out with terrorism matters. He told you
17 that he came -- or rather Nancy came to the hotel and he was
18 helping out in immigration investigation and that after that
19 she brought Anticev and Napoli, they wanted to know if he
20 was interested in helping them out, and he said no
21 initially.

22 Then he hurt himself, he couldn't work, and then
23 finally he said yes. But John Anticev in the testimony that
24 I just read to you shows that it was Emad Salem who said to
25 the FBI, "Let me help you. I can help you with terrorism

1 matters."

2 It was Emad Salem who said to the FBI,
3 (whispering) "Trust me."

4 Once Emad Salem injects himself into this
5 investigation of terrorism matters, what of all things does
6 he find? He finds terrorists. Isn't that shocking. And to
7 Emad Salem everybody is a terrorist. You heard him talk
8 about a lot of people, all terrorists. Terrorists,
9 terrorist sympathizers, terrorist front groups, it begins to
10 sound like McCarthyism.

11 Senator Joseph McCarthy was a senator from
12 Wisconsin who back in 1950 made a speech where he held up a
13 piece of paper and he said: I have in my hands the names of
14 100 communists working in the State Department. Communists,
15 communist front groups, communist sympathizers crawling out
16 from underneath every rock. That's what Senator McCarthy
17 saw. And that's what Emad Salem sees except he sees
18 terrorists and not communists. It is a convenient label,
19 ladies and gentlemen.

20 It's easy to call someone a terrorist. But you,
21 ladies and gentlemen, you're here to look at the proof.

22 When I opened to you many, many months ago -- and
23 I was honored by Mr. Fitzgerald quoting this portion of my
24 opening -- I called Emad Salem a vial, sleazy and disgusting
25 human being.

1 I submit to you that that has been proven beyond
2 a reasonable doubt. He came before you initially as a dumb
3 immigrant. That was the picture that he wanted you to
4 accept when he first got on the stand.

5 He said, page 4582: I was like a big shot in
6 Egypt and all of a sudden I became just an immigrant.

7 He told you on page 4590 that he said to Nancy
8 Floyd: I made myself a big shot.

9 We had all those excuses that Emad Salem gave
10 you, so many of them that I am going to refer to them as
11 "Salemisms." You will remember them.

12 I am bad at numbers and dates.

13 He told me at page 4870: Sir, I said that I am
14 bad at dates. Dates just don't register in my mind.

15 And this one at page 5986: I'm not the greatest
16 memory in the world. That's why I have tapes.

17 He played the fool for you during his first
18 appearance, ladies and gentlemen. This man played the fool
19 who I submit to you was an evil genius. He played a role, a
20 role that he knew best, a role as a con man in this case.

21 He conned everyone who ever came in contact with
22 him, including the case agents of the Federal Bureau of
23 Investigation. He was paid and paid handsomely, and Emad
24 was back here within a month. But if you figure out how
25 much money he made from when he was last here in April, you

1 have May, June, July, August, September, five months. He
2 gets seven grand a month and he gets \$2700 a month from the
3 Marshals Service, roughly \$10,000. He's earned \$50,000
4 since he left the witness stand for the first time.

5 You might recall the picture of -- if you're Emad
6 it's sort of hard to make ends meet on that. And he's going
7 to be paid over a million dollars at the end of this case,
8 and you might remember the picture of him holding up this
9 advance that he had to have for \$100,000, standing up there
10 like he had just won the New York Lottery.

11 I submit to you that he basically did win the
12 lottery, ladies and gentlemen. I don't know where his book
13 contract is going, I don't know where his movie deal is
14 going, but he's milked this case for all it's worth.

15 He took the FBI, this evil genius, and he wrapped
16 them around his little finger. He ran this investigation.
17 He made sure that there was no FBI undercover agent in with
18 him when he dealt with anyone. There was no FBI undercover
19 agent with him when he went to Mr. El-Gabrownny's house for
20 dinner.

21 That's not an accident, ladies and gentlemen.
22 Because in the tape that's marked Khallafalla C and the
23 transcript which is Khallafalla CT, on page 6, Nancy Floyd
24 tells Emad Salem: The supervisor that handles this, which
25 is not mine, and he agreed with you. I mean, he just, he

1 told Louie that no, he thought it was a dumb idea to try
2 to -- he agreed with you that it was a dumb idea to try to
3 introduce somebody undercover.

4 Is it dumb, ladies and gentlemen, I ask you, to
5 have an FBI agent able to get up on the witness stand
6 because he went undercover and say, yeah, what Emad's saying
7 about what happened at the dinner at Ibrahim El-Gabrownny's
8 house is exactly right, 'cause I was there, because Emad
9 said I'm bringing my friend, Ibrahim. He's going to come
10 with me. He's a good brother. He loves jihad in his heart.

11 Is it dumb to have that FBI undercover?

12 Would it be dumb for the government at this point
13 not to have its case hinging on Emad Salem alone, having an
14 FBI agent who was there, who saw it, who did it, who lived
15 it, get up on the witness stand and tell you what happened.

16 You see from that tape, Khallafalla CT, page 6,
17 that Emad Salem, this evil genius, conned the FBI out of
18 having an undercover agent. He did it because an undercover
19 agent would have seen that nothing was happening. He did it
20 because an undercover agent would have devalued him as an
21 FBI source. His value to the FBI is: I am the only one who
22 can say these things. That's his value to the FBI. That's
23 why he talked the FBI out of the dumb, dumb, stupid idea of
24 having an undercover agent work with Emad Salem.

25 Anything he wanted from the FBI he got. He

1 wanted money. You got it.

2 You want your tapes back? You got it.

3 You want your safe house photograph back? You
4 got it.

5 You want Nancy Floyd to be the only one to go to
6 your house to look for the tapes? We'll send Nancy Floyd.

7 Now, Mr. Fitzgerald was talking to you about
8 informants one week ago in his summation. I want to tell
9 you what he said because it is important. He was talking
10 about the murder of Meir Kahane and the importance of
11 informants. He says: Without an informant you can't tell,
12 you can't stop them. Because on November 5, 1990 Sayyid
13 Nosair did walk into a hotel room, did walk up, and he did
14 take a gun and shoot Meir Kahane in the head. It happened.
15 That's what happens when you don't have an informant to tell
16 you what's going on.

17 He made the same point with regard to the World
18 Trade Center.

19 Now, the lesson of the World Trade Center in many
20 ways is to show you how frightening it is not to have an
21 informant telling you what's going on. Without an
22 informant, it's hard to prevent this.

23 You need an informant to tell you what's "going
24 on."

25 Ladies and gentlemen, think about this: What is

1 an informant to do when nothing's going on? How can you
2 possibly be a successful informant if nothing is going on?

3 You only get paid if something is going on. No
4 work, and there's no pay.

5 You need an informant to tell you what's going
6 on. Informants are terrific. They lie, they cheat, they
7 deceive, and they do it all to the people that they try to
8 bring close to them, and they do it for a very noble
9 purpose, ladies and gentlemen. They do it to make money.

10 You need them to know what's going on and when
11 nothing's going on, someone like Emad Salem will tell you
12 that something's going on. He was one of the most
13 successful at the informant game because an informant
14 measures success in terms of money -- the noble purpose for
15 which one decides to enter the exciting career of being an
16 informant.

17 He corrupted the FBI, ladies and gentlemen, this
18 evil genius. This case, this case here with all these
19 different people who have in common only their religion,
20 this case was to be the FBI's finest hour. Instead, ladies
21 and gentlemen, with the lies that were told on the witness
22 stand by the FBI case agents, this has become their saddest
23 chapter.

24 Just look at what Salem did to the FBI. He
25 destroyed tapes. And you can ask yourself when you think of

1 things that Salem said that weren't on tape, particularly
2 the things going back to the time of Sayyid Nosair's state
3 trial, think about those tapes that he must have destroyed.
4 Think about Emad Salem telling Ibrahim El-Gabrownny, "We've
5 got to break Sayyid Nosair out of prison." And think about
6 Ibrahim El-Gabrownny saying to Emad Salem, "You're crazy,
7 man." Think about that tape and where it is today.

8 Think about Emad Salem talking to Mohammed Saad
9 about killing Leon, the JDL supporter that Emad Salem
10 testified about to you. And think of Mohammed Saad saying
11 to Emad Salem, "Muslims don't kill innocent people." Think
12 about that tape and where it might be today.

13 Think about Ahmed Abdel Sattar and his
14 conversation with Emad Salem where Emad says to him, "Let's
15 go kidnap a judge," and Ahmed Abdel Sattar says, "Kidnap a
16 judge? I work in the post office. What are you talking
17 about?" Think of that tape and where it might be today.

18 There were tapes. There were plenty of tapes,
19 and that's where the coverup starts, ladies and gentlemen.
20 Mr. Fitzgerald told you last Thursday about the agents. He
21 said, understand the situation those agents were in. They
22 were between a rock and a hard place.

23 He said: They should have gotten them, meaning
24 the tapes. I submit to you they didn't want to confront
25 him, meaning Emad Salem, his temperamental informant. They

1 didn't want to deal with that issue. Mr. Fitzgerald told
2 you, that's not an excuse, but it's a reason.

3 A reason for what? A reason for a law
4 enforcement agent to lie on the witness stand? We're going
5 to give reasons for that? Because, ladies and gentlemen,
6 that's what happened. That's what Emad Salem was able to do
7 to these case agents that he had twisted around his little
8 finger.

9 Each and every one of the case agents that came
10 before you were caught in lies. They were caught in lies
11 because of Emad Salem's secret tapes that he made and
12 because of the Department of Justice Office of Professional
13 Responsibility investigation getting to the bottom of it.

14 Let's take Nancy Floyd and see how Emad Salem
15 corrupted her.

16 (Continued on next page)

17

18

19

20

21

22

23

24

25

1 Government Exhibit 35148D, sworn, signed
2 statement, January 6, 1995:

3 "I told ASAC Dunbar that I had no knowledge that
4 source was taping conversations and, in fact, I had
5 instructed him repeatedly not to tape conversations."

6 On the exhibit that's known as Khallafalla CT,
7 you heard and saw Emad -- not Emad, I've got Emad on the
8 brain. You saw Nancy Floyd. You saw her discussing tapes
9 and taping with Emad Salem.

10 I want to read to you what Nancy Floyd said on
11 the witness stand about Emad Salem tapes and taping.

12 (Continued on next page)

13
14
15
16
17
18
19
20
21
22
23
24
25

1 MR. STAVIS: (Continued) This is Nancy Floyd's
2 testimony from July 26, 1995, at page 15210.

3 "Q Before June 23, 1993, Agent Floyd, did
4 Emad give you tapes that you listened to? Yes or no.

5 "A. In relation to this case?

6 "Q Any tapes, ma'am. Did he give you any
7 tapes?

8 "A. Yes.

9 "Q When you told Agent Dunbar in June of 1993
10 that you had no knowledge that Emad was taping
11 conversations, and in fact you had instructed him repeatedly
12 not to tape conversations, you were lying to Dunbar, weren't
13 you, ma'am?

14 "A. No, sir, I was not.

15 "Q You told Dunbar the truth in June of 1993,
16 correct?

17 "A. He asked me if I had knowledge of him
18 taping any terrorist, and I said no, I did not, until this
19 point.

20 "Q Tape A doesn't refer to tape terrorist
21 that we just heard?"

22 That reference was to what is in evidence as
23 Khallafalla C. The answer is:

24 "A. I do not know if he had any tapes, sir. I
25 was trying to find out if in fact he did, and that is what I

1 was instructed to do by the supervisor Mr. Crouthamel, who
2 had been told that we knew of some tapes in the beginning
3 who had no knowledge if they existed. I had neither seen
4 nor heard them. He asked me to contact him and find out if
5 there were tapes. This conversation was trying to find out
6 if there were any tapes. I never saw any tapes or heard
7 them until now.

8 "Q Never saw any?

9 "A. That is right, except the ones that he
10 gave me on a different case, which has already been
11 addressed."

12 There are two points that Nancy Floyd was trying
13 to make in that testimony. One is that Agent Crouthamel had
14 told her to find out from Emad Salem if he made tapes. And
15 the second point was that the tapes that she was talking
16 about in Khallafalla C were tapes from a different
17 investigation. Those are two points in the testimony.

18 I would like to play to you a portion of
19 Khallafalla C, and I want you to listen to that portion and
20 see if the tapes that she is discussing with Emad Salem are
21 from a different investigation.

22 (Tape played)

23 MR. STAVIS: You heard again how dumb it is to
24 introduce an informant to the scenario, but right before
25 that, ladies and gentlemen, when Nancy Floyd was talking on

1 tape for you -- you can ask for it, you can play it, you
2 have the transcript -- she said that -- this is page 5 of
3 Khallafalla CT -- they want the tapes, you will make copies
4 from them, is what Salem says.

5 Floyd then says: Right, but only the ones that
6 have to do with the information that, uh, on the, that we're
7 doing now.

8 Salem says: Hm.

9 Floyd says: Like LL -- you know, the uh, the
10 guns, the bombs, the ones they are going to be looking to do
11 to try to do a um.

12 Salem says: Yeah. And Salem says set up
13 wiretaps on the phones.

14 Floyd says: Like LL.

15 She is talking about El Sayyid Nosair. When she
16 is talking about the information that we are doing now,
17 that's what she says, information that we are doing now, and
18 when she stood up, swore an oath in that chair, she said
19 that this conversation had to do with something, a different
20 investigation a year before. That's the first of her lies.
21 The tapes that she was asking about were the tapes from this
22 investigation, the tapes from LL. Whether it is El-Gabrownny
23 or El Sayyid Nosair it was the tapes now.

24 The second point that she made was that Agent
25 Crouthamel had asked her to find out if Emad had tapes, and

1 so she got on the witness stand right over there, and she
2 said to you, I was trying to find out from Emad Salem if he
3 had tapes. She said that that's exactly what Crouthamel
4 asked her to do.

5 Well, when you look at Khallafalla CT, you will
6 see who initiated the call she was trying to explain with
7 that testimony. It was Emad Salem who called Nancy Floyd.
8 He called her, and the call that she is now explaining from
9 the witness stand was about her supervisor asking her to
10 find out if there were tapes. You know that because you see
11 the answer FBI, Salem says yeah, please, and Floyd answers
12 her phone Nancy Floyd. She told you that Agent Crouthamel
13 told her, since he is the supervising special agent. Maybe
14 he ordered her, I order you to find out from Emad Salem if
15 he has tapes.

16 Let's see what John Crouthamel had to say about
17 that on August 10, 1995, at page 16213:

18 "Q My apologies for reading so fast. Did you
19 have such a conversation with Floyd where she told you that,
20 or did you ask for the tapes?

21 "A. No.

22 "Q You never have? I am sorry.

23 "A. No.

24 "Q Assuming, Agent Crouthamel, that Agent
25 Floyd has testified under oath that you are the supervisor,

1 question, seven pages, assuming that, you have read the
2 seven pages, correct?

3 "A. Yes."

4 I am on 16214 now:

5 "Q Did you ever ask Floyd whether Salem has
6 private tapes or any tapes?

7 "A. No.

8 "Q Did you ever direct Floyd that Salem had
9 permission to make private tapes? Did you ever do that?

10 "A. No.

11 "Q Did she ever inform you that she was in
12 possession of tapes from Salem, whether it be on this
13 subject matter or any subject matter?

14 "A. No.

15 "Q Did she ever tell you that John and Louie
16 knew about tapes? Did she ever tell you that, sir?

17 "A. No.

18 "Q Did you ever tell her that or give her
19 authorization to tell Salem that he could made whatever
20 tapes he does for his own memos or whatever? Did you ever
21 do that, sir?

22 "A. Definitely not.

23 "Q Did you ever tell her, sir, that you gave
24 permission for him to do private tapes that would be used
25 for a federal wiretap? Did you ever do that, sir?

1 "A. No.

2 "Q Did you ever have a conversation with
3 Nancy Floyd where you told Nancy Floyd, Nancy, do whatever
4 you have to do, get me the tapes? Did you ever have such a
5 conversation?

6 "A. No."

7 Agent Floyd came here, told you that the
8 supervising special agent John Crouthamel told her to find
9 out if tapes were made, and that was her explanation for
10 that phone call, Khallafalla Exhibit C. John Crouthamel
11 took the same oath as Nancy Floyd did, and he told you that
12 never did he ask Nancy Floyd to find out about the tapes.
13 Somebody is lying. The somebody who is lying is Nancy
14 Floyd.

15 The next case agent to be corrupted by Emad Salem
16 is John Anticev. He told you he too had to give a statement
17 for the Department of Justice Office of Professional
18 Responsibility investigation. He gave his on November 23,
19 1994, in Government's Exhibit 35143B. And he said "I was
20 not aware that asset reported a conversation with New York
21 City Police Department detective Louis Napoli since I wasn't
22 aware that source had taped any conversations."

23 Contrast that with Mr. Anticev's, Agent Anticev's
24 July 6 testimony on page 13539:

25 "Q Concerning these unauthorized tapes, were

1 you aware before June 23, 1993, that he was recording
2 conversations with targets of the investigation?

3 "A. Yes. It became apparent to me that he
4 was."

5 When Agent Anticev gave his sworn testimony on
6 this witness stand, he told the truth. It's the FBI that he
7 lied to in his sworn statement. Once again, Emad Salem has
8 corrupted an agent of the Federal Bureau of Investigation, a
9 law enforcement agent, and turned that agent into a liar
10 under oath.

11 THE COURT: Mr. Stavis, could you come to a
12 convenient break point.

13 MR. STAVIS: This would be it, your Honor.

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

18 (Jury excused)

19 THE COURT: May I see Ms. Stewart and the
20 government briefly at the side.

21 (At the side bar)

22 THE COURT: You have during the charging
23 conference pointed out the problem with the lynching
24 metaphor and then you submitted something about hanging the
25 drifter, which doesn't ring in my mind. I thought what I

1 would do to make sure that I don't give offense, and I don't
2 think this will give offense, is to make it clear that the
3 lynching metaphor is in the Old West, so that I will refer
4 to an old western crowd gathered around the jail.

5 MS. STEWART: That solves it.

6 THE COURT: And evoke that image rather than the
7 one that you think would give offense, and I agree with you
8 it would, but I don't know of any other.

9 MS. STEWART: I think that is good. It is a
10 meeting of the minds.

11 MR. McCARTHY: I think that is good.

12 MS. STEWART: Very good.

13 MR. JABARA: It is possible to use another word
14 other than lynching?

15 THE COURT: Mr. Jabara, if you can come up with
16 another image for that charge, believe me, I will be happy
17 to use it. You want Miss Stewart tried and I tried. You
18 want to try, I will be happy to receive it.

19 MR. McCARTHY: And we want to know what western.

20 (Luncheon recess)

21

22

23

24

25

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

2 Time noted: 2:10 p.m.

3 (Jury present)

4 THE COURT: Good afternoon, ladies and gentlemen.

5 JURORS: Good afternoon.

6 THE COURT: Mr. Stavis.

7 MR. STAVIS: Thank you, your Honor.

8 Good afternoon.

9 Before the lunch break, I was going through the
10 agents who had been corrupted by Emad Salem, and it's the
11 case agents. And the last of those case agents is Louis
12 Napoli. He told you that he gave Emad Salem boxes of blank
13 tapes. He told you that on August 15, 1995 at page 16656,
14 and he said that those tapes were for Emad Salem to jog his
15 memory, that they were called the memory tapes because there
16 were so many facts back and forth, Emad, you know, he has
17 memory problems, and he had to use these tapes. So that is
18 what the tapes were all about.

19 Now, ladies and gentlemen, there is an exhibit in
20 evidence, Government's Exhibit 551, the "Source Tape Tally"
21 is the label on it. It's got some categories.

22 It's got, "Source Tape, Total Recordings."

23 Then it breaks it down. It's got Defendants,
24 it's got Anticev, it's got Floyd, it's got Napoli, it's got
25 subjects and it's got other.

1 But you know what it doesn't have? It doesn't
2 have a separate column for memory. It doesn't have a
3 separate column for memory tapes.

4 THE COURT: Mr. Stavis, if you don't talk into
5 the microphone the translators can't hear you.

6 MR. STAVIS: It doesn't have a separate column
7 for memory tapes, ladies and gentlemen. That is because
8 there were no memory tapes. There were tapes of FBI agents,
9 there were tapes of targets of the investigation, but there
10 were no memory tapes. Memory tapes were a convenient
11 fiction for Emad Salem at the time, and because Emad Salem
12 corrupted the FBI, Louis Napoli, Detective Louis Napoli, New
13 York City Police Department detective, assigned to the Joint
14 Terrorist Task Force lied about the memory tapes. He lied
15 to cover up for Emad Salem.

16 What does it all mean, ladies and gentlemen, Emad
17 Salem causing the FBI agents to lie to you? Well, Emad
18 Salem corrupted these law enforcement agents, and the lesson
19 in that is that he should not be permitted to corrupt you.
20 Don't allow him to do that, ladies and gentlemen. He is an
21 evil genius. That is what I called him this morning; that's
22 what he is. That's why he was able to get over on the FBI
23 and put those case agents in the position that they're now
24 in. But, ladies and gentlemen, do not let him get over on
25 you.

1 Now, there's one FBI agent that he didn't get
2 over on, and that was the first defense witness called in
3 this case, and the name of that witness is Carson Dunbar.
4 Carson Dunbar was the very first witness called on the
5 defense case. He's the assistant special agent in charge of
6 the New York office, and he was in charge of the entire
7 Joint Terrorist Task Force. He said to you that he brought
8 Emad Salem in for a meeting on July 6 of 1992.

9 It was a very unusual meeting, just him and
10 Salem -- no case agents, no handlers -- just the two of
11 them. And he told Salem that he wanted verification of what
12 Salem was telling him about Sayyid Nosair and Ibrahim
13 El-Gabrownny. This is July 6 of 1992. He wanted
14 verification, and he asked Emad Salem to go up to Attica
15 Prison and to tape record Sayyid Nosair, and the answer that
16 Emad Salem gave was no. Dunbar was telling him: "Emad, time
17 to put your money where your mouth is. Time to give us the
18 goods. You've been talking a good game, but we need
19 evidence. Go tape record Sayyid Nosair."

20 Answer: "No."

21 Now, Mr. Salem gave you a very convenient fiction
22 when he told you about him saying no to Carson Dunbar, and
23 Mr. Fitzgerald picked up on that theme in his summation. He
24 said: "And I submit to you what you saw in this case was
25 when there came a time when the FBI insisted, look, go to

1 Attica and get Sayyid Nosair on tape, Emad Salem says, I
2 will get it on tape, you can hear it, but I get it back,
3 because Emad Salem didn't want to be a witness."

4 Ladies and gentlemen, when we called Carson
5 Dunbar as our first witness and the first witness in the
6 entire case, he said that Emad Salem said no. And I ask you
7 to look at his testimony on July 5, pages 13348 to 13350,
8 pages 13352 to 13353 and page 13355 where Carson Dunbar
9 gives his most expansive answer about what occurred at that
10 meeting. He said: "What occurred was I tried to encourage
11 him to wear a wire. When he decided that he did not want to
12 do that, then I would -- then I asked him if he would submit
13 to a polygraph."

14 Mr. McCarthy cross-examined Agent Dunbar at page
15 13403 to 13408 of the record. And you know what
16 Mr. McCarthy never brought out, and what Carson Dunbar, one
17 of the two people at that meeting, never said? He never
18 said that Emad was willing to tape record at Attica Prison,
19 but was just afraid to be a witness. Carson Dunbar says he
20 said flat out, "No, I won't do it."

21 Emad Salem says, "I said yes, if I could keep my
22 tape, because I didn't want to be a witness."

23 Carson Dunbar saw through him. He told you about
24 it on the witness stand. And he exposed Emad Salem.

25 Why did Emad Salem not want to tape at Attica?

1 Because if he had taped at Attica, it would prove, just like
2 if he had agreed to have an undercover FBI agent work with
3 him, it would have shown that Salem's, quote, usual topic --
4 bombing, explosives, weapons, rifles, pistols, killing,
5 kidnaping and murdering -- was never the topic of discussion
6 at Attica Prison.

7 Tapes would have unmasked Emad Salem. Attica
8 tapes would have revealed that Emad Salem was a liar. You
9 can't have an undercover, and you can't have tapes. What
10 tapes you do have, those telephone recorded tapes, I submit
11 to you would have been the topic of discussion had Emad
12 Salem agreed to tape at Attica -- things about subpoenas,
13 things about appeals, things about how are the brothers,
14 that's what you would have gotten.

15 Ladies and gentlemen, and this convenient fiction
16 that Mr. Salem engages in, that he was willing to tape and
17 he said yes, but he had to keep the tape, why? Because he
18 was so afraid to testify.

19 Now, I ask you, ladies and gentlemen, you saw
20 Emad Salem for so many, so many weeks, sitting right over
21 there. And the question I have to ask you is: Did he look
22 afraid to you?

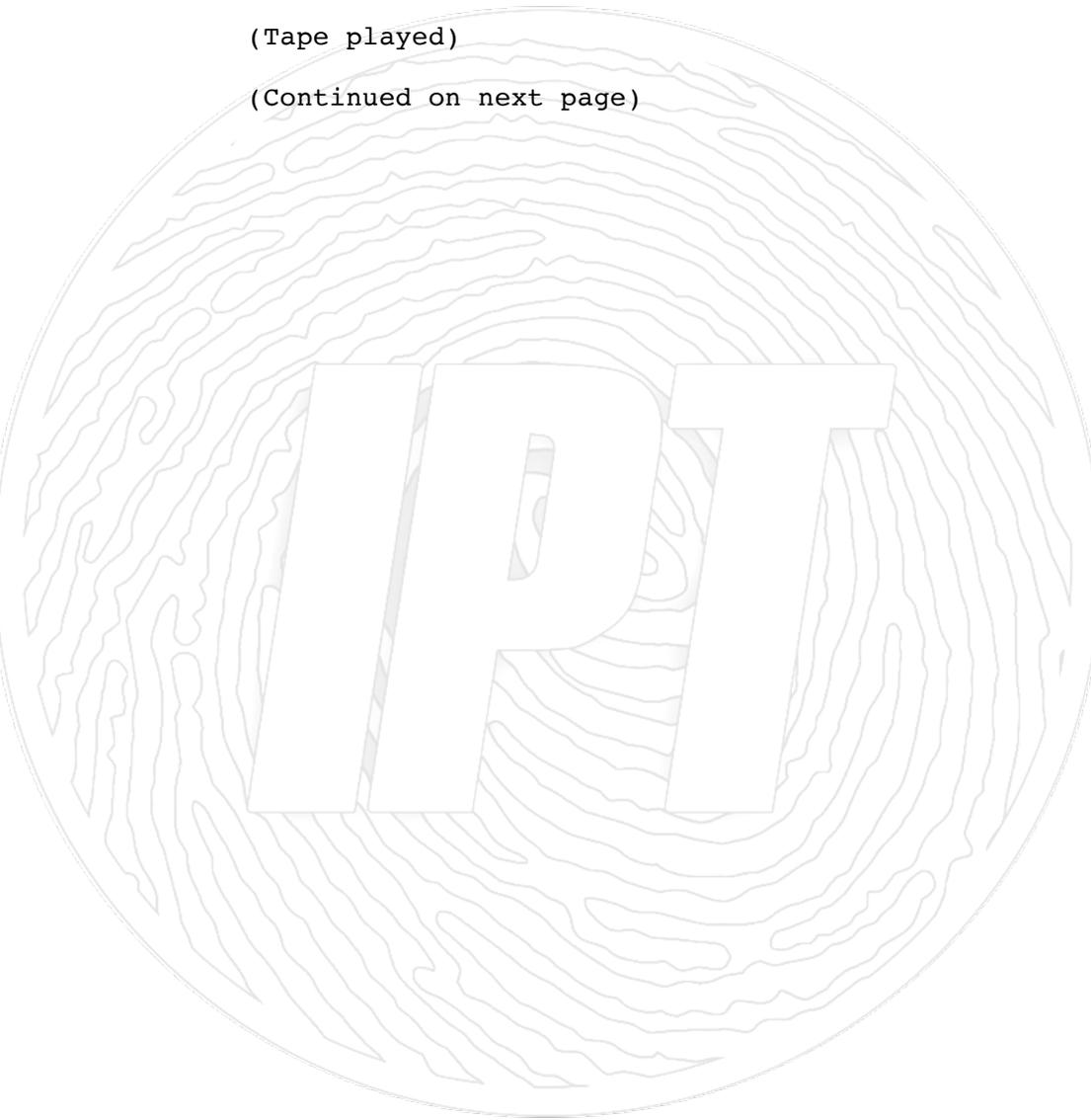
23 Did Emad Salem on the witness stand look like he
24 was shaking in his boots, or did he look defiant, with his
25 chest out?

1 Ladies and gentlemen, if there's anyone who
2 believes that Emad Salem was afraid to be a witness and
3 afraid to testify, it is for your benefit that I am now
4 going to play Nosair Defense Exhibit PPP.

5 (Tape played)

6 (Continued on next page)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 MR. STAVIS: (Continuing) Ladies and gentlemen,
2 that was a conversation that was about money. It wasn't
3 about being afraid to be a witness, it was about how much it
4 would take to be a witness. It was a call that also allowed
5 you to get a personal eyewitness view of care and feeding of
6 an informant by the FBI, and when you consider the tape that
7 you just heard, ask yourselves the following question.
8 Who's manipulating who?

9 The government asked Emad Salem to tape up at
10 Attica, Emad Salem refused to tape. The government said,
11 Mr. Fitzgerald said last Tuesday in his summation, I submit
12 to you that the key with him, as with any witness, is to
13 look at corroboration. There is a lot of corroboration with
14 Emad Salem. First and foremost, there are tapes. Where is
15 the corroboration for Emad Salem when it comes to my client
16 Sayyid Nosair? Where are the tapes when it comes to my
17 client Sayyid Nosair? When given the opportunity to make
18 those tapes, Emad Salem said no. Emad Salem's excuse is, he
19 didn't want to be a witness in 1992. But, you know, he was
20 perfectly willing to be a witness in 1993. So ask
21 yourselves, where are the tapes from Emad Salem in 1993 on?
22 On May 21 he went to visit Sayyid Nosair at Attica prison.
23 Ask yourselves where those tapes are.

24 And when you consider the fact that there is no
25 corroboration by tape, then we have to rely on Emad Salem's

1 memory, and the thing to remember about his memory is, he
2 said over and over again that he had problems remembering
3 things. If he has problems remembering things and that's a
4 lie that he said, then he can remember things. And where
5 are they? Or maybe he can't remember things, and then how
6 does he get on the stand and talk to you about what he
7 remembers?

8 If you look at Count 5 of the indictment, the
9 bombing conspiracy count, you are dependent upon Emad
10 Salem's word without the tapes and without the
11 corroboration.

12 On April 17, a witness came here down from Attica
13 by the name of Hoinski, to give you the corroboration for
14 what went on at Attica prison. What was that corroboration?
15 He said that Sayyid Nosair went to the hospital. And you
16 see what that corroborates, because Emad Salem said, when he
17 discussed escaping with Sayyid Nosair, Sayyid Nosair says
18 Emad, you just missed a great opportunity, I just went to
19 the hospital, we could have escaped, I could have gotten out
20 of here because I was at the hospital.

21 So they come in with the corroboration: He did
22 go to the hospital. Ladies and gentlemen, that's like what
23 Miss Stewart said the other day, where a person takes a pen
24 and says, I killed a bear with this pen. How do you know
25 it? Well, here's the pen. Here's my corroboration.

1 So Officer Hoinski is the corroboration for Emad
2 Salem.

3 Without the tapes that Salem refused to make,
4 there is no corroboration. All you have is Emad Salem's
5 word that even though he had met Sayyid Nosair only one
6 time, he goes up in May of 1992 to Attica, and in a crowded
7 visiting room of 60 to 80 people -- this is Salem's
8 testimony at page 6185 to '86 -- the second time that he met
9 him, Sayyid Nosair, according to Emad Salem, does that
10 display that Emad did on the witness stand, where he pulls
11 out the gun just like Sayyid Nosair did in the visiting room
12 at Attica, in front of 60 to 80 people, and that does not
13 make sense. It doesn't make sense, and if you remember what
14 Dr. Hirsch said about what actually happened in the Marriott
15 ballroom in terms of the wounds and the several inches
16 between the gun barrel, it really does not make sense. You
17 can have that testimony read back to you.

18 The second meeting involves Ali Shinawy. We
19 thought you might like to hear from Ali Shinawy, so we
20 brought him here. And according to what Emad Salem said
21 about Ali Shinawy, this man was a cold-blooded killer. The
22 man was willing to bomb 12 targets all around New York City,
23 to kill innocent people without even giving it a second
24 thought. That was Ali Shinawy. He's a terrorist, and he
25 walked right through the door, got on the witness stand, and

1 he told you what happened at that meeting, and what happened
2 at that meeting was nothing.

3 The government might say to you, well, Ali
4 Shinawy is a liar. And how do we know that? Easy. Emad
5 Salem told us. So if he's a liar, ladies and gentlemen, Ali
6 Shinawy, that means that instead of hiding out someplace,
7 instead of planning his next terrorist operation, Ali
8 Shinawy walked through the door, got up on the witness stand
9 and told you what happened.

10 You would think, you would think that on
11 cross-examination we can get to the truth of it, we could
12 confront Ali Shinawy with all of the terrorist acts that he
13 had committed throughout his life. That's what you would
14 think. Instead what we got was dirty laundry. We found out
15 all about his divorce, what he told the first wife about the
16 second wife, all his dirty laundry, his personal business,
17 that's what we got. Not something about his terrorist
18 involvement, not something to corroborate what Salem said,
19 not something to confirm that the man was the terrorist that
20 Salem portrayed him to be. But we found out all about his
21 divorce.

22 Ladies and gentlemen, when you think of Emad
23 Salem and you analyze Count 5 of the indictment, the bombing
24 conspiracy, and Emad Salem's word without tapes against
25 Sayyid Nosair, I want you to think of the following: Think

1 of Emad Salem whispering in your ear and saying trust me,
2 because that's what you have to do.

3 After the bombing of the World Trade Center, the
4 FBI was in a little bit of a pickle. They didn't know where
5 to go. Salem was out, they had their problems with him.
6 But they had nowhere to go. He may be a liar, but he's our
7 liar. And it was then that the FBI made a packet with the
8 devil. They needed him so bad they took him back. And you
9 heard Detective Louis Napoli in that tape promising Emad
10 Salem anything just to have him, so that the government
11 could have something to show.

12 There is only one contact between Mr. Salem and
13 Sayyid Nosair after the bombing of the World Trade Center,
14 and it occurs on May 21, 1993, at Attica prison.

15 In my opening statement I said to you, "I got a
16 videotape right here, ladies and gentlemen. The equipment
17 was poor, so we don't have the audio portion of it, but we
18 got the video. I'm the one who's going to play it for you.
19 I'm the one. Besides, because it's going to be played to
20 show you that from your prison -- from his prison cell in
21 Attica, he wasn't recruiting an army of terrorists because
22 he couldn't."

23 That tape was marked as a government exhibit,
24 385. But because it was also an exhibit that we promised
25 you in our opening you would see, it is marked Defense

1 Exhibit KK. It's double marked, it's a Joint Exhibit,
2 Government's Exhibit 385 and Defense Exhibit KK.

3 I want to play a portion of that for you, and
4 maybe Mr. Patel can get started with that, and I will
5 narrate as we go along.

6 Before we start, you may remember the testimony
7 that a person in a special housing unit, which is where Mr.
8 Nosair was sent in March of 1993, cannot leave his cell
9 without the escort of two corrections officers. So with
10 that, we are going to start playing the tape.

11 (Tape played)

12 Here is Mr. Nosair with his two escorts in the
13 elevator. He is picked up by one camera in the elevator.

14 Fortunately, the elevators in the courthouse work
15 a little faster than these ones at Attica prison.

16 Now you see Mr. Nosair getting picked up by the
17 second army in the hallway with his two escorts in the
18 special housing unit. He is going to go into a small room.

19 (Continued on next page)

20

21

22

23

24

25

1 He is going to get picked up by another camera as
2 he goes into the small room. Can you back that up for a
3 second, Mr. Patel. Before he gets into the room. There.

4 (Videotape played)

5 On the right side of your screen you see the door
6 and you see a plate glass window that looks out on the
7 visiting room.

8 Now, watch this. This is where the guards remain
9 on the other side of the plate glass window on your upper
10 right side of the screen, and then Sayyid goes inside the
11 small visiting room.

12 OK. You see in the upper right-hand corner there
13 is another inmate waiting for his visitor, and you are going
14 to see that visitor come in in just a minute. That is the
15 door opening with the corrections officer with his arm on
16 the door, and you are going to see another inmate come out
17 and his visitor is waiting on the other end of that table.

18 OK. Thank you, Mr. Patel.

19 This meeting, this May 21, 1993 meeting occurred
20 like that with another inmate and his visitor in the room
21 with the corrections officers on the other side of the plate
22 glass window, and Lieutenant Larry George testified before
23 you on July 6, 1995 at page 13697 that the video cameras in
24 the room were readily visible to anyone in the room.

25 At page 13703, he told you that there are three

1 cameras in that room, only six inmates can fit in that room,
2 and the entire room is 12 feet by 24 feet.

3 Now, after I stated in my opening statement that
4 I would show you this videotape, Mr. Salem testified about
5 what was really going on there, and the interesting part of
6 his testimony is the part where he refers to the gestures
7 that Mr. Nosair was making.

8 Now, Mr. Salem may say, well, Sayyid Nosair felt
9 comfortable in that atmosphere because he could speak
10 Arabic. OK. I guess no one who works for the FBI can speak
11 Arabic. But let's focus in on the gestures that Mr. Salem
12 spoke about.

13 On March 16, Emad Salem at page 5392 of the
14 record discussed a series of photographs taken off of that
15 video. The bottom one is Government Exhibit 385D2, and it
16 shows Sayyid Nosair with his arms outstretched. What did
17 Emad Salem say at page 5392 of the record about this exhibit
18 that I just showed you? He said: "He is point both hands
19 to us in the shape of pistols."

20 While the three cameras are watching and the
21 guards are across the plate glass window, gestures, not
22 talking, but gestures.

23 On page 5393 of the record, Emad Salem discussed
24 Government Exhibit 385D11, that is on the top of the page.

25 What does Emad Salem say at page 3539 about that

1 exhibit? He says: "He was making a gesture with his hand
2 that he's aiming with the rifle."

3 Ladies and gentlemen, some of us make more
4 gestures than others when we speak with our hands, but I
5 submit to you that Emad Salem looked at this video and tried
6 as hard as he could for the corroboration that is otherwise
7 lacking. And he picked up these gestures, all made under
8 the watchful eye of a video camera, and he told you that
9 they're one thing. He twisted them around and he pulled a
10 Whitehurst again, twisting the facts to fit the theory.

11 Ladies and gentlemen, the videotape, Defense KK,
12 is in evidence. It's also marked as Government Exhibit 385.
13 You can watch it. You can draw your own conclusions. You
14 can see if in that video Sayyid Nosair is being the general,
15 ordering the troops what to do.

16 When you consider that, ladies and gentlemen,
17 consider Government Exhibit 326T, which is a consensually
18 monitored tape recording on May 30, one week after this
19 meeting, consider page 50 of that exhibit, consider Siddig
20 Ali talking to Emad Salem about who is aware of what, and
21 consider that there is no mention of Sayyid Nosair a little
22 more than one week after what is now claimed to be this
23 important, important meeting.

24 Ladies and gentlemen, a lot of people visited
25 Sayyid Nosair in prison. You heard testimony that it was

1 announced at the mosque. You heard testimony that Ibrahim
2 El-Gabrowny, since the family took precedence, that Ibrahim
3 El-Gabrowny would organize groups of people or pair people
4 up to go to Attica and to go to other prisons.

5 And the people who visited him did not just
6 include the people who bombed the World Trade Center. They
7 included decent, hard-working Muslim brothers. They
8 included decent people who took their obligations seriously,
9 viewed another Muslim as a brother. And I am not going to
10 repeat for you the list that I read in my opening statement
11 of all those people who visited Sayyid Nosair, but you can
12 look under 505A, Government Exhibit 505A and 506A and see
13 for yourself that when the government says to you, Mahmud
14 Abouhalima took time out, meaning time out from planning to
15 blow up the World Trade Center, to go and visit Sayyid
16 Nosair, that's not unusual because a lot of other people
17 visited him. They viewed it as their obligation. Mustafa
18 Elnore, Mossad Salem, Heshamel Tabouri -- all took time out,
19 and all the other people who are on these lists.

20 Now, I want to get back for one second to the
21 indictment because the indictment alleges that the visits to
22 Sayyid in prison are overt acts in furtherance of the
23 conspiracy in Count One.

24 On page 9 of the indictment there is a
25 subheading. "The jihad organization members maintain

1 contact with Nosair."

2 It says: "E. Between on or about November 18,
3 1990 and December 27, 1991, Ibrahim A. El-Gabrowny visited
4 El Sayyid Nosair at the correctional facility located at
5 Rikers Island, New York on approximately 30 different
6 occasions."

7 Fortunately we have photographs of some of those.
8 I show to you now, ladies and gentlemen of the jury, Nosair
9 Defense Exhibits PP1 and PP2, which were taken during a
10 visit by Ibrahim El-Gabrowny to Sayyid Nosair at Rikers
11 Island. For the record, there are children present at those
12 visits. That is Overt Act E of the indictment, ladies and
13 gentlemen.

14 Overt Act P of the indictment is an Attica
15 meeting by Ibrahim El-Gabrowny to Sayyid Nosair. That's
16 Overt Act P.

17 It has a subheading. "Nosair organizes bombings,
18 assassinations, and his escape."

19 It says: "On or about February 24, 1992, Ibrahim
20 A. El-Gabrowny visited El Sayyid Nosair at the Attica
21 Correctional Facility in New York. That Overt Act P is on
22 page 11 of the indictment. February 24, 1992, Ibrahim
23 El-Gabrowny visiting Sayyid Nosair to organize bombings,
24 assassinations, and his escape.

25 When you look at Government Exhibit 506A, you'll

1 see who else went on that overt act conspiratorial meeting
2 on February 24, 1992. Ibrahim El-Gabrownny, Khadijah A.
3 Nosair and Nura Nosair. Relationship of Khadijah A. Nosair
4 is wife. Relationship of Nura Nosair is daughter. This is
5 Government's Exhibit 506A, and it's Overt Act P of the
6 indictment.

7 Ladies and gentlemen, the government wants to
8 look at only a few of the Muslim brothers who visited Sayyid
9 Nosair in prison. I'll now show you Government's Exhibit
10 W90A-1 through A-3, pictures of Sayyid Nosair and his
11 friends, the rotten apples, Mohammed Salameh, and Nidal
12 Ayyad.

13 Government Exhibit W90A-4 through 7 were taken at
14 the Attica Correctional Facility, and I ask you to take a
15 look at the way Mr. Salameh is dressed because he's dressed
16 differently in two pictures. So these pictures, these
17 smiling pictures were taken at Attica on different
18 occasions.

19 I submit to you, ladies and gentlemen, that those
20 photographs are as innocent as those meetings were. Visits
21 from one Muslim brother to another. That Muslim brother,
22 Mohammed Salameh, had his own agenda, but that agenda was
23 not the agenda of Sayyid Nosair. He was glad to have the
24 company. He met with Mohammed Salameh. He met with others
25 from the El Salaam mosque, and the government is asking you

1 to assume that that meeting was part of a conspiracy to wage
2 a war of urban terrorism.

3 They don't give you proof. They don't give you
4 tapes. They don't give you witnesses. They give you
5 visiting records and they say assume guilt.

6 Ladies and gentlemen, don't assume anything.
7 Require proof. Require proof beyond a reasonable doubt, and
8 require evidence. If you do, you'll find that nothing
9 happened up at Attica.

10 Now, in early March of 1993, Mr. Nosair was moved
11 to the Special Housing Unit at Attica, the most secure unit.
12 And he spoke to Sergeant Allen Herdzik about that, and he
13 was very upset. And he said that this is unfair. He said
14 many things. He said the war will continue. The war will
15 continue. Of course, the government now tells you that
16 Mr. Nosair was telling Sergeant Herdzik the war that was
17 going to continue was the war of urban terrorism.

18 I would like to read to you a portion of my
19 cross-examination of Mr. Herdzik. This is on April 26, page
20 9225:

21 "Q When Mr. Nosair was talking to you -- by
22 the way, would it be fair to say that Mr. Nosair had a
23 discussion with you?

24 "A. Yes, sir.

25 "Q. How long did that discussion last?

1 "A I would say -- I am not sure I can give
2 you a good estimate.

3 "Q. Did it last longer than your direct
4 testimony this morning?

5 "A No, it did not.

6 "Q Were there things in the discussion that
7 you didn't tell us about in your direct testimony this
8 morning?

9 "A. Yes.

10 "Q. Mr. Nosair requested his legal materials
11 from you, isn't that correct?

12 "A He may have.

13 "Q. Mr. Nosair requested a change of clothing
14 from you, isn't that correct?

15 "A. He may have."

16 I am now on page 9226:

17 "Q Mr. Nosair requested his personal items
18 from his cell in the general population from you, isn't that
19 correct?

20 "A. He may have.

21 "Q. Mr. Khuzami asked you some questions
22 during your direct examination about whether or not
23 Mr. Nosair described the war or the battle that he was
24 talking about. Do you recall your testimony on direct
25 examination?

1 "A. Yes, I do.

2 "Q. You said he didn't describe the war to
3 you.

4 "A. No.

5 "Q. You testified that he didn't describe the
6 battle to you?

7 "A. Yes.

8 "Q. He did describe the battle?

9 "A. No, I testified that he did not.

10 "Q. Didn't Mr. Nosair say to you at that time,
11 on March 5, 1993, at 8 o'clock in the morning, that the
12 devil leaders are the unjust court system that has wrongly
13 convicted me when I am innocent?

14 "A. He may have.

15 "Q. Didn't Mr. Nosair say to you at that time,
16 on March 5, 1995, I am at war with the courts of New York
17 State and my being in SHU" -- that's short for Special
18 Housing Unit -- "hampers my access to the law library.

19 "A. I don't recall him making that statement.

20 "Q. Didn't he say to you when you were making
21 the rounds on March 5, 1993 that SHU is not going to stop me
22 and I have just begun to fight the injustice of my
23 incarceration?

24 "A. He may have.

25 "Q. Didn't he say to you when you were making

1 your rounds on March 5, 1993, I will not stop fighting until
2 I am released. It is a war of right against wrong?

3 "A He may have."

4 Ladies and gentlemen, once again we see the
5 twisting of the words. We see them pulling a Whitehurst,
6 twisting the words to fit the theory of the case, the theory
7 of the war of urban terrorism. We see that on Government
8 Exhibit 128T, the taped phone call from the wife Khadijah
9 Nosair to her husband Sayyid. He is as angry at his unjust
10 incarceration in this call, Government's Exhibit 128T, as he
11 was when he spoke to Sergeant Herdzik and had that
12 discussion with him.

13 He is angry at the FBI. And he says: Good. My
14 prayers are answered. The hurricane hit. I have been
15 praying to Allah, you know, by God, Khadijah, what is
16 happening in this country because of my prayers by God. By
17 God, Khadijah, what is happening in this country, of this
18 hurricanes and all of the -- by God is my prayers."

19 And then his wife, Mrs. Nosair, says: God
20 willing.

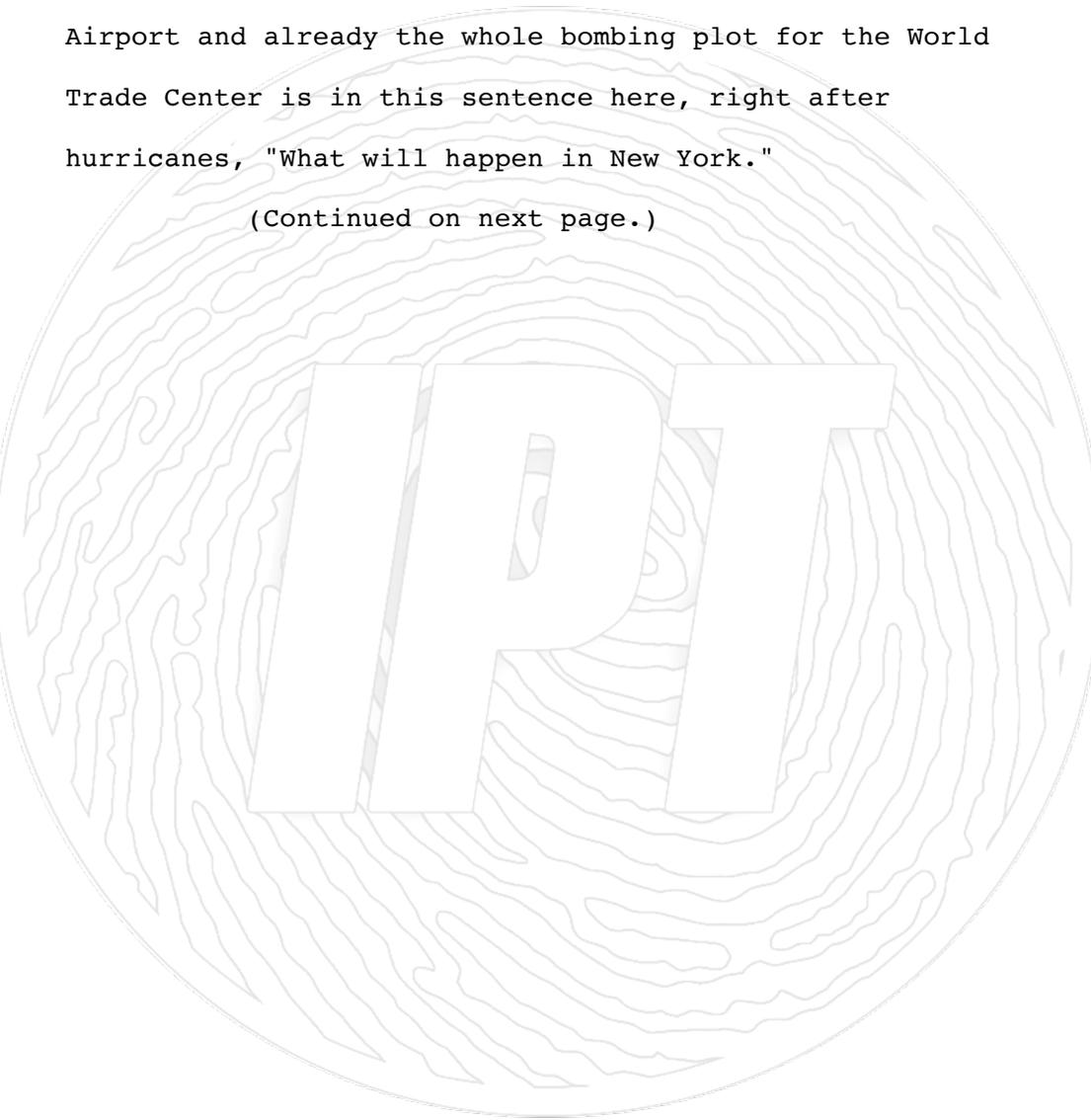
21 And then Sayyid says: And what will happen in
22 New York, God willing, it will be my prayers, too, because
23 of my prayers, so let them fight the believers, my love.

24 What will happen in New York is hurricanes and an
25 angry man talking about hurricanes.

1 Once again, another Whitehurst has been pulled on
2 us. And those angry remarks are used to conform to the
3 theory. Those angry remarks from September 20, 1992,
4 shortly after Ramzi Yousef stepped off a plane at Kennedy
5 Airport and already the whole bombing plot for the World
6 Trade Center is in this sentence here, right after
7 hurricanes, "What will happen in New York."

8 (Continued on next page.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



IPT

1 MR. STAVIS: (Continuing) That's pulling another
2 Whitehurst, ladies and gentlemen.

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

7 (Recess)

8 (Jury not present)

9 THE COURT: Before we begin, Mr. Ricco, word has
10 it that regardless how much time we have left, you want to
11 start this afternoon.

12 MR. RICCO: I would like to.

13 THE COURT: You haven't heard what I have heard.
14 Do you want to start this afternoon?

15 MR. RICCO: Yes, sir.

16 THE COURT: OK, that's a waiver. Thank you.

17 (Pause)

18 MR. RICCO: Your Honor, can I see you at the side
19 bar?

20 THE COURT: Sure.

21 (At the side bar)

22 MR. RICCO: Does your Honor have a preference?

23 THE COURT: I don't have a preference. What I
24 was referring to was the fact that you haven't sat through
25 this, I have, the jury has. If you are willing,

1 notwithstanding the anesthesia they have been listening to
2 all day and start, that is fine by me. If you would rather
3 wait until the morning that is fine by me, too. I would not
4 require any lawyer to start a summation after this. That is
5 my point.

6 THE COURT: Do you want to start?

7 MR. RICCO: Can I go off the record for a second,
8 Judge?

9 THE COURT: No.

10 MR. RICCO: Judge, I will do a few minutes. I
11 will start.

12 THE COURT: Fine.

13 (In open court; jury present)

14 THE COURT: Mr. Stavis.

15 MR. STAVIS: Thank you, your Honor. Ladies and
16 gentlemen, Michael Urban testified two times before you. He
17 testified on July 6, 1995, and he testified on August 29 of
18 1995. What he testified to was the scrutiny that Mr. Nosair
19 was under at Attica prison. What he testified to was that
20 Mr. Nosair was a central monitoring case.

21 Mr. Urban became aware of Mr. Nosair as soon as
22 he entered the prison system. Mr. Urban told you at page
23 13677 of the record that Mr. Nosair's prison cell was
24 searched by Department of Correctional Services on February
25 10, '92, March 12, '92, July 30, '92, September 6, '92,

1 December 25, '92, January 10, '93, January 20, '93, January
2 26, '93. He testified on that same page that Mr. Nosair was
3 under a mail watch. Mail was copied and forwarded to
4 Mr. Urban. He testified on page 13681 that he read Mr.
5 Nosair's mail.

6 Lieutenant Larry George testified on the same day
7 that in the special housing unit Mr. Nosair -- page 13695 --
8 was only allowed out one hour per day, had limited property,
9 had to use a special visiting room, and could only use the
10 phone for family emergencies. He told you at page 13697
11 that Mr. Nosair would be searched prior to every visit and
12 the video cameras were readily visible to anyone who was
13 visiting.

14 Mr. Urban told you that before Mr. Nosair went to
15 the special housing unit, his telephone calls were tape
16 recorded, and the way they were tape recorded was that a
17 corrections officer had to actually see Mr. Nosair outside
18 of his cell and alert the people to start the taping
19 process.

20 Mr. Urban told you, page 13663 of the record,
21 that the Department of Correctional Services people were not
22 the only ones who had Mr. Nosair under such tight scrutiny
23 but that the FBI in June '92, Special Agent Steve Veyera,
24 Detective Louis Napoli, called to ask that tapes be made of
25 Mr. Nosair at Attica. And you have heard two of those

1 tapes, conversation between Mr. Nosair and his wife, and a
2 conversation between Mr. Nosair, Mr. El-Gabrownny, and
3 Mr. Salem.

4 Mr. Urban told you at page 13669 of the record
5 that he sent to Agent Steve Veyera the tape recordings of
6 those telephone calls, as well as mail from Mr. Nosair. He
7 testified on page 13671, Mr. Urban, that he sent Steve
8 Veyera the visitors log for Mr. Nosair.

9 He testified just a week or two ago, at page
10 18108 of the record that on March 5, 1993, another FBI agent
11 from a different FBI office -- the office was the Albany
12 office, Special Agent Frank J. Woods -- received from him,
13 Michael Urban, copies of the tapes and visiting logs.

14 And in addition to the routine cell searches that
15 I have just told you, you might remember the very last
16 question that I asked in this entire trial when I said, can
17 I just make it my last question, and I did. It was about
18 the FBI's search of Mr. Nosair's prison cell on March 5 of
19 1993.

20 With all this scrutiny, ladies and gentlemen,
21 scrutiny of, I would submit to you, every contact that a
22 person could have with the outside world when they are in
23 prison, your visitors, your mail, your telephone calls,
24 everything scrutinized, and after all that scrutiny, Mr.
25 Nosair, from the level of the scrutiny and the mail being

1 returned to him and the visible video cameras in the
2 visiting room, knew that he was living inside a goldfish
3 bowl. And with all that scrutiny, with his every move being
4 monitored, the government is alleging that he was the
5 general in the war of urban terrorism. He was not, ladies
6 and gentlemen, nor could he have been, with all the
7 scrutiny, with all the surveillance that he had.

8 In his closing remarks, Mr. Fitzgerald spoke
9 about the freedom from fear, and how the freedom from fear
10 had been taken away from him. Ladies and gentlemen, fear
11 hangs like a pall all over this courtroom. It has been
12 here, it will remain here. Mr. Fitzgerald just gave voice
13 to what we all know.

14 With that I would challenge you, ladies and
15 gentlemen, challenge each and every one of you, challenge
16 you to do your jobs without fear, challenge you to analyze
17 the evidence, all of the evidence, the lack of evidence, and
18 the quality of the evidence. Analyze the giant seditious
19 conspiracy. Analyze the two sheiks, Sheik Azzam over here
20 and his jihad organization. Analyze the evidence about the
21 jihad organization to which Mr. Nosair belonged, the Sheik
22 Azzam Alkifah organization. Analyze the role of Ali
23 Mohammed in this case. Analyze the Irving Franklin medical
24 record, Exhibit DDD, and the fact that the gunman was left
25 handed. Analyze the video that we showed you here, the

1 video that shows Mr. Nosair walking, turning to walk out the
2 back door at the Marriott ballroom on November 5 of 1990,
3 moments before the murder of Rabbi Kahane. Analyze all the
4 elements, analyze all the evidence.

5 Ladies and gentlemen, I want to leave you and I
6 want you to think about something. I don't want wish to
7 quote any great statesman or any great person. I wish to
8 quote my father, who said live life according to your
9 conscience. Do what's right. That's what he said. You can
10 succumb to fear. You can do that. You can ignore all that
11 evidence. And if you succumb to fear, Sayyid Nosair will
12 have to live with those consequences, ladies and gentlemen.
13 But so will each and every one of you.

14 So I leave you with the thought. Live life
15 according to your conscience. Analyze and stick to the
16 evidence in this case. Do not succumb to fear, and send
17 Sayyid Nosair home.

18 THE COURT: Thank you, Mr. Stavis.

19 Ladies and gentlemen, you let now here at least
20 the beginning of a summation on behalf of Mr. El-Gabrowny
21 from Mr. Ricco.

22 MR. RICCO: Ladies and gentlemen of the jury, I
23 am very much aware that it is late in the afternoon and that
24 you are tired. I am tired. There are a few things I wanted
25 to say to you today, and so forgive me for imposing myself

1 on you this late.

2 The first thing I want to tell you is that my
3 summation is not going to take more than about two hours. I
4 am from a school of thought that if you have something to
5 say, say it and be done with it.

6 I am in a position where I think I can say that.
7 Some of my colleagues aren't. They have had to cover a heck
8 of a lot of ground and I haven't been in that position.

9 But it was very important to me to at least start
10 today --

11 THE COURT: Mr. Ricco, if you would try to speak
12 up and into the microphone because it is difficult for the
13 translators to hear. Thank you.

14 MR. RICCO: I am sorry.

15 -- at least start on where it is we are going to
16 go with this, what does it mean.

17 I like quoting great statesmen. I think those
18 quotes have their place and this is one of the forums where
19 they apply. I am going to start with a quote from Dr. King.
20 Dr. King said to us that the royal arc of truth is long, it
21 stretches out, but that ultimately that arc bends towards
22 the truth.

23 This has been a long trial. We have heard from
24 Detective Vail, we sat through the reading of CM's. We have
25 listened and not listened, nodded in and out. We have heard

1 agents, Salem too many times. And that arc was getting
2 very, very long in this case. But near the end of the case
3 the arc started, in my opinion, bending towards the truth.
4 And that arc, as it went from that witness stand and spread
5 out across this courtroom, started near the end of this
6 trial bending towards the truth about Mr. El-Gabrownny.

7 It is not going to take me a long time to point
8 out exactly what it is I am talking about.

9 Mr. El-Gabrownny is in this courtroom -- his
10 family is present -- charged with serious crimes against our
11 country. He also has a few charges kind of thrown in with
12 him.

13 Some people stopped listening in this case a long
14 time ago, and for those people I am going to say wake up.
15 You took a oath. It should mean something. He is here
16 because of crimes and his accuser is Mr. Emad Salem. It's
17 great, you could sit up here as Mr. Fitzgerald said and,
18 quote unquote, dump on Emad Salem. It's hard to dump on a
19 person who dumps on himself. But that is his accuser.

20 There are some subtle points about Mr. Salem that
21 should be brought to your attention. You don't have to go
22 through the whole thing. You all saw him, you all know what
23 he is all about, and if you don't, it doesn't make sense to
24 talk much about him.

25 But I think the most important thing that

1 Mr. Salem told you as jurors is that he walked into a
2 criminal court right down the street from here, and
3 testified to another jury in another criminal case, and he
4 perjured himself. As jurors, that should be something to
5 make you say, hm, wait a minute. Here's a man who says that
6 he was in this situation before. He stuck his big gut out,
7 put his hand up in the air and looked over at 12 people not
8 very different from yourselves, and perjured himself, with
9 all of the consequences that go along with a criminal trial.
10 Why is that important to you? Because the most important
11 thing should be that a person shouldn't lie to you, a jury.
12 And when you are around a person and you find out that they
13 have done that before, find out why and check it out.

14 He told us that the reason that he did that was
15 for money. The government tried to downplay that as much as
16 they wanted to. And he lied about his past. That was on
17 direct. But on cross you found that he lied to the jury,
18 saying that he suffered from amnesia, that he lied to the
19 doctors about his injuries. It was some kind of assault
20 case and he was trying to make himself sympathetic.

21 He is a professional con man that was doing to
22 that jury what a con man does best, and that is convince
23 them that what he was saying was reliable and responsible,
24 something that they could convict an individual in a
25 criminal court on.

1 You could call that dumping on Emad Salem if you
2 want to. It's easy to say when you're sitting in this seat.
3 But when you sitting over here where Mr. El-Gabrowny is
4 sitting, that's not called dumping, that's called thinking.

5 He is the accuser, and what does he do? The
6 government said in its opening, if Emad Salem doesn't have
7 corroboration for his testimony, reject it. That's what Mr.
8 Khuzami said. Mr. Fitzgerald said the same thing. He said
9 corroborate. There is no corroboration of anything that Mr.
10 Ibrahim said about Mr. El-Gabrowny. In fact the evidence in
11 this case shows just the opposite.

12 What the government has done, it has utilized a
13 witness -- let me back up for a second.

14 Con men are good at what they do. Some of them
15 practice at their trade. They sit at home watching TV with
16 their fingers stuck in lie detector tests. That's what
17 Mr. Salem says he did. That shouldn't strike the people on
18 the jury as being strange. Why? Because that's something
19 that we all do, isn't it? Don't we all sit around our homes
20 watching TV with our fingers stuck in a lie detector test?
21 For what purpose does a person practice doing it? I can't
22 think of one. I can't think of one legal, legitimate,
23 wholesome or honest reason why a person would do that.

24 But this is who he says he is, and what he does,
25 what the government has done with him, the professional, is

1 that what makes a lie acceptable is that inside the lie is a
2 little piece of the truth. The words get mixed up, so he
3 takes something that sounds attractive and sexy to you, and
4 then he puts a spin on it, and the spin is the lie. And
5 while you're trying to figure out what's happening, you're
6 concentrating on a little bit of proof but you get lost in a
7 lie. And a con man always has to be slowed down. If not,
8 he'll have your wallet and everything else. Slow him down,
9 go through the story, and make him go through it again, and
10 eventually you'll find it's been revealed.

11 He has infected the government with the same
12 thing. You saw that Emad Salem has ruined the careers of
13 some young FBI agents through his trickery. They're still
14 working for the Bureau, we'll see how long. But he is a
15 man, like most con men, who ruins everybody that he comes in
16 touch with. Barbara Rogers was great for him until he got
17 his citizenship, and then she's nothing. Dr. Mahdi was
18 great for him when he wanted to get into a position of
19 authority, but later he says he's just a broken down man
20 with a fax machine. That's what a con man does. We have a
21 different name for it. He uses people up. He used that
22 first jury up and he's working on the second.

23 What he has done also is, he has affected the way
24 in which this case has been presented, and what I am going
25 to show to you -- tomorrow -- is how Mr. Fitzgerald himself

1 has got into playing with words, so that he takes a piece of
2 a word here and connects it to another word, and then that
3 means that Mr. El-Gabrowny is guilty. What I'm talking
4 about doing here is simple. I'm not just talking about
5 talking and talking and talking. We're going to go to the
6 specifics and make it relate directly to a piece of proof
7 that the government claims is consistent with guilt. And
8 I'm going to show you how it is not so and how the
9 government has itself gotten taken under the spell of
10 Mr. Emad Salem.

11 So with the court's permission and the jury's
12 looks, I would like to break now.

13 THE COURT: Ladies and gentlemen, we are going to
14 break for the day. Please leave your notes and other
15 materials behind. Please don't discuss the case, and we
16 will resume tomorrow.

17 Good night.

18 (Jury excused)

19 THE COURT: Before we break, I would like to know
20 whether there is any lawyer who remains to sum up here who
21 believes that he or she has misrepresented him or herself on
22 the same scale that Mr. Stavis did as to the length of the
23 summation. Is there?

24 MR. JACOBS: I forgot what I said.

25 THE COURT: You said a day.

1 MR. JACOBS: No, I will stay there.

2 MS. AMSTERDAM: I said less than a day and more
3 than half and I will be three quarters.

4 THE COURT: You said three quarters, I believe,
5 and that is what you have.

6 Anybody else want to join the bidding? If I have
7 to start making adjustments in the schedule, somebody is
8 going to feel pain.

9 Mr. Bernstein.

10 MR. BERNSTEIN: Yes, Judge. Through Ms. Schwartz
11 I indicated to the court that it would be my preference and
12 my request not to start late tomorrow afternoon. It is my
13 anticipation given the estimates that what we have pretty
14 much is two full summations on the third day of the week and
15 we are looking at probably late afternoon, and I think it
16 would be unkind to my client if the jury had to face a third
17 one late in the courtroom --

18 THE COURT: There has been a lot of unkindness
19 here. There may have to be some tomorrow. I am not going
20 to promise it to you, and if I call on you to sum up I will
21 call on you to sum up, and I expect you to sum up.

22 MR. BERNSTEIN: Can I see you at side bar?

23 THE COURT: If you want to see me in the robing
24 room, I will see you in the robing room.

25 MR. WASSERMAN: I would join Mr. Bernstein in the

1 robing room.

2 THE COURT: Any supplicants who want to join me
3 in the robing room are welcome to do so.

4 (In the robing room)

5 THE COURT: Sir.

6 MR. BERNSTEIN: If you would take my application
7 first, Judge, I have not slept well the last couple of
8 nights, frankly, working on summations. My voice is half
9 gone. It seems to me that given the schedule as it is set
10 up vis-a-vis Mr. Ricco, Mr. Wasserman's estimate, that at
11 best the jury will get me late in the afternoon and it will
12 be the third day of this week. I will be extremely
13 exhausted. My summation is probably in the hour, hour and a
14 half range, and I just don't see why, given an eight-month
15 trial, I can't have the benefit of the jury hearing me in
16 the morning live, not after they have sat through two days
17 of one summation and two summations that will follow in that
18 day. The stakes are severe and I think maybe if anything --
19 it may not come to pass that there will be an issue because
20 of timing but if it does, we are talking about a half hour
21 to an hour.

22 THE COURT: If anybody moves the clock to deal
23 with that issue, they will get dealt with very unkindly.

24 I am going to tell you this. If I have to make
25 an adjustment in my schedule that requires that I charge any

1 later than Thursday of next week, I am telling you right now
2 that I am going to permit the government -- I am going to go
3 over the four days, I am going to permit the government to
4 give its rebuttal summation on Wednesday, and I will charge
5 on Thursday. If you want to precipitate that, you want to
6 have a hand in it, Stavis had a big hand in it today. Do
7 you want to do it?

8 MR. BERNSTEIN: Judge, I don't want to do it but
9 I don't want to hurt my client either. I don't control the
10 back end of what I guess are five summations to follow, or
11 six.

12 THE COURT: The fact is that somebody has to sum
13 up in the afternoon or we will stop giving summations in the
14 afternoon because people are getting delicate. This has
15 been a very long trial and it has a beginning, middle and an
16 end.

17 MR. BERNSTEIN: Judge, I think Mr. Ricco will
18 take us to 11:00 or noon, and Mr. Wasserman, to the best of
19 my recollection had told the court that he is somewhere in
20 the half day range, and that basically blows out tomorrow or
21 puts me up at 4:30 in the afternoon.

22 THE COURT: We will see where we are tomorrow.

23 MR. BERNSTEIN: Very well.

24 THE COURT: I am telling you that I am not
25 dishing out any more mercy in this case to anybody,

1 particularly lawyers.

2 MR. RICCO: Your Honor, I would just say, not in
3 an adversarial or antagonistic way, I was also greatly
4 inconvenienced today.

5 THE COURT: I don't want to start compiling a
6 list of who got inconvenienced by what went on in the
7 courtroom today.

8 MR. RICCO: I am not making an issue of it.

9 THE COURT: Neither am I. I am laying all my
10 cards on the table. You now know what they are and you can
11 go tell your colleagues about it.

12 MR. RICCO: I just want you to know I was ready
13 to go.

14 THE COURT: Nobody is suggesting that you
15 weren't. In fact, I don't understand what you are doing
16 here at all.

17 MR. RICCO: I am a lawyer, I am in this case, you
18 are talking about scheduling, so I am here.

19 THE COURT: You've got your summation. You
20 started when you wanted to start and you will end when you
21 want to end.

22 MR. RICCO: I don't think that is my position at
23 all. I am not a person who is about wants, Judge. I was
24 prepared to go today. I was a little put off that
25 Mr. Stavis went as late as he did. I was prepared to get

1 started. Arrangements were made for Mr. El-Gabrownny's
2 family to be here.

3 THE COURT: I didn't notice anything happening in
4 the courtroom.

5 MR. RICCO: It may not have happened in the
6 courtroom.

7 THE COURT: Not anything that I have been able to
8 perceive.

9 MR. RICCO: He is his own man.

10 THE COURT: I'll say. We are going to get it
11 done in as civilized a fashion as I can get it done, bearing
12 in mind that the main group I am worried about are the
13 people in there.

14 MR. BERNSTEIN: I understand that, Judge.

15 THE COURT: They are the people I am going to be
16 kindest to. They are the only people I am in the mood to be
17 kind to and they are the only people I am worried about. I
18 am here to serve their interests, and the record should
19 reflect that I am pointing across the hall to the jury room.

20 Let's call it a day, folks.

21 (Proceedings adjourned until 9:30 a.m., Tuesday,
22 September 13, 1995)

23

24

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

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

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

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

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

S5 93 Cr. 181 (MBM)

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

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

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

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

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

Defendants.

-----x

September 13, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

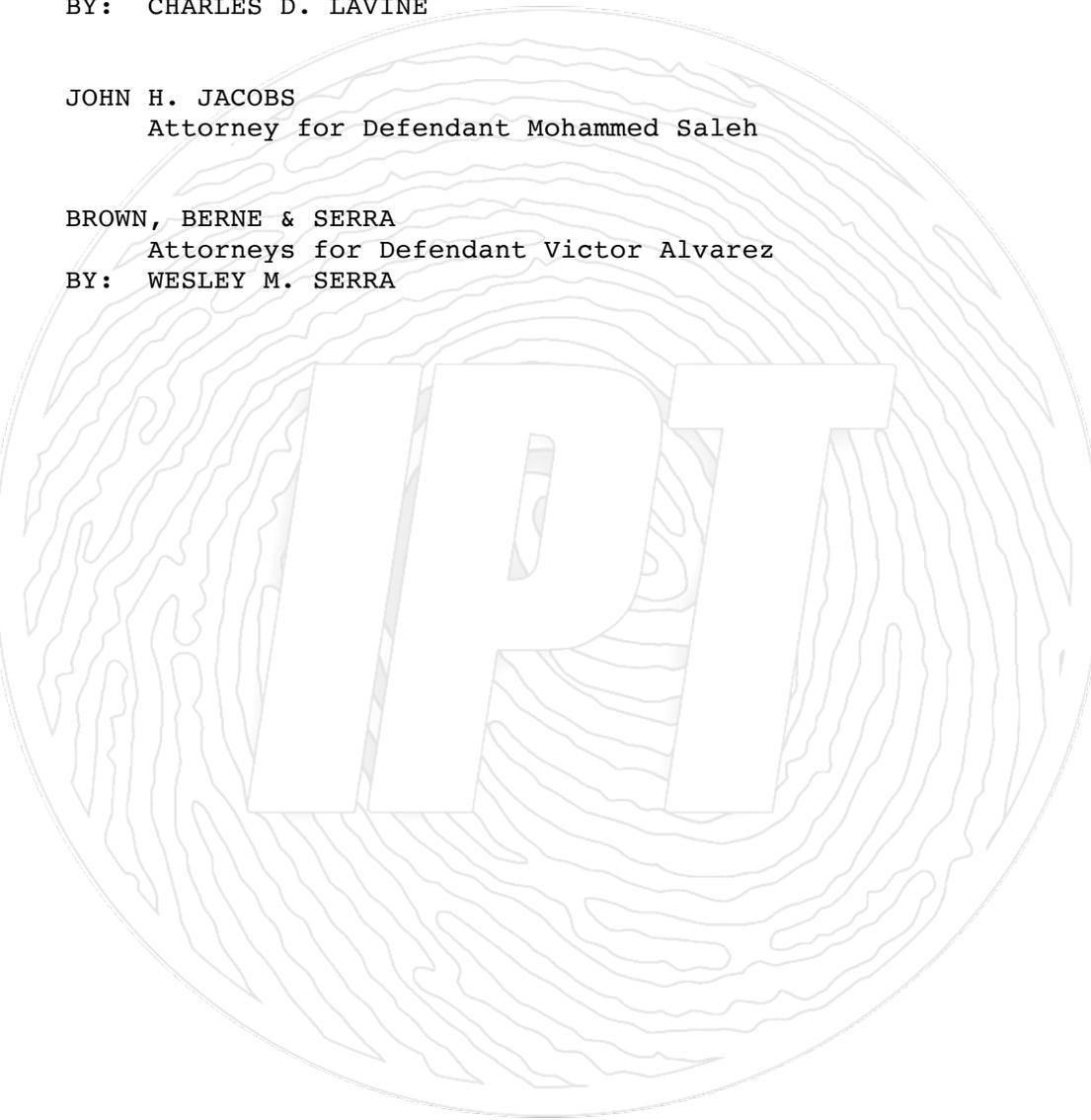
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning. Are you set to go, Mr.
4 Ricco?

5 MR. RICCO: Yes, your Honor.

6 MR. BERNSTEIN: Judge, I may have Mr. Warshaw to
7 step in during Mr. Ricco's summation while I work on my
8 summation.

9 THE COURT: Is that satisfactory, Mr. Abdelgani?

10 DEFENDANT AMIR ABDELGANI: Yes.

11 MR. BERNSTEIN: No offense to Mr. Ricco.

12 MS. STEWART: Also also no offense to Mr. Ricco,
13 I am going to sit in for Mr. Wasserman, Judge.

14 THE COURT: Is that satisfactory with you,
15 Mr. Hampton-El?

16 DEFENDANT HAMPTON-EL: Yes.

17 MS. AMSTERDAM: No offense to Mr. Ricco, I am
18 going to stay.

19 (Jury present)

20 THE COURT: Good morning, ladies and gentlemen.

21 JURORS: Good morning, your Honor.

22 THE COURT: Mr. Ricco, are you ready to continue?

23 MR. RICCO: Yes, thank you, your Honor. Good
24 morning.

25 JURORS: Good morning.

1 MR. RICCO: When you're in a case like this, you
2 have to think concept. If you don't, you get lost. There
3 is so much evidence, there were so many witnesses, there
4 were so many points to be made, if you don't think concept,
5 you get lost. That's how I think.

6 Conceptually, what has the government said Mr.
7 El-Gabrowny has done? And who has said it within that
8 framework? They said that Mr. El-Gabrowny conspired to do
9 violence against the policies of the United States,
10 conspired to bomb, and that he assaulted officers and that
11 he carried fraudulent documents. In order to prove that,
12 the government put on witnesses, and many of the witnesses
13 in this case had nothing to do with Mr. El-Gabrowny
14 whatsoever.

15 Some of the witnesses, I crossed them for a
16 reason, because conceptually, asking those witnesses
17 questions gave you a little insight into what was going on
18 in that time period that the government claims Mr.
19 El-Gabrowny was conspiring to bomb and to be engaged in
20 sedition.

21 You notice that I also asked questions about the
22 World Trade Center, though Mr. El-Gabrowny didn't have
23 anything to do with the World Trade Center. I asked
24 questions about it so that you would be confident in your
25 minds that the people that participated --

1 MR. McCARTHY: Objection.

2 THE COURT: That is argument about the evidence.

3 He can make those arguments and you can make yours.

4 I will hear you at the side.

5 (At the side bar)

6 MR. McCARTHY: My objection isn't at all to the
7 area. It is that I don't think Mr. Ricco should be arguing
8 to the jury about why he took this tack and why he took that
9 tack. It is inappropriate argument.

10 THE COURT: It is his way of explaining what they
11 are supposed to do by way of strategy.

12 MR. McCARTHY: I am sorry to bring you up.

13 THE COURT: Now that we are up here, it is OK to
14 do that as a line of argument. On the other hand, what it
15 risks is offering your personal opinions.

16 MR. RICCO: Which I won't. Judge, I have been
17 doing this for 15 years.

18 THE COURT: People get into bad habits in 15
19 years.

20 MR. RICCO: I am not one of them.

21 THE COURT: Whether you are or aren't will depend
22 on this summation, not on the last 15 years.

23 MR. RICCO: I understand that, Judge.

24 THE COURT: Thanks.

25 (In open court)

1 MR. RICCO: See, what's important here is what
2 you the jurors think about this evidence, not what we
3 lawyers think about the evidence or anybody else in this
4 courtroom. It is you who have to decide what this case is
5 and isn't, and I want you to be confident as to what your
6 decision is, and that is why I asked those questions about
7 the World Trade Center, so that you would know how they did
8 it, how they went about doing it, and it would show you that
9 Mr. El-Gabrowny had nothing to do with it. That is why I
10 asked questions about it. But let's get right to Mr.
11 El-Gabrowny.

12 Emad Salem is the main accuser, and everything in
13 this case relates to March 4, 1993, the day Mr. El-Gabrowny
14 was arrested, because it's like a doorway that you can walk
15 into to understand all the evidence, what took place before
16 then and what would take place after that.

17 You have to understand what's going on in March
18 of 1993. In March of 1993, the World Trade Center, great
19 tragedy had happened. The Bureau was looking for
20 information about --

21 THE COURT: Oddly, Mr. Ricco, for some reason
22 your voice isn't being picked up. Point it more in the
23 direction of the microphone, not closer.

24 MR. RICCO: OK.

25 The Bureau was looking for information. Whether

1 Emad gets in touch with them or they get in touch with him
2 is irrelevant. We do know that they get together. What the
3 Bureau wants to find out from this guy is, does he know
4 anything. Naturally. But Mr. Salem has a different agenda.
5 He is looking at the World Trade Center like most people
6 like him look at tragedy. He wants to take advantage of it.
7 He is looking to profit off of it. So when he gets together
8 with the agents, he has some things on his mind. He wants
9 to get back on the payroll because at this point he has been
10 out of work about six months. He don't have no money. He
11 is living on the Upper West Side. He don't have a job, he's
12 got to get paid. He has his rent to pay and everything
13 else.

14 When he gets together with the agents, what he
15 tells you he is going to do is, he says that he is going to
16 tape his conversations with the agents to do a couple of
17 things. He says he is going to tape his conversations with
18 the agents, number one, to prove and have proof that he had
19 given them information in the past that led to the World
20 Trade bombing. That was his testimony.

21 Think about it. Why does he have to do that?
22 Sitting home at his house is a whole box full of tapes where
23 he has them on tape giving information before. He told that
24 to you. It's a falsehood, it's a coverup story. It's an
25 explanation that he has to give to you to explain the

1 unexplainable. The unexplainable is that he is taping the
2 federal agents. He says that they asked me to come back, I
3 didn't ask them. When they finally get together in the
4 car -- that's Emad, Anticev and Napoli -- Emad has already
5 talked to Nancy Floyd, she has already pumped him with a
6 little information, he's good to go.

7 Let's go to the car. In the car, the car door --
8 I am going to tape 43 -- the car door opens and closes.
9 Then they start talking about Mr. El-Gabrowny and Napoli
10 says: But, but uh, El-Gabrowny.

11 Emad says: Yes.

12 Napoli says: You know, ah, the idiot, he took a
13 swing at one of the cops, that's why he got arrested.

14 Let me stop right here. Nobody is standing in
15 front of you and saying because Napoli said that, that is
16 why Mr. El-Gabrowny got arrested. It is for you to
17 determine what Mr. El-Gabrowny did or didn't. But I
18 highlighted this statement because Napoli knows something
19 about El-Gabrowny. He has been involved with El-Gabrowny
20 since 1990. What he says about Mr. El-Gabrowny is
21 corroborated by other witnesses who testified in this case
22 and other people's impressions of Mr. El-Gabrowny. So what
23 he says here is, the idiot, he took a swing at one of the
24 cops, that's why he got arrested.

25 Emad says: Oh, that's a different story.

1 Napoli says: But, no.

2 Anticev says: Well, thank God he did, because
3 there was -- and he is cut off in the middle of the sentence
4 by Emad.

5 Mind you, Emad says when he goes to the car he
6 has a purpose for taping, and he wants to establish that.
7 He wants to establish that he has been providing information
8 that led to the World Trade bombing. That's his testimony.

9 He cuts off Napoli and says: That's what you
10 looking for since long time ago.

11 No, Napoli says. No, no, no, because we found he
12 had five passports --

13 He cuts him off and he says: I know that.
14 Heard it on TV.

15 Napoli says: On him.

16 Emad says: That's what I told you guys, they
17 preparing to break, you remember now, to break Sayyid Nosair
18 out of jail, and he'll be out of the country.

19 This is the guy who says they asked him to come
20 back. Let me, let me stay in, to know where he's going.

21 And we start later with Mohammed Seed, to plan
22 that we will go and rent apartment and perhaps work on
23 something in jail. But all of these things, you didn't
24 think that it's serious. You didn't think.

25 And Napoli says: No, no, we knew it was serious.

1 And Anticev says: We knew it was serious.

2 They're playing with him because they fired him.

3 That's how serious they thought he was.

4 And Emad says: Oh yeah? Well, they were pushing
5 me and they kept pushing hard, too hard to bring me back
6 before the bomb came off.

7 He says that somebody was pushing him to get
8 involved before the bomb went off. Let's see who he's
9 talking about.

10 Because they know, they know they need some
11 technical support, and I kept on saying I am busy and I have
12 a lack of business. I am busy with Sayyid's case and this,
13 and I soon became to a point where they became mad at me.
14 So I, Sayyid Nosair called me at home.

15 Now, we got the tape of that call and we're going
16 to go into it in a minute. And let's see if what he says
17 about that tape is on in a call.

18 Anticev says: When, a month ago?

19 And Emad says: Yes, a month ago, and I informed,
20 I reported to you, I called, I told you Nosair called me
21 from jail.

22 Why is he saying that? He is saying to the
23 agents that I told called you and told you that Nosair
24 called me from jail because he is trying to make that
25 connection. He is trying to make a case for the World Trade

1 Center and he wants to make the connection that he gave it
2 to them, he gave it to them before it happened and they knew
3 it. This guy is crafty, and if you pay attention to his
4 words you bust him. If you just listen to them without
5 focusing in, you missed it.

6 But he says: I reported that call to you. I
7 called, I told you so, Nosair called me in jail, and he want
8 me to sign a paper. Now, you remember that. He tried to
9 calm me down, that I will have a lawyer for you, just make
10 up an official, ah, ah, like a complaint against the FBI
11 and.

12 Remember the questions I asked Mr. Hafiz, did
13 anybody in that conversation ask somebody were they going to
14 get him a lawyer? No. How was the conversation, Mr. Hafiz?
15 Was anybody angry? No. Did anybody appear to be raising
16 their voice? No.

17 Why did I ask Mr. Hafiz those questions? Because
18 the conversation is in Arabic, and you can listen to the
19 Arabic till you blue in your face and you don't know whether
20 they are talking about selling cars or hailing a taxicab.
21 So I asked Mr. Hafiz about it, because this line was coming.

22 And Anticev says: Right.

23 And Emad says: They have no right to take you,
24 they have no right, and all of this B.S. So all of that was
25 on the edge of pushing with me.

1 So what he's claiming in this conversation is
2 that Nosair, who called him at home, which never happened,
3 was pushing him to come back into the case to give technical
4 support for bombing. We will get to the conversation in a
5 minute.

6 And then Emad says right, then, the time of the
7 arrest Mohammed El-Gabrowny was standing downstairs and he
8 said arrest. He slipped away so he don't be picked up.

9 Why is he talking about Mohammed El-Gabrowny?
10 The World Trade Center goes off. It's the best thing going
11 for him and he don't have any information that he can sell.
12 He's got one, that's Mr. El-Gabrowny, and he is now creating
13 other people to talk about so that he can get back on the
14 payroll.

15 Detective Corrigan testified about surveillance
16 in front of 57 Prospect Park. He told you and Agent Burke
17 told you there was at least 12 agents posted in front of the
18 building. He is down the block looking up the block. They
19 got bomb trucks, all kinds of stuff out there. Did Emad
20 tell you that Mohammed El-Gabrowny was standing in front of
21 the building and slipped off?

22 Napoli says: We weren't going after, we weren't
23 going to lock El-Gabrowny up. We just, we just had a search
24 warrant for his house. But the idiot took a punch at the
25 cop.

1 And Emad says: Yeah.

2 And Napoli says: And the others, that's what he
3 got arrested for -- meaning the bombing. And that was a
4 good thing because on him had all the passports, the jerk.

5 He's not saying the jerk because Mr. El-Gabrownny
6 is stupid, he is saying the guy is a jerk for having the
7 passports on him, if he hadn't, he would never have been
8 arrested.

9 Anticev said we probably would have searched him
10 anyway. I am not sure what that means but it doesn't sound
11 good, and in cop vernacular, that means we search him, we
12 find something and we make the story up later. But this
13 case is not about that with anyone here.

14 Napoli says what are you going to do now, Emad?
15 What do you want to do? Tell us what you want to do. The
16 stage is open for Emad to now tell them what he wants. So
17 he goes to this tape.

18 He says: Mahmoud Abouhalima, you got to find
19 him.

20 That's a revelation.

21 Napoli says: Right. Who else lives close by
22 there?

23 Emad: Mahmoud Abouhalima, ah, close to Mr.
24 El-Gabrownny.

25 At the time the World Trade Center went off, I

1 think all these agents testified that Mahmoud Abouhalima was
2 living in New Jersey, and I think they said Ibrahim
3 El-Gabrowny was living in Brooklyn. In the universal sense
4 of things they live close by but in the practical sense it's
5 a spin, and what he's doing here is, just like Mr.
6 Fitzgerald in his opening, every time he could say the name
7 El-Gabrowny he said it, every time Emad could say the name
8 El-Gabrowny he said it, because we have a way that we think.
9 We as humans are creatures of habit, and the more we say
10 something, we accept it, we accept it, we accept it, without
11 questioning.

12 So Napoli says: No, I mean, you know, of doing
13 for. El-Gabrowny ain't gonna out putting no bombs down. I
14 mean, you know that, you know.

15 What Napoli is saying is El-Gabrowny is not going
16 around being involved with the bombing. He is talking like
17 a cop with 27 years of experience in New York City, but we
18 understand what he is saying there. He is saying
19 El-Gabrowny is not going with to be putting no bombs down.

20 What's his basis of knowledge? You have to
21 remember that Napoli and Anticev knew Mr. El-Gabrowny before
22 Mr. Salem even got involved in the case. They knew Mr.
23 El-Gabrowny from November 1990 from the 17th precinct when
24 he is in there giving information about his cousin El Sayyid
25 Nosair. And they testified to that.

1 And Emad says: What, what do you mean?

2 Anticev says something unintelligible. Gabrownny
3 capable of doing that.

4 That's coming from a real reliable source,
5 particularly since he just said they searched Mr.
6 El-Gabrownny anyway.

7 Emad says: Yeah? Ibrahim, he is the one who
8 told you that he go to bring me the detonator from
9 Afghanistan.

10 And Anticev says something very interesting, and
11 I would like for you to focus in on this. Anticev says:
12 Right, he asked one time in the beginning.

13 Not two times, not all the time. Anticev recalls
14 a conversation that happened one time in the beginning of
15 the case. And of course, Emad Salem, who doesn't want the
16 conversation to go that way, cuts him off.

17 And he said: He asked me how can I, do you, are
18 you capable to build a bomb? And he start, they're
19 checking.

20 And Anticev for once sticks to his guns. He
21 says: You said one time, you said to him, that is, Emad
22 said to Mr. El-Gabrownny, guys if you just want to get back
23 at the Jews -- that's Emad talking, not Mr. El-Gabrownny --
24 why don't you throw a simple Molotov cocktail through the
25 window of the mosque.

1 And Emad says: Uh-huh.

2 Anticev says: I mean of the synagogue, and he
3 responded: No, I want to use my explosives.

4 Anticev has such a distinct impression of this
5 that he is able to recognize that what was said at that time
6 wasn't mosque but was synagogue.

7 And Emad responds: Well, right, yes.

8 And he says: So he very capable of,
9 unintelligible.

10 Emad says: Yes, they wasn't happy enough about
11 the cocktail.

12 Now we went from "he" to "they."

13 They want explosives and when they ask me to
14 build a bomb they was checking, they was checking me if I am
15 capable to do so or not. When they go from "he" to "they,"
16 go back to his testimony on cross, and he says don't mention
17 it to them.

18 One other point. This whole point about the
19 detonator for Afghanistan. You know, when you put the lies
20 together, they fall apart. If Dr. Rashid is supposed to be
21 the guy to get the ready-made bombs from his friend on Long
22 Island, why in the world would Mr. El-Gabrownny take time off
23 from the mosque, take time from his six children, take time
24 from building homes in Jersey, get on an airplane, fly
25 halfway around the world to Afghanistan to get a detonator,

1 when they can supposedly go to Dr. Rashid, and he could go
2 to Brooklyn somewhere and get a whole bomb ready-made? I
3 don't know. But con people's stories when you look at them
4 closely never make sense.

5 So Anticev says: Second question.

6 Emad says: Why the World Trade Center?

7 Emad says: Because I told you this was one of
8 the targets. And Emad is trying to tell Anticev, you
9 forgot, you have your papers, go back to it. World Trade
10 Center, Empire State Building, Grand Central, Times Square.

11 And Anticev says: I don't.

12 And Emad says: All of, all of this is counted to
13 me by with Nosair.

14 This is why I am telling you that the man is
15 trying to pull Nosair and El-Gabrownny into the World Trade
16 Center. What he is telling the agents is that Nosair told
17 him World Trade Center, Empire State Building, Grand
18 Central. And the reason why he is saying that is because he
19 wants the information, the garbage that he gave them a year
20 ago to somehow apply to the new thing, so he can get on this
21 new thing.

22 And then Emad says: The day we visited Nosair in
23 jail, Ali Shinawy was in the bus. On the way back we
24 started discussing targets.

25 And Anticev says: Were you taking these notes?

1 And Napoli says: No, I must have not. I'm just
2 listening. Go ahead.

3 So Emad goes ahead. You had the notes. Guys, I
4 gave it to you.

5 Anticev says: I don't remember. I just.

6 And Napoli says: That, I don't remember.

7 And Anticev says: I looked, I looked over my
8 notes. I didn't see anything about a target.

9 Now, that's a conversation that is taking place
10 in a car in the first week of March 1993. The agents don't
11 know Emad is wearing a wire, they don't know Emad is trying
12 to set them up. They don't know that. Emad is trying to
13 set them up. And they are saying you never told us about
14 the World Trade Center. You never told us that this man
15 said anything about that. You never told us that
16 El-Gabrownny is involved in that. But yet he is persistent.

17 Napoli said: I was there, I was there also, and
18 I don't remember you saying targets. I remember you saying
19 that Ali Shinawy on the way home used, ah, ah, saying that
20 they're going to get to the weapons and stuff like that,
21 that he was going to contact someone.

22 And then Emad cuts him off: For the pipe.

23 And Napoli says: Yeah, for five.

24 Emad says: I should go and buy the remote.

25 Napoli says: Right. Which I did.

1 And he says: Right. They have been through this
2 with him many many times before this.

3 Emad says: But I have said 12 bombs.

4 And he started talking about distributing them,
5 the assemble man in Brooklyn. This is what con people do
6 with words. They are going to assemble them with their
7 assemble man, the man who is going to assemble bombs in
8 Brooklyn. Emad says the judge, the assemble man, the World
9 Trade Center. The connection, right? The judge that
10 El-Gabrownny wrote the letter to, the assemble man,
11 supposedly the Dov Hikind thing. But he changed the
12 assemblyman Dov Hikind to assemble man, the World Trade
13 Center bomb. He is bringing them to the World Trade Center,
14 and he's got to do it because he has to get paid. Napoli
15 says no, that's not what you told us.

16 Did you ever watch this TV program called Get
17 Smart, and Matt says to the chief there were a hundred chaos
18 agents there. And chief goes I don't think there was a
19 hundred. And he says, well, would you believe 50? And he
20 says no. He says two salesmen? And he goes through the
21 list. Look at Emad. He probably watched it too.

22 Napoli says: No, that's not what you told us.

23 Emad says: The Empire State Building?

24 No, you never told us.

25 And he says: Grand Central Station?

1 He says: Look, believe me, you may think you
2 told us.

3 He says: Well, probably, probably, probably, and
4 I -- where we going now?

5 Napoli says; you thought, maybe you thought.

6 And Emad says: No, no.

7 The reason Anticev is thinking back, having gone
8 through his notes from that earlier time period when things
9 are fresh in his mind. Remember Mr. El-Gabrownny with the
10 demonstrations and stuff like that and the voting and all
11 those good things that we like to see people do?

12 Anticev says: The reason I thought it was the
13 World Trade Center was because they had a protest in front
14 of the World Trade Center. Remember?

15 And Emad says: No. Of course he doesn't
16 remember that. They --

17 And Napoli cuts him off. That was,
18 unintelligible. They went because of Mario.

19 Emad says: The governor.

20 And Napoli says: Ah, the governor was supposed
21 to meet them and they didn't and that's why they went there
22 then. That wasn't because of, ah, I keep telling you that.

23 This call -- I am not going to be up here long.

24 I promise you, I promise you, but please stick with me.

25 This call and a subsequent call to Agent Napoli

1 is all you need to acquit Mr. El-Gabrowny in this case.
2 Why? Because here's the sequence. World Trade Center goes
3 off, he speaks to Nancy Floyd, Nancy Floyd gives him the
4 insight, Nancy Floyd tells him the rap to give to the other
5 agents, he's got his rap together. He puts his wire on, he
6 gets in the car. He tells you why he is wearing a wire. He
7 comes up with an excuse but we know why he is wearing a
8 wire. The last time he got himself in trouble. This time
9 he has one meal ticket and that's Mr. El-Gabrowny. He tried
10 in this car to get the agents to say that Mr. El-Gabrowny
11 gave them information about bombing and bombing at the World
12 Trade Center, and it didn't work. And like most con men
13 that come up to you on the street, the first no don't step
14 them. They going to try again. After all, this is his
15 livelihood. There is how he makes his living.
16 He then calls Anticev, and I asked him about that
17 on cross. He calls him afterwards, and when he calls
18 Anticev he says to Anticev -- they start talking about
19 El-Gabrowny again. And when he gets on the phone with
20 Anticev, he's aware that he has a problem. He was
21 terminated from the FBI, and this time he knows that he
22 don't have no tapes with Mr. El-Gabrowny discussing none of
23 the nonsense he claimed he did. He knows he has a whole
24 bunch of tapes but none of them discuss those conversations.
25 So now when he gets on the tape on the phone after the car

1 with Anticev, he has to fill the gaps. He knows he is going
2 to be questioned on it because he was questioned before. He
3 was bitter, they took his money from him, and this time he
4 is going to be ready.

5 So this time when he gets on the phone with
6 Anticev, he says to Anticev: You remember I called you
7 about, and gave you the information about bombing.

8 Anticev says: That was earlier on in the case.
9 That was 1991 before the verdict.

10 He said the same nonsense he says here.

11 Then I asked Anticev about another call that he
12 had with -- one second. Let me get my notes here. It's
13 very important.

14 Anticev reported that in 1991 Ibrahim wanted to
15 bomb a synagogue, and I asked Anticev about that in his
16 cross-examination. After the car there was a telephone
17 conversation where John asked Emad a question. He said to
18 him, do you have any conversations with Mr. El-Gabrownny
19 discussing bombs? I asked him that, and I asked him did he
20 recall the conversation. He said yes. He said that I had
21 asked Emad did he have any conversations discussing bombs
22 and stuff like that. And he says he recalls having that
23 conversation with Emad after the car in March.

24 And Emad responded: You told me don't record
25 them talking about bombing.

1 Emad is in this call saying to Anticev, you told
2 me don't record him talking about bombing.

3 And John said: Well, maybe if you did it with
4 your own machinery.

5 But Salem was adamant in this call. Salem said:
6 Since you told me don't, I didn't.

7 That's what he told Anticev. Why is he telling
8 Anticev this after this car conversation? Because he knows
9 he don't have no verification. So what he is trying to do
10 is put it on the agents. He is trying to put it on the
11 agents that you told me don't record so I didn't record.
12 Why is Emad saying that to Anticev when he know that that
13 ain't true? He is saying it to him because that second call
14 is the insight into the mastery of him. He is not no
15 run-of-the-mill con man pigeon game. He understands that he
16 doesn't have the verification and what he is trying to do is
17 make it look like the agents told him not to get it.

18 What is he doing with this tape recorded
19 conversation and why is he recording this call with Anticev?
20 What's his plans for this tape? He is going to use that in
21 his arsenal when he sits down at the table to negotiate with
22 the Bureau. That's what he is keeping it for. Serves his
23 purpose.

24 But the interesting thing about it was that Emad
25 had offered to go through his tapes to see if there could be

1 something that could be used against Mr. El-Gabrowny, and he
2 never did, because he never delivered. And Anticev relates
3 that there was yet another call in January of 1992 where
4 Emad and Anticev spoke, and Anticev said to him did Mr.
5 El-Gabrowny ever mention anything more about bombing? And
6 Emad said no, just peaceful things and demonstrations and
7 press conferences, that's what they are doing.

8 So you have Anticev with a distinct recollection
9 that the only time he had ever mentioned Mr. El-Gabrowny in
10 connection with any kind of bombing whatsoever was way back
11 in 1991 during the trial, but that in January 1992, before
12 the sentencing he had asked him did you ever discuss
13 anything more about bombing, and Emad said no, that's it,
14 that is it. When Mr. El-Gabrowny was arrested in March of
15 1993, he tries to make more of it, and when he comes here he
16 tells you, the jury, we discussed bombing all the time, we
17 discussed hating Jewish people all the time. That was his
18 testimony. He said he discussed it constantly, constantly.
19 Think about it.

20 He is taping Mr. El-Gabrowny for two years. He
21 says on cross by me that he was trying to bait Mr.
22 El-Gabrowny for two years in conversations about bombing,
23 kidnapping, escape. Think about it. And I just said
24 something that got away. He says to Anticev you told me
25 don't tape, so I didn't. But on cross-examination he said

1 he had been baiting Mr. El-Gabrownny for two years about the
2 very same subjects that he told Anticev he told me not to
3 do.

4 Let me back up for a minute. Emad testified on
5 cross that if you kind of bait Mr. El-Gabrownny into
6 conversations for two years. When you go back over the
7 cross of Anticev by me, you will find that Anticev recalls a
8 conversation in March of 1993 where Emad says to him, you
9 told me don't tape Mr. El-Gabrownny about bombing so I
10 didn't. He is lying to the agent. The reason why he is
11 lying to the agent, number one, he never followed their
12 instructions anyway. Did he? He was taping the agents. He
13 was taping Mr. El-Gabrownny. But what he is doing is, he has
14 enough presence of mind to know that this conversation that
15 he is having with the agent is going to mean something. So
16 he is setting the table. He is setting the table so that
17 the results come out in a way that he can use them, even
18 though he is lying.

19 What I submit to you is, this is the mind set of
20 a man that comes into the witness stand. If he has that
21 kind of mind set in his apartment, don't you think he got
22 that before he walks through that door?

23 Mr. Fitzgerald says why would Emad say something
24 like El-Gabrownny said I told about the escape plan but, you
25 know, he said after the appeal. If he's going to bury Mr.

1 El-Gabrownny, why doesn't he just do it?

2 Listen, why people tell half a lie is something
3 that always escaped me. But he is smart enough to know what
4 you are going to hear about Mr. El-Gabrownny and he wants to
5 play along with the current just like he is playing along
6 with Anticev about what he told them and didn't tell them.
7 He is smart enough to know that he can take a little bit to
8 make it look he can like he is doing Mr. El-Gabrownny a favor
9 but he is sticking the knife as deep as he can. That is the
10 mastery of Salem. If you look at this chart and you go back
11 to those calls, it's an acquittal for Mr. El-Gabrownny
12 straight up.

13 Ask yourselves why did he say this and why is he
14 saying that?

15 (Continued on next page)

16

17

18

19

20

21

22

23

24

25

1 And why is he using these words and those words.

2 Why is he switching from "he" to "they"?

3 Ask yourself those questions.

4 Now, enough of that. Patrick Fitzgerald -- con
5 men are very effective. Unless you grew up around them,
6 you've got a problem. They are very effective.

7 See, what happens after a while, and what he
8 wants to do, the con man, is he wants to mesmerize you, too.
9 Nice expensive suits, beautiful ties, chest all stuck out,
10 grinning at the judge and everybody else in the courtroom,
11 trying to make friends with everybody he can. He's going to
12 need all the help he can get.

13 But you are talking about another criminal case
14 with him. And even Mr. Fitzgerald got caught up in Emad's
15 word game. Now, I submit to you that the government's got a
16 weak case against a defendant when they've got to stand in
17 front of you in their closing remarks and tell you what the
18 defense lawyer said in his opening remarks.

19 Well, Mr. Ricco said Emad Salem was going to lie
20 about the passports. I did say that. And I said, you know,
21 it ain't going to make no difference. You know why it is
22 not going to make any difference, because Mr. El-Gabrownny
23 had the passports on him. The judge is going to tell you
24 that is a crime. So it don't make a difference at this
25 point if Mr. Salem lies about the passports or not. But if

1 that is the best they can do to try to make Mr. El-Gabrowny
2 look bad, you better look real close at this evidence.

3 Mr. Fitzgerald said in his closing remarks the
4 following, and I am going to show you how that's wrong. I
5 need two seconds to switch this with that.

6 Now, again, you have to think concept. What is
7 the concept of the stun guns? This is a good one. At first
8 you think the concept of the stun guns is that the jihad
9 organization is going to be running through New York with
10 stun guns in their hands zapping people. Then the story
11 gets a little more sophisticated.

12 One thing I want you to notice about this exhibit
13 that is in evidence is, read it. It says: Do not discharge
14 the unit in the air for more than one second. So that means
15 you get bip, bip, bip, bip. If you hold it down longer than
16 that, it can cause damage to the unit and the warranty will
17 be void. So you won't be able to get your money back. And
18 with people like Mohammed Salameh --

19 But the stun gun thing is almost sinister. It
20 shows that if you play with the words right, you begin to
21 think that maybe the Indians did sell Manhattan for \$24.00
22 If you say it long enough, it becomes true.

23 Let's look at how they played with the words with
24 the stun guns. Mr. Fitzgerald said, let's set the scenario,
25 the concept. Emad is going to Attica. Mr. El-Gabrowny has

1 got a letter that came in on the defense case from a friend
2 of his in Yemen that said, buy me some stun guns. It is in
3 evidence as El-Gabrownny P and PT.

4 The government tells you, believe their theory,
5 Emad Salem's theory that these stun guns were going to be a
6 part of the future operations of the jihad organization.
7 What they was going to do with them, I don't know. But the
8 stun guns in Mr. El-Gabrownny's house, the two stun guns is
9 evidence, direct evidence that Mr. El-Gabrownny conspired to
10 overthrow the United States government by force. Right
11 there. These two stun guns. Let's look at what Mr.
12 Fitzgerald said, and let's look at what the evidence
13 actually was.

14 Mr. Fitzgerald says that Emad went to Attica, and
15 that Nosair had talked about there were 300 people in the
16 room and nobody saw him kill Kahane. Mr. Fitzgerald says he
17 actually wanted to improve upon things. He talked about how
18 he was running guns, that stun guns would make sense.

19 Please stay with me on this one.

20 I am sure everybody on this jury has seen a
21 enough cowboy movies to know what "running guns" means. It
22 means dealing in them. He says that he is talking about to
23 improve upon things in the future. He says that Nosair
24 talked about how he was running guns, that stun guns would
25 make sense. This way you're not making noise in the street.

1 This is Mr. Fitzgerald in his remarks on page
2 18099, lines 1 through 25. He says, you can stun people.
3 Finally, he talked, this is Nosair, about the escape and he
4 said, you know, you just missed a good opportunity. I went
5 to the hospital the other day and there were only two guards
6 with pistols. Lo and behold, says Mr. Fitzgerald, during
7 this trial you saw one of the people involved in the prison
8 system come in and say that they did in fact take Nosair to
9 the hospital.

10 This is the point that Ms. Stewart made. You get
11 the language, then you throw somebody on the witness stand.
12 That's not the point that you got to confirm. Nosair going
13 to the hospital -- great. You don't prove that Mr. Nosair
14 said he was running guns by putting somebody on the stand
15 that says he went to the hospital. You have got to put
16 somebody on the stand that's going to corroborate the part
17 of the statement that says he was running guns, particularly
18 if the stun guns are the things that says he's guilty.

19 Now, Mr. Fitzgerald says -- and he thinks concept
20 also. Mr. Fitzgerald says during this time when Nosair is
21 talking to Emad in May of 1992 about buying stun guns, lo
22 and behold, what do you find later but Ibrahim El-Gabrownny
23 bought stun guns during that time. His apartment was
24 searched, 1993, a year later, and they recovered a
25 120,000-volt stun gun and a 90,000-volt stun gun, which is

1 in evidence and the receipt indicating that those stun guns
2 was bought in May of 1992, the same month Emad tells you
3 that Nosair up in Attica was talking about the need for stun
4 guns, etc., etc.

5 Now, let's go to Emad's testimony about that
6 subject and you tell me where it says that Nosair, even if
7 you believe his testimony, said anything about running guns
8 and using guns for future operations.

9 Let me have one second, please.

10 I'm sorry, your Honor. The technology isn't with
11 me. Sorry. This is not exciting to do this. But it's got
12 to be done.

13 Now, you go through the transcript, as Mr.
14 Fitzgerald said. The only time there is a discussion about
15 what Mr. Nosair claimed -- I'm sorry, what Mr. Salem claims
16 Nosair said about stun guns is right here on this page, 4757
17 and 4758. That is where I am going to tell you how people
18 play with words to try to make people look guilty.

19 Here's the thing about the 300 individuals in the
20 room, nobody saw who shot Kahane. And the question was:

21 "For the record you raised your hand" -- and he's
22 demonstrating from the -- he's all into it. He's showing
23 you with the hand, and everybody's "ooh, ah" and impressed
24 by what he's doing.

25 Then he says: "Did the subject of breaking

1 Nosair out of jail come up?"

2 He says, "Oh, yes, sir."

3 "Can you tell us what was said in that regard."

4 "I told him that Mohammed Saad was suggesting to
5 do something about breaking you out of jail. He said, you
6 just missed a very good opportunity because I just went out
7 to the hospital with two guards only with pistols. This was
8 a good opportunity, you can take them down in that time, but
9 you missed the chance."

10 OK. Then he says: "Well, was the topic of stun
11 guns discussed?"

12 Then Emad says: "Yes."

13 He says: "Tell us in what regard."

14 "You told us about the escape, you told us about
15 the room. Tell us in what regard did the stun guns come
16 up."

17 Here's the answer: "It came, the subject of that
18 when he was running," there's that word again, "when he was
19 running. He said, I was running, and I used the pistol.
20 The pistol is that .357 magnum. But if I have a stun gun, I
21 could have been in a different position -- a different shoes
22 than now. Stun gun, it wouldn't be possession of a weapon."

23 "And after you had this conversation with
24 Mr. Nosair, did you report the conversation to
25 Mr. El-Gabrownny?"

1 "Oh, yes."

2 "What was Mr. El-Gabrownny's reaction?"

3 "He said the guy's very upset. He's in jail.

4 He's hot right now. Let's just, just let us to slow down
5 after we finish the appeal, then may God facilitate it."

6 That's it. Now, you tell me, in here where does
7 it say that Nosair wanted to use stun guns for the future
8 operations of the jihad organization?

9 Where does it say that Mr. Nosair was running
10 stun guns? He said he wanted to run with a stun gun.

11 But, see, when you don't have direct proof
12 against people, then you start playing with the words. It's
13 called making a person look bad. If he did it, come out
14 with it.

15 But this is the words. Look at it yourself.
16 Where do you see him saying that? Where do you see him
17 saying he went to the hospital, and you had an opportunity
18 to shoot them with the stun guns?

19 Where do you see him saying that stun guns would
20 make sense? Where do you see him saying that they don't
21 make noise on the street? Where do you see him saying that?

22 You see the government is worried about me
23 talking about passports. Give me a break. Mr. El-Gabrownny
24 is not charging nobody with anything. They are trying to
25 prove a case against Mr. El-Gabrownny. After months and

1 months of testimony, these words start slipping in, and you
2 all sit there, going: "Oh, yeah. They were talking about
3 stun guns. Right. There go stun guns. He's guilty."

4 If you start looking at it closely, the case
5 against Mr. El-Gabrownny, I am going to tell you something,
6 it makes you want to look at everybody in this courtroom's
7 case a little more closely.

8 I am going to say it again. This case, the way
9 it's trumped up against Mr. El-Gabrownny, should make you
10 look at every man's case in this courtroom a little more
11 closely.

12 You ask yourself where those words are. Even if
13 you believe this conversation happened, it doesn't make
14 sense. That is how you bust a con man. You say all right,
15 I believe you said that. Now, let's look at what you said.

16 It falls down. Why is it important? And I
17 talked to you about not dumping on Emad Salem. But let's
18 take what he said and how it relates to the government's
19 proof. What are we going to do with these stun guns now?

20 You are going to come out here and say:

21 "Mr. El-Gabrownny, I'm sorry. I know he didn't say it, but
22 you had them."

23 Then what we do is we put into evidence a letter
24 from a friend of his in Yemen. Is this more reasonable than
25 the story that the government wants you to believe? Words

1 have been twisted around for you except this. He got a
2 letter dated sometime in February from some guy over in
3 Yemen who wanted stun guns for something. And there's a
4 receipt that they were purchased in May.

5 If that story is as plausible as this thing the
6 government wants you to believe where they put the words in,
7 then justice says you acquit him. Now, those are hard
8 words. And this case has been tried by great lawyers on
9 both sides. It's been very funny watching -- sometimes.
10 But oftentimes, good people get caught up in with con
11 people. They do. That's what makes them con people. If
12 good people didn't get caught up by con people, we wouldn't
13 be worried about them. We would let them do what they do,
14 catch them and be done with them. But they're good and if
15 you're not careful you find yourself doing the same thing
16 they do.

17 Mr. Ricco and the passports. Another example.
18 Let's talk about what Emad Salem did -- excuse me.

19 Let me just finish something here and then I'll
20 go to the phone records. Bear with me, it's not that much
21 longer. It is not that much longer.

22 Now, I want you to remember something. The
23 government comes with Mr. El-Gabrownny with a whole bunch of
24 charts, 508, and they say: "Oh, look. He called his house.
25 He called his house. You know they're guilty now."

1 The last time I looked, people in this country
2 were not guilty because somebody called them on the
3 telephone. Now, they might be guilty for what they said on
4 the phone, but you don't convict people because somebody
5 telephoned them.

6 If that was true, then the government witness
7 Ashraf Moneeb -- remember him? He's the guy who lived with
8 Mohammed Salameh from September to February -- September '92
9 to February '93. He was the Muslim man who came in, who
10 said that he helped Mohammed Salameh move his stuff out and
11 that Rashid lived in there with him. If El-Gabrownny's
12 guilty because Mohammed Salameh telephoned him and Nidal
13 Ayyad telephoned him, what does that say about Mr. Moneeb
14 who lived with them? Do you want to know another person who
15 lived with them and testified? You got another one, Abdou
16 Waly. You see, these names happened so long ago you forgot
17 about them. But a guy named Abdou Waly testified. He said
18 that Mohammed Salameh lived with him for a year. Right? If
19 Mr. El-Gabrownny is guilty because Mohammed Salameh telephone
20 called him a couple of times, what does that say about
21 Mr. Abdou Waly? I don't know.

22 What it means is that you can't draw guilt from
23 association. You are supposed to convict people on
24 substance, not charts. That is not what anybody calls
25 corroboration. Salem recorded all of these calls with

1 Mr. El-Gabrownny. And the opportunity that you had to listen
2 to those calls, do those calls sound like a man who is
3 involved in terrorism? Or do they sound like a man that
4 Dr. Mehdi and Imam Siraj told you about?

5 Emad told you, and a critical time period was in
6 June and July of 1992. That's when he ran into his problems
7 with the Bureau. That's when Carson Dunbar got on the case
8 and said bring that guy in here. What do you mean about a
9 box of stun guns? And what about the box of carpenter --
10 they called them carpenter shells, but the box said
11 carpenter nails. That's words for them. This guy came in
12 here with a box of carpenter nails and all these wild
13 stories about killing judges and busting people out of
14 Attica and whatnot. Carson Dunbar says: Bring that guy in
15 here. He's got problems. He's got to pay his own parking
16 tickets.

17 In this time period is when Mr. Salem tries to
18 weave for you as a story of real intrigue that was rejected
19 by the government before. He says that he was going back
20 and forth and that they were discussing bombing, going back
21 and forth. And El-Gabrownny was discussing bombing all this
22 time.

23 Fortunately, we have a call from that time
24 period. We have a couple of calls. Remember when he told
25 you that Mr. El-Gabrownny was real mad at him because he

1 messed up the trip to Attica because of the jihad plans and
2 everything else. Oh, he was so mad about him about the car
3 rental. Do you remember that story? That he went over to
4 Newark and he didn't order the car and El-Gabrowny was mad.

5 Let's look at the call. Let's see if the call is
6 consistent. Let's see if it is consistent with what
7 Mr. Salem says, or is it consistent with what the other
8 witnesses say about Mr. El-Gabrowny.

9 Oh, by the way, the part that I wanted to tell
10 you about the stun gun story is this: What Mr. Salem would
11 have you believe is that what Mr. Nosair said to him was, if
12 I had the stun gun that night I wouldn't be in jail now.

13 Now, what does that mean? It means he zaps
14 Kahane one time. Kahane drops. He runs out the door. Zaps
15 Mr. Franklin, goes downstairs, and when Mr. Acosta steps out
16 from the shadows with that .357 magnum, he goes, "Hold it,"
17 zaps him with the stun gun, and if that had happened he
18 wouldn't be here in the situation he's in now.

19 When you look at his story, that's what happens
20 to it. That's what he said. He, Sayyid Nosair, said if he
21 had the stun gun he wouldn't be in jail now.

22 What the heck does that mean? He is going to zap
23 Kahane with the thing, or does he shoot Kahane with the .357
24 magnum, throw that in the bushes, run through the hotel with
25 the stun gun and he gets away? That doesn't make sense to

1 anybody -- well, most people.

2 Telephone call. Now one thing you learn about
3 Mr. El-Gabrowny, he's a very responsible man. They didn't
4 make him president of the mosque for nothing. He's
5 responsible.

6 His mosque is like your church. There are people
7 like Mr. El-Gabrowny in your church. They get involved.
8 They visit people when they are sick. Isn't that what he
9 said Mr. El-Gabrowny did. He's probably the only visitor
10 that he had was Mr. El-Gabrowny. They have children and
11 they have careers, but they find time for the mosque and
12 they find time to do things for other people. After all,
13 isn't that the people who always get hurt by con men? The
14 people who are willing to help somebody?

15 When you live in New York City and you ride on
16 the subways and you don't care about nobody but yourself,
17 and you never go to help nobody, you don't have to worry
18 about those kind of con men creating problems for you. You
19 have problems when you extend yourself, and here's
20 Mr. El-Gabrowny doing what he does best.

21 Now, how do we have this call? It's interesting.
22 It's fabulous how we have this call. We got to thank the
23 fact that Mr. Emad Salem taped these calls. Because if he
24 hadn't taped these calls, we wouldn't have them. Of course,
25 he would deny that they ever had them. But we got these

1 calls because he did tape them, and ultimately the
2 government that was involved with him made him turn those
3 tapes over. This call came because El-Gabrownly has a
4 three-way call to Y.J.O. Jewelry with Najiyollah, the imam
5 up at Attica. Salem is not home, but his tape machine picks
6 up the conversation between Najiyollah and Ibrahim and it
7 records it, and naturally he kept it.

8 Ibrahim leaves a message about Najiyollah that he
9 will be waiting tomorrow at 9 o'clock, God willing. This is
10 for the trip to Attica. And Najiyollah says hello and they
11 give the greetings. And he talks about coming up to Attica.
12 They will be there at 9 o'clock.

13 Well, if they come at nine o'clock, we'll arrange
14 it the three men can go in there. Sayyid, have a visit with
15 Sayyid just for the juma, or we can have five brothers
16 attend meetings tomorrow morning, and then go out to lunch,
17 etc., etc. And they talk about setting up the program.
18 There's going to be some kind of religious program at the
19 prison that's set up with the prison officials.

20 I asked Emad about that on cross. I said: You
21 had to get a special permit for that visit, didn't you
22 because normally visits are not allowed on Friday?

23 Yes. Yes, sir. Yes, sir.

24 He didn't say that in his direct. But this is
25 Najiyollah discussing the trip. And then Ibrahim says when

1 they reach the counter to ask about you, he said, yes, they
2 should ask me. Now the clearance for them will be at the
3 front gate. This is a monitored visit to a high-security
4 maximum facility.

5 He's telling you they are going up there to talk
6 about bombing. Does that sound like they are going to talk
7 about bombing so far?

8 Now we have this call that is in evidence. By
9 the way, that is in evidence. This call that is in evidence
10 is LA20T. This is between Ibrahim and Mr. Salem talking
11 about going up there.

12 He says: I talked to Najiyollah. He was on the
13 line.

14 Then Ibrahim says to him: He said, give me the
15 names of the people that they want to come.

16 El-Gabrownny says that they would have a program
17 on Friday in the morning for the prisoners, then they can
18 perform the Friday prayer. Then they can deliver the
19 sermon. Then they can go to the mosque in Rochester
20 afterwards.

21 This is a call where Mr. Salem is trying to bait
22 Mr. El-Gabrownny into talking about escape, bombing, killing
23 judges and everything else.

24 El-Gabrownny gives him the number of the mosque
25 and the residence of the imam, the phone number. He says:

1 Be early in the morning. And Emad is only concerned about
2 who is going to pay for the gas, and El-Gabrownny says: Why
3 don't you be fair, sheik, everybody will chip in.

4 And then El-Gabrownny talks about the food and
5 that it will be necessary for each person to sit and have
6 their own food with them.

7 And then El-Gabrownny says something very
8 interesting that gives you a beautiful insight into who he
9 is as a man.

10 Salem says: Are you coming with us?

11 And what does Mr. El-Gabrownny say? He says: I
12 can't, sheik. I have an official holiday here and my wife.

13 He says: Yes.

14 My wife is --

15 El-Gabrownny says: I am telling you. I have
16 abdomen pains because of the stress.

17 And Emad says: I resort to God.

18 He said: By God, it's so painful.

19 He said: I resort to God.

20 He said: I frankly can't imagine it would be
21 like this.

22 Early in the morning with the kids you never
23 finish.

24 And he says: Of course not.

25 And Salem says: And especially the kids, may God

1 bless them, they love you and they jump on your shoulders
2 all day.

3 And El-Gabrowny said: I just finished sweeping
4 the living room and I slept only two hours. I'm trying to
5 sweep it since the morning, and I'm trying between cooking,
6 kids, and diapers. One cries and --

7 And the mice running.

8 And El-Gabrowny says: I am telling you, these
9 days I am running all over the house as though I am running
10 on the street all day.

11 And Emad says: There's no God but God.

12 And El-Gabrowny says: Between the kitchen, the
13 bathroom and the living room --

14 He says: And I'm trying to clean up.

15 And then Emad gets back to his subject: I don't
16 think Sheik Ali will be able to go again. It is a long trip
17 for him.

18 And El-Gabrowny said: He was just there last
19 week.

20 And Emad gets back to his subject. He says: And
21 this is a long trip for him, and, God willing, Ahmad Abdel
22 Sattar called a little while ago.

23 And El-Gabrowny says: It is impossible for Ahmad
24 to go because he's off, and the day after tomorrow he'll be
25 working. Tomorrow there is a demonstration in front of the

1 city -- baby crying. He yells out, Aliya, his daughter.

2 And he says: At one o'clock. And he tells his
3 daughter, Shut your mouth. Which possibly is not a good
4 thing to say to your daughter, but at least he's not talking
5 about bombing.

6 He says: I think so, but I'm not going.

7 He says: I will use the time when the children
8 will be sleeping. The girl goes to school at 12. My son
9 goes at 7:30. I am going to go to the Bronx to get the
10 transcripts, God willing, and I'll be back. Therefore,
11 everyone will be asleep and this will be a point when I can
12 run, and God is the supporter. So I can't go to the
13 demonstration after that.

14 He says: OK. Do you think people will go? He
15 says, by God, I mean.

16 And then they talk about the demonstration and he
17 says he's really not going to go to this demonstration
18 because he doesn't really believe in what this demonstration
19 is. But he says that the demonstration will show that the
20 congregation has power, but at the same time it can hurt us
21 because you might get what you're demonstrating for. And
22 what they are talking about here is getting religious
23 holidays off.

24 They go back to talking about going up there and
25 the timing, and El-Gabrownny says he will make the permit so

1 you can also arrange for yourself the beginning of the day
2 and who will plan to travel.

3 Then Mr. El-Gabrownny says a very interesting
4 question to Emad Salem. He asks Emad Salem: How many
5 people are going? Who's going?

6 And Emad says: Well, I have Imad Abdou. I have
7 sheik Siddig. That must be you-know-who. Both are ready.
8 Myself, and that's it. Only three. But Imad Abdou told me
9 there are other people who want to go.

10 And he talks about it and Mr. El-Gabrownny says:
11 Well, reach out to them and make sure everything goes by
12 schedule.

13 Now, what does this call mean? This call is an
14 insight into what's going on in the mind of Mr. El-Gabrownny
15 at the time that Emad Salem says he's talking about bombing,
16 escape and killing judges.

17 Mr. El-Gabrownny doesn't know this call is being
18 recorded. Did you get the impression that that is what on
19 this man's mind? Did it in any way, shape or form? Or is
20 this call consistent with what Agent Anticev said: You
21 know, you told me about something back in 1991, but you
22 never mentioned anything about anything of the sort since
23 then.

24 Is this call consistent with the testimony of
25 people like Dr. Mehdi, Imam Siraj? Is it consistent with

1 Agent Napoli's observation when Emad is trying to tell him
2 that Mr. El-Gabrownny was involved with the World Trade
3 Center bombing, and Napoli says, El-Gabrownny wouldn't be
4 involved in nothing like that? Is it consistent or
5 inconsistent with it? I don't even think that question
6 needs an answer.

7 While I am on the subject of the calls, the
8 government has talked about conspiracy by charts. What the
9 government has done -- one more call before I go to that.
10 No. Let me do this. I am going to go to the call later.
11 Since it's up here, I want to just get it done.

12 Remember the government -- hold on a second.

13 THE COURT: Excuse me, Mr. Ricco, do you want to
14 take a break at this point or would you like to continue?

15 MR. RICCO: A few more minutes. I want to finish
16 this up.

17 THE COURT: All right.

18 MR. RICCO: Thank you.

19 You will have to excuse me, ladies and gentlemen.

20 OK. The government comes up with a chart. And
21 in the chart they say, look at the calls that were made. He
22 called him, he called him. Lynn reminded you that
23 Mr. El-Gabrownny is the president of the mosque, and
24 Dr. Rahman speaks there twice a week.

25 Does it strike you as odd that he might talk to

1 the president of the mosque about speaking to him before he
2 goes there? Is it unreasonable, totally? It could be.

3 Would you convict somebody just because of it?
4 If there is a reasonable explanation for what it could be,
5 would you consider it in your deliberations or would you
6 just disregard it right off?

7 You might say to yourself: Well, it depends on
8 how many calls. The government says to you: We know
9 Mr. El-Gabrowny's guilty because Nidal Ayyad called him
10 twice -- February 24, February 28 -- so you know he's
11 guilty.

12 Now, we don't know what the substance of those
13 conversations was. But the government says because he
14 called, he's guilty. You are going to find in the charts
15 that I am going to show you after the break that the
16 government missed one. In Mr. El-Gabrowny's phone records
17 from February 28, there is a call from Mr. El-Gabrowny's
18 house to Nidal Ayyad's. Does that mean he's guilty? I
19 don't know. It depends on what they said. What were they
20 talking about?

21 Now, the government says he's guilty because he
22 called him twice and that it was around the time of the
23 World Trade Center, so you know they must have been doing
24 something wrong. I want you to think about something. The
25 government put into evidence a chart, and on that chart

1 Mr. Salem had 56 telephone calls that he kept to
2 Mr. El-Gabrowny's house. You will have that chart with you
3 when you go in the back.

4 The 56 calls to Mr. El-Gabrowny demonstrate why
5 you can't look at numbers and assign guilt to them. Some of
6 you may say: 56 calls, they must have been talking about
7 something. I don't hear nothing about no mosque, scheduling
8 no trips, raising no money for Nosair, none of that. If he
9 called him 56 times, you know he was talking about something
10 he shouldn't have been. But we got the 56 calls, and
11 Anticev asked him to go do the 56 calls, and see if you
12 could use anything against Mr. El-Gabrowny.

13 He didn't come up with anything. Now, he told
14 him: Go through your tapes.

15 Think about something. This is the same man who
16 told you he never did that. He recorded them, and he threw
17 them in the box. If Anticev is asking him to go through the
18 tapes, do you think Salem did? Do you believe him when he
19 said he made the tapes and threw them in the box and never
20 touched them?

21 Remember Paul Ginsberg's testimony about how the
22 tapes were edited, backed up, recorded over, and the
23 government was asking him questions about Woody Allen and
24 Mia Farrow and stuff like that. It was all very
25 interesting, but it didn't have anything to do with the

1 bootleg tapes in this case. Because, guess what, you don't
2 have to be an expert to know that the tapes in this case
3 have been edited. Listen to them yourself. The
4 conversation stops. It starts. They start in the middle.
5 They are not consistent.

6 Mr. Ginsberg told you on one tape you have stereo
7 calls and mono calls. That means he padded the deck, and so
8 when Anticev says, go through your tapes, is that consistent
9 with a guy who is throwing them away or consistent with a
10 guy who is trying to use them?

11 Go back to the number 56. The government says he
12 called him twice, so you know he's guilty. Supposing Nidal
13 Ayyad had called Mr. El-Gabrownny 56 times? The people on
14 the jury would be saying: Mr. Ricco, nice job but -- if
15 that young kid called him 56 times, I don't know. If he had
16 called him once or twice I'd give you the benefit of the
17 doubt, but 56 times? That don't sit right for me. Even
18 that would be wrong. You know why? Because the 56 calls to
19 Mr. El-Gabrownny were Emad Salem trying to bait him every
20 step of the way. That's his testimony. He was trying to
21 bait him every step of the way. They reveal a different man
22 than the man that Mr. Salem claims was involved in bombing.
23 So don't get hooked up on this two calls here and one call
24 here. It is not the number; it is the substance. If they
25 don't have the substance, they've got the burden of proof.

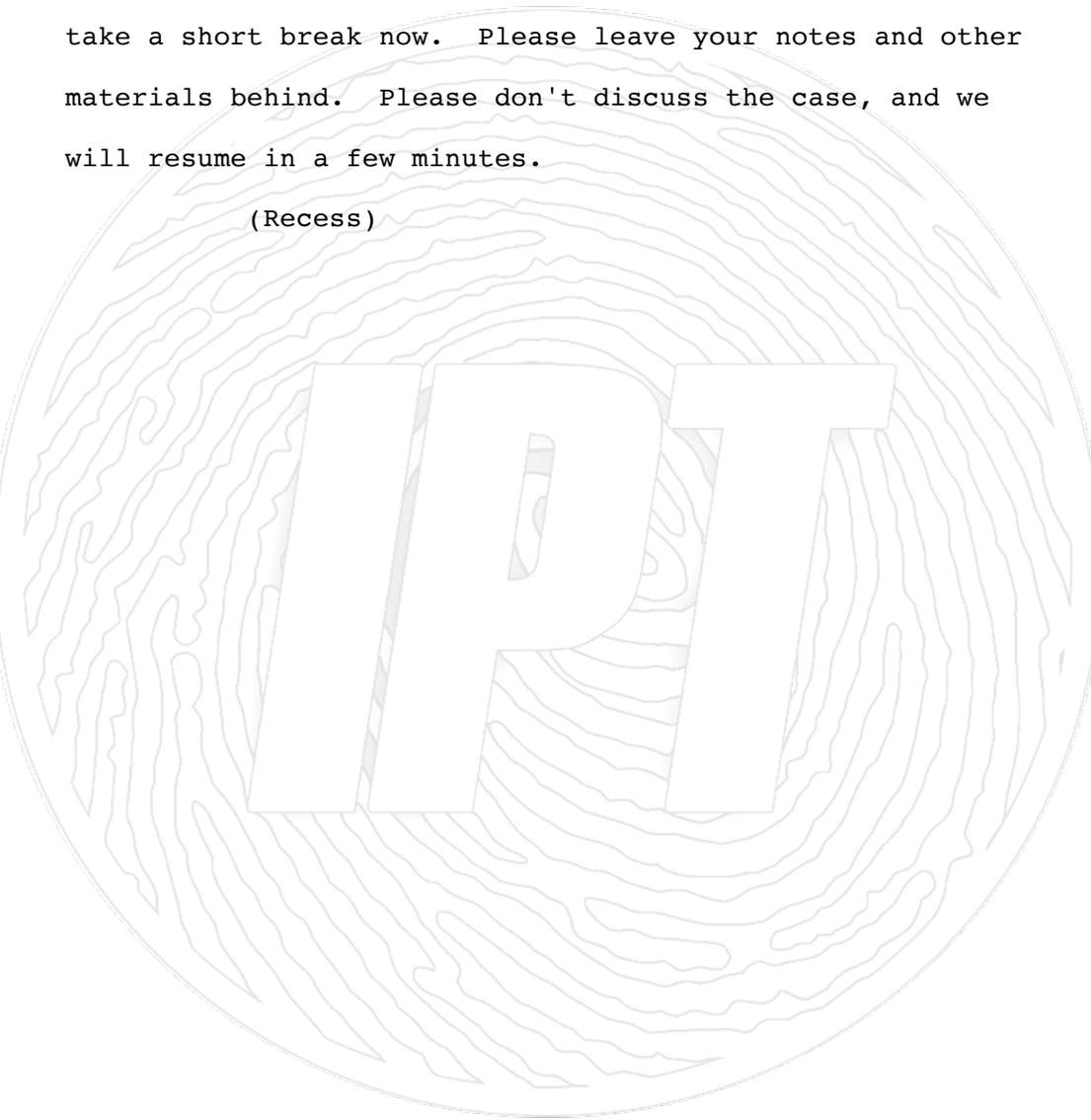
1 They are supposed to prove guilt beyond a reasonable doubt,
2 not chart it into existence.

3 This is a good place, your Honor.

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

8 (Recess)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 (In open court; jury present)

2 THE COURT: Mr. Ricco.

3 MR. RICCO: We are almost there. We will be
4 finishing up before the lunch hour.

5 When I ended, I was talking about the phone
6 charge that the government put in, and I was trying to
7 explain to you the danger of charts.

8 Remember when we left I told you on the February
9 28, Exhibit 510B, of Mr. El-Gabrownny's phone records, one of
10 the things that Mr. Fitzgerald didn't mention while he was
11 trying to get you to make significance out of the fact that
12 this postdated February 5 letter was somehow significant,
13 was that in fact Mr. El-Gabrownny apparently, or someone from
14 his home called Nidal Ayyad back. There is the phone call.
15 It's a 9-minute call to Nidal Ayyad's address on that day.

16 It is a good thing, not a bad thing, that the
17 message was written on something that had a date. It is a
18 good thing, not a bad thing, because if it was written on a
19 paper that didn't have a date, then the government could
20 very well have got up here and said that the call was made
21 on the day of the World Trade Center bombing. They have
22 practically said it anyway.

23 I find that the fact that it was written -- you
24 saw the pictures of Mr. El-Gabrownny's house. I described it
25 as being junky in my cross-examination. Full of papers and

1 children and rocking horses and -- I mean, if you want to
2 take a look at the pictures again ask for them. It don't
3 make sense. The house looks lived in, one bedroom with six
4 kids. Out of all the papers his wife could have written on,
5 she wrote on this piece of paper, a letter from Buffalo
6 postmarked February 25, 1993, and it's a good thing she did,
7 because if she hadn't, the government would have said he
8 probably called on the day of the World Trade Center
9 bombing. But we know there is no way in the world, some of
10 you know, in Buffalo, that a letter postdated February 25,
11 1993, got from Buffalo to Brooklyn by February 26 at 12:00.
12 We know that.

13 But when we go back to the phone records, the
14 phone records are deceptive. Why? Well, look at this. On
15 March 4, 1993, after Mr. El-Gabrowny is arrested, at 6:00
16 and a little later after that, somebody from Mr.
17 El-Gabrowny's house calls Mr. Nosair's house in New Jersey,
18 after he is arrested. I wonder if that means that Mr.
19 El-Gabrowny broke out of jail, snuck back in his house, made
20 this call, went back to jail and back in his cell. I
21 wonder. I wonder who made this call to Mr. Nosair's house
22 and what the call was about.

23 You understand the point that I am making? You
24 can't go to a chart and say there's a call and here's a
25 call, and you know what those calls mean? Somebody's

1 guilty. You can't do it.

2 March 4, after Mr. El-Gabrowny is arrested, to
3 Jersey.

4 Mr. Fitzgerald pointed out to you that on
5 November 1990 when Mr. Nosair was arrested, there was a call
6 from Mr. Nosair's house to Mr. El-Gabrowny's house. What
7 were you supposed to think that meant? I am not sure, but
8 they are trying to prove guilt, and I think the inference
9 that they wanted you to draw was one of guilt.

10 Let's talk about charts again, just a couple
11 minutes on this and we will be away from this. The
12 government says that El-Gabrowny is a terrorist and that he
13 planned a breakout after the appeal, whatever that means.
14 They are talking about that they are talking about bombing
15 every time they get together. You know, Emad Salem projects
16 himself on other people. Every witness who took the witness
17 stand who said they met Emad Salem said that he gave them
18 the same line, Green Beret 18 years, blah, blah, blah. I
19 don't care who the witness is. If they met Emad Salem he
20 gave them the same story. And he said it too, except he
21 said he was not true.

22 They are talking about this all the time, like
23 it's an obsession. When you go to the phone record, look at
24 all the calls from Attica to Mr. El-Gabrowny's house. This
25 is December alone. The government only put his phone

1 records in from August. They didn't put the phone records
2 in before August of 1992. Nor did they put in any phone
3 records of Mr. Emad Salem. But they want to convict Mr.
4 El-Gabrownny on the phone records. They didn't put in no
5 phone records of Emad Salem, no phone records of Mr.
6 El-Gabrownny before August of 1992. But if you look at what
7 they did put in and you go to the chart, the man is calling
8 him till the phone bill is like \$500 a month. You could see
9 it. It's in the charts if you want to.

10 The government says that they planning this
11 breakout, and the government tells you, through Michael
12 Urban, the man from Attica, that Nosair is a centrally
13 monitored inmate, phones are monitored. He did his best to
14 try to tell you that he don't know that his mail is being
15 opened and read, but I submit to you it is common sense.
16 Everybody in the jury box, if you get your mail every day
17 opened, don't you think after awhile somebody might be
18 reading it? No? It don't make sense. If you locked up
19 somewhere every day open and the guy next to you gets his
20 mail open and the other guy sets his mail opened, after
21 awhile you say hm, I wonder if somebody is reading my mail.
22 But he did his best to play down the fact that he doesn't
23 know, you know. It's a game to some people.

24 But the government told you that they recorded
25 Mr. Sayyid Nosair's conversations from Attica from about

1 August through March and they sent them to the FBI, and they
2 went over them because they're in Arabic. And the
3 government took its best shot. They took the pick of the
4 litter and played it for you. It was one of the last
5 exhibits they put in. It was their best shot. It was the
6 December 28, 1992 phone call. It was the phone call where
7 Emad Salem said that stuff about the lawyer -- remember he
8 made up the story later on when we started this morning when
9 he was in the car and he said yeah, Nosair called me from
10 home and he wanted me to come up, he was pushing me into
11 technical stuff, he wanted me to come up, he said don't
12 worry about it, I'll get you a lawyer -- that's the call
13 that is recorded, that's the call that the government put
14 into evidence, and that call is on a chart. But let's look
15 at the call itself and see what it says about Mr.
16 El-Gabrownny.

17 This call is in evidence as Government's Exhibit
18 GX672T. I am only going to page 8 and 9. You look at the
19 whole call. Any time people start pointing you to parts,
20 look at the whole thing. But this is the part of the call
21 that the government focused in on through Mr. Khuzami, and
22 it says -- it's 672T.

23 Right here Nosair: God willing Ibrahim I almost
24 lost at, thanks be to God by the grace of exalted might I
25 God, you can say that I have finished the papers for the

1 appeal.

2 And El-Gabrowny says: Of course I want to talk
3 about the subject.

4 And Nosair says: Of course, I can't talk over
5 the phone about too many things, you see.

6 And El-Gabrowny says: No, I will come to you God
7 willing, Sayyid, so we know what we are doing, going to do
8 exactly.

9 Nosair says: Yes, God willing.

10 The government put this tape in to imply that
11 they are talking about planning the World Trade Center.
12 That's why they put the call in. Isn't that what they're
13 trying to prove?

14 And El-Gabrowny says: Because I'm lost now.

15 And Nosair says: Fine, God willing.

16 He says: I'm completely lost.

17 Nosair says: Fine.

18 El-Gabrowny says: And the amount that will be
19 paid.

20 Nosair says: This amount will not be paid and
21 I'll tell you why.

22 They are talking about the subject anyway, even
23 though Nosair is saying hold on. El-Gabrowny is pushing it,
24 he is lost, he wants some answers as to what he should do.

25 He says: I agree with you, I agree with you, but

1 we see.

2 Nosair says: Yes?

3 Where we exactly stand.

4 Nosair says: Yes. Of course, I am the one who
5 prepared all the papers, all the papers, you see. I mean
6 they are supposed to, thank God for the money we paid, you
7 see, and they will present these papers as if they were the
8 ones who prepared them, you see, unless they want to place
9 an argument or two or something, you see.

10 And he says: I will tell them, may God be
11 gracious to you, we don't have the rest of their money.

12 Mr. Khuzami, try hard as he may, tried to get
13 Mr. Salem to give you the impression that they were talking
14 about some kind of bombing, escape and stuff. And I asked
15 Mr. Hafiz, the government's interpreter -- I didn't call
16 Mr. Yousry, I didn't call Faoud, you know, I didn't call the
17 defense interpreters because you know you can't trust them,
18 they are only going to tell you what the defense wants to
19 hear, right? I asked their interpreter, the one you can
20 trust, or so it seems. I said to him, Mr. Hafiz, tell the
21 jury what's being discussed here and what did he tell you?
22 He said they are talking about getting papers to a lawyer to
23 pay for an appeal. It's in the transcript. That's the
24 government's best shot against Mr. El-Gabrowny. Sound
25 consistent with something that you heard in the opening?

1 Does it sound consistent with the other witnesses, what they
2 said in this case? Is it consistent with Khalid Ibrahim?
3 Is it consistent with the defense witnesses, the government
4 witnesses, the tapes, and everything else? Is it consistent
5 with the other call where the man said he was going to get
6 his transcripts?

7 Let me tell you how double talk is. Double talk
8 is a powerful thing. It's worse than the finger of
9 accusation. Salem testified to you that he got the autopsy
10 photos from Mr. El-Gabrowny's apartment. Remember way back
11 then? And some of you said to yourselves what in the world
12 does a man have autopsy pictures in his house for? I mean,
13 regular people just don't have that at home -- unless some
14 of you all do. I submit to you that most regular people
15 don't have autopsy pictures in their house unless there is a
16 reason for it.

17 What we found out through cross-examination and
18 stipulation by the government is that seized from Mr.
19 El-Gabrowny's house was all of his trial records, the
20 transcripts, the photographs, the exhibits, all of the
21 records were seized from his house. But Salem didn't tell
22 you that. He didn't tell you that. He told you Mr.
23 El-Gabrowny turned up the TV set and said I got to talk to
24 you about something and took the pictures off the top, look
25 at these bloody pictures. He didn't tell you that in Mr.

1 El-Gabrowny's apartment was all of his cousin's records.

2 Mr. Kunstler took the stand and he had amnesia
3 about whether or not he knew there was a fund or not. I
4 submit to you everybody else knew. He said he was the
5 lawyer, he didn't know, that's between him and whatever.
6 But Mr. Kunstler told you that Mr. El-Gabrowny kept all of
7 the records from the trial after the case. He worked as a
8 paralegal. Mr. Kunstler didn't do the appeal. They were
9 looking on an appellate lawyer. So they gave the records to
10 Mr. El-Gabrowny. That's the inference to be drawn from it.
11 He is talking about it on a tape that you heard this
12 morning. He says he is going to go get them, and you heard
13 it. There he is on December 28.

14 You know that remark before the World Trade
15 Center when the government said people took time from their
16 busy schedules to go to Attica? He always took time out
17 from his busy schedule to go see Mr. Nosair. We don't have
18 that sense of family any more. Mr. El-Gabrowny is from a
19 place where people still have a sense of family, the
20 children or a cousin who is in trouble. Is he wrong? Is he
21 wrong because he did that? Without proof he is wrong?

22 He's a jerk. He had the passports in his pocket.
23 That's what Napoli said, the idiot. We weren't even going
24 to arrest him. That's what he said. He took a swing at a
25 cop. That's what Napoli said. Is he wrong?

1 One thing we know about living here. When you
2 get in between a cop and something they want to do, you
3 better have your house in order, and if you do it in
4 Brooklyn, you better have some bail money. If you get
5 between a cop performing his duty, you going to get locked
6 up, especially if you don't go along with the program. That
7 wasn't my words, that was Detective Corrigan's words. And
8 we know what the program is.

9 Let me make this point and go on from there. I
10 digressed a little bit. This is the government's best shot
11 against Mr. El-Gabrowny, and this is a reference to
12 something that I talked about earlier this morning. If you
13 go to the transcripts at page 6387, that is where Mr. Salem
14 says he was trying to bait Mr. El-Gabrowny into having
15 conversations about bombs. And I asked him, and
16 conversations about arms coming in, isn't that right? He
17 said yes. And conversations about kidnapping judges, isn't
18 that right? He said yes. And other violent acts? He said
19 yes, sir. And when you talked to Mr. El-Gabrowny about
20 that, you talked to Mr. El-Gabrowny about demonstrations,
21 isn't that right? He said yes, we talked about that. What
22 Mr. El-Gabrowny told you was what the Muslims need to do is
23 to get registered and vote, didn't he? He said yes, sir.
24 He said he had a conversation with you on more than one
25 occasion, this happened on more than one occasion. Yes.

1 And you had these conversations about him? Yes. And a part
2 of those conversations was using the ballot instead of the
3 bullet -- and I used those words for a reason. And he said
4 yes, that's right. He said that's what El-Gabrowny said
5 about the time being. Mr. El-Gabrowny always postponed the
6 bombing and violent acts. After we see the appeal of Nosair
7 we will succeed or fail.

8 I put this up here for a reason, because this is
9 the art of a con man. The con man takes a bit of the truth
10 and puts a little lie on it, and while you dealing with the
11 truth element, he is tricking you on the lie. Everything
12 about what he said in answer to this ballot or bullet
13 question is verified and corroborated on the tapes, except
14 for guess what part. Hm, let's see the part that's not
15 verified. Postponed the bombing and violent act after we
16 see the appeal of Mr. Sayyid Nosair will succeed or fail,
17 sir. That part is not corroborated anywhere. I told you
18 put this in your notes and you put it down. No, I didn't.
19 Yes I did. Remember about the World Trade Center? Wait a
20 minute, man, you was talking about a demonstration, I
21 checked my notes. Uh-huh. That's how he works his game.
22 He takes a little bit of truth and wraps it around a lie and
23 he delivers it to you like it is the truth.

24 The government may say to you Mr. Ricco wants you
25 to focus on these isolated pieces of evidence. Mr. Ricco

1 doesn't want you to focus in on anything. Mr. Ricco wants
2 you to use your own common sense and your own experience,
3 and if you want to look at every piece of evidence in this
4 case, I welcome you to do that. Take every piece of it and
5 question it. Take every exhibit. Take them carpenter nails
6 back there with you and the stun guns, everything back there
7 with you. I am not trying to get you focus on nothing or
8 anything. Use your minds, use your common sense. And you
9 ask yourselves when you are all said and done, is everything
10 that has been put in front of you consistent with what the
11 government says they have proven? And if they haven't, then
12 you know what your answer is, and if they have, you know
13 what your answer is.

14 I got one chart, and then no more charts.

15 I don't believe in dumping on people, but perjury
16 is a different story and setting people up for convictions
17 is something that Mr. Salem has already told you he don't
18 have no problem doing if the money is right. What you have
19 to understand is, you don't get money from a criminal case.
20 Mr. Salem said he was involved in an incident with a car.
21 He had the wherewithal to know that if I testify in this
22 criminal case and it's favorable to me, I can then use the
23 evidence from that for my civil case so I can get paid on
24 it. That is deviousness on a high order. That is worse
25 than vengeance. That's worse than going in there and making

1 up a story because you hate the sheik. It's worse than
2 that. Forget about hating the sheik, I'm going in there so
3 I can get some money in my pocket.

4 Remember the young guy that came up here,
5 Pinckney, that nobody cross-examined. The guy that the
6 government brought the khufi for and the prayer rug and
7 Walkman? What were we going to ask him? Did the Walkman
8 work? Here is a guy that robbed his own parents, kicked
9 people down steps, what are you supposed to do with his
10 testimony? Oh, I know he's telling the truth today.

11 Salem is the same thing, and I'm going to show
12 you why.

13 Remember a question that I asked Mr. Salem about
14 the day of the arrest, and I want to go to the day of the
15 arrest. Like Miss Stewart, I don't want you to think I am
16 avoiding it. I want to cover it and I think I am going to.
17 The day of the arrest is important because that's the day
18 Mr. El-Gabrownny assaulted Detective Corrigan and he
19 assaulted Officer Burke, or so they say.

20 On the day of the arrest, Salem told you -- check
21 this out -- he spoke to El-Gabrownny five minutes before his
22 arrest and he recorded the conversation and here it is.
23 Came into evidence as Government's Exhibit 601-4T was the
24 transcript, and the tape came in as 601-4 -- thank you, Mr.
25 McCarthy. I got news for you: He told you a lie. This is

1 not the call that he had with Mr. El-Gabrowny five minutes
2 before he got arrested. He just wanted you to think that it
3 was, and I am going to prove to you that it wasn't. It's
4 real simple. OK.

5 Remember when I talked about Dr. King, he said
6 this statement that said that the royal arc of truth was a
7 long arc, but that eventually the arc bends towards the
8 truth, or the royal arc of justice is what he really said.
9 He said it's a long arc, you know, the struggle is a long
10 one, but then eventually it starts bending towards the
11 truth.

12 After he testified for six weeks and we read
13 through them CM's day after day after day, near the end of
14 the trial, I submit that the arc started bending towards the
15 truth, because I crossed Mr. Salem when he came back for the
16 reprise, about that call. And I said to him, and a lot of
17 the jurors looked at me when I asked the questions -- so I
18 think. I said didn't you tell Sheik Omar on a phone
19 conversation that Mr. El-Gabrowny, you talked to Mr.
20 El-Gabrowny five minutes before he was arrested, and Mr.
21 El-Gabrowny told you that he was going to his car to pick
22 something up and bring it back? He said that's correct,
23 sir. Right? He also said the same thing to Agent Floyd in
24 a recorded conversation, and I asked Salem about it. I said
25 did you have an opportunity to go over the conversation that

1 you had with Floyd where you were relating the other
2 conversation? He says yes, sir, I did, and yes, I told
3 Floyd that five minutes before Mr. El-Gabrowny was arrested
4 with the passports in his pocket. He spoke with him over
5 the phone and Mr. El-Gabrowny said to him I was going down
6 to my car to get something and I'm coming back. Why is
7 that?

8 It is important to the government's case, because
9 the government said Mr. El-Gabrowny got passports, he heard
10 about somebody being arrested, and he is running out the
11 door with the passports. That's their theory. Real neat.
12 El-Gabrowny hears about it, he is running out the door with
13 the passports, right, he is going to hide out in the street
14 in the bushes and watch the agents go in and out of the
15 building, with Mohammed El-Gabrowny, who Salem said was down
16 there but nobody else seen him.

17 That is important to the government's case, it is
18 crucial to the government's case. They say that when he
19 left the house with those passports, running, that proves
20 that he had something to hide.

21 Salem to other people, the agent -- why would he
22 be lying to Nancy Floyd? I don't know. And he also said to
23 the sheik, I could think of a couple -- withdrawn. He told
24 two different people on the spectrum of this case.
25 El-Gabrowny five minutes before he left, I was on the phone

1 with him, and El-Gabrowny told me I was going to my car to
2 get something and I was coming back, and it was the first
3 time he had heard that when it was asked, when the arc was
4 bending down.

5 Because before that, the only call that you had
6 heard was this call. And in this call it says nothing about
7 going to a car, nothing about coming right back. But this
8 is not the call. Mr. Salem destroyed the call. How you
9 know that? Let's go to a phone chart. This about a
10 30-second call. It is to Mr. El-Gabrowny. How do we know?
11 Listen.

12 (Tape played)

13 MR. RICCO: His phone rings, he picks it up, he
14 says hello. And Salem starts with his game.

15 Mind you, conceptually what's going on in the
16 case at this time? Salem has to set this guy up so he can
17 get back in. How do we know that? He is setting up the
18 agents. If he is setting up the agents the same week,
19 wearing a wire against them, think he's setting up
20 El-Gabrowny? No. Why would he do that?

21 This is a short call, about 30 seconds. We don't
22 have Salem's phone records. The government didn't put them
23 in. They put in Gabrowny's, and look at his phone records.
24 Remember the nine-minute call I told you about, Nidal Ayyad?
25 We got another nine-minute call. Look at this. At 12:44

1 p.m. there is a 10-minute call between Mr. El-Gabrowny's
2 apartment and 362-0099, Mr. Salem's phone number.
3 Ten-minute phone call. Do you see that 30-second call on
4 here anywhere? No. So when I told you the phone rang and
5 it was El-Gabrowny picked up, that phone call will be
6 recorded on Mr. Salem's phone bill, right? When we get our
7 phone bill, what is listed on our phone bills are our phone
8 calls and the ones we pay for collect, like from Attica.
9 Mr. El-Gabrowny is arrested around 1, a little after 1.
10 Here is a call at quarter to 1. He is on the phone for 10
11 minutes, maybe 5 or 10 minutes before he is raced, and it's
12 a 10-minute phone call. I wonder what they talking about.

13 Remember, Mr. Salem is the guy who scared Mr.
14 El-Gabrowny into buying this. This is the 9-millimeter that
15 the agents seized from Mr. El-Gabrowny that has never been
16 loaded, fired, anything. I wonder what that 10-minute call
17 was about. What insight would it give you about what Mr.
18 El-Gabrowny was going to his car to get and why he was going
19 to get it? And isn't it a happy coincidence that when he is
20 outside of his house he is arrested with passports in his
21 pocket that were issued two years before. Talk about fate.
22 What a happy coincidence.

23 You remember when the State Department agent took
24 the stand, Stuart, and we got into this thing about the
25 depth of the investigation they did for those passports?

1 They were looking for their man. They found the guy down in
2 Nicaragua who put the passports through the window with the
3 money. The guy even offered to get him a phony passport.
4 They went searching for their man. One thing they told you
5 and one thing I tried to make clear was, the passports were
6 issued in July 1991. Mr. El-Gabrownny was arrested in March
7 1993, and it is just a happy coincidence that he happened to
8 have those passports in his pocket that afternoon. I wonder
9 what was said in that 10-minute call and why Mr. Salem
10 destroyed that call.

11 You could go back to something Mr. Jacobs did in
12 his cross. Salem told Jacobs in his cross when he heard
13 about the bombing he put his tape in his machine that day
14 and he wanted to make sure it was working. He recorded
15 every call that went in and out. John Jacobs brought that
16 out on his cross. He said the machine was working, he
17 recorded every call that went in and out. And when you are
18 back there deciding whether or not Mr. El-Gabrownny is
19 running out of his house to hide in the bushes, say to
20 yourselves, I wonder what was on that 10-minute call that
21 Mr. Salem destroyed. Because he taped it, he told you he
22 did.

23 If he is recording these calls the way he said he
24 was, as they come in he throws them in the box, then where
25 is the call? You knew that was garbage when he was telling

1 it to you. He edited, he stacked the deck. Don't you see
2 it? He testified that he had a call with Mr. El-Gabrowny
3 and he tried to trick you. He lied to you and told you this
4 was the call that came into evidence. That's not the call.
5 This is a 30-second call. Anybody think that's a 10-minute
6 call? It's not from Mr. El-Gabrowny, it's to Mr.
7 El-Gabrowny. And here are the phone records.

8 You can put charts up there and say charts mean
9 something. I'm not saying that this phone call here makes
10 Mr. El-Gabrowny guilty or not guilty. But gee, what a
11 liar -- if he could get away with it. Don't forget, he
12 wanted to pick Mr. El-Gabrowny's lawyer for him. It's a
13 good thing that didn't work.

14 Now let's go right to the assault -- another
15 thing, too, about the passports. The government wants you
16 to think that the passports was part of some kind of escape
17 plan. I asked Mr. Salem -- check out the escape plan.
18 Mohammad Salameh supposedly said he was going to move to
19 Buffalo, get an apartment and get a job either in a garbage
20 removal thing or a bakery thing, and then they are going to
21 make a delivery to the prison and Mr. Nosair, who is top
22 security prison, constantly watched, one of them that's in
23 the state central monitoring, he is going to get a job in
24 the garbage delivery or in the bakery, right? Mr. Stavis
25 took all that time, you know, about they watching everything

1 this man is doing. He can't walk out his cell without it
2 being taped. But look at the plan, according to Salem.
3 Mohammed is going to get an apartment, hide, get a job --
4 only Arab in Buffalo (Laughter) -- drive into the facility.
5 Right? Salem is going to hop out, he is going to have his
6 stun gun with him, he is going to get into the bakery truck
7 or the garbage truck, and they going to go where? Mohammed
8 said they can go to my apartment because nobody will look
9 there. I mean, that's as silly as believing that Nosair is
10 going to go running out with the stun gun in his hand, to me
11 and, I suggest, to you.

12 But this is the plan that he gives to
13 El-Gabrowny, and I say to him, when you telling this story
14 to El-Gabrowny, does he say to you, Emad, that's a really
15 good idea because you know what, I've had these passports
16 since 1991 and he can leave the country. You know what
17 Mr. Salem said? No, sir, he didn't say that. Of course he
18 didn't say it, because he didn't tell the other part of it.

19 But when you stop to think about some of this
20 stuff, this guy got a million dollars for this. And your
21 children could come up with a better story than this stuff.
22 Talk about a grade B movie. We talking about people's lives
23 in here. That's the escape plan that the passports were
24 supposed to be used for.

25 You look at the passports, what was going on in

1 his life, what was going on -- 1991, he hadn't even put on
2 trial in 1991, still in the pretrial, death threats, two
3 Arabs to every Jew. Mr. El-Gabrownny threatened at a press
4 conference. Think Dr. Mahdi came and lied about that?

5 Sure. He is threatened at a press conference. Mr.
6 El-Gabrownny wants to go to the police for help. That's a
7 twist. That's the terrorist for you. He wants to go to
8 John Anticev and Napoli to get a gun permit because he is
9 scared for him and his six children.

10 Why doesn't -- listen. Being scared for yourself
11 is one thing, being scared for your children is a different
12 story, and for people who have children, you know what I'm
13 talking about. If you that scared that you motivated to get
14 yourself a licensed gun, you not going to wait the four
15 months to clear it -- because this was a licensed gun. You
16 going to go to your pal Dr. Rashid and Ali Shinawy, your boy
17 from the mosque. Man, I'm scared, yo, can you hook me up,
18 you know, can you do something for me? Aren't you? You
19 scared for your wife and your children and I'm going to sit
20 here and wait for my permit? You going to go out there and
21 get you something. And if he is supposed to be the gunman
22 and Shinawy is the gunman and Shinawy is on the board with
23 Ibrahim, why doesn't Ibrahim go to Shinawy and say hey
24 Shinawy, my children are being threatened, get me a gun.

25 Because it ain't true. That's why.

1 Salem is the guy who talked him into getting this
2 gun and when Mr. El-Gabrowny got it the officers told you
3 they took it from his house chained up in a closet, like any
4 responsible parent should do if they got a gun in the house,
5 chain it up. These guns, they ain't take one 9-volt battery
6 out of Mr. El-Gabrowny's house. They wasn't even looking
7 for carpenter nails when they went in there, the tools of
8 the bombing. They wasn't looking for one carpenter nail and
9 they left this box of tools right there, you saw it in the
10 pictures.

11 The assault. This video came in for a reason. I
12 wanted to show you the great distance -- this one is
13 working. Can everyone see that? Hold on a second.

14 Why the video? Detective Burke testified for a
15 reason, and I want to share something with you, particularly
16 for the people on the jury who have jury experience before.
17 You ever been on a robbery case or some other kind of
18 case -- Mr. El-Gabrowny is charged with assaulting an Agent
19 Michael Burke in Count 21, and Detective Corrigan in Count
20 20. They didn't even call Burke. Back up for a minute, as
21 Mr. Fitzgerald was saying, and throw a cold bucket of water
22 on you. The man is charged with a crime and they didn't
23 even call the person he was supposed to have assaulted, and
24 the person is a federal employee? I wonder why -- I'm going
25 to tell you why.

1 The reason is because they give two different
2 accounts of what happened. Not about whether or not he put
3 his hands up or down but two very important accounts that
4 relates to that phone call, because Detective Corrigan told
5 you that Mr. El-Gabrowny walked all the way down from his
6 building with his head down and his hands in his pocket,
7 turned around before he crossed the street, and walked all
8 the way back with his head down and his hands in his
9 pocket -- in Brooklyn. Never looked up. And it's
10 important, because what the government wants you to infer is
11 that the agents going into the building didn't have nothing
12 to do with Mr. El-Gabrowny's decision to come back. See, if
13 Mr. El-Gabrowny sees the agents and comes back to the agents
14 going into his building, then the theory of him running out
15 the house, out the door, is gone. So they didn't call
16 Burke. They went with Corrigan. I'm sorry. Agent Burke
17 told you that Mr. El-Gabrowny -- OK, Detective Corrigan, you
18 can let it run. He told you that Mr. El-Gabrowny came all
19 the way down and came across 11th Avenue -- stop right
20 there, please. Thank you. That's right here, from this
21 building right there. And he said -- then he heard the
22 call, the running to the building, and kept watching Mr.
23 El-Gabrowny. As the agents were running into the building
24 Mr. El-Gabrowny turned and looked in the direction of the
25 building after the agents were running in, and that's the

1 difference. After the agents were running in, and seeing
2 the agents running in, he goes back to his building.

3 I carefully went through the testimony with him.
4 As they went up the block, could you see the agents -- Mr.
5 El-Gabrowny was in front of you, could you see the agents
6 going in? Yes, he said there were two in front of the
7 building, a big bomb truck out there. It is very important.
8 That testimony is very important to the seditious conspiracy
9 theory, as opposed to the seditious conspiracy fact.

10 So he was not called as a witness. The defense
11 called him as a witness. The defense called the accuser,
12 not the government. The defense called the accuser, and he
13 told you that it wasn't until after the agents went in that
14 Mr. El-Gabrowny went back towards the building. I said to
15 him, did Mr. El-Gabrowny dip down 11th Avenue? No. Did Mr.
16 El-Gabrowny throw anything out onto the ground? No. Look
17 how long that block is. Look at that sewer down here. He
18 don't know these agents are behind him. Why doesn't he take
19 the passports out and, you know, flip them. He ain't
20 thinking nothing about them passports. It's just a happy
21 coincidence that he had them, happy. He is not trying to
22 duck nobody. If you trying to duck a cop, you don't duck a
23 cop by saying get your hands off me. You duck a cop saying
24 yes, you right, officer, I was wrong, I don't want to stand
25 here in the rain with my hands up but you right. That's how

1 you go. You don't start by saying take your hands off me,
2 where you going, what's the matter with me, what's the
3 problem.

4 The assault is nonsense. They didn't even
5 testify to it with a straight face. El-Gabrownny sitting
6 over there, Detective Corrigan is a big man. Six feet -- I
7 don't want to throw his weight around, but he's solid, he's
8 no lightweight. And he's experienced. Burke is a big man.
9 El-Gabrownny mustered so much strength that with two quick
10 blows, boom, boom, he knocked two big 6-foot men down to the
11 ground like that. You believe that? He was able to
12 generate so much force to knock these big men down to the
13 ground that it was like Mohammed Ali's punch against Sonny
14 Liston, no scar, no nothing.

15 You try to knock a man down like Detective
16 Corrigan. If you knock him down with one punch, he's going
17 to have a bruise, your hand's going to have a bruise, or
18 something. They just happened to fall to the ground.

19 When you deliberate on this count -- I don't mean
20 to be unkind towards Detective Corrigan or anyone else in
21 these proceedings -- your Honor is going to instruct you
22 that you have to determine that Mr. El-Gabrownny had a bad
23 evil purpose. What was his evil purpose? What was his bad
24 purpose? What was he trying to do? Interfere with agents
25 executing a search warrant. They took him into the

1 building. Why couldn't he have stood outside, Mr.
2 El-Gabrowny, we are searching your house, we know your kids
3 are up there, relax, we are going to take a few minutes, we
4 are not going to arrest you, your kids will be OK. He was
5 an engineer, he is an intelligent man. Was he entitled to
6 that? Or must he go along with the program? Because he
7 didn't want to go along with the program, there he is, and
8 there they are. That's how I go.

9 What was his evil purpose? I asked the agents,
10 did Mr. El-Gabrowny ever ball his fists to you? No. Did
11 Mr. El-Gabrowny ever say any mean or threatening words? No.
12 When you were taking Mr. El-Gabrowny from the front of the
13 building into the building, did he ever try to break away
14 and run? No. Where is the evil purpose and the bad purpose
15 come from to justify a conviction of assaulting an officer
16 in the performance of his duties? That's a serious charge.
17 And I submit to you that they didn't testify to it with a
18 straight face. Go back to Detective Anticev's statement,
19 they would have searched him anyway.

20 I am going to wrap up.

21 Real quickly, why do we do the World Trade
22 Center? Mr. Fitzgerald said to you Mohammad Salameh wasn't
23 trying to hide his address. You don't think so? You know
24 how many different addresses he used in the time period?
25 3605 30th Street, Long Island City. 57 Prospect Park. 17

1 Park Place, Brooklyn. 251 Virginia Avenue. 69 Mallory
2 Avenue.

3 You don't think that guy was trying to hide his
4 identity? He was known to some people as Mohammad Amin.
5 Six months before the World Trade Center he was known as
6 Mohammad Amin and the other guy was known as Rashid, not
7 this Rashid, Rashid Ramzi Yousef. You don't think he was
8 trying to hide? Look at the kid. The mirror on the van was
9 broken. How long do you think they had to drive around for
10 them to find somebody who was going to rent them a car
11 without putting up a credit card? Miss Stango from the car
12 rental place said we don't rent cars to nobody without with
13 verification, credit card, etc., etc. For people who rent
14 cars, you know what I am talking about. Nidal Ayyad was
15 there when Mohammad Salameh rented the car and he stayed in
16 the back. I asked the man, he stayed in the back and he
17 used Mohammad Salameh like a puppet because the man said
18 Mohammed would come to him and come back, come to him and
19 come back. He didn't want his name or address used in
20 connection with the World Trade Center. You don't think so?

21 Emad claims that Mohammed Abouhalima tried to
22 rent a van from a guy named Wally Moran in Jersey and that
23 he wouldn't rent the van to him in his own name. I don't
24 know if he was making that up or not. But the fact of the
25 matter is, if you look at how the World Trade Center

1 happened, the renting and the car, they sent the police to
2 his house, they sent him to his house. In fact, they had
3 his address 24 hours before. They got the address on March
4 3. They probably were watching him for a whole day. They
5 wasn't going there to arrest him. The government says he
6 had a picture and a passport and Mohammad Salameh had the
7 picture. Mr. El-Gabrowny had 16 of them pictures in his
8 house. They little snapshots. They in evidence. What you
9 mean? Mohammad Salameh is his friend. So he's got a
10 picture of him, he's got a picture of him, we know they're
11 guilty. That's the government's theory. And that's why we
12 do the World Trade Center.

13 Now let me say this. Khalid Mohammed
14 testified -- one thing. Everybody arrested in the World
15 Trade Center, you know what they got on them? One-way
16 tickets out the country. Came out on cross-examination.
17 Mohammad Salameh got a one-way ticket to Amsterdam and 2
18 grand in his pocket. Mahmoud Abouhalima flew out the
19 country, left his family behind, but they come and they got
20 one-way tickets. Everybody fled. Ramzi Yousef, they just
21 brought him back. Everybody fled except for the guy who
22 laid in the cut, who didn't think nobody was going to know
23 who he was, and he got busted. They took great pains and
24 care to set that thing up. The different addresses they
25 gave. He was known as Karim Kahn. He says he uses his

1 right name. Remember the names that he used when the tanks
2 were delivered and the space was rented. He used the name
3 Karim Kahn. He had different ID's. In his house in
4 evidence there is the George Izarry identification, the
5 passport and the driver's license where he tried to get a
6 driver's license under the name of George Izarry. He is
7 using 17 Park Street and other addresses. He has George
8 Izarry's birth certificate. You don't think they planned
9 that? It's like sending a return address envelope, put that
10 address on there it's going back to who it is addressed.
11 Mohammad Salameh, you looking for Mohammed, you got 15, 20
12 people to talk to.

13 Khalid Ibrahim testified that he helped Mohammad
14 Salameh. You saw his testimony. He said he helped him get
15 into the country and he perjured himself to do that. Do you
16 think that is something that he was proud of or do you think
17 he was a guy who really felt bad about having done that?

18 He helped Mohammad Salameh too. Mohammad Salameh
19 was using his address to get a license. Mohammad Salameh
20 had a way of being around people. He was around Moneeb for
21 six months. I asked him, did you ever get a clue of any
22 violence with him? No. The guy he lived with for a year,
23 did you ever get a sense of violence? No, not at all.
24 People use people that's up to no good and they use the good
25 people. They use the man that is willing to sacrifice his

1 life and expose their family to going to Afghanistan. They
2 use people like him, and that's what happens to him.

3 One person testified here that I got to speak on.
4 His name was Mohammed Abdel Haggag. Here is a man who is
5 coldblooded. For people to have children, you have to
6 appreciate what he did. He took a baby from the mother for
7 the child never to see the mother. And for people who have
8 children and know the love of their children, what a awful,
9 what a awful man. What a awful thought. What a awful man.
10 He turns Mahmud over in Egypt but gives money to his wife
11 and kids on the other hand. Suppose we put a witness on
12 like that. You all still be laughing. I say believe him
13 this time, you be laughing in my face. You think I'm going
14 to believe him. Keep standing there. That's what you be
15 saying to me.

16 And you know something else, he testified, he
17 never mentioned the name El-Gabrownny. He knows El-Gabrownny.
18 He never even pointed him out in the courtroom. How do we
19 know he knows him? Khalid Ibrahim told you that him and
20 Mohammed Haggag served on the board together and they had a
21 big dispute about Mr. El-Gabrownny controlling the funds for
22 Nosair's committee, and Mohammed was against it.

23 I wonder why he didn't tell you he knew Mr.
24 El-Gabrownny. I wonder why in his twisted distorted mind, he
25 couldn't bring himself to lying on Mr. El-Gabrownny. So he

1 just tried to pretend like he didn't know him. I wonder.
2 Or maybe Khalid Ibrahim just made that up.

3 I showed you -- just give me a few minutes I'm
4 almost done. Please bear with me, I'll be done, I'll be
5 over.

6 Mr. El-Gabrownny wrote a letter to Judge
7 Schlesinger, the judge who sentenced Mr. Nosair, and the
8 government and I stipulated. The letter said like this. It
9 said we appeal to you not to succumb to political pressure
10 on your Honor's person or the court, not to yield to
11 pressure by those who are trying to bring pressure on your
12 Honor and disrespect on the judicial system and the American
13 Constitution. And we ask that you exercise leniency in
14 sentencing. That's a letter from a terrorist to a judge
15 sitting in our jurisdiction.

16 The government didn't put that letter in. I put
17 that letter in. The government was too busy putting in
18 these stun guns.

19 Stuff came in. Sure there was Islamic literature
20 and his speeches and stuff like that in Mr. El-Gabrownny's
21 house. He had all this junk in Mr. El-Gabrownny's house.
22 Don't pick that out, put all of it in. Mr. El-Gabrownny had
23 literature in his house talking about unequal treatment in
24 America, who will the Muslims vote for. This is his
25 literature. The government didn't put those in, I put those

1 in. I was telling you that that call talked about an
2 appeal. The government and I stipulated, 672T, the
3 government and I stipulated that recovered from Mr.
4 El-Gabrowny's apartment was a letter dated November 5, 1992,
5 from an attorney Elizabeth Fink, and in the letter she is
6 getting information from Mr. El-Gabrowny concerning the
7 perfecting of the appeal of Mr. Nosair's state court
8 conviction. That letter was in his house.

9 I want to leave you on an impression, because I
10 think the government and I agree that impressions are very
11 important. You know, Malcolm X once he said just 'cause a
12 kitten is born in a oven, don't make him biscuits. I heard
13 that when I was a kid and I didn't have a clue as to what
14 Malcolm X was talking about. But now that I'm all grown up
15 I think I know what he is talking about. Just because Emad
16 Salem says it and just because they show you a picture and
17 say this is what happens when you don't have an informant,
18 that don't mean that you got to believe this man about Mr.
19 El-Gabrowny. Just because Emad Salem say he is born in a
20 oven don't make him biscuits.

21 I want to leave you with how he felt the day when
22 Dr. Mahdi walked into this courtroom with his wrinkled up
23 shirt and suit, his 50 years of civil libertarian history,
24 his Ph.D from Berkeley, his 10 books, his friend Kahane
25 murdered, his colleague. He said well, don't call him

1 colleague, we know each other's jokes, we been on 30 shows
2 together, I respected his ability to know what he did. He
3 looked over at Mr. El-Gabrowny and he said I'm the one that
4 gave him an idea to set up a committee. Some people are
5 interested in justice, other people are interested in
6 results. Think about how you felt. Didn't you feel as
7 though Dr. Mahdi was telling you something that you could
8 rely on? Did he tell you anything that is inconsistent with
9 going back to the first thing that I said about Agent
10 Napoli? Isn't it consistent?

11 Imam Siraj walked into the courtroom, one of the
12 most important people in our city, I suggest to you. The
13 work that he is doing on Bedford and Fulton and Brooklyn
14 most of us could care less about. He told you what jihad
15 means in his mosque, it means getting yourself together,
16 getting your act together, taking responsibility for your
17 family and making a good man of yourself, all them things we
18 against. Imam Siraj was the type of man that if you ask him
19 a question he is going to give you the answer whether you
20 like it or not, and a couple of people here found that out
21 the hard way. Remember?

22 Imam Siraj says Emad Salem tried to come on to
23 me, too. He wanted to ruin what that imam was doing in
24 Bedford and if you let upon in Brooklyn. He wanted to ruin
25 Dr. Mahdi who he looks at scornfully and says is an old man

1 with a fax machine. He tried to get Dr. Mahdi in a
2 conversation, call up the sheik and say that he is trying to
3 get the Jews. He goes to Imam Siraj and says I could come
4 in and wire your mosque. That brother said you're not
5 coming in my mosque. The imam told you that before they
6 gave any support to Mr. El-Gabrownny they checked him out,
7 and they said they heard no bad things about Mr.
8 El-Gabrownny. Is that a fact consistent or inconsistent with
9 what you heard?

10 Edward Ferguson took the stand. Emad took him
11 for a real ride. He was the best man at Edward Ferguson's
12 wedding and he is still wearing the medal that Emad gave
13 him, because he was the gunman. Remember, he is the guy
14 with the machine that Mr. El-Gabrownny wants to open up the
15 carpenter nails with. Mr. El-Gabrownny is an intelligent
16 man, he's an engineer. Why doesn't he go to the gun store
17 and buy a box of gunpowder for \$10? No. He is going to sit
18 at home and open up carpenter nails to get out the powder to
19 make the bombs.

20 Does that make sense to you?

21 Here they go, right here, right here. That's why
22 he got fired, because Carson Dunbar said enough's enough.

23 The point of closing is this: I want you to
24 remember your impressions of those men and what they told
25 you about this man. Did you see how proud he looked when

1 Dr. Mahdi stand up and pointed him out? It was like a
2 teacher pointing out his pupil. He was beaming. His chest
3 was back. You knew, I submit, that when those men took the
4 stand, for the first time in this case, I submit, you were
5 getting testimony from people that you could rely on, that
6 you could make an important decision on. Government, no
7 thank you, no questions. Ain't nothing to ask? Imam Siraj
8 says I am against the fool who shot Kahane, it's a crazy
9 man, he'll walk into my mosque and do the same thing. Dr.
10 Mahdi said I'm against it, he was a friend and a colleague,
11 it was wrong.

12 But what's that got to do with Mr. El-Gabrowny,
13 the guy who shows up in the precinct the night it happens
14 and gives all the information about his cousin who is
15 charged with the crime. He is not hiding. When they arrest
16 Mr. El-Gabrowny he has no one-way ticket, his children
17 aren't going anywhere. Came into evidence that in two more
18 weeks he would have been an American citizen. He has
19 letters in his possession. Yes, Mr. Fitzgerald. He has
20 still on the day he is arrested got two letters on him where
21 he is raising money for his appeal when he is telling you a
22 month before they are running out of money.

23 That's all I have to say about the case, it
24 really is. I don't think it is important for lawyers to
25 have to close up on some emotional high point, you know,

1 where, you know, everybody sort of, you got us, you know. I
2 think that's is a little disingenuous sometimes. He is what
3 he is. His family is what they are. I ask you, whether you
4 make a decision about him and the passports and whether or
5 not he was going to use those passports to further the
6 travel with the jihad leaders, ask how much you really
7 believe that and think about that coincidence and the
8 missing phone call. Think about the character of this man
9 as it was demonstrated in this trial. How much more would
10 he have to do to prove to you that the connections made with
11 the little phone calls are meaningless. How many tapes
12 would Emad have to doctor? How many of them would he have
13 to destroy? He said he talked to him three times a week for
14 two years. He only has 56 calls, where is the rest of the
15 calls? Ask yourselves how much more you would need if it
16 were you sitting there, what more would have had to have
17 been said if you were seated there. How much more would
18 have had to have been demonstrated about you or you or any
19 one of you, and that's the standard.

20 Use the wisdom of your experiences in evaluating
21 this case. Don't get caught up in the rhetoric. The
22 government is going to come back with more theory and as
23 they are giving you more of the theory about Mr.
24 El-Gabrownny, start thinking about some of these other
25 fellows sitting around here. Start looking a little closer

1 at some of the other evidence in this case. Because it's
2 just a theory, and when it doesn't match the theory, they
3 don't call the people as witnesses.

4 Thank you very much.

5 THE COURT: Thank you, Mr. Ricco. Ladies and
6 gentlemen, we are going to break now for lunch. Please
7 leave your notes and other materials behind. Please don't
8 discuss the case. We will resume after lunch.

9 (Jury excused)

10 THE COURT: I would like to see counsel in the
11 robing room briefly.

12 COUNSEL: Everyone?

13 THE COURT: Everyone.

14 (Pages 19387-19389 sealed)

15 (Luncheon recess)

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION

2:30 p.m.

(In open court; jury not present)

MR. SERRA: Your Honor, Mr. Alvarez is not feeling well. He wishes to return to the MCC and consents to our proceeding in his absence.

THE COURT: Is that all right, Mr. Alvarez?

DEFENDANT ALVAREZ: Yes.

THE COURT: All right, thank you. You are excused.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon, your Honor.

THE COURT: We will now hear a summation in behalf of Mr. Hampton-El, from Mr. Wasserman.

MR. WASSERMAN: Thank you. May it please the court, counsel and ladies and gentlemen of the jury. Where to start in a case like this is a problem, so let me just start with the fact that my client has testified here, he was on the stand for almost five days. I think you got a very good taste of who the man is.

THE COURT: Mr. Wasserman, if you go back and deport it is difficult for the translators --

MR. WASSERMAN: I will use this as a backup.

THE COURT: Good.

1 MR. WASSERMAN: Thank you. So there is some
2 stuff that I really don't have to cover in great detail on
3 the summation. I am trying to conceive of my job with you
4 in helping to deal with the deliberations and the problems
5 you are going to have to deal with. One counsel mentioned
6 that he felt there was fear in this courtroom and I don't
7 feel that, I don't think you do. I think what I feel and
8 what you are going to feel is pressure. There is a lot of
9 power in this courtroom and a lot of pressure. This is a
10 historical trial. I think at some point in history the O.J.
11 trial becomes a footnote and this becomes a chapter. I know
12 you have been taking it seriously.

13 THE COURT: Mr. Wasserman, the microphone that
14 you are using as a backup, if you could point it toward
15 you --

16 MR. WASSERMAN: I can wrap it around my neck.

17 (Laughter)

18 THE COURT: If you could tilt it towards you.

19 MR. WASSERMAN: Let me start just giving you a
20 broad outline and do it this way. The questions are what I
21 think the essence of the government's case is, and what
22 topics I am going to cover, and then I am just going to go
23 through it one by one. If I stop in a topic or between a
24 topic, I hope you will bear with me. It is to get organized
25 and make it a little quicker and a little clearer.

1 I think the first question is the first charge in
2 this case, which is, as the government put it, the seditious
3 conspiracy, the war of urban terrorism to get the United
4 States to change its immediate east policy.

5 I am struck by that charge because all that you
6 have heard about that client is Afghanistan and Bosnia.
7 Bosnia became very real to you, I think, because he was not
8 someone who simply heard about it, trained, and he was
9 someone who organized. I will go over that in detail later,
10 but that first formulation, that charge of seditious
11 conspiracy to me rings so false with relationship to him,
12 that I think that is an easy one. I don't see how he joined
13 a conspiracy to wage a war of urban terrorism to change the
14 United States Mid-east policy. I don't think he ever spoke
15 in any kind of detail about Mid-east policy. I think his
16 focus was entirely Bosnia and basically the United States
17 was Bosnia's only hope.

18 The second question, do you believe he aided and
19 abetted. In essence this is the attempt count, Siddig Ali
20 in an attempted bombing. There what I think is critical is
21 the way Mr. Fitzgerald summed up for the government and he
22 listed all the things that Siddig Ali had done. He had done
23 a test bombing on June 22 with Emad Salem, bought
24 fertilizer, fuel oil, scouted targets, made a video, etc.,
25 etc. And as he ran down that list, it recapitulated in my

1 mind that there was not one thing he mentioned that they
2 ever mentioned to my client, ever.

3 So what you have in the attempted bombing is his
4 complete ignorance of what they were doing, with whom,
5 where, etc., and we will go into some detail on that. I
6 think that is also a relatively easy charge for you to deal
7 with based upon that fact.

8 The next question is, do you believe he joined
9 the conspiracy to bomb the Lincoln and Holland Tunnels, 26
10 Federal Plaza, the UN, etc. That is the tough one. Yet I
11 think that the evidence there, ironically, coming from the
12 government, is a very powerful, very powerful refutation of
13 that, and I will simply point to in CM 25, which is Emad's
14 tape of his meeting with Rashid on May 30, 1993. They have
15 this long discussion, and it has been portrayed to you, I
16 think misleadingly by the government, as one in which at the
17 end of it Rashid agrees to provide detonators. The one
18 thing you know in this case is that he never provided
19 anything, nothing, no money, no guns, no offer of money,
20 guns, people, facilities, whatever. He was entirely
21 responsive, as you will see, to Emad's script, and you will
22 see how that played out.

23 But the time in that tape, they have a discussion
24 which my client has told you was relating back to a topic
25 that Siddig Ali had brought up, about a Serbian warehouse,

1 and you saw in a previous CM, CM 20, that people were
2 talking about how my client was talking about striking the
3 Serbs here. Suddenly at the end of that tape, the end of
4 that discussion, as Rashid put it, things changed, things
5 got ugly. Siddig unbundled the bag of tricks. I think that
6 Emad Salem, if you could see him in that conversation, was
7 aghast.

8 THE COURT: Mr. Wasserman, turn the microphone.
9 Thank you.

10 MR. WASSERMAN: Yes. That at that point in time
11 Siddig had done something stupid, because when he told
12 Rashid we are going to do the tunnels, on that tape you
13 heard, and you can hear it again in the deliberations room,
14 Rashid saying for that you don't need me.

15 I think the government's summation really is such
16 a reach that you can't consider it, which is that what he is
17 saying is that for that you don't need me there at the
18 scene. Tone changes. This is a world in three dimensions
19 and tone is a factor and that tape has a tone. From the
20 point Siddig mentions the tunnels the tone changes. If you
21 are a participant in this conspiracy you don't continue on
22 and say you are talking about killing innocent people,
23 ordinary citizens will be drowned. You are talking about
24 bringing down the federal system. Those are not comments of
25 someone who is joining. Those are comments of someone who

1 is saying excuse me, what are you talking about?

2 At the end of that conversation, and again we
3 will go back in some detail but I promise not the detail
4 that we did when Rashid was on the stand, there is my client
5 talking about the Mafia and how people were looking to kill
6 him, and they were making it clear that they were out to get
7 him.

8 I think it will be clear as Emad tries to
9 inveigle my client into this. I want to stress that point.
10 The purpose in a sense for Rashid testifying was to get you
11 to know that a man who has lived 57 years has a certain
12 pattern. He is who he is, the good and the bad. You don't
13 just become a monster because the government says you are a
14 monster, and a monster is what you have to be to want to
15 bomb the tunnels or 26 Federal Plaza or the UN or, for that
16 matter, anyplace where people are going to be killed.
17 That's not him, and nothing in his life as you heard him
18 describe it, which the government did not refute, is
19 consistent with being a monster, nothing.

20 He is the kind of person, if you think back to
21 the example used about Emad, would you trust Emad, would you
22 trust Haggag, I think you could trust Rashid to pick your
23 kids up from school. I think you could trust him to walk
24 your grandmother across the street. I think when Rashid was
25 aghast about Bosnia, it was about women and children.

1 MR. McCARTHY: Objection.

2 THE COURT: Again, it is not counsel's opinion
3 but what the evidence says.

4 MR. WASSERMAN: Your Honor, when I say it, I mean
5 I believe the evidence evinces that.

6 The problem that Rashid faces is that the
7 government's case basically boils down to two things, both
8 of which you are going to have to deal with. The first
9 thing is, they have a gun, this gun. They call it the
10 Shinawy gun, and it's really marvelous, I think, how Mr.
11 Fitzgerald did it in his summation. It's now the Shinawy
12 gun. It ignores the fact that the only way you know it
13 comes from Shinawy is through two people: Emad Salem and
14 Cedric Pinckney, and I will talk about both as we come to
15 it, and I will prove to you, I will prove to you that my
16 client was absolutely not involved with that. I know that
17 when you hear the word absolutely someone thinks my God.
18 But I am telling you I will prove it and you will see.

19 I think you have heard the evidence, but the job
20 on summation to some extent is to put it together and I
21 think you will see it. But that gun, the government says in
22 '92 evidences certain things. It evidences that Rashid is a
23 supplier and it evidences that he joined the jihad
24 organization in '92.

25 I have trouble with that from other points of

1 view. According to Emad Salem and only to him, there was a
2 bombing plot against the Jewish community. I don't know how
3 that fits with a seditious conspiracy, but we will talk
4 about that at a later point.

5 The second thing my client has to deal with --
6 and actually let me change that. He has dealt with it as he
7 can on the witness stand. I have to try to put the evidence
8 together to work with you on it -- is the calls to Mustafa
9 Assad between June 16 and June 19, and his calls to Siddig
10 Ali during that period. It is very focused. The government
11 focuses on it and that is their case. There is nothing
12 else. That's it.

13 So the essence of the case is this gun and those
14 conversations between June 16 and June 19. There is other
15 stuff that has been floating around and I think part of what
16 I have to do is to kind of clean the area off from it,
17 because there has been a deliberate attempt by the
18 prosecution to bias the case against Rashid. That's their
19 job, I mean, is to present as potent a case as they can, but
20 I think that what you will see is that the evidence that
21 they allowed to come in wasn't accurate, and it was designed
22 to smear him, and the first point -- and I will just tell
23 you what it is and I will tell you what the topics that will
24 be covered are so that we kind of know where we are going.
25 The first thing they do is to get you to think that he was

1 somehow connected with the World Trade Center. If you think
2 back to the openings in this case, you will remember that
3 some of the counsel were pointing out that the case was
4 jerrybuilt, it was kind of Frankenstein. You took this part
5 and that part and put together this conspiracy that didn't
6 quite fit. The Trade Center, one of the only contacts that
7 the government alleged at one point during this case was my
8 client doing a test bombing. They backed off of it entirely
9 at the end and we will see how that --

10 MR. McCARTHY: Objection. Objection.

11 MR. WASSERMAN: I think it is what the evidence
12 will show and I think I can show it.

13 THE COURT: It is what the evidence shows that
14 counts. Go ahead.

15 MR. WASSERMAN: Thank you, Judge.

16 The first topic -- let me tell you what the
17 topics are. Trade Center, and we will start from the
18 beginning briefly with Calverton, the photos that were taken
19 in 1989. We will go to 1992, the meeting that Emad Salem
20 has with Rashid at the Abu Bakr Mosque. Then we will talk
21 in detail about this gun. Then we will go to talking about
22 Project Bosnia and we will touch upon Garrett Wilson,
23 Mubarak. We will talk a little about CM 25, and then the
24 period after that between May 30 and June 16.

25 If I may, let me just highlight that for you,

1 because I think it is very important in understanding what
2 happened. May 30 to June 16 marks what you might almost
3 call a quiet period. They have had their meeting. It
4 didn't exactly go according to plan, I think, according to
5 what Emad Salem wanted. What happens is, Rashid has said,
6 you know, for that you don't need me, and doesn't get in
7 contact with them except on a minimal basis, there is no
8 discussions about the project, if you will.

9 The only contact that Siddig reports back is that
10 Rashid spoke to him about going to the Philippines and
11 Siddig thought that was a great idea and Emad Salem says
12 please, please, don't leave me here. That's it for that
13 period. There is really nothing happening. The government
14 points to a call to Mustafa Assad on May 30. I think it is
15 clear from the conversation they are talking about meeting
16 in the park the next day for the Eid, which is what occurs
17 the next day.

18 Then there are some conversations between them
19 during that period but absolutely about innocuous things and
20 there is no reporting back to Siddig and Emad.

21 So I think you will see when we go through it
22 that nothing is happening, and in fact what is happening is,
23 Siddig is saying basically shit, this guy is not going to do
24 anything, and Emad is steaming him up too because Emad is
25 thinking the same thing. Then Emad gets clever and I will

1 show you later what he does.

2 Then they meet on June 16. It is unquestionably
3 an unplanned meeting, and I think although Mr. Fitzgerald
4 pooh-poohs the fact that my client says if it's unplanned
5 and to him it's like a hijacking, I think in our own life
6 experience there is a difference between being surprised and
7 not. If you know you are going to discuss things with
8 people it is one thing. If you go to pray in a mosque and
9 people suddenly want to talk to you, the tone has changed.

10 You then have the Mustafa calls and I want to go
11 into what they were about and I want to talk about the
12 passports and the overwhelming evidence -- just to highlight
13 it, the government in summation said listen, if you go back
14 and listen in the deliberations room to CM 41 where the
15 discussion takes place, you won't hear passports like they
16 said you heard it when they played it for you, you will hear
17 far away or something like that. You will see that the
18 evidence is not just the fact that the passports appear
19 twice in that conversation, that the context of the
20 conversation has other reference to it, but you will hear
21 where Emad plans it, talks about it, and then his testimony
22 where he confirms it. So this is not something which rests
23 on whether you pick out one word from a transcript.

24 We will go then go to something of a detailed
25 analysis of the charges that we discussed at the beginning,

1 and that is roughly it. Let me start with Calverton.

2 The end position of the government concerning the
3 Trade Center is that they know now, after Haggag has
4 testified and Emad has testified, both of whom poisoned the
5 well, that Rashid never did a test bombing but rather Siddig
6 spoke to him, according to Siddig, and therefore -- this is
7 the message they want you to draw -- that therefore when
8 Siddig comes to him months later, Rashid, who has told you
9 this is, you know, kind of a bullshit discussion for a
10 couple of hours till he mentions the tunnels, that Rashid
11 should have taken it very seriously because the last time
12 Siddig asked about explosives, thereafter the World Trade
13 Center happened.

14 I just want to mention one thing in that regard
15 and we will come back to it. The answer that Siddig -- the
16 end position is that Siddig has gone to Rashid who says he
17 doesn't know explosives, that he knows hand grenades, he
18 knows land mines, but he doesn't know explosives. We will
19 get to that.

20 But the beginning of this case took you to a
21 shooting range in Long Island called Calverton. Much was
22 made of the fact that there was a hot dog stand and a lot of
23 cops went there and stuff like that. But I think the
24 important thing is, the way the government presented the
25 pictures to you at the beginning and the way they presented

1 the pictures to you in summation is that the intent was to
2 show the gathering of the evil clan, and what they are doing
3 is saying uh-huh, there is Salameh, Trade Center, and there
4 is Nidal Ayyad -- Trade Center -- and there is Mahmoud
5 Abouhalima -- Trade Center -- and there is Nosair, who we
6 say was involved with the Trade Center. And there is
7 Rashid.

8 At the beginning of this case there were a lot of
9 photographs shown of Calverton, and one of the interesting
10 things is that at the end of the case what is important to
11 tell you is that they presented three dates. It is hard to
12 go back in time whether you took notes or you didn't, but I
13 think it is useful to see what it was. June 2, June 9, June
14 16. There was a notice that has been testified to, posted
15 outside the mosque on Atlantic Avenue where the Alkifah
16 office was, that basically said come out to the shooting
17 range on Sundays, and people went.

18 The day my client went, which was July 9, there
19 were about 10 people. The agent, I think it was Dustin,
20 testified to 10 to 12, of which my client was one. My
21 client told you the reason he went out to Calverton, and he
22 testified he went there three or four times, was that the
23 Alkifah office asked him to lend moral support, that because
24 of his having gone to Afghanistan and having been wounded,
25 having made a video which was sold and distributed, he was

1 something of an advertisement, and if they could get them to
2 go, he could get others to go.

3 One of the people was Mahmoud Abouhalima, just
4 like the picture showed, and he went three or four times but
5 didn't go with him any other time. That wouldn't have been
6 momentous, though. Mahmoud Abouhalima was connected with
7 the Alkifah office. He was never identified with Nidal
8 Ayyad or Mohammad Salameh or, in fact, Sayyid Nosair.

9 The photos that the government has from July 7
10 and July 16, Rashid is not in those pictures. Not that the
11 pictures would do anything even if they showed him there,
12 but it is the purpose of showing the pictures to you at the
13 beginning of the case and the way the government hands you
14 three key exhibits at the end of the case to show my client
15 with Mahmoud as if that shows you something. It shows you
16 nothing. They were both related to the Alkifah office at
17 the same time.

18 To step back, why is there surveillance in 1989?
19 To go back all the way, because in a sense we have had to do
20 this work first, why there was surveillance in 1989, why
21 were they taking pictures? Why were they following people
22 from the Alkifah office? The closest we got to an
23 explanation from one agent -- basically all but one claimed
24 ignorance. They didn't remember, didn't know, did what they
25 were told to do. One says he thinks he remembers that it

1 was in relationship to the neutrality international
2 terrorism. The only thing going on at the time in the world
3 that is involving these guys, the Alkifah office, is
4 Afghanistan. So basically the FBI is surveilling them for
5 their involvement there.

6 My client testified that he knew pictures were
7 being taken of him at the time. He had gone on a speaking
8 engagement when he came back from Afghanistan for the
9 Alkifah office, and in fact was told by the head of the
10 office, Mustafa Shalabi, that the FBI had visited and asked
11 about Rashid.

12 The reason I make the point to you is to pose the
13 question why in 1989 are the government's guns turned on
14 him? What did he do? In 1989, just roughly, he is 50, 51
15 years old, he is working, he is back at the hospital. He
16 has been living at the same address for about 25 years, same
17 wife, same job. What had he done to merit the FBI visiting
18 and trying to find out about Dr. Rashid? I think it is a
19 question you have to keep in mind, because the same question
20 arises in 1992.

21 You know, when Garrett Wilson got up here and
22 testified, he talked about how Rashid had met him and
23 spoken, stressed that he wanted training for Bosnia,
24 military training, medical training, that he was organizing
25 something for Bosnia, and Garrett Wilson said look, I don't

1 have a tape of that meeting, I have a tape of all the other
2 meetings but I don't have a tape of that meeting. What the
3 government shows is videotape. They were surveilling it.
4 It was very organized and well set up.

5 The question I would again ask you is why? What
6 in December of 1992 is Rashid doing that merits the
7 surveillance? I think the two dots are easily connected:
8 Afghanistan and Bosnia. Those are the only two things that
9 he is involved in. There is no issue about that in terms of
10 1992. Not even the claim that Siddig approached him, which
11 the government makes, which was in January and February of
12 '93, is made. So that the only thing going on in December
13 when Garrett Wilson meets my client is Bosnia.

14 Why the surveillance? I think you just have
15 to -- I will come back to that, but I think it is a very key
16 factor in this case.

17 Siddig Ali is the source, and I think one
18 function of going through the evidence is to remind you
19 where it comes from. Just like this gun. This gun comes to
20 you not because an FBI agent was there when Emad Salem walks
21 out of Abu Bakr Mosque, having patted him down before to
22 make sure he wasn't bringing in a gun, so at least there is
23 some confirmation that a gun is bought at the time and place
24 that Emad Salem says. This gun comes to you through Emad
25 Salem. It's his story. It's Pinckney's story. There is no

1 other evidence about this gun.

2 Siddig Ali is the source of the stories about
3 going to Rashid to ask him if he knows explosives, and I
4 think again it is one of the ironies in the case that Siddig
5 says he doesn't know, but along the way a lot of mud is
6 hurled. I will show you how it is hurled and for what
7 purpose.

8 The first thing I want to point out is that in
9 the first CM in this case, CM 1, which covers a lot of
10 different topics, Siddig Ali is telling Emad, who is probing
11 like crazy for information, that he conducted a test for the
12 Trade Center conspirators, that Mahmoud Abouhalima came to
13 him after the bomb was built, so says Siddig, and asked him
14 to do a test. He doesn't say that he went to Rashid or
15 anything but he says he went to do a test, and when Emad
16 went to question him, what did the bomb look like, Siddig
17 starts to fuffer, because in fact he never did it. So he
18 tells Emad that Mahmoud's bomb was chemicals, liquid. Emad
19 says you know why I ask you these questions? Because it is
20 possible that we can understand how it works and we can
21 collect these solutions once more. Emad is no dummy. He is
22 trying to see what he can knit together and he says if
23 Siddig is telling me the real deal, we have the formula, the
24 real stuff, we can do it.

25 One of the things that is remarkable here is the

1 distance between the Trade Center bomb group and bomb and
2 the allegations in this case. It is a distance that the
3 government cannot cross. One of the reasons is evidenced in
4 the CM.

5 Emad asked Siddig what the thing looked like and
6 Siddig said it was packed in a bag. Emad says listen, I
7 have a question, why didn't Nidal test it? Nidal is the
8 chemist, Nidal Ayyad. There is a whole couple of pages
9 going on here. Emad says there is something wrong here,
10 something doesn't connect here. He knows when he is being
11 bullshitted and that's what Siddig was doing to him.

12 Emad Salem comes into this court, though, and
13 testifies that Siddig came to him and said that Mahmoud gave
14 him a test bomb, a bomb to test, and that he went to the
15 experts and that Siddig identified the experts as
16 Dr. Rashid's people. That was the testimony of Emad Salem.
17 And Mr. McCarthy asked him, does that, did you take it that
18 there was a test performed, and Emad said yes, I don't know
19 if Rashid participated in the test but yes, that was the
20 idea of it, that a test was performed.

21 Haggag comes in with much the same story. He
22 tells you that Siddig comes to him and gives him two
23 stories, the first that he does a test bomb, that he gives
24 one to Rashid to test, and then he comes back and says no,
25 that wasn't true. But again, the key is Haggag says that

1 the concept was in the first story, and the government, I
2 think really looking to have the first story be believed, is
3 that the concept was that there was a test bombing and that
4 Rashid did it.

5 Haggag on cross-examination admitted that he kept
6 a diary at MCC. You remember the whole pattern with Haggag
7 as he is brought in for questioning on July 16 of 1993, and
8 Mr. McCarthy and others talked to him for several hours, and
9 then they throw him into the prison. You know, whatever he
10 has told them that day is not currency sufficient. They
11 want more. And he knows it.

12 He goes back into MCC to see what he can get out.
13 He comes back with some stuff that is kind of interesting.
14 He tells you that he finds out that Mohammad Salameh had
15 contacts with Iraqi intelligence. And he tells you in this
16 diary -- which presumably is the real deal because it
17 doesn't come out on direct. He just admits that he kept it.
18 He says in the diary he kept at MCC he made a notation that
19 all the charges against Rashid, who he told you in the diary
20 he refers to as the American brother, have been fabricated
21 by Siddig, who was inventing a heroic tale.

22 So it's not just that, as the government puts it,
23 they find out in CM 40 that gee, there was no test, that all
24 it was was Siddig saying in a conversation that he went to
25 Rashid and Rashid said he didn't know. It's a very

1 elliptical conversation, but that's their point. They knew
2 long before.

3 They floated Haggag's testimony and Emad's
4 testimony that there was a test bombing, and I don't think
5 anything can scar a defendant in this case more than to be
6 associated with that, and that for the longest time was left
7 floating in the air to see if it would stick, and it wasn't
8 withdrawn until the end when it got reduced to, well, since
9 Siddig once talked about explosions with Rashid and Rashid
10 didn't know explosions, and sometime later the World Trade
11 Center happened, no allegation in any sense that the Trade
12 Center was ever known, told to Rashid, that that somehow
13 makes Rashid take Siddig seriously when Siddig talks about
14 bombing on May 30. That is what it is reduced to. It is a
15 long smear, and again I would ask you to take that smear and
16 put it next to the question why the surveillance and see if
17 it doesn't start to add up.

18 I would like to end this particular topic on one
19 point which I think is kind of decisive, that even the end
20 position of Siddig, that he at any time before May 30 had
21 discussed explosives with Rashid is a lie, I think you just,
22 as the sportscasters say, go to the videotape. But we won't
23 go to the videotape, we will go to the CM. This is CM 1 on
24 page 19.

25 THE COURT: Mr. Wasserman, could you give it by

1 exhibit number, please.

2 MR. WASSERMAN: Yes, your Honor. I will give you
3 both. It is GX301T and it is also in Hampton-El Q-1T, just
4 the excerpt.

5 The excerpt is, Siddig says to Emad: What else
6 we need?

7 Emad says: The detonator.

8 Siddig says: Yeah, you told me about it.

9 Problem where are we going to find it, brother?

10 Let's just stop there for a second. If Rashid is
11 a supplier of explosives and Siddig is associated with him,
12 as in fact he was during Project Bosnia, during the training
13 in Pennsylvania, then why does he ask that question? He
14 would know the answer to that. He would be telling Emad
15 listen, man, no problem. Because we know that Siddig is
16 capable of a long story, the really wild tale. You know, in
17 CM 14 -- I don't have the exhibit number but I will bring it
18 back after the break -- there is a point where Siddig is
19 being pressured by Emad. No problem, Rashid has two hand
20 grenades for us, we can pick them up at any time. Of course
21 we know it isn't true but Emad testified yes, that's what he
22 told me, and of course never picked up anything. Siddig
23 would love to have Rashid be someone who can supply it, but
24 his question is, problem, where are we going to the find it,
25 brother.

1 Emad says: God knows.

2 Then Siddig says: Does Abdel Rashid know it?

3 And Emad says: Abdel Rashid knows it, of course,
4 when you tell him detonator, he will tell you.

5 Siddig says: Fine.

6 Emad says: He will know the story.

7 Siddig says: Don't talk to him, don't open the
8 subject with him.

9 That second aspect of CM 1 where Siddig says does
10 Abdel Rashid know it, what I submit to you for your
11 consideration is that something which a person who has gone
12 to Rashid earlier and found out that he doesn't know
13 explosives, would ask. Just think about it. There are two
14 things in that little excerpt that I think are very
15 meaningful.

16 The next topic, if you will, is the 1992 meeting
17 between Emad Salem and Rashid. Just to trace it, at that
18 time Rashid is back working at the hospital, and he is
19 introduced to Emad Salem. There is a difference in the
20 testimony that is very marked. Ali Shinawy came in and he
21 said he made the introduction, and then Rashid and Emad
22 Salem talked. That's Rashid's testimony. Emad Salem says
23 no, we all met together, we met for an hour and a half.

24 The most basic fact to point out, and I know
25 that -- I think when you start the repetition of dumping on

1 Emad -- but it's not a dump, it is simply a fact. The man
2 tapes a lot. There is no tape of this meeting and it is a
3 meeting that he would naturally tape. The question is where
4 is the tape, and there probably was a tape but it didn't say
5 what he said it said. That is what you can read into Emad.
6 Simply he tapes anything. When it is in his interests the
7 tape surfaces, when it is not, the tape disappears.

8 I think you can take it as a good hypothesis that
9 it was taped, we just don't have it.

10 One of the things that happens at this meeting,
11 which is something subtle -- let me jump ahead a year later
12 because that is the contact between Rashid and Emad. Emad
13 sizes up Rashid. Not to say that Rashid doesn't size him
14 up. But a year later they meet again.

15 Detective Napoli got on the stand and told you,
16 you know, right before that meeting in '93 Emad came to me
17 and said he was frightened about meeting Rashid. So we told
18 him don't wear a wire, don't take the Nagra in with you.
19 What did you learn from Emad? He took not one wire, he took
20 two. And you will find in evidence both the Nagra tape for
21 that meeting, as well as the microcassette recorder that
22 Emad wore in his pants. So he was doubly armed.

23 The point I want to make to you is simply he was
24 totally unafraid of being frisked, of being hassled. He had
25 sized up Rashid earlier and he knew his man. There was no

1 problem, there was no fear. If you are afraid you don't go
2 in doubly exposed to being frisked or to having a briefcase,
3 what's in your briefcase, let me see, blah, blah, blah.

4 Going back to '92, Emad's story is very simple.
5 He says that he sits down with Rashid and shows him a timer.
6 This is one of Emad's kind of like magician bag of tricks
7 things. Timers appear throughout this case and he can pull
8 out a timer and make it sing and he is talking about doing
9 that. Rashid says to me what's that for and Shinawy says
10 it's for a bombing campaign against the Jewish community, we
11 are going to get Dov Hikind, blah, blah, blah.

12 Then Emad says, he says to Rashid we need
13 detonators. And Emad testifies to you that Rashid says
14 detonators, what do you need detonators for, I can get you
15 bombs, 900 bucks apiece. You want machine guns? Get you
16 machine guns, 900 bucks apiece too, no problem.

17 Now one last thing, Emad says I need a gun, an
18 ordinary gun, I need it for personal protection. And we
19 know that the protection -- well, let me go past that.

20 (Continued on next page)

21

22

23

24

25

1 Rashid, according to Emad, says, I don't have
2 any, but I will check into it. Rashid tells you that in sum
3 and substance Emad talked about -- something of a campaign
4 of terror against the Jewish community. It wasn't bombing,
5 but it was killing people. And he asked him for a gun and
6 Rashid said no.

7 I want you to, if you would, stop and think for a
8 minute about the absurdity of what Emad told you. If, in
9 fact, he had met someone who had bombs and machine guns and
10 you know that the FBI authorized him to buy a pistol, why
11 were they not following up with a much more serious thing of
12 machine guns and bombs?

13 Does it have any credibility?

14 There never was any followup on it. After Emad
15 was detached from the FBI, fired in July, there was never
16 any followup by the FBI.

17 I submit to you, it is ridiculous, it could not
18 be true. I think I can prove it to you. It goes like this:
19 On cross-examination Emad was forced to date the meetings
20 that he said he had. Remember, there were no tapes, so it's
21 all what he says he had.

22 He says the following on cross, and it goes like
23 this: I go to Attica June 14. On June 16 I meet with
24 Ibrahim El-Gabrownny and Ali Shinawy. We talk about bombs
25 and Ibrahim El-Gabrownny says I am going to try to get them

1 from Afghanistan.

2 OK. Then on June 19, three days later is the
3 meeting with Rashid. At this meeting Emad says, I ask for
4 detonators but get told, what do you need detonators for? I
5 have bombs.

6 Then Emad is forced to date another meeting. I
7 will show you why I use the word "force." The date is June
8 28. He meets. He says -- again I want to stress that he
9 says, we don't know. It doesn't sound credible, but this is
10 the story he has constructed. He says he meets with Ibrahim
11 El-Gabrownny and Ibrahim says: Bad news. Can't get
12 detonators from Afghanistan. They will never pass through
13 the airport.

14 Why doesn't he at that time, say, no problem.
15 But he also testifies that Ibrahim El-Gabrownny says to him:
16 You make the detonators. And then he says to Ibrahim: I
17 don't know how to make them. So they got an insoluble
18 problem except for the fact that three days before he's met
19 somebody who has bombs. No mention of it. No reason for
20 not mentioning it. And the reason is it is absurd. It
21 didn't happen.

22 Now, that dating important because the way the
23 evidence was presented to you by the prosecution was fudged.
24 And it was fudged in the following way. Emad was asked:
25 When did you meet with Ibrahim El-Gabrownny? Well, he says,

1 a day or two after I went to Attica on June 14. When did
2 you meet with him again? That week.

3 All right. And then they go through the
4 Afghanistan, no Afghanistan discussion. Then the topic
5 changes. When did you meet with Rashid? Oh, I can't
6 remember. Remember Emad's, "I don't recall. I can't
7 remember. I don't know," he says, "beats me."

8 So the government obligingly tries to narrow it
9 down and says: Well, was it more than a month or less than
10 a month? And Emad says, less than a month.

11 That's the dating that you get. The reason that
12 you get that dating, and the reason why it was necessary to
13 pin it down is because with that kind of dating it looks
14 like he's met with El-Gabrownny, he says, and the issue of
15 the detonators from Afghanistan is something that's behind
16 him.

17 So when it comes out that what, the story he's
18 telling, that he's met someone who has bombs and then he
19 meets with El-Gabrownny and says, we have a problem we can't
20 get any detonators, it doesn't work. I mean, I think the
21 dating is absolutely convincing that Emad's story is a
22 fabrication. It doesn't work. There's no logic to it in
23 any sense.

24 Now, one thing to note: A year later, when he
25 meets with Rashid, and interesting, isn't it, that there's

1 no followup at all. I mean, this is a guy who, according to
2 Emad has said: I got bombs, I got machine guns. The FBI
3 doesn't follow up, the police department doesn't follow up.
4 Nothing happened.

5 When he meets with him and he tapes it on May 30,
6 1993, it's Emad's tape, it's his evidence. Remember his job
7 in this case was to create evidence. He never tells the
8 story at that meeting to Rashid the way he tells the story
9 to Siddig at various times in the CM's. You can go back to
10 CM1, but there are other places. Because he tells the "Ali
11 Shinawy ready-made bomb" story a number of times in the
12 CM's. He never, ever says it in CM25, May 30. He never
13 says: Do you remember Rashid when you had those bombs? Do
14 you remember Rashid when you had those machine guns? They
15 still going for 900 bucks?

16 There is an allusion to -- the government makes
17 much of the fact that Emad says: Very important. That is
18 why the first time one year ago when we were looking for
19 this, and you told me was available, you already had -- you
20 don't know -- and you can look. I will read to you when we
21 come back from the break what the following conversation is.
22 What is going on -- whether at that time Rashid understands
23 what's being said. But what you do know is that nowhere in
24 that 85-page, three-hour conversation does Emad simply come
25 out and say what would be to his benefit to say, because it

1 would confirm to the FBI that in fact what he said happened
2 in June of '92 had happened, and create darn good evidence
3 against Rashid to simply say: "Remember those bombs?"

4 That is all he has to say. It's his tape. In a
5 sense it is the government's obligation. I would like you
6 to keep that in mind, if you would, because that is the way
7 Emad does these tapes, in a sense putting the burden on
8 Rashid to explain why it was elliptical. Why weren't things
9 stated? Why didn't Emad, who wants to create evidence, not
10 simply refer to that meeting the same way he did with
11 Siddig? "Do you remember that pipe bomb plot, the one
12 against the Jewish community?" Does he ever say that in
13 CM25? Does he ever say "bombs"?

14 I think it is a very revealing thing. When we
15 talk about the gun, you will see confirmation of why it is
16 so revealing.

17 The government argues that, well, there's
18 confirmation that back in June of '92 Rashid had connections
19 to get bombs. That is a wonderful tale, no evidence
20 whatsoever. None.

21 They tell you through an agent who gets on the
22 witness stand that there was a guy arrested in Pennsylvania
23 in July of 1991 for possession of a handgun, and he became a
24 cooperating witness.

25 Mr. Fitzgerald kind of glides by it in his

1 summation. Well, yes, although Rashid in the tape talks
2 about the guy being arrested in Pennsylvania, being shot,
3 high-speed chase, having C-4 and everything in his car,
4 that's the same person that the agent has described as being
5 arrested in July of '91 on a handgun charge and some
6 outstanding warrants. I mean, whatever rumors, facts Rashid
7 is operating on, what you know is the dating is all wrong.

8 If this is the guy the government is insinuating
9 is a connection, he's out of the picture in July of 1991,
10 and it's not operative that Rashid would be referring to it
11 in June of '92 when he meets with Emad.

12 But the key, I suggest to you, is the very simple
13 logic that the FBI would have acted on somebody who's saying
14 he has bombs, emad or no Emad. Second, when Emad's story,
15 which he tried to obfuscate on direct that El-Gabrownny can't
16 get detonators, he knows when El-Gabrownny says that the
17 logical thing is to say: No problem. We've got a guy.
18 We've got a guy who's got bombs. We're in business, folks.

19 Your Honor, can we break at this point?

20 THE COURT: Do you want to break now?

21 MR. WASSERMAN: Yes, thank you.

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

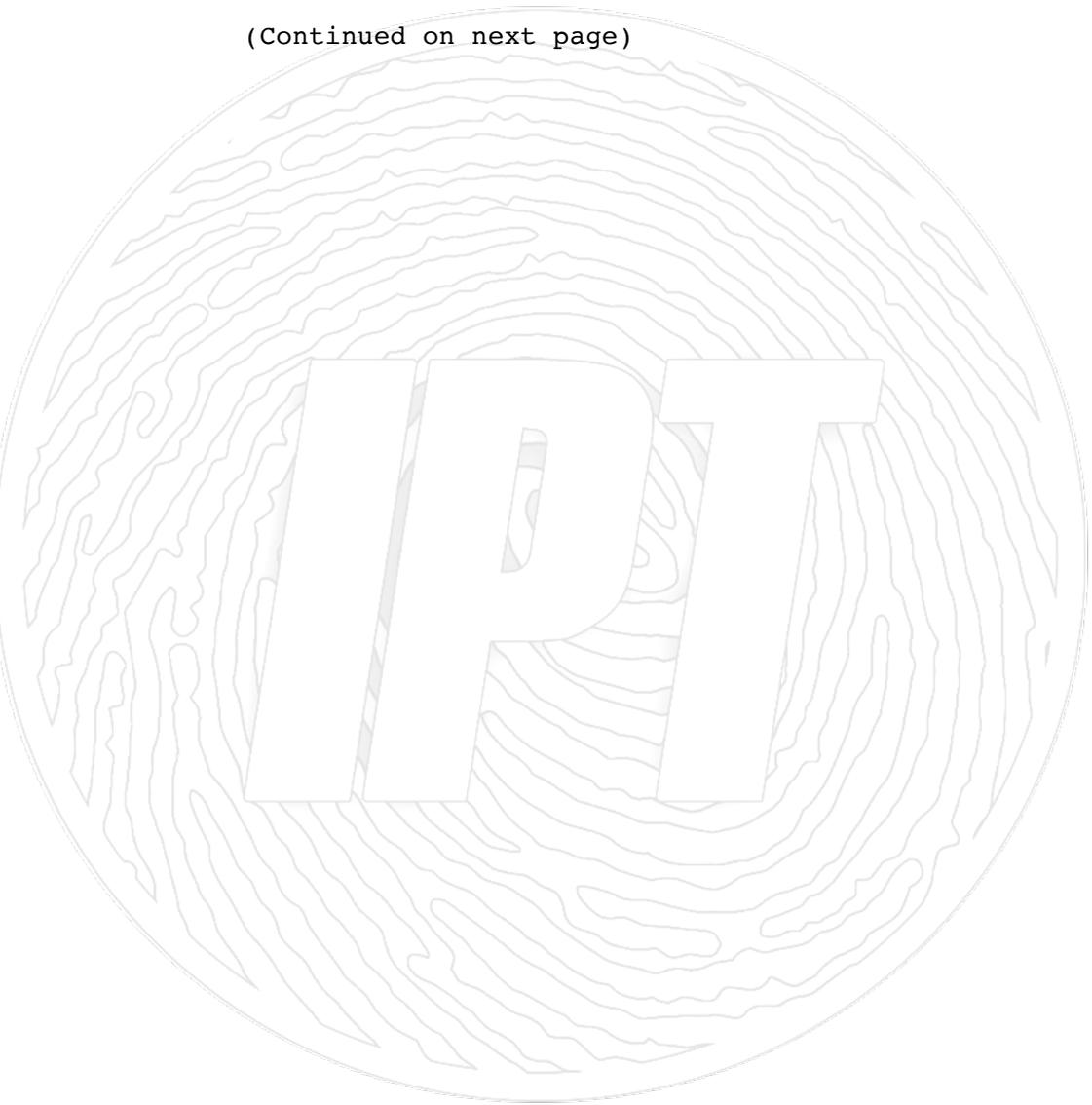
1 (The jury was excused)

2 THE COURT: May I again see counsel briefly in
3 the robing room.

4 (Pages 19421 to 19434 sealed)

5 (Continued on next page)

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 (In open court)

2 MR. STAVIS: Judge, Mr. Ricco just went someplace
3 for three minutes, and he told me before he left for three
4 minutes that I should cover for him in the event he's not
5 back when we start with the summations again.

6 THE COURT: Is that satisfactory,
7 Mr. El-Gabrownny?

8 DEFENDANT EL-GABROWNY: Yes.

9 THE COURT: Thank you.

10 MR. PATEL: Your Honor?

11 THE COURT: Sir?

12 MR. PATEL: I will cover for Mr. Alvarez. Both
13 he and his lawyer are out.

14 MR. STAVIS: He is just in the back, your Honor.

15 THE COURT: If you are covering for Mr. Alvarez,
16 who is covering for his lawyer?

17 MR. STAVIS: I will cover for Ms. Amsterdam and
18 Mr. Lavine also, and Ms. London.

19 MR. PATEL: And I'll do Mr. Jacobs.

20

21

22

23

24

25

1 (Jury present)

2 THE COURT: Mr. Wasserman?

3 MR. WASSERMAN: I just want to bring up something
4 that was referred to in connection with CM25, the May 30
5 conversation, and that more goes on in a conversation than
6 just the transcript from it.

7 There are gestures people are making. People are
8 tuning out at different times, as we all do when we get
9 tired or we get bored or you are just not following up on
10 the conversation, you are not calling someone on what they
11 have just said. I want to point you to Emad Salem, the
12 author of the following. He is being questioned on cross
13 about the meeting on May 30, 1993 and he's asked the
14 following questions, and he gives his testimony:

15 "Q Did you discuss getting weapons from
16 Dr. Rashid?"

17 This is at page 6541 of the transcript.

18 "A. I am sorry, sir?

19 "Q. Did you discuss getting weapons from him?

20 "A Siddig discussed some weapons, yes.

21 "Q. What did he discuss?

22 "A. That he needs some of this for protection.

23 "Q. Where is there, sir? What is there, sir?

24 "A. This, he made a gesture like that. We
25 need some of this.

1 "Q. You are making a finger like a pistol?

2 "A. Yes, sir

3 "Q What did Dr. Rashid say?

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

5 My endless apologies to all of you and the court
6 and everyone else for having had to go through CM25 the way
7 we did, but it really saves work in the end. There is no
8 conversation about getting weapons, and what Emad is in a
9 sense pointing out is that there wasn't, but that it could
10 happen. People can say things by gesture in a conversation,
11 and that's my point about it being Emad's tape, and if the
12 government wants to pin on Rashid a conversation in June '92
13 about bombs, when Emad comes padding around a year later
14 it's his tape and his interest to get it on tape.

15 It's evidence to simply confirm, "Remember those
16 bombs? Still cost the same? What about those people you
17 could get it from?"

18 Let me follow up, if I may, on that, what the
19 government argues, if I can find it.

20 OK. The government is saying that when Emad says
21 in CM25, "Very important. That is why at the first time one
22 year ago when we were looking for this and you told me it
23 was available you already had unintelligible." This is page
24 42 of GX325T. This is the defense version of the
25 transcript, which is W-2T:

1 Hampton-El: Unintelligible. These brother, they
2 got 30 or 50 of these, unintelligible.

3 What's 30 or 50? What is that referring to?

4 We don't know. It's not your tape; it's not my
5 client's tape. It's Emad's, and he's recording it.

6 And then it goes on to say: C-4s,
7 unintelligible, M-16s, AKK's, everything. Detonators,
8 bulletproof vests, they had everything.

9 Emad: Unintelligible.

10 Hampton-El: FBI caught them in Pennsylvania.

11 Emad: When?

12 Hampton-El: Last year. When I was down there, I
13 had access to it. Everything.

14 Emad: No.

15 Now, that's a very appropriate place in the
16 conversation, again, for Emad to bring it back to, "You
17 remember in June, were those the people you were getting it
18 from? Do you have another source?" I mean let's update.
19 let's connect -- not in an allusive way, not in a way that's
20 designed to create suggestions.

21 I mean, it's not just that the government has the
22 burden of proof beyond a reasonable doubt at the end of the
23 road, it's if they're going to create evidence, which is
24 what Emad was set out to do, it has to also be done cleanly
25 in a sense beyond a reasonable doubt. Let him say "bombs."

1 Let him refer specifically to what he has told Siddig.
2 You'll see how it falls apart when we talk about the gun,
3 which we'll do now.

4 Now, the first thing I want to say about the gun,
5 this .38 caliber pistol from 1992, does it strike you as odd
6 that in 1993, the bombing conspiracy alleged, that they go
7 not to Rashid for weapons?

8 I mean, after all the government in its opening
9 terms it, Siddig Ali, for his day of terror, went to
10 Dr. Rashid as the person in the organization best -- I'm
11 sorry -- who would be best equipped to attempt to get the
12 detonators and the explosives that they needed.

13 I mean, looking back, I love the way the word
14 "attempt" was put in. Because we know for a fact that he
15 produces nothing. And, in fact, I think you'll see he asks
16 for nothing in connection with detonators or explosives.

17 But the point is that they're referring to him as
18 the supplier. In fact, in the opening they say, "Rashid,
19 the weapons supplier." You will learn that Rashid had
20 already sold the pistol to the group in 1992. That's the
21 pistol.

22 Now, why, if that's the description, that is the
23 government's theory of the case -- just let me pose a
24 question. It's kind of a background question: Why, if this
25 this is 1992, the little guy, the big guy comes from Victor

1 Alvarez, the one easiest to take advantage of?

2 Is there any -- and I ask you any, big, bold,
3 any -- discussion of getting weapons from Rashid? If he's
4 the weapons supplier, if that be true, why don't they go to
5 him in '93? If he did this, why not this?

6 I want to be dramatic about it because that's how
7 it is. It is a big gun and a little gun. It's 1992 and
8 1993.

9 It is defendant Victor Alvarez who is, by the
10 account of the psychologist, close to the village idiot.
11 And I mean no disrespect, but you can take advantage of him
12 easily. That's what the expert tells you.

13 Why don't they do that with Rashid? "Hey,
14 Rashid, we want some guns for the tunnels"? Because when
15 they tell him tunnels, and you heard it, he says, "For that
16 you don't need me." Talking about killing innocent people.
17 Drowning ordinary citizens.

18 Now, this gun, the Shinawy gun, is really the
19 Emad Salem secret pinky gun, and I'll tell you how. Emad
20 Salem -- and I love the construct that the government
21 creates. It is really wonderful -- tells you that he comes
22 to Shinawy and Shinawy says, I have two suppliers, a Spanish
23 guy and a black guy, and the Spanish guy has German pistols
24 and the black guy has Dr. Rashid, and then they have a
25 meeting. And Dr. Rashid says, according to Emad, I don't

1 have any pistols, and, according to Rashid, I wouldn't sell
2 you a pistol. I don't sell pistols. No.

3 Now, Emad then reports back that on June 28 he
4 goes to get a gun from Shinawy, who has told him in advance,
5 he said, come over. This is according to Emad. There's no
6 record of it. There's no tape. There's no phone
7 conversation. There's no hint of corroboration. And the
8 government has told you where there's no corroboration,
9 watch it with Emad, as if they had to tell you.

10 But here's the point: Emad goes to pick up this
11 gun and it's entirely his word that it happens at all. And
12 it's hard to understand when the man is testifying about it,
13 but that's the reality. He could have gotten that gun from
14 any one of the people that you heard: Bilal Harun, the gun
15 dealer from Virginia, who sold, he testified, 124 guns to
16 Muslim brothers in New York City between the years 1991 and
17 I think 1994. Guns were floating around like crazy. This
18 is no special gun. An agent testified this is a \$70 gun.

19 (Continued on next page)

20

21

22

23

24

25

1 MR. WASSERMAN: (Continuing) So then Emad says
2 well, Shinawy calls him up and says bring money, I think
3 it's \$300, come to the mosque. We know that the FBI has
4 authorized this purchase, so why isn't there some
5 corroboration? I mean, if they show you pictures of what
6 they say is my client going into Abu Bakr on June 16, why
7 don't they show you some pictures of June 28 of Emad going
8 in to get the gun? Interesting, isn't it? It's entirely
9 Emad who says well, I got this gun from so and so. Why
10 should you place any reliance upon it? What check did the
11 FBI give you that in fact this took place? None.

12 Emad -- and forgive me, because the credibility
13 issue with Emad has been probed where it's like a ditch.
14 But I just want to point out one thing, and just one thing.
15 The government puts him on and says, you know, Emad, you
16 lied when you testified in criminal court across the street,
17 didn't you? Yes, sir. And you lied that you were a big
18 shot, didn't you? Yes, sir. And you lied to everybody that
19 you were a big shot. Yes, sir. And aren't you sorry that
20 you lied? Yes, sir.

21 The impression, the intent and the message is
22 that that is all he lied about, and I think that that is
23 fair to say. In fact, Mr. Ricco brought it out and I just
24 want to put a closing line on it, he lied much worse, and
25 then he lied to you about it, because what he told you was

1 all the lies I told in that trial is what I confessed to
2 when I was on direct examination by the government. That
3 was it. I lied about being a big shot. Don't we all?
4 Don't we all want to be a little bit more than we are and we
5 tell our wives and our employers that we are something
6 other? So I said I was a bodyguard for Sadat. How could
7 that affect the jury in an assault case? Come on. That's
8 the message.

9 But on cross-examination the message is a little
10 different. What did he tell that jury? He told them that
11 he lost his job as a result of the accident. That's
12 different, folks. If you were sitting on that jury on an
13 assault case, somebody who loses his job as a result of the
14 assault is painting a different picture for you than just
15 somebody who is saying I was a bodyguard for Anwar Sadat.
16 He is saying I really got hurt, I lost my job.

17 And you know, even the way he told that jury what
18 the job was was nonsense. He said I lost my job with the
19 jewelry company. That was the transcript testimony, and we
20 know for a fact that the job he is referring to -- it's a
21 real job but it's with his wife, the YGL Jewelry Company.
22 He never lost it. He testified, until in a sense the trap
23 was sprung, that he worked continuously on YGL business,
24 from the day of that accident until he was rehired by the
25 FBI in March of 1993. Never a pause. But he told the jury

1 that he lost his job because for five months he couldn't get
2 out of bed. That's an entirely different type of lie. And
3 he compounded it when he told you that the only lie was this
4 business about being a big shot.

5 So when Emad tells you that Ali Shinawy said I
6 have two suppliers, why is there any basis for you to put
7 any credence to it? Because what the government wants to
8 have you do is slide by that so that when Ali Shinawy
9 according to Emad says the Spanish guy was out of pistols,
10 you can reach your own conclusion that it had to be
11 Dr. Rashid, although he didn't have it on June 16, must have
12 come up with one between then and June 28. Not the Spanish
13 guy. We only have two sources of supply. The only one
14 other one is Dr. Rashid, the conclusion there. But the
15 construct, the facts are all Emad's. The Spanish guy is all
16 Emad's. Shinawy is all Emad's.

17 You have no conception, and I say this
18 respectfully, you have no facts that you can say Emad got
19 this gun at any particular time from any particular person
20 any particular way, because it's Emad telling you, you know
21 he tapes, he's got no tape and you know you can't trust him
22 on his word alone.

23 The next person whose gun this is is Pinckney,
24 and Cedric Pinckney is a piece of work, and the government
25 in its effort to get my client gives him an immunity letter

1 for about 50 robberies and is going to send him back to the
2 community far earlier than he would otherwise be for his
3 bank robbery by writing a letter to the sentencing judge,
4 and yes it is up to the sentencing judge what to do, but the
5 letters have power. They permit the judge to reduce the
6 sentence. Otherwise he gets out sometime in the year 2005,
7 I believe, and now he has a better shot.

8 They do a trace on the gun. I think the exhibit
9 is 391D. And they trace his gun in July of 1992, and
10 Pinckney testifies that they came to him in March of 1995.
11 Took a long time to find Pinckney.

12 Pinckney is another one that the only basis you
13 have for his connection to the gun -- I mean, he is not on
14 the trace -- a woman named Teresa Bush is on the trace. The
15 gun comes from the manufacturer to Lou's Loans in
16 Philadelphia and it is purchased on the record by Teresa
17 Bush. What do you get? You get Cedric Pinckney coming in
18 and saying well, Teresa is my wife. How do you know that?
19 And Teresa gave me the gun to sell. How do you know that?
20 Cedric's telling you that.

21 And then Cedric does something that is really fun
22 on the witness stand. They show him the gun and they say do
23 you recognize this gun? Cedric has sold by his own
24 testimony 30 to 40 guns in the time period, and this is a
25 gun that he says he sold in November, I believe, of 1990. I

1 will correct myself the next stage if I am wrong. It is
2 1990,-1991. It is quite sometime ago. He says yeah, I
3 recognize it. Looks like the gun. Did he put his initials
4 in it, folks? Looks like the gun. They show him a picture
5 of Asim Mohammed. Do you recognize this picture? Oh, yeah,
6 that's the guy I sold the gun to. Terrific. You don't have
7 to do much in the nature of detective work to know -- if you
8 show a guy a picture and he has a lot at stake, to say
9 that's the guy, yeah, that's the guy, same as identifying
10 this as the gun, yeah, this is the gun.

11 The reason that Cedric fundamentally cannot be
12 trusted is very simple, that whenever he is put in a
13 position of trust he betrays it. When he testified before a
14 grand jury about a bank robbery, he lied, he admitted that.
15 When he was caring for someone who he would drive to and
16 from the post office to his job, he tells you -- this is
17 really a story for the agents -- that he strangles that
18 person with that person's underwear, until that person signs
19 a check made out to Cedric Pinckney. Boy, we should be in
20 such care, you know. Those people can kill you who do that.
21 The guy signed the check and he thought he was smart, he
22 stopped payment. But Cedric was one step ahead. He stole
23 two blank checks and forged the signature. I am not telling
24 you this, Cedric told you. This is some piece of work. To
25 have the foresight to think that the guy he stole the check

1 from would regret and stop it, he stole two checks and
2 forged the signature. That is a guy that you cannot trust,
3 it's as simple as that.

4 There are two other aspects to the gun and they
5 all kind of point in the same direction. One is simply
6 logic. You know that Asim Mohammed lives in New Jersey. It
7 doesn't make much sense for him to be padding back and forth
8 from Brooklyn to Philadelphia to buy guns.

9 The second thing you know comes from the
10 testimony of Alijah, Elsa Hampton-El, my client's wife, who
11 says that she forbade guns in the house, she really, really
12 hates them, and the gun that Rashid had, that he lied to you
13 about having at first, was hidden in his little cupboard and
14 she finds it when she comes back from North Carolina after
15 he is arrested. So he is not a gun person, at least
16 according to his wife and his testimony.

17 She describes it that she could see it looked
18 like new it was still in the original container, it was the
19 kind of thing that he could see him looking at. Certainly
20 we know for a fact, I think it is eminently deducible, that
21 he didn't have a gun in his possession when he was arrested,
22 because he would have been charged with it. I forgot to ask
23 him the question but that is what you can deduce from the
24 absence of any evidence on it.

25 There is one point about Asim Mohammed that I

1 would like to make and that is that -- you were played a
2 bunch of conversations between him and Rashid. There is no
3 question that they are friends. In one of those
4 conversations, there is a discussion about Asim, who is the
5 superintendent of a building, and this is 782T. Asim was
6 assaulted by a drug dealer in the building and he recounts
7 this story to Rashid in the conversation that was played,
8 and he gets something like, I think, 12 or 14 inches -- the
9 guy uses a saw on his head.

10 The interesting thing is that given that kind of
11 provocation, and Asim reports that the police came because
12 Asim is a super and was injured, they took that other guy
13 away to jail and that's where he is. Asim describes how he
14 runs back to his apartment to get a baseball bat. There is
15 never a mention of a gun, ever. It is the kind of thing
16 where they talk about what are we going to do with this dude
17 when he gets out of prison, how do we make sure this drug
18 dealer doesn't come back to the building. There is no talk
19 about what about the piece, no talk about, you know, shoot
20 the MF, stop fooling around. There is no G-U-N word in all
21 the hours of Asim Mohammed tapes that you heard with my
22 client, never. There is no possible reference to any gun
23 dealing. In fact, it really cuts the other way.

24 I think that if more proof be needed -- again you
25 are in a situation where the tape tells the story, and the

1 tape in question is the infamous CM 25. It was at one point
2 played during Emad's --

3 THE COURT: Do you have an exhibit number, Mr.
4 Wasserman.

5 MR. WASSERMAN: Yes, your Honor, it is 325, your
6 Honor.

7 It was played during Emad's cross-examination,
8 and the sequence in the conversation, and I will read it to
9 you -- it's a very short excerpt -- before I do that, let me
10 take one step back quickly, and forgive me doing that.

11 In the first CM, CM 1, Emad tells the story of
12 getting that gun from Rashid to Siddig. That is one of his
13 stories. Talking about Rashid and Emad says -- Siddig says
14 I know him, I will introduce you to him. Emad says he knows
15 me, we met, if you will tell him Emad Salem, I bought a
16 weapon from him one time, the man is trustworthy. Yes, says
17 Siddig.

18 When we come to CM 25, the conversation goes like
19 this. It occurs on page 74 of the transcript. It starts
20 rather innocuously enough, talking about getting a glass of
21 water.

22 Then Rashid says: OK, you got to get it, you
23 don't have any personal pistols?

24 And Salem says: I, I, I, I purchased one, I
25 bought one awhile ago but when the World Trade Center bomb

1 went off, I get rid of it.

2 Hampton-El: But you can get it back?

3 Salem: No, it was hot.

4 Hampton-El: Oh, oh, I hear you.

5 Salem: I was carrying it just for protection.

6 Hampton-El: No, all I did was pick it up for
7 someone else, I will return it later on. But mine is clean.

8 Salem: It's legal?

9 Hampton-El: New, yeah. For the time being I
10 need three hand grenades so I can take the detonators out of
11 it.

12 We will come back to that later. You have Rashid
13 on one end and Emad on the other. The reason I ask you to
14 focus on both conversations is because the question is posed
15 by Rashid and I think it is innocently posed. You don't
16 have any personal pistols? If this is the guy who had
17 engineered that sale you don't ask the question because you
18 know the answer. You don't ask it because that is simply
19 the proof. Then if you are Emad, why do you stutter? You
20 stutter because you have told Siddig that you have a gun
21 from this guy and you have been caught in the worst of
22 situations where you have told one thing to one guy and now
23 you are caught, you're lying. Siddig doesn't seem to pick
24 it up, but Emad sure stutters. I, I, I, I purchased one.

25 I asked Emad about it and he said well, I never

1 said I got the gun from Rashid. The question is, and that's
2 a gun that you believe came from Rashid, correct? Answer:
3 I cannot believe anything, because I don't, I don't see that
4 Mr. Ali Shinawy get it from who, so I cannot speculate, sir.

5 Well, the government uses that in their summation
6 and says what a guy Emad is, he doesn't speculate, you see,
7 he just brings you the facts, he wouldn't make a judgment
8 call, that's for you. But what are they dishing to you?
9 Emad's facts, that Ali Shinawy had two sources of supply,
10 Spanish guy and Rashid.

11 So I just submit to you on every phase of that
12 gun, on the Cedric Pinckney phase of that gun, on the Emad
13 Salem phase, on the tape, that it is conclusive, that you
14 cannot link that gun to Rashid. But the government tried
15 very, very, very hard, very hard. I don't think it came
16 easily to them to make the deal with Cedric Pinckney. You
17 had to forgive a lot of stuff to make that deal. You had to
18 want someone very much to make that deal.

19 The next thing I would like to cover, and I think
20 rather briefly, is a little different in tone, and it is
21 Project Bosnia, otherwise known in the ledger that was given
22 to you as -- I will get you the exhibit number. It's the
23 legal size ledger that is entitled Project Bos which Alijah
24 Hampton-El testified she prepared from the receipts --

25 THE COURT: I am told it is Exhibit Y, Mr.

1 Wasserman.

2 MR. WASSERMAN: Thank you, your Honor.

3 I will refer to it, if you will, as Project Bos.
4 at the time also the way Rashid refers to it in that tape
5 you saw of the karate exercises that Professor McBride came,
6 he works for the Transit Authority, he described how he led
7 this training class, and you saw excerpts from the tape. We
8 moved it forward and made random stops and at one of the
9 random stops you heard Rashid say Project Bosnia, and he
10 also testified that he took it with him to the Phillipines
11 to meet the source of the financing. But I am getting ahead
12 of the story.

13 Project Bos is quite real, I guess is what I am
14 trying to say. This is not someone talking about gee, I
15 would like to do this, I would like to do that. This is
16 someone who actually got off his rear and tried to do
17 something. He is very motivated about it. I think the
18 reality is that it is not just that he works as a medical
19 technician. He does have in a sense a secret life. He is a
20 jihad warrior. There is no argument about it. He had a
21 secret life. He had another place that he was renting, the
22 dojo on Rogers Avenue. You saw the receipts, he signed his
23 name. You saw the landlord, I don't want any trouble with
24 Con Ed, I want everything legit, everything on the up and
25 up. He is on the phone bill. Everything was open about it.

1 But nevertheless you can call it part of a secret life
2 because it is certainly not part of our lives. We go 9 to
3 5, maybe this and that, but we are not planning to train
4 people to go to Bosnia. We never went to Afghanistan.
5 Those are adventures, those are very serious commitments.
6 They speak about somebody, and Project Bosnia was very real.

7 When Rashid was talking about going to the Saudi
8 embassy and being introduced to a prince and stuff, I think
9 that it didn't gain credibility until he showed you the
10 passport, that passport which has the visa of Zagreb on
11 February 24, 1993. It validates the documents. What
12 courage, really, for a guy from Brooklyn, an African
13 American from Brooklyn to end up in Croatian Zagreb on
14 February 24, 1993. Whether you buy it completely or not on
15 the story where he opens the mosque, the soldier standing in
16 front and blocking the people from praying, whether that is
17 entirely accurate or not, the very fact of going is so
18 courageous, the very fact of trying to get into Bosnia is so
19 courageous. You don't need more. You don't need that
20 story.

21 And I want to point out if I may something about
22 his personality. When he feels he is right -- he is a very
23 true believer in Islam. You caught that in a number of
24 ways. You caught it on tape and you caught it on the stand.
25 Let me point out two examples. In the June 16 conversation

1 on tape, where it starts off that Emad and Siddig have kind
2 of caught up with it, hijacked him as he puts it, by
3 surprise at Farook Mosque, the first words out of Rashid's
4 mouth are I am going to the Philippines, getting out of
5 here. The joke is that he is going to do jihad in the
6 Philippines. We know from having listened to his
7 conversations that there was a woman in the Philippines that
8 he was interested in Islamically making his second wife. We
9 will go back to that at a later point, but in that
10 conversation -- this conversation about being a martyr, and
11 if you are a martyr your blood smells like musk and you go
12 to paradise immediately, if you are a martyr in jihad, and
13 you get 72 wives. I think he really believes it. I mean,
14 you know, that's it, because he tells you on the witness
15 stand that when he is going to Afghanistan, being driven out
16 to the airport by Mohammed Saoud, he says we get there in 10
17 minutes. You know before he took the stand we spoke, and
18 you know before he took the stand and said 10 minutes I
19 asked him a few times, 10 minutes?

20 MR. McCARTHY: Objection.

21 THE COURT: Sustained.

22 MR. WASSERMAN: Withdrawn.

23 THE COURT: Please don't.

24 MR. WASSERMAN: No problem, Judge.

25 That's his story, he tells you 10 minutes, on the

1 clock. Allah's first miracle as far as he is concerned in
2 going to Afghanistan is a true religious experience. He
3 believes it.

4 There are other places where he talks about in CM
5 25, there is a day of reckoning, and he doesn't want to
6 account for himself. He doesn't want to go to hell. Hell
7 is as real to him as getting to the airport in 10 minutes
8 and having 72 wives. That has a certain consequence about
9 his actions which will come up.

10 But the thing is that in Zagreb he feels
11 righteous, he is brave, and when he goes to Afghanistan he
12 is righteous and he is brave. He feels that he is doing the
13 right thing, he is totally backed Islamically.

14 Islam, for all the foreign betrayals and the
15 wording and all that, what you get from it, and you have
16 seen it, although I don't know if it has come. In all the
17 inshallahs and Hamdi Allahs and Mashallas, thank God, God
18 knows, the conversation is pervaded with it. Mr. Stavis
19 went through a conversation the other day where it takes 10
20 minutes of greetings before you get down to how are you. It
21 is wonderful. But there is this God consciousness. Islam
22 is no different from Christianity or any major religion in
23 terms of what's right is right and what's wrong is wrong and
24 you don't kill innocent people. And one of the reasons that
25 I will offer throughout, one of the reasons that he would

1 never, ever do anything that the government has charged him
2 with is because he would go to hell, and he believes that he
3 would go to hell.

4 If he is not protected righteously, if he doesn't
5 think that he is doing right, and he ain't no angel, then I
6 don't think he is so brave. We will see that later on June
7 16. We saw it on May 30. When they tell him on May 30,
8 when Siddig unbundles this little bag of horrors, we are
9 going to do the tunnels, and Rashid says for that you don't
10 need me, he is threatened by them.

11 That little disclosure, which I am sure Emad was
12 angry that Siddig came out with because it was working so
13 well -- they had Siddig talk Rashid talking detonators.
14 They could take that to the bank. That was marketable.
15 That was good stuff. And Siddig blew it. They told Rashid
16 what they were going to do. He said excuse me, that's
17 killing innocent people. That's on tape. I am not telling
18 you this is what happened, he is not telling you this is
19 what happened. The recording tells you that is what
20 happened. At that point he don't feel so brave, and he
21 doesn't feel so brave because he has been told something
22 that sounds crazy.

23 You know, it is one of those things that we have
24 all experienced that someone tells us something that we
25 don't want to know, thanks very much but I wish you hadn't

1 told me. This is a little scary. He met Emad one year
2 before. The subject of discussion was murder. The
3 advertisement by Emad was I have remember killed people, I
4 have been in the Egyptian army.

5 A long digression and back to Project Bos. You
6 heard from Rashid that he went to the Saudi embassy, then to
7 Fort Bellevue, met a Sergeant Carson, was given military
8 manuals, a list of people to contact who would soon be
9 discharged, and that he contacted those people but nothing
10 came of it.

11 And then in Washington his escort was Bilal
12 Phillips and Bilal Phillips you will see on a brochure as
13 one of the speakers at the Islamic conference in the
14 Philippines. Bilal is identified by Rashid as someone who
15 is based in Saudi Arabia and is channeling money out of
16 there to finance the war in Bosnia. It is coming from Saudi
17 Arabia, going to Europe and going from there to here.
18 Rashid basically confesses to the crime of taking money in,
19 over \$10,000, and not reporting it. Not basically, he tells
20 you. He tells you the approximate amount of what he brought
21 in, which I believe was 44,000, over a period of around
22 three trips, and he tells you how he did it and where he
23 went and that the Zagreb trip was for the purpose of picking
24 up money, that they had been picking up the money in
25 Austria, and that the purpose of the money was to train

1 people for Bosnia.

2 As part of Project Bosnia, he meets with Garrett
3 Wilson on December 20, 1992. This is the meeting that is
4 completely surveilled. It is videoed but not taped,
5 according to Garrett Wilson. Garrett Wilson tells you that
6 yes, the discussion was about Bosnia and training for Bosnia
7 but that Rashid asked for detonators. It's like the magic
8 word, you know. If you can say detonator you've got your
9 guy in this case. All I can tell you is that it doesn't
10 quite fit. Why in December would it come up in a discussion
11 where they are talking about training for Bosnia? There is
12 just no basis for it. It is Garrett Wilson who sells them
13 the equipment for training.

14 A lot of that ends up in the Rogers Avenue dojo,
15 and you have a list, which I will give you the exhibit
16 number tomorrow, of the items Garrett sold, and you can look
17 at the pictures and recognize that -- the crossbow, etc. It
18 is Garrett who sells them as early warning devices, booby
19 traps for the training, cannon fuses and electric matches --
20 this is all his testimony -- and fuse lighter.

21 But I would pose the question to you, why is the
22 thing surveilled? Why is the thing videoed? Why is this
23 meeting of interest to the FBI? What is Rashid doing wrong?
24 The only thing he is doing is Project Bosnia, so that must
25 be what they are surveilling him about. I don't know of

1 anything else. Nothing else has been presented to you.

2 The followup on Garrett is that there are further
3 discussions, there is a taping of a meeting on St. Patrick's
4 Day, March 17, at a restaurant in Brooklyn at which the
5 trainer of the people in Pennsylvania, a man named Ubaidah,
6 whose name has been mentioned in this case quite frequently,
7 who was the trainer at the Rogers Avenue dojo, meets with
8 Garrett Wilson. That conversation is taped.

9 The calls that Garrett Wilson has with Rashid in
10 May, May 27 and then May 31 are taped, taped pursuant to a
11 court order to wiretap Rashid's phones from April 2, I
12 believe, on until the date of his arrest, June 24. Hundreds
13 and hundreds of calls. There is nothing in those taped
14 conversations that is untoward in any way, that deals with
15 anything connected with explosives or detonators or
16 anything. It's strange, isn't it, that when there are tapes
17 it's not there.

18 The equipment that Garrett sells is picked up by
19 Siddig Ali and Abdel Haggag and Ubaidah at the Salmon Motel,
20 I believe, in January of 1993. That is also surveilled. It
21 is filmed. You were shown pictures of the pickup of the
22 equipment.

23 That brings us to the training in Pennsylvania,
24 which again was surveilled. You have been shown a lot of
25 pictures about that. I think it is one of the balls that

1 the government put into play which they just found went
2 nowhere. Obviously, as charged in the indictment they saw
3 the Pennsylvania training as paramilitary training, somehow
4 relating to the war of urban terrorism to get the United
5 States to change its Mid-east policy. All you heard from
6 every witness was that Bosnia was what was on their minds,
7 and you heard a lot of different descriptions about the
8 training, but no one said, you know, what we are training
9 for is to get the United States to change its Mid-east
10 policy.

11 You heard reasons why people went. You know, it
12 wasn't easy training, but there was that video circulating
13 around which was played for you that Ms. London put in,
14 which really has tremendous shock value. When you see that,
15 you just kind of know what motivated Rashid to try to do
16 something about Bosnia and to take steps to do it. That is
17 what the training in Pennsylvania was about. I would like
18 to show you a picture in the small version, which is how it
19 was shown to the witness Robert Abdullah, where he
20 identified himself in the picture, and then the bigger
21 version, which I have pulled up, GX812B.

22 If you look at this picture, it looks a little
23 ominous, doesn't it? It's kind of dim and these guys are
24 like looking at something and there seems to be a railroad
25 tie there. I don't know.

1 Then Robert Abdullah, who is a lawyer from
2 Harrisburg, who is one of the founders of the ICEDA, the
3 Islamic Community Enrichment Development Association, which
4 sponsored the training in Pennsylvania, along with other
5 people going to his friend's house, Kelvin Smith, otherwise
6 known as Mohaimon, Robert Abdullah comes in and tells you
7 yeah, this is one of the groups that came up and they talked
8 about Bosnia and this is what the training was like and they
9 had to do running and this and that, and yes, here I am, and
10 they point out where he is in the photo. This was part of a
11 public park and this is part of where they went, and they
12 had an obstacle course and that's what we were doing.

13 Somehow that photo becomes less dim and certainly
14 not ominous, because you now have Robert Abdullah, who the
15 government had no questions for, and I think his testimony
16 stands on its own, of what ICEDA was about and what this
17 training was about, and his character and that he would
18 participate in this training.

19 There is an exhibit that was presented to you
20 early in the trial and I would ask that you go back to it at
21 some point, just to confirm what I am telling you, which is
22 that -- it is called 641-1. It is one of the transcripts
23 that was made. It is a long taped conversation between Emad
24 and Siddig, which Emad dates as preceding CM 1. He says
25 it's a few days before CM 1. It is a somewhat rambling

1 conversation, but Siddig tells the story of Pennsylvania in
2 somewhat of a concise form, with no motive to exaggerate or
3 whatever. He tells the story fairly directly. He says that
4 the FBI came to Kelvin Smith, and as a result of that --
5 this all takes place before the World Trade Center. As a
6 result, Kelvin Smith says that's it, no more training. Emad
7 says was it connected, this training was it connected to the
8 Trade Center? And Siddig says no, it had nothing to do with
9 it. That is 641-1.

10 There is one point I would like to make on the
11 training tape, and that is that by the time that was made --
12 Rashid dates it as April '93, and he is able to date it
13 because there is a trip that has come up to Saudi which he
14 would like to go but he can't, and he remembers the video
15 being made at that time -- that that video, the people in
16 it, Professor McBride describes who he knows and he says one
17 of the people leading it is one of his students and he names
18 a couple of other people who are his students' students.
19 Rashid testifies and supplements that identification and
20 says that it was an entirely different group than the group
21 that trained in Pennsylvania.

22 There is a reason for that, and it goes back to a
23 meeting that Rashid testifies about which takes place in
24 March of '93 at Rogers Avenue, and at this meeting is
25 Ubaidah the trainer, Haggag, Siddig Ali, and Amir Abdelgani.

1 The subject of the meeting, which Haggag also testifies
2 about, is that Ubaidah is a jerk who is wasting all the
3 money, and that Haggag and Siddig want to take over,
4 essentially, and Haggag tells them \$100,000 a month is
5 coming in, it's being wasted, and they complain to Rashid,
6 and among the complaints is a complaint concerning money
7 spent by Amir Abdelgani in connection with the rental of a
8 van in connection with the training, which Ubaidah owes to
9 him, according to Amir. And that at that meeting Haggag
10 says no more are you going to take advantage of the boys,
11 they are not going to make any video for you to raise more
12 money, you're through, you're not using the boys any more,
13 and that's it, it's over, done, finished. And that marks a
14 breakup.

15 The Pennsylvania training had stopped, as we
16 know, in early February, and this meeting takes place, and
17 we can date it because Haggag tells you that it took place
18 several weeks after he learned that Rashid had gone to
19 Zagreb, which means it took place several weeks after
20 February 24.

21 Just a brief followup on that. You heard some
22 FISA's which, given all the mass of stuff that you have been
23 presented with, I can scarcely ask you to remember, but let
24 me try to do it very quickly. Amir Abdelgani, I just
25 mentioned, had this money that he wanted, \$700 for the

1 rental of the van. It was discussed at the meeting at
2 Rogers Avenue in February -- March. Then you heard some
3 FISA conversations, where Amir is trying to reach Rashid to
4 get the money, because I believe there was a commitment at
5 the meeting by Rashid that he would make sure that Amir got
6 at least \$500 or something like that.

7 What you find is that in the last of the FISA
8 conversations, Rashid is saying I don't know nothing about
9 it, you're not getting any money, and that's it. They never
10 talk again. There are no more conversations that go on with
11 anybody from Pennsylvania except Siddig and Rashid.

12 The next time that there is an occasion for
13 Haggag and Siddig to meet with Rashid, you hear about from
14 two sources. You hear about it from Haggag and you hear
15 about it from Rashid. Basically the story is not much
16 different, and the story goes like this. In late March or
17 thereabouts, they discuss with Rashid on Court Street --
18 Rashid says I didn't expect to see these guys, they come
19 up -- Siddig will describe it in CM 29 as a meeting that --
20 where he says to Rashid you have eluded me, you are eluding
21 me. In any event, the discussion basically follows that
22 Siddig says we are going to do an Islamic thing, we need
23 weapons. Both Haggag and Rashid tell you that he tells
24 Siddig forget about it, you know, you don't do that in this
25 country, you are going to get yourself killed, you go to

1 jail, forget about it. Siddig says it's an Islamic thing,
2 you got to do it, and Rashid says OK, fine.

3 They never get back to him. The whole thing gets
4 canceled. We know from CM 40, and I will read to you --
5 this is Government's Exhibit 342T, Hampton-El Exhibit Q40,
6 which has the passage in question, that it was not that I
7 was so scared for Abdel Rashid or anything like that, we
8 hadn't done anything. I didn't even call Abdel Rashid on
9 Monday. Monday was the day that they were ostensibly to
10 call for weapons. And I forgot about the whole subject,
11 Rashid says. The government translation doesn't have the
12 line I forgot about the whole subject. They end with I
13 didn't even call Abdel Rashid on Monday.

14 But, you know, given the FISA recordings and the
15 surveillance and all the rest that we have here, what you do
16 know is that there was no followup. There was no mention
17 certainly on May 30, Rashid, those weapons, we are so sorry
18 that you got them. Nor is there any mention by Rashid.
19 No one does anything. It is just one of the things that
20 Siddig does and there is no followup. That is really a
21 prelude to the May 30 meeting.

22 I think the fact that Haggag is with Siddig is
23 something that after Rashid said no is what pushed Rashid to
24 say OK, fine, I'll get back to you. And the reason is that
25 there had been this break and this was Rashid's way of just

1 putting them off.

2 What I would like you to notice is that in
3 Haggag's report of this conversation, and certainly in
4 Rashid's, after he has told Siddig forget about it, there is
5 no mention to Rashid hey, come on, man, the sheik said so,
6 there's a fatwa, what are you talking no? You know.

7 It would seem to me that if there was any reality
8 to Rashid supplying weapons, that there would have not only
9 been followup conversations concerning why Siddig never
10 called him -- after all, if someone is really getting you
11 something as meaningful, if you will, as weapons, you would
12 expect there to be some, excuse me, what happened, let's
13 talk about it, you put me out, don't do that to me, brother,
14 next time you ask me for weapons, come on, don't do that.

15 The main thing, though, is that you would expect.
16 If he is the supplier of weapons, they go to him for this.
17 If there is reality, why not on May 30 say Rashid, remember
18 those weapons you said you could get for us for the Islamic
19 thing?

20 There is absolutely no question, by the way, that
21 no one says what it's about to him, they just tell him.
22 This vagueness is another kind of signal that what we are
23 talking about isn't a tangible plan. But if in fact there
24 was a reality to his being the supplier, then why is it we
25 don't have anything on CM 25 about getting weapons, we just

1 have Emad saying Siddig made a gesture with his hand and he
2 forgets what Rashid said, and why don't they get this baby
3 and more like it from Rashid? That's the question. It
4 doesn't fit.

5 The time is late, and I will conclude with the
6 Bosnian thing quickly, with this kind of proviso. It didn't
7 end. Even at CM 25 -- you know, there is no more training.
8 The training stopped in February and there wasn't very much
9 activity at the dojo but Rashid still had money left. In
10 fact he tells Emad and Siddig I have money left from Project
11 Bos. And by the way, you guys need money to do what you
12 want to do, you need a lot of money. You will find he says
13 that to them, and this is before Siddig unbundles, he must
14 say it a dozen times. But you can't have any of mine
15 because that's Project Bos money and I can't touch that.

16 He goes to the Philippines in May and he goes
17 with the ledger and he goes with the training film and he
18 goes to meet Bilal Phillips at an Islamic conference. The
19 purpose there is to discuss the is next step. There is a
20 promise of there will be a next step, and that's where it is
21 left.

22 You were shown some pictures of that conference
23 which I will show to you tomorrow morning very quickly. But
24 basically it was a very open, public conference in which my
25 client got a certificate of attendance, which is an exhibit

1 in this case. I will show you the brochure which is an
2 exhibit in this case. And Bilal Phillips was one of the
3 chief speakers.

4 When Rashid returns from that trip to Manila,
5 what we know at that point, what the evidence shows you at
6 that point is that he has done nothing wrong, but he has
7 been surveilled and followed and targeted for a long time,
8 and it goes back to Calverton, and it certainly picks up in
9 December of '92 with Garrett Wilson and the FBI surveillance
10 in Pennsylvania of the training, which causes that to stop.

11 So what you know is, he has been targeted, and
12 what you know when he comes back from the Philippines is
13 that the only thing he has ever done is gone to Afghanistan,
14 tried to promote the Alkifah office with a video and some
15 speaking engagements, and Project Bos.

16 And that is where we are, and I would like to
17 resume tomorrow with the court's permission.

18 THE COURT: Ladies and gentlemen, please leave
19 your notes and other materials behind, and I say this at the
20 end of every day but I don't want the repetition to dull the
21 message. Please don't discuss the case, please don't see,
22 hear or read anything about this case or any related matter.
23 I am going to talk to you briefly in the jury room about
24 some few matters before you go home so I will say good night
25 there, but I will say good night here also.

1 (Jury excused)

2 THE COURT: I want to ask all counsel, with
3 regard to the instruction on tapes and tape transcripts, I
4 have Exhibits 333 and 333T, and 381B and 381BT as two of the
5 tapes, the Arabic language tapes, in which they are being or
6 were asked during the trial to make judgments about whether
7 certain words were said or not said. The instruction as it
8 stands now may indicate that there were others, but the
9 lawyers know which they were. Mr. Wasserman, you, I know,
10 have a horse in this race.

11 MR. WASSERMAN: Your Honor, I had proposed to Mr.
12 McCarthy a draft instruction. I am simply awaiting word
13 back from the government. I think the first indication is
14 that it is acceptable.

15 THE COURT: Since I am the one who has to say it
16 and since I am the one who is drafting it, I would kind of
17 like to have it. Simply because you and he agree doesn't
18 mean that I am going to say it exactly that way. What I am
19 most interested in is the numbers of the exhibits. If you
20 can get that to me tomorrow at noon.

21 MR. MCCARTHY: Yes, sir.

22 THE COURT: Also, I am going to make to them the
23 commitment that I said I am going to make, which is that I
24 think they will be instructed on Thursday, unless anybody
25 tells me that I have a good reason that I shouldn't.

1 Hearing nothing, I think that is what I will do.

2 MS. AMSTERDAM: Your Honor, may I see you about a
3 scheduling matter for a moment? Don't worry, nothing.

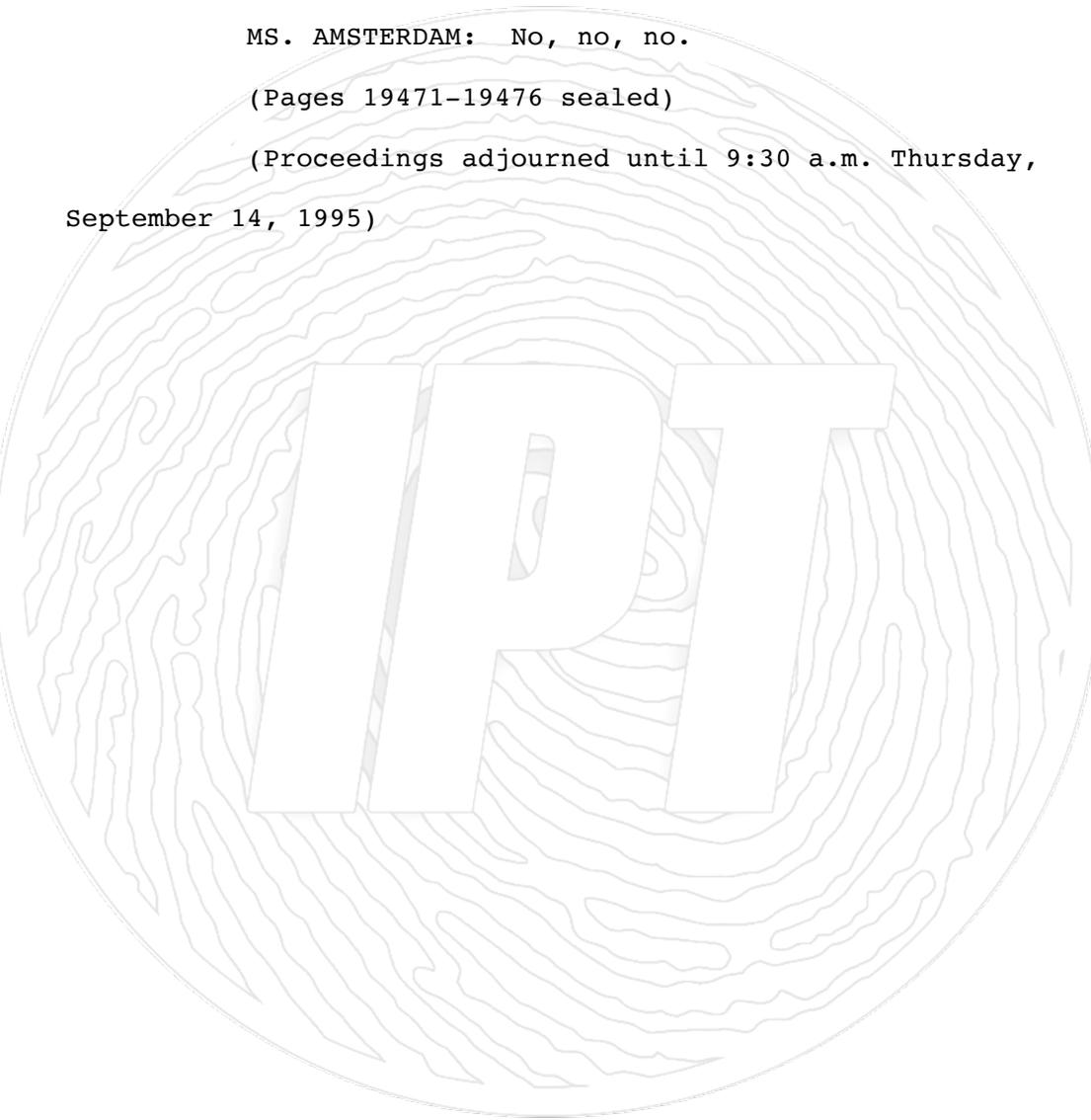
4 THE COURT: I am worried. I will see you.

5 MS. AMSTERDAM: No, no, no.

6 (Pages 19471-19476 sealed)

7 (Proceedings adjourned until 9:30 a.m. Thursday,
8 September 14, 1995)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



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,"

S5 93 Cr. 181 (MBM)

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

September 14, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

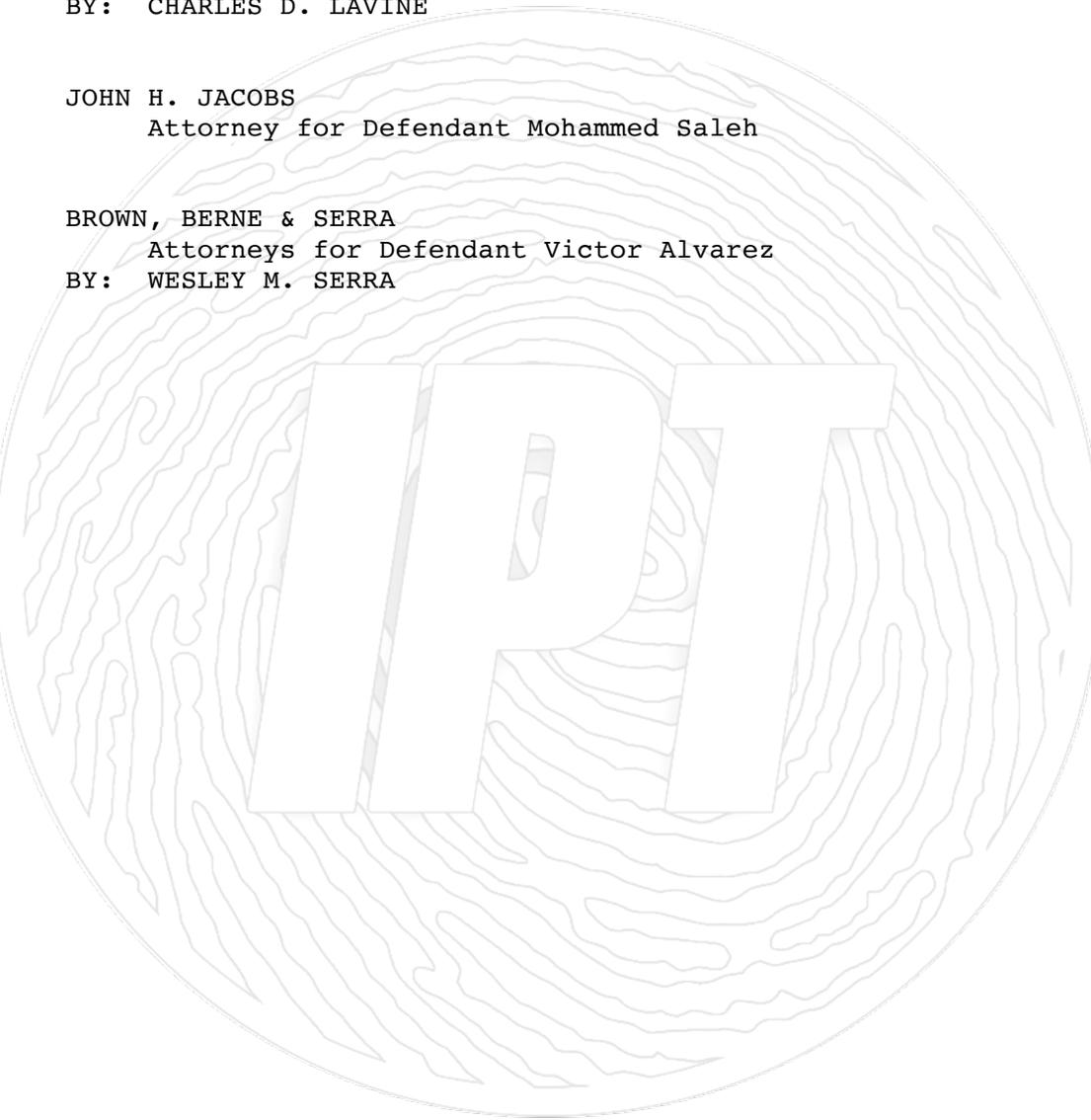
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Pages 19481-19483 sealed)

2 (In open court; jury not present)

3 MR. RICCO: Good morning, your Honor. I have to
4 take care of a matter that has to take me away for a good
5 part of the morning. Mr. Patel has said he would stand in.

6 THE COURT: Is that OK with you, Mr. El-Gabrownny?

7 DEFENDANT EL-GABROWNY: Yes.

8 THE COURT: Thank you.

9 MS. AMSTERDAM: Am your Honor, I will be next
10 door finishing up my part of the summation and Miss Stewart
11 will cover, with the consent of my client.

12 MS. STEWART: That is correct, your Honor.

13 THE COURT: Is that satisfactory,
14 Mr. Khallafalla?

15 The record will reflect that he nodded his head
16 in an affirmative answer.

17 MR. BERNSTEIN: I follow after Mr. Wasserman and
18 I want to go out for awhile and check some things in my
19 summation. So I will leave the courtroom. Mr. Jacobs will
20 cover for me in my absence and Mr. Abdelgani will agree to
21 that.

22 THE COURT: Is that satisfactory, Mr. Abdelgani?

23 DEFENDANT AMIR ABDELGANI: Yes.

24 MR. WASSERMAN: Your Honor, one quick point.

25 THE COURT: You don't want to leave during the

1 summation, do you?

2 MR. WASSERMAN: I have asked Mr. Patel to stand
3 in --

4 MR. PATEL: That's OK.

5 MR. WASSERMAN: Your Honor, there was a matter
6 that was heavily litigated during the course of the
7 presentation of the evidence concerning the Napoli
8 conversation with --

9 THE COURT: That is right.

10 MR. WASSERMAN: What is on the transcript I would
11 like to go into.

12 THE COURT: What is it?

13 MR. WASSERMAN: I asked a question of Emad Salem,
14 did Agent Napoli tell you that you got to get the doctor
15 involved and Emad Salem said I don't recall. That's it.

16 THE COURT: No, you may not.

17 MR. WASSERMAN: I figured I would get the ruling.

18 THE COURT: I appreciate your doing it, I really
19 do. Would that others were as straightforward. You have
20 your record. Let's get the jury.

21 (Jury present)

22 THE COURT: Good morning, ladies and gentlemen.

23 JURORS: Good morning, your Honor.

24 THE COURT: Mr. Wasserman, are you ready to
25 continue?

1 MR. WASSERMAN: Yes, Judge.

2 THE COURT: Thank you.

3 MR. WASSERMAN: Good morning.

4 JURORS: Good morning.

5 MR. WASSERMAN: It is my pleasure to be before
6 you again. We have several more topics to go.

7 At the end I promised you that I would show you
8 some of the exhibits and I will do so quickly. You have
9 seen the passport which evidences his trip to Manila, to
10 Zagreb, and any time that you want to look at it in the
11 deliberations room, it is available to you. Zagreb visa.
12 It simply is something that corroborates what he has told
13 you about Project Bosnia.

14 The Philippines, this is the certificate of
15 attendance. It is certified that Abdel Rashid Hampton-El
16 has participated in the third series symposium on Islam
17 conducted on May 16, 1993. The theme was Islam and the
18 environment for world peace. That is Exhibit 882. Again,
19 all these are available.

20 The program for that conference is Defendant's
21 Exhibit E1, and I just would point out that the source of
22 financing of Project Bos, Bilal Phillips, based in Saudi
23 Arabia, is the speaker on topic 2, Islam and its
24 relationship to the environment of man and world peace being
25 a natural religion and the way of life for mankind, brother

1 Bilal Phillips. Again, this is all available if you want to
2 take a look at it. I think it gives you some context for
3 Rashid.

4 This is in the middle of May.

5 We have done a lot of work on CM 25, which is
6 Government's Exhibit 325T, and it is also in your Hampton-El
7 exhibit book, which is a green folder, and in fact we
8 excerpted a lot of pages from the CM's and gave them Q
9 designations. For CM 25 it is W1. The reason I point it
10 out is, it is accessible to you in the Hampton-El folder.

11 First of all, the defense enhanced the tape
12 digitally, and that came out in the evidence. Therefore,
13 there was more that we were able to put into the transcript.
14 Ms. Avrill testified about that which she had underlined.
15 The underlinings in it represent the additions. The same
16 was done for the only other contact in person between Emad
17 and Siddig and Rashid, which was June 16. That is CM 41,
18 and you will find that as W2 in the Hampton-El exhibit book.
19 There is just a page and a half that is digitally
20 enhanced but it was very important because we were able
21 to bring out certain words, which when we get to that I
22 will point out to you.

23 One of the things about CM 25 is that I would ask
24 you, if there are questions that arise when you are
25 deliberating to please remember that Rashid testified a lot

1 as we went through it, and so you can refer back to his
2 testimony to see what his commentary was about what was
3 going on.

4 Because he testified so extensively and we took
5 so much time, there is no need to go through it in any more
6 detail than would otherwise be required, but I would like to
7 point out some things quickly that only a lawyer can do and
8 that Rashid could not do on the stand.

9 The first thing I would point out is that
10 beginning around page 40 is the discussion that begins about
11 detonators. I point that out to you because it is very
12 important to know that it is not at the end of the meeting
13 that detonators are discussed and that Rashid agrees to look
14 for them but rather it occurs in the middle when they are
15 talking about what he has testified to as the Serbian
16 warehouse.

17 The discussion begins on page 40 with a reference
18 by Siddig to, you remember that time in the park, and then
19 Rashid says what do you need, and Siddig says detonators.
20 We put that word in. It comes from the enhanced digital
21 recording. That is what you find in your transcript.
22 Rashid answers him, and I think it is very meaningful -- it
23 is not a word. He says blockbusters. Blockbusters are
24 firecrackers. As you see in the conversation that Emad
25 picks up on, he says that is not a detonator. You can take

1 a detonator from a hand grenade or C-4 but you can't use an
2 M80 or firecracker blockbuster as a detonator. That
3 signifies Rashid's ignorance. No one is saying, including
4 the prosecution, that he is an explosives expert. In fact,
5 their bottom line position is that Siddig went to him and
6 found out that is not what he knows. It is very evident in
7 the conversation that he doesn't know about it.

8 Another point is, he asked a question a page
9 later, do you mean if I stuck an M80 into C-4 and lit the
10 fuse it wouldn't blow up? Then Emad goes on to talk about
11 it.

12 The last and most telling occurs on page 78 where
13 Emad suddenly brings up, we need three hand grenades.
14 Again, this all occurs before Siddig has unbundled and that
15 occurs on page 79. Siddig then talks about the tunnels
16 break like straws. Until then, you cannot find a target
17 named in that transcript. You cannot find it on the tape.
18 I submit to you since it is not our tape, it is the
19 government's, it is Emad's, the agent who is doing it, there
20 was a purpose behind it. It was deliberately kept vague,
21 and you will see why that is done. Let me show you.

22 Emad says we need three hand grenades and asks
23 Rashid how much they cost and Rashid says 50 to \$100. If, I
24 submit to you, they cost 50 to \$100, then you should be able
25 to get all you want if you are willing to pay 200 apiece.

1 It's an absurd answer and it just doesn't comport with any
2 kind of logic about the availability of hand grenades. If
3 in fact it is true, then it would have been easy to buy
4 them. But the point of the matter is, it doesn't make any
5 sense and it is one of the things that sticks out like a
6 sore thumb.

7 On page 58, you will find Rashid -- again, this
8 is before Siddig has mentioned targets. That is 79. Page
9 58, Rashid is saying take your time. Page 60, find out the
10 cost. Page 63, you better get money. Page 63 also has
11 discussion about passports and there you will find that
12 Rashid refers to the picture. The photo of the face that is
13 used in a passport is faces, and one of the things that
14 corroborates that when they meet with him on June 16 that
15 they ask him for passports is you will see the word faces
16 twice in the page transcript that we have submitted to you.

17 Page 65, Rashid continues, say got to work on the
18 money. Page 66, don't rush for success. I would point out
19 to you, on page 65 Siddig says what am I going to do about
20 the money, and Rashid tells him on page 69 that Rashid has
21 money but he can't give it to them, that money is for
22 Project Bos.

23 All of that is in the context of this no mention
24 name of target, what I submit to you is a bull discussion as
25 evidenced by a lot of things in the conversation, including

1 my client describing how he follows FBI agents home and
2 knows where they live and knows their names. Then he talks
3 about the Bruce Lee death hand and stuff like that. This is
4 a conversation that was rolling along without any
5 seriousness of purpose until we come to page 79.

6 Then Siddig, I think, misinterprets something
7 that my client had said about creating a diversion. He
8 thinks that my client is really talking about doing two
9 targets, and Siddig unbundles. It is the only word I can
10 describe. He says yes, we are going to do it with tunnels,
11 and he snaps his fingers and says break like straws. With
12 that my client says for that you don't need me. You can
13 listen to the tone and it is very clear, and it's the only
14 logic of the sentence.

15 THE COURT: Mr. Wasserman, if you could use the
16 auxiliary mike as well, please. The translators are having
17 difficulty.

18 MR. WASSERMAN: Sure.

19 THE COURT: Thank you.

20 MR. WASSERMAN: You are welcome.

21 The statements that go on after the tunnels
22 disclosure are extremely revealing, because it is not only
23 the tunnels disclosure but also, although it is not said as
24 26 Federal Plaza, my client says you are talking about
25 knocking out the federal system. Then he talks about you

1 are talking about drowning innocent people, ordinary
2 citizens will be harmed. That is not the talk of someone
3 saying hey, what a good idea, that's terrific. The tunnels
4 really will be something good to do.

5 You know, when he testifies about it, I just
6 would read you this statement that he made. When he was
7 asked about it. He says look, I ride the tunnel. In Islam
8 this is not permissible. This is my country too. What am I
9 going to blow it up for or help anyone to do it. I would
10 ask you always to keep that in mind.

11 We will come back to it later, but one of the
12 things to keep in mind too is, tunnels never, ever, ever
13 comes up again in any conversation between Emad Salem and
14 Siddig Ali with Rashid. They do not tell him anything.
15 They can't, because having nixed it the first time they
16 can't disclose to him anything that they are about to do in
17 connection with it. So it is all left very, very vague, and
18 I will show you how unfair that is. But the point is, they
19 keep him totally, totally out of the picture, and we will go
20 into detail when we come to that portion of the summation.

21 The conversation ends with two things, my client
22 again raising the money as an obstacle, Siddig knowing that
23 is a real problem and my client says without the money it's
24 nothing. That is on page 82. Then we end on the note of
25 talking about chop shops and Mafia, that they used to call

1 them googats, and he says the following. This is the way
2 the conversation ends. I worked with a couple of guys once
3 and they tried to kill me one time and this guy tell them
4 that I was people, good people. So I said to myself, what I
5 think in parentheses, he is saying to them, kill me, we both
6 die. So if you get the money we can do it.

7 What he is saying to them is, don't fool with me,
8 and I think that there is no other logic for that particular
9 passage to be there.

10 When you look at this summation, the government's
11 or the case, I would ask you to try to see things in
12 context, which in this case is very, very hard. But in our
13 defense, Rashid's defense, our defense is the CM's, and that
14 is why we submitted so many to you, so many excerpts to you,
15 so you could see the story unfold of what happened to him
16 through these CM's.

17 How do you judge what happened at that May 30
18 meeting? One way to do it would be to look at the reaction
19 of Siddig Ali, who is not talking for the tape -- remember,
20 Emad talks for the tape. It's his evidence. What does
21 Siddig Ali say about the meeting? We know that -- well, we
22 will just look at the transcript. In CM 27 -- I will give
23 you the defense exhibit number, Q27, which has the
24 Government's Exhibit number on it from which it is taken --
25 Siddig says Rashid turned out to be a dud. I love the

1 Arabic word that Mr. Yousry told you. It is fishenk. It
2 kind of sounds like what it means, dud.

3 Siddig goes on to say he is a failure when it
4 comes to important matters, a complete failure. I just
5 submit Siddig is real here, he is not talking for the tape.
6 He is reacting to the reality of the meeting. Remember we
7 spoke a little bit yesterday, a meeting as you know from
8 your lives, a meeting is more than the statements you say.
9 It is your facial expressions. How many times does a person
10 say yes and the way they are moving their head means no to
11 you. It is a totality, not just the words. Siddig is
12 responding to the gestures that Rashid had at the end of the
13 meeting, to his tone, and that is very good evidence, I
14 think, of how that meeting ended up.

15 The next CM after the meeting that I point out to
16 you is CM 26, Q26, and again you can find the government's
17 exhibit number listed on it. I happen to have it here in my
18 notes. It is 328. That is June 3 also. It is the same
19 date as the he's a dud comments, and it is just a different
20 tape recording of a different period during that day. Emad
21 is telling Siddig be persistent with Rashid. Evidently
22 Siddig has called him on the phone, beeped him, he has not
23 gotten any call back, and Emad tells Siddig and says after
24 Siddig says he is not returning his beeps, Emad tells Siddig
25 to leave a message on Rashid's answering machine and call

1 him later. Who is pushing the buttons? I please ask you to
2 keep that in mind. Emad says to him just let him know that
3 you are persistent.

4 Now, you will find that the word persistent is
5 underlined in our transcript Q26, which signifies that that
6 is Mohamed Yousry's interpretation of the Arabic word that
7 he heard, that the government did not hear that in their
8 transcript. They presented nothing on rebuttal in
9 connection with that, and I submit to you it is somewhat
10 meaningless because again, the context of the conversation
11 is exactly that. If Siddig has beeped and gotten no
12 response and you tell him to leave a message and call him
13 later, if you add those three things up you come up with the
14 word persistent. But I submit to you that Mr. Yousry is
15 credible and the word persistent is there in the Arabic.
16 But the context says the same thing. I think it is
17 extremely meaningful that you have Emad saying come on, be
18 persistent, and Siddig Ali saying he's a dud, because when
19 it comes to who's pushing this case, who is trying to
20 maneuver something out of it, it's Emad and it is the
21 government.

22 The next CM I would point out is CM 36, which is
23 designated as Q36, and the government put in that transcript
24 as GX337 but did not include our excerpt, or the portion
25 that we put in. In that, very briefly, Emad asked Siddig

1 for any news about our brother. Siddig says that he has
2 seen Rashid -- this is June 12. He has seen Rashid. This
3 conversation is taking place June 12. He says Rashid wanted
4 me for a completely different issue. He wants people to go
5 with him to the Philippines. He is going to the
6 Philippines. He asked me if I wanted to go with him. There
7 is a marvelous exchange that then takes place where Emad
8 says don't leave me here by myself.

9 I think that that evidences a couple of things.
10 First of all, they are not talking about what they talked
11 about on May 30, and again, Siddig can't and Emad can't,
12 because it has been vetoed by Rashid.

13 The second thing is, I think that Rashid talking
14 about the Philippines is a diversion for Siddig. I think
15 Rashid is trying his own way to maneuver Siddig away from
16 the discussion. I mean, it was disturbing to Rashid.
17 Siddig is not someone who came in under -- how shall I put
18 it -- in a bad way. Siddig meets Rashid with Project
19 Bosnia. Siddig is someone Rashid met in November and was an
20 enthusiast, was someone who wanted to go desperately and had
21 some people he knew who wanted to train as well, and it was
22 bliss. I mean, Rashid was looking for people who wanted to
23 train and this guy comes in and says I'm your man and I have
24 some friends. That is how it starts.

25 The breakup, as we discussed yesterday, and again

1 this is all relating to evidence you have heard, occurs at
2 the meeting at Rogers Avenue in March when Haggag and Siddig
3 come to Rashid and say Ubaidah has frittered the money away
4 on stuff that is not needed and you are not going to use the
5 people any more who train in Pennsylvania to make videos to
6 raise more money for the project, we're done with you.
7 That's how the meeting ends up.

8 The last CM that I point out in this period of
9 time where Rashid is discussed by Emad and Siddig in the
10 period between the meeting on May 30 and the next time Emad
11 and Siddig catch up with Rashid on June 16, this last CM is
12 CM 37, which is Q37, GX339. What goes on there is, Siddig
13 is talking to Emad and telling Emad that Rashid has played
14 a, quote unquote, horrible trick on him, that he was
15 supposed to meet me and didn't show up, and in fact you will
16 find this referred to in a government exhibit which was
17 referred to on summation, Government's Exhibit 754 in which
18 there is a conversation on June 15, which is a Wednesday,
19 and Rashid apologizes for having stood Siddig up, and in
20 that conversation Rashid says are you going to be doing
21 interkof over the weekend. It sounds sinister the way the
22 government puts it. He says I'll make myself available to
23 you any time, blah, blah, blah. He just stood the guy up.
24 Siddig complains in CM 37 I waited an hour, it was horrible.
25 So the conversation has an apologetic tone to it.

1 The other thing to note is that what Rashid is
2 talking about is getting together with him over the weekend
3 to do interkof and even Detective Corrigan knows that
4 interkof is a term that denotes staying in the mosque to do
5 intensive study of the Koran.

6 Again I would suggest to you very strongly that
7 this is another diversion that Rashid is creating for
8 Siddig. He is trying to get Siddig out of what he was
9 talking of. There are two subjects that he is discussing
10 that are not about the bombing project. One is the
11 Philippines. You know that he is not going there for jihad.
12 You know from his conversations why he wanted to go. I
13 think the idea of meeting over the weekend to do interkof
14 also suggests that this is not going to be a bombing
15 discussion.

16 That is where things are left. So whether Rashid
17 tells you that they hijacked it the next day when he goes to
18 pray at Farook Mosque, he is telling the truth. There is no
19 arrangement to meet, they just catch up with him.

20 You will find in the transcript that he is
21 actually trying to leave and they say no, no, take off your
22 shoes. The tape actually starts with a very interest
23 statement. I go, I am getting out of here, I am going to
24 the Philippines. Then he starts to bullshit them. He says
25 yes, I made some calls, there is nothing, sorry. He is

1 always looking around, always spinning them off. That's his
2 style.

3 None of those conversations between May 30 and
4 June 16 have anything to do with Rashid's participation in
5 any kind of bombing conspiracy. The government points out
6 that he called Mustafa Assad on May 30 at night, and yes he
7 did, and the subject of conversation was meeting the next
8 day in the park where the Eid celebration would be taking
9 place, and we will cover just very briefly who Mustafa Assad
10 is at this point.

11 The first thing to mention is that he and Rashid
12 are good friends. Rashid testified to that, described many
13 conversations that he had had in the months preceding June,
14 conversations with ranged from a letter that was helping out
15 the Assad family with welfare, concerning the rent, to
16 leaving rice and sugar for Mustafa at work, to Mustafa
17 repairing his car, Rashid's car, because Mustafa was a car
18 mechanic, to the number of children that Mustafa has, just
19 going to prayer, meeting after work -- a relationship. And
20 you heard Rashid talked about visiting the Assad family,
21 knowing the children, and vice versa.

22 The government has a mantra about Mustafa Assad
23 that goes, every time it is mentioned Mustafa Assad, he is
24 the guy that Emad Salem told you, but they don't say Emad
25 Salem told you, they just say Mustafa Assad was the guy that

1 was supposed to be involved in 1992's bombing conspiracy.
2 You know, and I don't want to be repetitive about it, the
3 only evidence you have for that is Emad Salem, and the only
4 evidence you have for Mustafa Assad being in any way alleged
5 is our friend Emad. So when it's Emad pointing the finger,
6 you know that you have to be careful, and there is no
7 conversations between Emad and Mustafa, there is no taping
8 of conversations, and you know that if there was any kind of
9 relationship or any kind of contact, that you would have had
10 the tape.

11 More to the point and most critical, if Mustafa
12 Assad, and I think this determines the issue, if Mustafa
13 Assad was supposed to be a player in '92, why hasn't Emad or
14 Siddig called him in '93? Why isn't he at the safe house in
15 Queens? Why hasn't he been contacted by Siddig? If he is
16 going up to visit Nosair with Siddig and Siddig knows him,
17 why hasn't Siddig contacted him? It just doesn't make too
18 much sense if what Emad is telling you is true.

19 There is another connection, again some similar
20 reasoning. Mr. Alvarez is alleged to have been involved.
21 He has testified that another Muslim Hispanic was a good
22 friend of his. The name of that person is Mustafa Assad.
23 In fact he told you that at one point in Mr. Alvarez's life
24 he stayed over at the Assad home.

25 So given that, why isn't there any connection

1 between Alvarez and Assad? Again, it just suggests that
2 there is a total lack of credibility to what Emad is telling
3 you about 1992.

4 Rashid has testified to you that he spoke with
5 Mustafa Assad on June 16, that he had arranged to meet with
6 him early that morning, and we gave you that recorded
7 conversation. That is Defendant's Exhibit C8. There was
8 one other conversation that we submitted into evidence which
9 was C7, another FISA recorded conversation of June 11, which
10 occurs in that period that I refer to as the quiet period,
11 May 30 to June 16, and you have Mustafa and Rashid talking
12 about Mustafa has a business proposal and he is trying to
13 raise some money for it, and it is a fairly long
14 conversation and it is a totally innocuous conversation, and
15 that is the only one. But we know from the one C8 that the
16 arrangement to meet between Rashid and Mustafa on June 16 is
17 done before he is hijacked, if you will, at Farook Mosque
18 later that day by Siddig and Emad.

19 The reason I stress that is, I think it was very
20 spur of the moment, very rabbit being flushed that Rashid
21 says anything to Mustafa about the conversation that he has
22 with Siddig and Emad. Not that he describes the
23 conversation but that he makes the inquiry about passports.

24 I stress the word inquiry and I know that you
25 know that it is a lawyer word but there is a reason for it,

1 because you will see that when Emad talks about passports,
2 and you will see it is his idea, you don't just get a
3 passport. You need a picture and if you are getting a phony
4 passport you need money.

5 I will show you Q27 which I referred to before.
6 It is June 3, and it is a very meaningful conversation
7 because Emad knows also -- it's not just Siddig knows
8 Rashid's a dud. That's a real reaction. Emad is no fool.
9 He has been called here an evil genius or whatever. He is
10 very, very shrewd about maneuvering. He is not getting
11 detonators from Rashid. He knows his man. It's a small
12 point -- maybe not so small. He meets him in June of '92,
13 one year before, and takes the measure of the man, and
14 that's why when Detective Napoli testifies that he told
15 Emad, when Emad says he was very frightened about meeting
16 Rashid in '93, that's why Emad wears two devices, one in his
17 pants, and he takes the briefcase in. He is so afraid.

18 The meeting he has on May 30, he understands full
19 well he is never getting anything from Rashid, certainly no
20 explosives. And that's that.

21 So he comes up with the idea of passports and
22 here is where it first occurs on June 3, and he and Siddig
23 are talking, and Emad -- again, please note, this becomes
24 very meaningful as we proceed this morning, please note who
25 is doing the suggesting. It's extremely important. It is

1 Emad who's saying look, let's go get the pictures and \$300,
2 and we will get passports. In the paragraphs that precede
3 that, they are talking about going to Rashid.

4 I am trying to not go into exhaustive summaries
5 of these, so if you want to check what I'm saying, just go
6 to Q27 or the government exhibit, and you can confirm it.

7 The government argues that, you know, folks, if
8 you listen to the tape, the enhanced tape, you won't hear
9 passports, you will hear far away or some such thing. In
10 point of fact passports appears twice on the enhanced
11 transcript. But that's not the issue. The issue is
12 context.

13 Again, if you look at the transcript that we
14 submitted, which is W2, that excerpt that is enhanced from
15 that meeting, from that tape recording, you will see that
16 they are talking about getting passports, that the word
17 faces appears twice, and we know what faces means. But I
18 submit that you heard it when we played it for you, and the
19 digital tape is available to you when you deliberate.

20 But that is not the only evidence. Again I urge
21 you all the time to please always look at the context,
22 because things taken out of context can be terrible. If you
23 look at the context, it's not just that this discussion
24 takes place on June 16 without things preceding it, and I
25 will run through very quickly what they are.

1 Before they meet, before they meet, Emad tells
2 Siddig, and this, although it is CM 43, Government's Exhibit
3 government's Exhibit 346, and we submitted it to you, I
4 believe, as Q43, although it has a number 43 it actually
5 takes place before the June 16 meetings, and Emad says we
6 are going to ask him for two passports and three balls.
7 This is not a question of whether you can make it out on the
8 tape, this is what the plan is. Again, please note whose
9 plan it is. It becomes very important that this plan -- you
10 see now it is unfolding from June 3 on, the dud date, if you
11 will, that Emad has come up with the alternative of let's
12 see if I can get some passports from this guy. Can't get
13 hardware, maybe I can get some software from this dude.

14 I asked Emad on cross-examination about this and
15 he confirms it. He says yes, that they were going to ask
16 him for two passports and three balls and that in fact they
17 did. So you have the testimonial confirmation of the CM's
18 and there it is.

19 What's the point? The point is that the
20 passports, first of all, aren't quite as relevant and
21 important, even emotional, if you will, if you are talking
22 about a bombing conspiracy. Second, it was very vague in
23 terms of what the passports were for. But they are not
24 self-effectuating. You really can make an inquiry, because
25 if you don't have the pictures and you don't have the money,

1 you are not in a position. It really is very, very
2 preliminary, and I submit to you it is very spur of the
3 moment.

4 But most important perhaps, it is part of
5 trapping Rashid. It is part of the snare. It is part of
6 Emad's plan to get a guy -- and this is the question I posed
7 to you, is, without Emad is Rashid involved. Emad wants to
8 get him involved. He can't get him involved to get
9 detonators. That was ruled out, not getting detonators.

10 Please understand that when Rashid is getting
11 back to Siddig in the period June 16 to June 19, he is not
12 saying look, I asked about the passports and we can't get
13 them. They don't say what they are talking about. Rashid
14 is quite happy to let it be vague. For that matter, they
15 are happy to let it be vague. And they are not counting on
16 him at all and I think it is extremely important.

17 Please, I know I say that word too much now, but
18 if you look at the dispute that occurred in the government's
19 rebuttal case over CM 50 and whether the wording was we have
20 to look elsewhere or we better start on the condensers,
21 which was the essentially the only rebuttal they submitted,
22 we played the rest of the tape where there was a dispute
23 about whether you heard certain Arabic words and I submit
24 what you heard conformed to what Mr. Yousry testified. But
25 it doesn't really make that much difference. CM 50 takes

1 place before Rashid ever gets back on June 19. CM 50 is
2 recorded on June 19 but it takes place before Rashid ever
3 calls Siddig that night after Siddig has called him to
4 remind him at the behest of Emad. What's up?

5 Rashid calls Mustafa, find out no can do and says
6 La, which is no. I hear that in Rashid's voice and you can
7 make your own determination.

8 I think it is very important that before that
9 call is made earlier that day they are talking about Rashid
10 and what they are saying about him is forget about him,
11 don't trust him -- this is Siddig -- and on the very next
12 page of the excerpt we submitted to you, he is a headache,
13 it's always tomorrow, tomorrow, tomorrow. He's a headache.

14 You will find that Emad is happily at work on the
15 condensers at CM 52, which you will find that passage right
16 after Rashid has called and said that nothing is available,
17 and right after that part of the conversation which the
18 Nagra picks up, Emad says no problem, we'll do condensers.
19 So there has been no reliance upon Rashid, and this goes
20 back to June 3, he's a dud, and it continues throughout,
21 even before he gets back on June 19 after having called
22 Mustafa.

23 There is one other thing I would point out, that
24 the first appearance of the may God breathe life into your
25 picture takes place on June 3, and this is Emad chanting it.

1 It comes at the time when he has come up with the idea of
2 passports. If you think about it -- I certainly didn't have
3 a full insight into it before, but I think I do now, when he
4 says may God breathe life into his picture, what he is
5 talking about there is, get him to get me some evidence, I
6 need evidence on this guy, and that's what Emad is looking
7 for. That's what he is supposed to be doing.

8 What you will be seeing is that by that chant and
9 by his coming up with the idea of passports that they have,
10 he has come up with this idea because he knows that he can't
11 get detonators from Rashid and that he hopes he can get
12 something. It is kind of almost in my mind blaspheming to
13 be chanting this thing to try to trap this guy.

14 Again ask yourselves the question, but for Emad's
15 idea, but for his persistence, but for his pushing it, where
16 is Rashid? And all that they have is the calls to Mustafa
17 and the calls to Siddig during this period. That is what I
18 might call the only acting out, and it is an inquiry into
19 passports, and I think the evidence supports it. The
20 passports are Emad's idea and the passports are a substitute
21 for the detonators that he knows he can't get.

22 There is a context to all of this that relates
23 to, I think, really, all three charges, and very much to
24 what we have just been covering, and that is what did Rashid
25 know? I think it is very important because what I am saying

1 to you is that he knew nothing, and if you think about the
2 recital of things that Siddig is alleged to have done and
3 ask yourselves what did Rashid know, you will see that he
4 knew nothing. Did he know about the tunnel video? Ask
5 yourselves. Did he know that Siddig and Emad had done a
6 test bombing on June 22? As it turns out it was an M80
7 firecracker that Emad set off, and Rashid, ignorant about
8 all these things, by Emad's testimony thought it was a real
9 test. Did they tell Rashid? Come on.

10 When they go to him on June 23 it also is another
11 indication. They call him. Again, it is their persistence.
12 He is not calling them on June 23 and saying listen, can I
13 still be involved? I know I haven't done anything yet, did
14 I give you something from the dojo? Would you like a blow
15 gun? Like some help? I got Ubaidah, he's not doing very
16 much. Would you like me? Would you like to use the dojo?
17 Do you need some cash? You short? Is he making any
18 initiatives? Is he making any offers?

19 So Emad speaks to him, calls him on June 23 and
20 says, you know, we hoped you might come through. And Rashid
21 says well, I have flyers out. Emad tells you that he
22 expects the next morning to pick up stuff to find as
23 detonators and stuff from Rashid. It's more than absurd.
24 But I think the point is that June 23 they are still asking
25 Rashid for detonators.

1 So the status of the operation, full, project
2 unknown, goal unknown, since he has ruled out the tunnels
3 and 26 Federal Plaza, that whole thing has been ruled out on
4 May 30. When they come to him on June 23 and ask him for
5 detonators, as far as he knows they are at the same point
6 they were on May 30, the same point they were on June 16.
7 They are still looking for detonators. He doesn't know the
8 following, and let's take a look at the list, because it is
9 extremely relevant to every charge against them. There is a
10 twist to it.

11 The twist is that he is deliberately kept in the
12 dark by Emad, and the reason they keep him in the dark is
13 because they can't tell him. Can they tell him listen, we
14 have a safe house in Queens, come on out? Do they say to
15 him at any time brother, you got to meet the people we have
16 collected? You may know some of them from Pennsylvania. Do
17 they say to him you got to see this video of the tunnel,
18 it's a gas? You remember that tunnel we talked about, break
19 like straws, that you thought innocent people will drown?
20 Let's show you the video we made, you'll love it, you'll get
21 a gas out of it. Do they tell him listen, we just got some
22 fuel oil, what about the fertilizer, the timer? Does Siddig
23 report back listen, I've scouted the different targets, you
24 wouldn't believe the security at 26 Federal Plaza. Remember
25 you said you're talking about taking down the federal

1 system? Well, I've done some work since then and I would
2 like to report back to you about where we are, sir.

3 They told him about the Uzi. They tell him about
4 it. Ask yourselves the question why not. If you are really
5 trying to get someone who is a terrorist, a bomber,
6 legitimately -- and it's perfectly legitimate to get a drug
7 dealer to sell drugs and arrest him if you are an undercover
8 agent. That's how you do it. That's the business of
9 arresting drug dealers. They are on a street corner. If a
10 cop comes by dressed in street clothes and gets a sale,
11 that's fine. How else are you going to do it, basically?
12 But you are getting a drug dealer. You are getting a guy
13 out on the corner whose business it is to sell drugs.

14 Why do you keep everything so nondisclosed? Why
15 do you not bring Rashid into the picture? If he is a
16 terrorist and he is a bomber, if he is one of those
17 involved, why don't you involve him? What's the secret?
18 Why not tell him? It's an unassailable hurdle for the
19 government in this case. There is just no reason for it
20 except that if they did tell him, he really might -- he
21 wouldn't call 911 but he would have to do something, because
22 he is not part of that, and that is believable about him.
23 It's vicious to do it this way. If you are going to cleanly
24 get somebody who is a bad guy, do it. But make it clear
25 what you are doing. Don't, you know, have this very

1 cleverly constructed thing which squeezes out a phone call
2 to Mustafa after you have bugged the guy, and come up with
3 an alternative plan so he might even make an inquiry about
4 it. Do it cleanly. Tell him the plan.

5 Is there anything on June 16 in any recording, is
6 there anything on June 19 in any recording, on June 23 --
7 June 23 they are going out to the safe house. Do they say
8 Rashid, come on out, you got to see where we're at, it's
9 looking good?

10 It's a very nasty piece of business to do it this
11 way, and it was very deliberately done. It all hangs
12 together.

13 You know, Ms. Stewart referred to the suckers in
14 the safe house, and I tell you, I sat bolt upright when she
15 said it. It's true. Why doesn't Rashid know about the safe
16 house? What's the secret about Queens? Because he is not
17 part of the Queens tunnel plot, that simple. That's the
18 reason. There is no artifice in the argument, it is just a
19 very simple factual matter. He's not involved in it.

20 There are some hints in the record, I think, that
21 you can substantiate Rashid's position. There was a whole
22 period of time in this case where they put in evidence that
23 was seized from Rogers Avenue where the dojo was, and they
24 put in all those weapons that you saw on the wall in the
25 video, and that you saw in the pictures that were taken. In

1 fact you know from testimony. Detective Cordero told you
2 that he had actually entered the Rogers Avenue facility on
3 May 10, almost two months before the raid, and that Ubaidah
4 was very cooperative, took him through the joint. They were
5 posing as building inspectors. Nothing to hide. You heard
6 Rashid tell you all the weapons were on the wall in April,
7 the video was made at that time. There was nothing to hide.

8 The government put in the note, a note from Abu
9 Ubaidah, dated June 24, El Salaam Aleikum, Sheik Abdel
10 Rashid, this from Abu Ubaidah -- this was left on the wished
11 of Rashid's car -- we have an extreme emergency, the FBI
12 came by early this morning, they raided the apartment and
13 the gym, please contact the interhouse immediately. Exhibit
14 number 846. If you are involved in Project Bos and the FBI
15 comes by and seizes everything at 4:00 in the morning,
16 that's the right thing to say.

17 But I think the point is, you don't hear about
18 that raid and the evidence seized again in this case. There
19 is a reason, and there is a strong reason. Because if there
20 was anything there that could conceivably be part of the
21 bombing conspiracy, we know for a fact that it was never
22 offered, never given, and the most fundamental thing you
23 know about Rashid is he never gave them anything, and that
24 goes from the dojo facilities to everything that was in it.
25 So the stuff from the dojo disappears when the government

1 sums up. It is no longer relevant to this case. As is
2 Pennsylvania, from the government's point of view. From the
3 defense point of view it is highly relevant, particularly
4 from Rashid's point of view.

5 The note disappears into this ton of evidence
6 that has been paraded before you, no longer worthy of
7 discussion.

8 Because of the total ignorance in which Rashid
9 was kept, he cannot possibly be aiding in any way, even by
10 the inquiry to Mustafa, which is the only thing they have,
11 and attempted bombing. For an attempted bombing you need
12 what they have spoken about Siddig doing all those things,
13 if in fact that constitutes it. But at least it is doing a
14 bunch of things, moving the thing along. That's an attempt.
15 If you are talking about it, that's conspiracy. If you are
16 taking a significant step, getting fertilizer, doing all the
17 things that Siddig did perhaps, and adding them up, that's
18 an attempt. So for Rashid to be aiding it, he has to know
19 about it.

20 How does he know to ask is there a safe house in
21 Queens or do you have a safe house? Or, excuse me, did you
22 do a tunnel video? Did you do a test bombing? I mean, turn
23 it around for a minute if you don't find it so important
24 that he wasn't told. These are not questions for him to
25 ask. These are for the organizers, which is what Emad and

1 Siddig are, to tell him. If he is honestly a terrorist and
2 a bomber, why don't you tell him? If you are dealing with a
3 drug dealer, you tell him what you want and how much you are
4 willing to pay. You may talk in code but you tell him.
5 There is no secret.

6 I am sorry for raising my voice about it, but
7 that's true. That's the way it is supposed to be, and that
8 is why it is not just with attempted bombing that the
9 ignorance is so powerful but it is also with this idea that
10 the law has an antidote to this kind of poisonous trap and
11 it is, and the judge will give you an instruction on it,
12 entrapment. It is literally an antidote because it is
13 poisonous. You are not supposed to take someone who
14 otherwise wouldn't do it, who otherwise wouldn't be
15 involved, and get him involved. That is not the business of
16 the government. It's just common sense and the law often,
17 where common sense is required, comes up with something that
18 deals with it, and that's what deals with it.

19 So you will find the judge will give you the
20 instruction, and it is a powerful instruction, because the
21 burden is on the government, not Rashid. The burden is on
22 the government that he would have done it anyway, if Emad,
23 but for Emad Rashid is going to be your terrorist, he is
24 going to bomb your tunnels, he is going to kill you, he is
25 going to get every single one of you if he can because he

1 wants to change United States policy in the Mid-east.

2 The fact, you know, that he is this guy who has a
3 job and a wife and an apartment and a total consistency to
4 his life, including his secret life, which consists of
5 jihad, Afghanistan and Bosnia, says to you that when he
6 comes back from Manila he has done nothing wrong, he is not
7 a bomber, he is not a terrorist, and therefore what Emad did
8 was wrong, and Emad was doing it for the FBI. It's just
9 wrong, and you know it's wrong.

10 He shouldn't be here. He really wasn't living a
11 bad life. He was working. In fact you hear him describing
12 he was working overtime. He was working hard, supporting
13 himself and his wife.

14 You know, the evidence the government brought in
15 that he wrote this letter about an airport incident and he
16 wasn't at the airport, even the way they asked him the
17 questions about it wasn't fair. It wasn't a sworn
18 statement. But he felt bad about it and when they asked him
19 did you make a sworn statement about it, well, yes, and then
20 it was pointed out to him it is not sworn. The notary is
21 simply for his signature. You can say wait a minute, don't
22 be so picky. Well, you have to be picky. It's a little
23 different to swear before the notary.

24 The point is, if that's the worst thing he did, I
25 don't think that makes him a ripe target.

1 If the government's position is well, he
2 participated in Afghanistan and he had Project Bosnia, that
3 makes him a ripe target, let them say it to you. Because
4 that's all there can be. Is there something else? I don't
5 know. But that is all there is.

6 I would like to play a very, very short excerpt
7 from one of the FISA's that Rashid has a conversation on, I
8 believe it is May 27, with Garrett Wilson, who, as you know,
9 was working for the government. Let's listen to what Rashid
10 has to say.

11 (Tape played)

12 MR. WASSERMAN: One of the more meaningful, I
13 believe, exchanges that took place which supplements, gives
14 you more context on the vagueness of this whole thing,
15 occurred during questioning of Emad Salem, where he was
16 asked what project he had been referring to, in a
17 conversation with Detective Napoli on June 23, where he told
18 Detective Napoli no, no, no, the doctor has his own project,
19 has nothing to do with us. And I asked him what's the
20 project? The project that you were referring to referred to
21 what, sir? He has his own project. Either it will be the
22 United Nations, either it will be -- whatever it is.

23 "Q You weren't referring to the Philippines,
24 sir?

25 "A. Could be, sir. He have his own project.

1 He mentioned that he would go to Philippines, he mentioned
2 that he have his own project or he had the United Nations as
3 a project for him one day."

4 Does what Emad says about the doctor having his
5 own project having nothing to do with us, doesn't that tell
6 you that his report back to Napoli on June 23 is listen,
7 man, this guy is not involved with us, haven't gotten
8 anything from him, got scared off on May 30 as soon as
9 Siddig, you know, like, started to be specific, we haven't
10 been able to tell him a thing since, how can we do it if we
11 can't talk to him because we know if we talk to him we will
12 never be able to talk to him again. That conversation tells
13 you a lot.

14 I would like to just bring up a couple of the
15 discussions at the end, very brief segments from the CM's
16 which capture again -- really no different from the ones
17 between June 1 and June 16, where we have the dud and stuff
18 like that, and at the end of the case, on -- well, let's go
19 to June 23, CM 64. We submitted it to you as Q64. Again,
20 Siddig is not talking for the record, and Emad, we know, is.
21 Look what happens.

22 Emad: If Abdel Rashid be generous to us, one
23 block.

24 Siddig: The man cannot, by God.

25 Emad: One block of C-4, no more, no less, and I

1 divide it among them.

2 Siddig: Do not depend on him.

3 I mean, the reality was the reality, and Siddig
4 knew the reality from the beginning. He knew it and I would
5 ask you to look upon it as really the shortest, tightest,
6 best explanation of why it was wrong to go after Rashid. In
7 CM 1, that short excerpt which we submitted to you as Q1,
8 Emad says we need to get detonators and Siddig says where do
9 we get that from.

10 Another prospective short piece of context is a
11 short conversation that Rashid has on June 19, I believe it
12 is, Defendant's Exhibit V4. He is talking with this woman
13 in the Philippines, Fatima. He says that he wants to go, he
14 would like to meet her parents -- I think that is V4. It
15 might be one of the other V conversations. He is talking
16 about meeting her parents, meeting her daughter, and that he
17 wants to go. But he can't.

18 So you know a couple of things. You know his
19 talk about going to the Philippines was centered around this
20 fantasy he has about Fatima. But he can't go. He says to
21 her the job won't permit my absence, I can't afford to lose
22 my job. I submit to you, it is a small detail but it
23 suggests to you both in terms of where his mind is, Fatima,
24 the Philippines, and the fact that he has this job, he can't
25 lose this job. This is not a bomber, this is not a

1 terrorist. This is not a guy engaged at the time in a bomb
2 or any such thing. He is not ready to throw his life away.

3 I think another point to make about Rashid is
4 that everything in his life is consistent with the medical
5 field he was in and everything is consistent also with, if
6 he wants to get something done he can. You know, the two
7 are tied together.

8 We spent a fair amount of time, and you were very
9 patient and the court was very patient. Rashid described
10 how he worked his way up. Got out of the army, which wasn't
11 that easy. He had a general discharge under undesirable
12 conditions. He had a variety of jobs and I think he used
13 the term bedpan job. I am not sure he used the word.
14 Lowest position in the hospital and he worked his way up.
15 He became a senior EMS, a guy who could go out alone on
16 serious cases. Then he went into dialysis. There is a lot
17 of autonomy, a lot of responsibility. He worked his way up
18 and stayed at that job for a long time, and still was at
19 that job when he was arrested.

20 When he goes to Afghanistan, does he go with a
21 gun? He goes with a bag of medicine. He is enticed to go
22 by Mohammed Souad showing him pictures of the wounded in
23 Afghanistan, children with their eyes blown out by napalm.
24 The women -- terrible stuff, very similar to what you saw in
25 the Bosnia picture. He goes for 11 days and gets his foot

1 almost blown off by stepping on a landmine. But his
2 function in Afghanistan was medical. You heard Namallah
3 Abdullah say the reputation was there in Afghanistan, of
4 him. It wasn't that usual to have Americans there. It
5 wasn't that usual to have guys from Brooklyn. It wasn't
6 that usual to have African Americans there. It wasn't that
7 usual to have someone like him who as Namallah Abdullah
8 described it, wasn't abusive to the Afghans. That is his
9 reputation. So that is consistent.

10 He has been really touched by the experience,
11 makes a video, goes on speaking engagements. No light
12 thing. He is by no means -- as a witness he is a layman and
13 you saw it. You saw it. But you know, he went out on a
14 speaking tour. I never had the privilege of hearing him but
15 I think it would have been interesting. He went to MIT, a
16 host of colleges in the east, and he told you about it --
17 it's in evidence -- and talked about Afghanistan and the
18 experiences and what was going on.

19 Something about that must have triggered, I can
20 only term it, the authorities, or some segment of the
21 authorities. I don't think it is a monolithic hole but I
22 think someone took an interest, not only with the people who
23 were going to Afghanistan from the United States but
24 particularly this guy. He stood out. And they go visit the
25 Alkifah office and they ask about him. They start taking

1 his pictures, surveilling him.

2 Then in '92 he becomes involved in Project Bosnia
3 and again you have the surveillance. He is sticking out.
4 But it is all consistent. It is all so very consistent.
5 The jihad that he is involved in, that he believes in is
6 Afghanistan and Bosnia. You have heard a lot about those
7 things but that is very real with him, and there are no
8 exceptions to it.

9 I want to point out that the government cited in
10 CM 25 criticism on page 13, Rashid was criticizing the
11 United States and kuhfars. As so often they do, they stop
12 in mid-package and don't continue with the rest of it. If
13 you look at page 13, you will find that he is criticizing
14 also Khomeini of Iran, Assad of Syria, Hussein of Iraq, and
15 Mubarak of Egypt. All of them in the same boat. They are
16 all dictators, as he testified to.

17 He says on the CM -- this is the continuation.
18 This is what the government doesn't read to you: In fact,
19 people of the world who don't really give a damn what's
20 going on in Bosnia because the people in Bosnia, kind of
21 ellipsing here, dot dot dot, and the massacre, and the world
22 has not cried out with outrage.

23 Certainly I think when we saw that video we
24 thought, what are we doing, and he actually was doing
25 something. I think it is something to be very proud of. I

1 think it is very American to do that. I think it is in our
2 traditions. We have always, always had in our spirit to be
3 on the side of liberty and the oppressed. With Rashid it is
4 very focused, it is the Muslim oppressed, but it is very
5 focused and it is very out. It is there, not here.

6 He is an American, he is a Brooklyn guy, he works
7 here, lives here, and I don't think you can point to
8 anything that he has ever done that is you know American.
9 Even, you know, that discharge. When he finally settles in
10 you hear about he gets called in literally on the carpet, if
11 you will, after a year and a half at the Long Island College
12 Hospital and the administrator says to him you know, you
13 didn't tell us about your discharge. This is at a time when
14 I think things are a little different. If your discharge
15 isn't right, you get hassled. Rashid says to him listen, if
16 I told you would you have hired me? And the administrator
17 says well, you're right, you're right, you stay on.

18 So getting the discharge changed really is of no
19 moment. He stays at Long Island College Hospital for the
20 next 25 years. But he wants to change it. His name means
21 something. He is proud of it and he is proud in his own way
22 of having been in the army, as much as he encountered severe
23 discrimination there in the fifties, he wanted to get his
24 discharge changed and he did, and I think it says two
25 things. I think he is very much American. It counts to him

1 having the right kind of discharge, and I think it tells you
2 something about his persistence. He didn't have to do it
3 economically, he wanted to do it, and he put a lot of effort
4 into it and got it done.

5 I don't think the Pennsylvania training, although
6 it has come trippingly out, was that easy to put together
7 either. You had to get the people, you had to get the
8 facility, and he did it. The fact is, his guy Ubaidah
9 brought guns up to Pennsylvania. You heard about the five
10 rifles that were purchased at a gun show in Virginia through
11 Bilal Harun, and those rifles -- I think it was six -- those
12 were used up in Pennsylvania.

13 If you look in 4011, Government's Exhibit 64011,
14 it is left unclear what happened. You know, the story was
15 that Smith who worked for the park service, and it was his
16 facility, what Robert Abdullah referred to as the farm, as
17 they called it there, after the FBI visited in early
18 February and Smith said all right, I can't take this, I
19 can't do it, I have family, I have kids, I don't know why
20 the FBI is so hot and bothered and there can be no more
21 training here for Project Bos.

22 So it is left very unclear as Siddig is
23 recounting the story to Emad what happens to the rifle. But
24 the fact of the matter is that Ubaidah had contacts, Ubaidah
25 had a way, and I think the point is that it is not that

1 Rashid has no contact with the training, he isn't able to
2 get things done, he couldn't if he wanted to, if he wanted
3 to, get weapons through Ubaidah.

4 The point is that it is all very directed towards
5 something that is, I suggest to you, quite legitimate, which
6 is the project for Bosnia and that is the reason the
7 government didn't bring it up in their summation and has no
8 relationship to the bombing conspiracy in any way.

9 THE COURT: Mr. Wasserman, would you come to a
10 convenient break point within a few minutes.

11 MR. WASSERMAN: Yes, your Honor.

12 There is another point that I mentioned very
13 briefly yesterday as a way of giving the context about who
14 he is and why it was wrong to target him. It again suggests
15 why they don't tell him the details, why they don't tell him
16 about the Queens and the tunnel plot, because very
17 religious, and the things he says, you heard a number of
18 them on some of the FISA's. But even in CM 25 with all the
19 bull and some of the ugly talk that is going on he is saying
20 first of all you have to be an example of what a good Muslim
21 is. He is not ignorant, he is not an aggressive, he is not
22 a wrongdoing person. On page 31, I am worried about what
23 Allah is going to do to me when time is concluded. That's
24 what I am worried about, brother, I have to go back to
25 Allah.

1 I think again it is just one of those points
2 about the man that suggests to you that this is not the
3 bomber, this is not the terrorist, and that what Emad did on
4 behalf of the FBI at their request was very wrong. They
5 squeezed out the calls to Mustafa, they came up with the
6 alternative of passports, and that's all they got, and they
7 did it by not telling him what they were doing. That is
8 just simply on the record, and that is very wrong.

9 I would ask you to note, if you would, that all
10 the CM excerpts that we put in for you in the Q series, I
11 would ask you to look at. They all tell the story from CM
12 1, Q1 on, about Siddig saying where do we go for detonators
13 and Emad saying Rashid -- or rather Siddig asks, after he
14 says that he says does Abdel Rashid know about it, right,
15 and Emad says sure, he knows. Start there, and that tells
16 you -- and then you go to Emad's persistence, got to be
17 persistent in Q2. 6, you go to his plan for passports in
18 Q27, you go to his may God breathe life into his picture and
19 the plan for passports in Q43, asking for passports, the
20 request in 41, and then the aftermath of that.

21 It is all malicious, and there is no other word
22 for it, and there is the formulation the law has come up
23 with not just for this case, that the burden is on the
24 government in a case like this to show that he would have
25 been involved but for Emad Salem. That is their burden,

1 beyond a reasonable doubt. It is a burden they can't meet
2 in this case.

3 I would like to ask the court's permission to
4 break in a minute and just play a quick excerpt. Thank you,
5 Judge.

6 THE COURT: Would you indicate which exhibit it
7 is a quick excerpt of.

8 MR. WASSERMAN: Yes, Judge. This is Hampton-El
9 Exhibit U1, and it is a FISA conversation between Rashid and
10 Asim Mohammed. You heard a lot of conversations that were
11 played to you during the course of this trial by the
12 government and by us. You know, some of the talk is not
13 particularly -- Asim may say some things about Jews that are
14 not nice but there is no talk about guns, and I would like
15 you to hear this exchange which takes place on May 9 and ask
16 yourselves who is Rashid.

17 (Tape played)

18 MR. WASSERMAN: I would, if the court would
19 permit, like to think if I have left anything out.

20 THE COURT: Beg your pardon.

21 MR. WASSERMAN: If the court would permit, I
22 would like to think if I have left anything out over the
23 break.

24 THE COURT: Go right ahead.

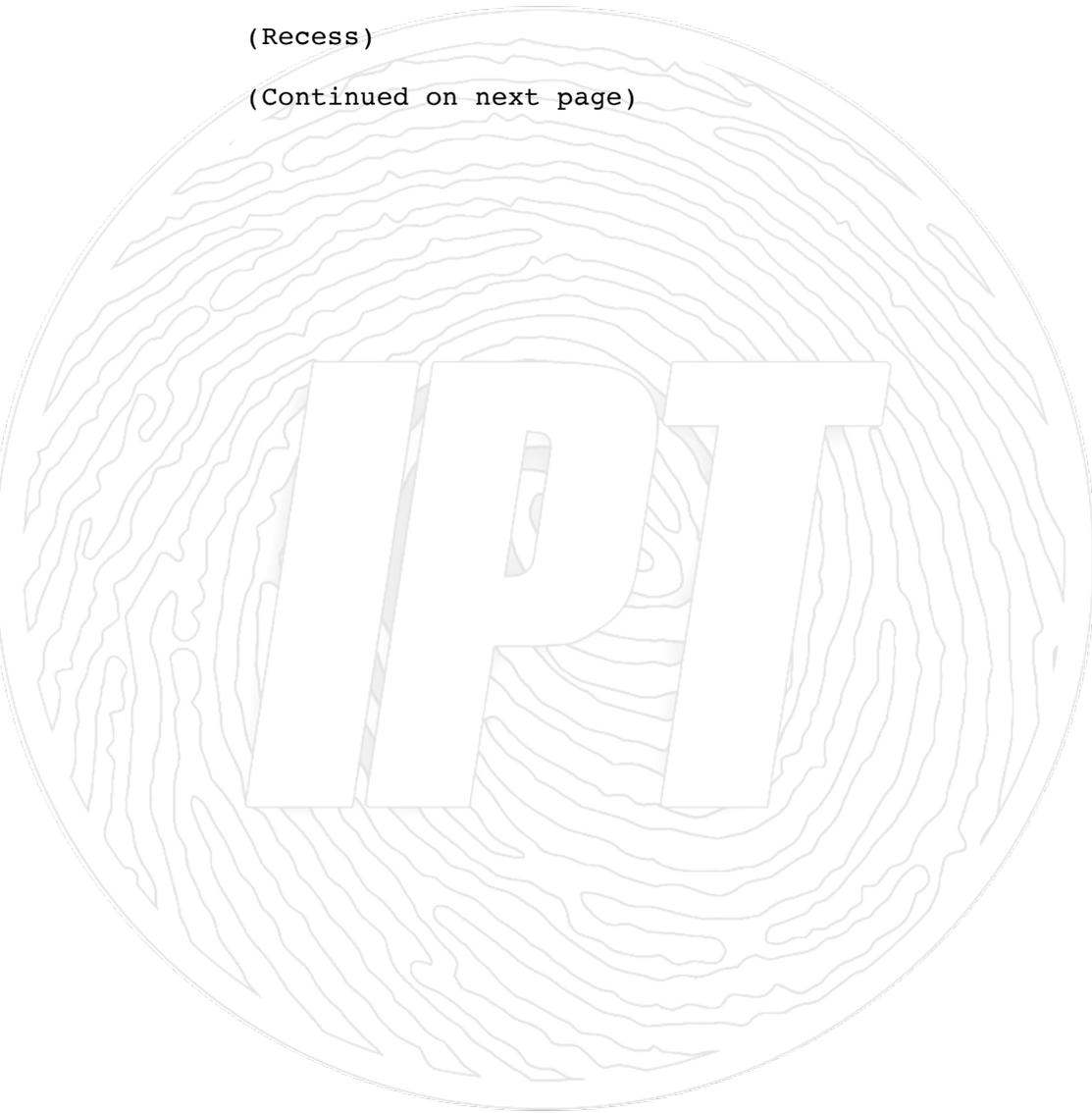
25 MR. WASSERMAN: Thank you very much.

1 THE COURT: Ladies and gentlemen, we are going to
2 break. Please leave your notes and other materials behind.
3 Please don't discuss the case, and we will resume after the
4 break.

5 (Recess)

6 (Continued on next page)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 (Jury not present)

2 MR. WASSERMAN: One minute.

3 THE COURT: You've thought of something.

4 MR. WASSERMAN: Very short.

5 (Jury present)

6 THE COURT: Mr. Wasserman.

7 MR. WASSERMAN: Thank you, Judge.

8 Just a minute of your time. There was a group of
9 students that came in about a week and a half ago, I don't
10 know if you noticed, from Norway. I think everything in
11 this courtroom looked familiar to them. They saw a judge.
12 They saw the defendants. They saw the marshals. It was
13 something that they could relate to, except when the jury
14 walked in. That's uniquely American. At the end of this
15 case, it is you who decide on the evidence. The government
16 gets the last shot. They speak to you, and there is no
17 answer by any defense attorney. But you have the evidence,
18 and collectively you have the wisdom. I trust in you.

19 I thank you so much for your attention and your
20 time and what I believe will be your fairness. Thank you
21 very much.

22 THE COURT: Thank you, Mr. Wasserman.

23 Ladies and gentlemen, we will now hear the
24 summation in behalf of Mr. Amir Abdelgani from
25 Mr. Bernstein.

1 MR. BERNSTEIN: Your Honor, Amir Abdelgani, my
2 cocounsels, my adversaries at the government table, but most
3 of all, to all 14 of you, ladies and gentlemen of the jury,
4 let me begin by telling you that there is some good news and
5 there's some bad news.

6 The bad news is that I intend to be thorough in
7 my presentation of how I submit you should view the evidence
8 and the lack of the evidence presented by the government
9 pertaining to Amir's case. The good news is that I intend
10 to present those arguments as concisely as possible.

11 My expectation is that my summation will be about
12 an hour, maybe an hour and a half. As I stand here before
13 you, I can only say thank you for your willingness to sit as
14 jurors in this case. As we all know -- I'm sorry. When you
15 turn 45 you start to have problems with the short vision,
16 and maybe some of you noticed I had half glasses at the
17 beginning of the trial and I am now down to these.

18 As I stand here before you, I thank you for your
19 willingness to sit as jurors in this case. As we all know,
20 any of you could have probably found a way to avoid service
21 on a trial of this length and none of you chose the easy
22 path. On behalf of Amir Abdelgani, I thank you for what is
23 enormous patience you have each shown and ask that you allow
24 me to thank all of my cocounsels for their presentations and
25 for their arguments, because each lawyer in this case could

1 get up and present repetitive facts and arguments about
2 certain issues in this case, and I hope to do that as little
3 as possible for you and still make the points that are
4 necessary regarding why you should go into that jury room
5 and find my client as having not been proven guilty on these
6 three charges.

7 In order not to bore you, I will try not to
8 repeat, but I will return to some things thematically and to
9 emphasize some points. So far you have heard from several
10 counsel, and each of them in their own way have told you
11 that you should not believe anything from the lips of Emad
12 Salem, taped or not. It cannot be avoided that you will
13 hear some of that from me.

14 Regarding some overall issues in this case, such
15 as the incredible conduct of the FBI agents who were
16 supposedly in charge of the investigation and supposedly in
17 charge of Emad Salem, I note that you can expect to hear
18 detailed arguments from Mr. Jacobs and Ms. Amsterdam. I
19 will address these issues in my summation in connection with
20 Amir Abdelgani's case, but I ask that you wait to hear from
21 them to fully understand and appreciate the various threads
22 of what you heard from the agent witnesses and how that
23 stuff affects or rather infects the evidence in Amir's case.

24 Similarly, I will address some of the issues
25 regarding the alleged safe house plot, the lack of substance

1 in the case, and the fact that no attempt at bombing has
2 been proven by the government.

3 To each of my cocounsels, I thank you for your
4 analysis and your arguments and ask you, the members of the
5 jury, to incorporate their arguments about a witness or an
6 issue into my summation. We all know that you have taken
7 notes during the trial. We all see you taking notes during
8 summations. One of the problems is that if you put down
9 notes about something I mention when you go back into the
10 jury room and you look at your notes about my summation, it
11 may not include some of the notations you made on similar
12 issues from other counsel. I ask you to remember that and
13 incorporate those notes in the notes from Mr. Abdelgani.

14 The government has presented a somewhat
15 chronological view of the evidence and so will I. As I go
16 through the evidence, I want you to keep focused on a few
17 issues which I believe demonstrate that Amir Abdelgani
18 thought it was merely a sophisticated explosives training
19 exercise and that he was not committed to waging a war on
20 his adopted country.

21 I know the safe house tapes are fairly harsh.
22 They look harsh, and the question really for you to address
23 is whether Amir Abdelgani truly believed this is what he was
24 doing, trying to blow up America.

25 The issues that I ask you to keep your eyes on

1 are the Pennsylvania training for Bosnia. Money is a very
2 important issue. Amir's money, how it's been spent in the
3 past, how he chooses to withhold it during the time when the
4 safe house operation is in constant need of funds, his
5 attempt to become a citizen during the middle of the period
6 when he is alleged to be a person devoted to a war against
7 America, the government's lack of evidence and
8 corroboration, and, lastly, his actions on the last night,
9 June 23.

10 In the beginning there was nothing terrible in
11 the heart and mind of Amir Abdelgani, and there was nothing
12 different in the end. He was a Muslim living in the United
13 States, working for a medical livery service as a medical
14 livery driver, who wanted nothing more than to become a
15 United States citizen and even paid his taxes. Pretty much
16 all of that is established by the stipulation in evidence
17 known as Amir Abdelgani H. Amir Abdelgani H, I think, is in
18 your books. It is a stipulation signed by the government.
19 And by Amir Abdelgani G1 through G16. G1 through G16 are a
20 number of the items Amir had in his possession at the time
21 of his arrest. They are in evidence. You have, I think,
22 copies in your books. When you go into the jury room,
23 sometimes the live items are better to look at for your
24 analysis than the Xeroxes, so, if you want them, they're
25 yours at your request.

1 When you look at the case, you realize that Amir
2 is not some underground man who just got off a plane with a
3 phony name and phony identification. He was married from
4 '87 to '91 to a woman named Carmen Torres. By 1989, he had
5 been granted a permanent resident alien status, which
6 entitled him to remain in the United States forever without
7 any need to ever apply to become a citizen or to stand up
8 and seek to take the oath of allegiance to the United
9 States.

10 After receiving that permanent resident status,
11 you have no further requirement to protect your right to
12 stay here. Those facts are stipulated to in Exhibit H.

13 Despite being divorced in 1991 from Ms. Torres,
14 Mr. Abdelgani chose to remain in the United States, and he
15 remarried a woman named Ekram Mohammed Abdul Malik at the
16 end of '91. Approximately a year later -- this is October
17 of '92, it is just before the safe house, the Pennsylvania
18 training begins, about seven months before he is arrested in
19 this case. And shortly before he goes to Pennsylvania for
20 the Bosnian training, Amir applies to become a citizen of
21 the US.

22 On the date of his arrest, he's carrying his
23 permanent resident card, a copy of which is there, his
24 Social Security card, those are G7 and G8, his driver's
25 license in his name with his photograph on it, and an

1 uncashed New York State tax refund check issued on June 4.
2 That's G12. It was uncashed and in his pocket even though
3 it's a few weeks old.

4 There was also an uncashed check from the medical
5 livery service he works for. That's G14. Additionally, you
6 know that he was carrying bank cards from the Provident
7 Savings Bank, G2; Citibank, G5; and Citibank Visa and
8 MasterCard, G3 and 4. The importance of this I will get to
9 later on.

10 But from just the documents he was holding on to
11 the day of his arrest, it appears that during the middle of
12 May Amir has been using the credit cards to purchase or pay
13 off a vehicle totaling almost \$5,000. G9, 10 and 13 are the
14 MasterCard bills, the ones you sign when you are putting
15 something on your credit card. It is from a place called
16 Gigi's Auto Sales. But you will see also in his pocket that
17 night, by June 7 he has deposited into his Provident bank
18 account over \$2800. That is a receipt known as G15, and he
19 has also paid down on his MasterCard \$1100. I think that's
20 G11.

21 If you review those documents, you can tell that
22 Amir is buying the car and he's paying it off, and he's
23 doing this presumably, as you see, it is a van that's
24 purchased, it's being purchased for Cousin's Medical Livery
25 Service. You can also tell that as late as June the 7th,

1 he's also in possession of I think a \$300 check from
2 Cousin's.

3 The real importance of the access to the funds
4 ultimately has to do with the fact that during June of 1993
5 there's no money for Siddig and Salem's plans, as you can
6 tell from the CM conversations in evidence over and over
7 again. There are conversations about money, the fact that
8 there isn't any. They are collecting nickels and dimes
9 and counting out small amounts to see what they can do.
10 They are worrying about hundred-dollar and \$50
11 contributions, and they are trying to buy cars I think
12 for about a hundred dollars apiece.

13 With the exception of the \$200 which Amir gives
14 to Salem, Amir doesn't offer to bail out the operation.
15 And, most importantly, Siddig doesn't dare to ask Amir for
16 the use of these funds and you'll see the reasons why.

17 The reason why is that Siddig knows that Amir
18 knows that this isn't real and it's training and he's not
19 going to dig that deep into his pocket.

20 By the late fall of 1992 it is clear from the
21 testimony of a lot of people in this trial, people like the
22 medical student who went to Bosnia, Mr. Hamami, and Mr.
23 Haggag and others, that the Serbian ethnic cleansing of the
24 Bosnian Muslim population has angered many people and
25 Muslims have begun to do what they can do to aid their

1 brothers and sisters, both with material aid and with their
2 bodies on the line in Bosnia to defend themselves and their
3 Muslim brothers and sisters. This was done just as Muslims
4 around the world had come to the aid of the Afghani
5 mujahideen who were fighting the Russian invasion a few
6 years earlier. Amir recognized that he, as a Muslim, was
7 required to do jihad, to do his part and to aid against the
8 slaughter and the atrocities.

9 Amir, through his relationships in the Muslim
10 communities, was invited to train in Pennsylvania. The
11 government did not discuss the Pennsylvania training in its
12 closing argument, but it's listed as Overt Act BB in the
13 indictment. I think you are going to have the indictment in
14 the jury room with you, and BB is the first place that Amir
15 is mentioned. It's mentioned as an overt act of sedition.

16 From the evidence you have heard, you know that
17 it is not seditious in any way unless you happen to be a
18 Serb. He's recruited to go to Pennsylvania on weekends at a
19 cost to himself, of his weekends, his money, his time, to
20 undergo cold nights on mountaintops and pain and suffering
21 to be trained to prepare him to make the ultimate sacrifice
22 and to leave the United States to help fight in Bosnia. You
23 have seen and heard many perspectives on the Pennsylvania
24 training from these witnesses, but they are all basically
25 similar.

1 A few of the defendants who were there have
2 testified about the difficult and cold conditions, the types
3 of activities that went on there. I am sure you may hear
4 more from some of the other lawyers.

5 You should understand that from an outsider's
6 perspective much of what had he said has been confirmed,
7 particularly the daytime physical training activities. The
8 outsider I'm referring to is Special Agent Eddie Craig of
9 the FBI.

10 Agent Eddie Craig testified about the
11 surveillance which was conducted on January 23, 1993, one
12 month before the World Trade Center. Craig's testimony
13 begins at 10893 of the record. You should read it. It's
14 very short.

15 By the way, you know that anything that I say or
16 any other lawyers say is not evidence, but anything you want
17 from the record read back, any items you may want in the
18 jury room can be gotten for you, even if we don't
19 necessarily give you the exact exhibit number or give you
20 the exact page reference. You can give us the best analysis
21 of what it is you want and we will try to find it.

22 Craig's activity is not very -- his testimony
23 wasn't long, but it demonstrates that the training
24 activities are consistent with the testimony of others and
25 the defendants. It makes abundantly clear that the type of

1 activity relates to training for the kind of war that one
2 might engage in a place like Bosnia, not New York City.

3 Agent Craig testified that he observed the
4 physical exercises. He testified about having seen people
5 running with the telephone pole over their heads in the
6 public road and the open countryside obviously developing
7 strength and endurance. Even though he was only passing by
8 the pond area for a short moment, he observed the trainees
9 canoeing in the small pond near the house. Agent Craig also
10 testified that he may have done surveillance there on
11 another occasion but he's not certain.

12 Certainly, if there were other surveillances
13 which were done of Amir at the training that were
14 inconsistent with the image portrayed, then you would have
15 heard that evidence from the government.

16 This was from the perspective of the outsiders,
17 meaning the FBI surveillance team. I wish now to take you
18 to the perspective of a person who is very much like Amir
19 Abdelgani. That person is Abdo Rahman Haggag. Haggag, a
20 person who was close to Siddig Ali, who befriended Siddig
21 Ali for a year or more and who followed him for a long time
22 before he had any real notion that Siddig was crazy.

23 Haggag is one of the government's main witnesses
24 in this case, and he is someone the government wants you to
25 believe. Although Mr. Haggag may have done some awful

1 things in his personal life, and although he may have a
2 personal motive to lie against Sheik Abdel Rahman and some
3 other people in this courtroom, he simply found it
4 impossible, impossible to direct any claim against Amir
5 Abdelgani and tell falsehoods about him or about the
6 Pennsylvania training.

7 Haggag went to Pennsylvania at the end of 1992 or
8 the beginning of 1993 with Amir and others. He described
9 that training and that the reason for it being located where
10 it was was an effort to simulate Bosnian conditions, not New
11 York conditions.

12 I would like to read for a few moments from the
13 record of Mr. Haggag's testimony to bring you back to
14 Pennsylvania. These are pages 9979 through 9982, 10390,
15 10427 through 29, and 10448 through 10449.

16 I don't need to do much with them, but we put in
17 Abdelgani F1 through or 2 through 6 or 7, the photos of the
18 surveillance. I know that there are other photos about
19 Pennsylvania. I am sure if you want to review them you can
20 just ask for the all the Pennsylvania photo exhibits. They
21 are numerous.

22 Reading from 9979:

23 "Q Can you describe" -- this is Mr. Haggag.

24 "Q. Can you describe what happened when you
25 arrived at the training camp the time you attended.

1 "A. First we got there and familiarized
2 ourselves with the place. Abdul Mohaimon came after a while
3 and spoke about the camp and the training and spoke about
4 the situation you will encounter in Bosnia and the situation
5 over there in Bosnia will be difficult, and we will try to
6 make some of this, create some of this difficulty here in
7 the training. He showed us papers that this camp is legal,
8 the weapons are legal, and he spoke about what we may see in
9 Bosnia and we have to be prepared in ourselves for anything
10 that we might encounter."

11 Going to 81:

12 "Q During the training, did you make any runs
13 or excursions to a power plant?" That was late at night.

14 "A. We did some light jogging, jogging but the
15 basic training we were going to run to the electrical
16 center, the power plant, and we are going to imagine that
17 this plant is in Serbian territory, and until we reach
18 there, we're not supposed to be seen by anybody, because of
19 the snipers, and your mission is to go and explode this
20 power plant in Serbian territory, must be very careful that
21 no one sees you because anybody could be a sniper.

22 "Q. Can you describe how it is you ran to this
23 power plant?

24 "A We made two rows, for two columns, we made
25 two rows, we began to run in the fields. At the beginning

1 some of us were going to faint, and he almost vomited he
2 says. Ongoing, we continued until the end, until we got to
3 the power plant. At the plant Mohaimon was waiting for us
4 at the side of the street. We were hiding underneath the
5 tower of the power plant until he gives us the signal for us
6 to run and get in his car. It was a training that would be
7 similar to the type of situation you would see in Bosnia.

8 "Q Did Mohaimon or anyone else indicate what
9 it was that you were practicing to do?

10 "A. I said at the beginning it was to explode
11 the power plant as if it were in Serbian territory.

12 "Q Were the persons at the training camp
13 referred to by names other than their names, real names?

14 "A. We all had different names.

15 "Q. Who gave you those names?

16 "A Siddig and Abu Ubaidah.

17 "Q What name were you given?"

18 And he goes on to say, Abu Said, and then they
19 changed it to Abu Suliman. Then he describes that Amir was
20 called Abu Mohammed. He talked about firearms practice.
21 Then he goes on at 10390:

22 "Q And you slept outside on the top of the
23 mountain that was there, correct.

24 "A. Yes

25 "Q And you slept with a sleeping bag,

1 correct?

2 "A Yes."

3 And he goes on to talk about the nicknames, and
4 he said that Abu Ubaidah didn't want people to know the true
5 names, their own true names when they went to Bosnia, and he
6 understood that that was the practice that had been in
7 Afghanistan.

8 And he said that Amir was called Abu Mohammed and
9 that Amir had a son named Mohammed, that means father of
10 Mohammed. He then went on to talk about the fact that,
11 question, at 10428, people were divided into teams.

12 "Q Regarding people going to Pennsylvania,
13 would it be fair to say that Ubaidah divided people into
14 teams as to who would be going to Bosnia first, who would be
15 going to Bosnia second?

16 "A Yes, he wanted to do that.

17 "Q And in fact there was a time that he said
18 the first time going to Bosnia would be -- the first team --
19 time, team -- would be Siddig, Amir Abdelgani, and Hamdi
20 Ali. Did you ever tell the government that?

21 "A Yes.

22 "Q And later on I told you -- I think you
23 told the agents it was going to be Siddig, Amir, Tarig, and
24 somebody named Mohammed. Correct?

25 "A. Yes.

1 "Q. And you were going to be in the second
2 team with other people, correct?

3 "A Yes.

4 "Q And the first team and second team who
5 meant who would go over first and who would go over second,
6 correct?

7 A No, the first team means the people who were
8 doing very well in the training. The second team means the
9 people who need more training.

10 "Q. Didn't you tell the government that the
11 first team would go to Bosnia first, presumably, from your
12 answer, because they were ready?

13 "A Yes."

14 And he went on to talk more about the power
15 plant, and he talked about the briefing session that
16 Mohaimon gave them about blowing up the power plant, and he
17 also goes on to say that he never intended nor did anyone
18 else to blow up the power plant, but he acted as if it was a
19 real-life mission. It was sketched out on the blackboard.
20 There was set of hand signals. They had to lie down and not
21 move on some of those signals. You should get up and run
22 when ordered to, and even though it was simulated, and he
23 had felt faint and he vomited, he kept on going even for
24 that simulated mission.

25 Before we jump ahead and away from the

1 Pennsylvania training which Amir participated in, I would
2 like you to stop and think about the scene there. Think
3 about these men in the middle of the night, carrying guns,
4 using hand signals, ducking in and out of the shadows trying
5 to avoid being seen by cars, sitting up late at night doing
6 sentry watches, trying to climb up the hill to attack this
7 power plant. If you were a police officer or even a
8 civilian seeing this live, or viewing it on a videotape,
9 these events, you would be certain that this was real. You
10 would be certain and you would believe that these people
11 were guilty of crimes.

12 You can imagine that the charges which would be
13 brought would be something like conspiracy to blow up the
14 power plant, attempted blowing up of the power plant.

15 Imagine further for a minute that if some of the
16 beginnings of the tapes were missing, as they had been
17 edited, and all you could see was the action itself and not
18 the initial discussions and the directions, imagine what you
19 would think. Imagine that Amir Abdelgani is arrested at the
20 top of the mountain in Pennsylvania and these charges were
21 brought against him.

22 Now shift that scene, and we're in a trial. The
23 main witness in that trial was Emad Salem. Assume that he
24 had rejoined the government's investigation during the time
25 of Pennsylvania. You could expect that he would come in to

1 this courtroom and tell you that this was a real plot, and
2 that if Amir had not been stopped just before the top of the
3 hill, then the hilltop in Pennsylvania would have been
4 devastated.

5 If I stood up on summation in that case and said
6 to you that Amir believed it was training for Bosnia, you
7 probably would have rejected my argument and found Amir
8 guilty. There's only one problem. Your verdict would have
9 been wrong. You would have convicted an innocent man. You
10 know that your verdict would have been wrong because Abdo
11 Rahman Haggag was a participant in that training, and he is
12 the government's witness, and he tells you that no matter
13 how real it appeared, it wasn't.

14 You know from what Haggag, the government's own
15 witness, would have told you these would have been false
16 charges. They would have been wrong. Unfortunately for
17 Amir Abdelgani, Mr. Haggag did not go to Queens, and he
18 can't tell you about that.

19 When I discuss the reasons as we go through this
20 why Amir's conduct, particularly in the last night, is
21 consistent with his belief that there was never ever going
22 to be a bombing in his mind in June of '93, I want you to
23 keep that Pennsylvania scenario in mind.

24 I don't want to hide anything that you might
25 think relevant. There is testimony in the record that Amir

1 Abdelgani also participated in, I think, what was called the
2 Khalifa mosque training conducted by Mr. Ferguson, who
3 testified at the trial. And I think there's also testimony
4 in the record that Amir participated in the Lincoln Park
5 calisthenics training that went on in New Jersey.

6 I am going to move forward because Pennsylvania
7 has ended. It's clear from the evidence that Amir Abdelgani
8 participated in Pennsylvania for jihad in Bosnia, not here
9 in America. He wasn't there to blow up tunnels and bridges
10 in New York. You don't run up and down mountains in the
11 middle of the of the night to kill on the streets of New
12 York. But that's what they did to develop their physical
13 strength and do basic training to go to Bosnia.

14 As you know, the Pennsylvania training shuts down
15 sometime after the surveillance by the FBI, even before the
16 World Trade Center explosion happens, so that the
17 surveillance that was conducted leads to the ending of
18 training even before the World Trade.

19 Apparently, the people who ran the training camp
20 were scared by the FBI visit and they disallowed people to
21 come back. People like Amir who spent their time and their
22 money now have their hopes dashed. Although Siddig through
23 his organizing has led Amir part of the way down the path to
24 Bosnia, the path is now blocked for further training,
25 particularly training on the rural land and under conditions

1 which seemed to so closely mirror the terrain they might
2 face in Bosnia.

3 Despite having operated in an open and
4 above-board fashion to do the training required, the
5 pressures from the ongoing governmental surveillance,
6 coupled with the reactions to the World Trade Center and the
7 arrest of Muslims for that bombing causes enormous pressure.

8 You have heard testimony, Dr. Mehdi and others,
9 about how people in the community are affected. People were
10 scared and apprehensive and fearful, even if they had done
11 nothing wrong. Further training and preparation will simply
12 have to be done under other more closed circumstances.

13 The lesson learned was simple: Even though
14 you've done nothing wrong, one must now be cautious,
15 secretive. One can't merely have a good desire. It's this
16 cautiousness and secretiveness which becomes part of the
17 community as I've described and which affect and impact what
18 Amir does later in Queens.

19 I said earlier keep your eye on the money. Money
20 is a factor. After the training breaks down, there is a
21 problem. Sometime in January or February Amir Abdelgani
22 receives a credit card bill for a van he rented to take
23 people to Pennsylvania. Although people have chipped in for
24 expenses for such things as uniforms, and I think somebody
25 mentioned \$35 weekends -- that may have been Mr. Abdallah --

1 Amir had been asked to rent the van believing he would be
2 reimbursed. The van was given back to the trainer, Ubaidah.
3 Ubaidah doesn't return it on time and Amir gets a bill
4 that's \$765.

5 As you can tell from what transpires, Amir is not
6 a very aggressive person. He speaks out quietly. He is a
7 not personally assertive in speaking out for himself
8 regarding the money owed to him. In February of '93, he
9 asks for Haggag's help in obtaining reimbursement for the
10 765. He goes with Haggag and Siddig to ask for the money in
11 a meeting at 251 Rogers Avenue where Haggag tells Rashid and
12 Ubaidah that Amir has a family and responsibilities and he
13 has to be reimbursed for this. Some promises are made to
14 Amir -- he'll get \$500 -- but he never receives a penny.
15 Although he's promised by Ubaidah and Rashid, he's in effect
16 really brushed off, and he never sees the money from the
17 training.

18 Now, that's sometime in February. In March an
19 important event happens. March 16, about six weeks before
20 anything happens regarding the Queens safe house, Amir goes
21 down to the INS because now it's his time to go become an
22 American citizen.

23 According to the government, this is already a
24 period in which Amir Abdelgani is in a war against the
25 United States. This is March 16. He is supposed to be a

1 man to hates the US and what it represents, but off he goes.

2 As you remember, there's no reason he has to go
3 do this. He's a permanent resident. He doesn't have to
4 swear an oath to anybody he doesn't like, but that's what he
5 does.

6 In Abdelgani H I would like to read from
7 Paragraphs 8 and 9:

8 On March 16, 1993, Mr. Amir Abdelgani appeared
9 for his interview with an INS examiner in connection with
10 his application. In response to written questions on the
11 application form, Mr. Abdelgani checked the answer "yes" to
12 all questions relating to his belief in the Constitution of
13 the United States, the form of government of the United
14 States, and his willingness to take the full oath of
15 allegiance and his willingness to bear arms on behalf of the
16 United States. These written responses were reaffirmed and
17 sworn to in the presence of an INS examiner, and on April
18 14, Amir's application was approved, and on April 28,
19 notification was sent through the mail for him to appear
20 July 7 of '93.

21 You know that by June 24 he's arrested and he
22 never gets to become a citizen.

23 I want to go back to the money again because the
24 money becomes a real issue both in the safe house and in
25 April. In the last week of April, Amir again makes feeble

1 attempts to be reimbursed for his training. He calls Rashid
2 at home on April 24 and April 26 trying to get his money
3 back. He doesn't know there's a FISA tape recording. He
4 doesn't know there's a wiretap. He leaves his name and his
5 own telephone number on the machine, speaks with Rashid's
6 wife, and finally with Rashid.

7 Those calls were recorded, and I am going to play
8 them. They only take a few moments. They are in English.
9 They are in evidence as Hampton-El Exhibits 01 through 05.
10 I don't know which the -- the tapes themselves are in
11 evidence. They are not translated because they are in
12 English. It shows who Amir is. It attests to his meekness
13 when you listen to these and in dealing with the world.
14 He's begging, he's fatalistic, and he's ultimately resigned
15 when he's rebuffed by Rashid.

16 (Tape played)

17 So he never gets the money, we know that.

18 He is brushed off. The importance of all this is
19 that Amir has been burned by those who were supposed to help
20 him. He's gone out on a limb financially for training,
21 apparently when others have not done so, and because he's
22 been so badly burned in the training in Pennsylvania when it
23 comes later on to the safe house, which the government
24 insists is real, Amir doesn't dig into his pockets because
25 of his past experience. And he's got the money. You know

1 that from all the G exhibits.

2 I would like to give you a few more glimpses of
3 Amir from the testimony of Abdo Rahman Haggag. It was the
4 bomb manual that people spoke about. Haggag said that there
5 was a 400 copies. He had that manual. He took one from the
6 Alkifah Refugee Center. He had given it to someone to
7 rewrite, to simplify it so he could send it to Bosnia, but
8 after the World Trade Center explosion Haggag, who had done
9 nothing wrong, was afraid. He speaks to Amir about it and
10 Amir tells him to burn it when he does.

11 Those are pages 9963, 64, 65:

12 "Q Did there come a time where you took a
13 book from the Alkifah Refugee Center?

14 "A Yes, the one in Jersey City.

15 "Q Do you recall what kind of book it was?

16 "A It was explosive book, book about bombing
17 explosive.

18 "Q. Did you later give it to anyone?

19 "A Yes, Ahmed Muaih.

20 "Q Why did you give it to him?

21 "A I tell him simple-ize it, make it simple.

22 "Q Why did you want to make it simpler?

23 "A To send it to Bosnia. I'm not sure to
24 send it to Bosnia only or send it to Egypt, but I believe is
25 only Bosnia."

1 Then he goes on to say he got the book back and
2 he had it in his house, but that he didn't keep it because
3 the government asked him:

4 "Q. Do you still have it today?

5 "A. No, sir. Later on, after the World Trade
6 Center, I burned it, me and Amir in my house, I burned the
7 book.

8 "Q. Do you mean Amir --

9 "A. Abdelgani.

10 "Q. What is the last name?

11 "A. Amir Abdelgani."

12 At 10207 there's a question.

13 "Q. Did you leave out something about burning
14 this book, this bomb manual?

15 "A. I burned the book with Amir. We burned it
16 together. I was afraid, and Amir --

17 "THE COURT: The question was simply whether
18 anybody asked you or told you to burn the book, just yes or
19 no. Did anyone ask you or tell you to burn the book?

20 "A. Yes.

21 "Q. Who was that person?

22 "A. Amir."

23 Remember when you review all of the safe house
24 transcripts, there is not a shred of knowledge on the part
25 of Amir Abdelgani about what makes a bomb, how you make a

1 bomb, what are the ingredients. Yet Amir five or six weeks
2 before the opening of this great safe house plots starring
3 Emad Salem, Amir Abdelgani says to Haggag, get rid of this
4 bomb-making manual.

5 If Amir Abdelgani in March or April had any
6 desire to blow things up in America, he would have been
7 saying: Hey, you don't want it, give it to me. Amir would
8 have said, I can use it for my sedition in America, for my
9 war on urban terrorism.

10 No, Amir tells him burn the book and get rid of
11 it. If Amir had thought at that time that Siddig Ali, who
12 you also know as you look into the safe house tapes,
13 whatever his desires were, Siddig Ali didn't know a gun from
14 a bomb, he didn't know C-4 from black powder, even in the
15 last days when the ANFO bomb is being discussed, he thinks
16 Salem is talking about an information bomb.

17 So if Amir had thought Siddig had a need for
18 this, he could have said: Give it to me, I'll give it to
19 Siddig. But, no, he doesn't do that. Does he consciously
20 aid and abet Siddig by bringing him a bomb book in April of
21 '93? No, because Amir has no use for it, and he doesn't
22 even think Siddig's got a use for it.

23 Lastly, regarding Haggag, I want to talk about
24 the Mubarak plot, which Siddig and Haggag share alone. I
25 raise it with you because I'm certain that if I don't the

1 government might on its rebuttal case.

2 According to Haggag, Siddig has included Amir as
3 one of the people he wishes to use in the Mubarak plot, as
4 he calls it. Only one problem: Amir doesn't know anything
5 about it. Siddig hasn't discussed it with him, and Haggag
6 goes on to say that he, Haggag, was worried that because
7 some of the Sudanese people were, to his mind, blind to
8 Siddig's real machinations that he should go and warn Amir.

9 But when Haggag goes to warn Amir, he never tells
10 him about what it is that Siddig is actually planning. He
11 merely checks out whether Siddig has told Amir anything.

12 Amir tells Haggag no. Haggag goes on to tell
13 Amir that Siddig is not balanced, and Amir looked at Haggag
14 in amazement. He said "like he didn't believe what I was
15 telling him."

16 Even though the government pressed on with Mr.
17 Haggag, it is clear that Haggag went as far as to say that
18 Amir was ready to do operations, the record is absolutely
19 clear that Amir had no knowledge that Haggag was referring
20 to a plan to kill President Mubarak, and there's not a word
21 in there that Amir understood he was talking about anything
22 regarding the United States of America.

23 As of that time, the only thing that Haggag and
24 Amir had done was burn the bomb book and go to Pennsylvania
25 and run up and down those hills. So although the government

1 pressed Mr. Haggag three times on the same point, Haggag
2 never said Amir was talking about: I'll do anything Siddig
3 wants to do here in the United States.

4 You know that witnesses are prepared before they
5 take the witness stand, that the government had access to
6 Mr. Haggag. I don't know how many times they prepared him
7 for the witness stand. You can imagine the interviewing
8 process and that this is what he said and no more, or else
9 you would have heard more from Haggag on the witness stand.
10 Siddig Ali, the close friend and planner to Haggag, had not
11 discussed anything with Amir. Amir was in the dark.

12 I am going to talk about Emad Salem. I know you
13 have heard more than you may have wanted to hear about Emad
14 Salem, but I have a little more to go with.

15 The government tells you to trust the tapes,
16 trust the tapes. I tell you don't do so. I tell you that
17 they were selectively turned over by Salem to eliminate the
18 fact that he knew that Amir was under the misguided belief
19 that this was a sophisticated training exercise designed to
20 teach him to act under war-like training conditions using
21 New York as a base to work in. There was no other way to do
22 it. Pennsylvania had been shut down, you can't do it out
23 there. New York is where you are. You do it here.

24 They couldn't duplicate the Serbian countryside
25 any longer. We're now in late April or May, and by May 7 of

1 '93 we know that Siddig now has hooked up with Emad Salem.
2 May 7 is the first time Emad Salem has an official
3 government tape machine.

4 Prior to that time you know he's been making his
5 own tape recordings both in his home, on the street, using
6 such items as his own microcassette recorders, his three
7 home taping machines, and who knows what else. You remember
8 he answered one question: Yes, I have many gadgets, ma'am.
9 That's page 5511 of the record.

10 Obviously, no one in this case can discuss
11 anything without discussing Salem. I am going to try to
12 spare you some of the stuff I was going to talk about with
13 Salem to move this forward.

14 His lies are pretty amazing. What is amazing
15 about them is that he didn't just do it with average people,
16 but he did it against the professionals. He was a master, a
17 manipulator, a con man.

18 Do you remember the first day he took the witness
19 stand? It took the government almost half the first day
20 just to take him through some lies, just to clear the air
21 before he would be cross-examined. I am sure most of you
22 were pretty shocked that he was going to get paid a million
23 dollars, this person.

24 It is one thing to lie in an undercover capacity,
25 but it is another thing to do it under oath. He lied about

1 his marriage to Barbara Rogers. He lied about coming to the
2 United States and why. Remember, he said he was just on his
3 way to Denmark and somehow within three weeks he's married
4 to a woman in the United States. His entire life story to
5 his own -- the woman he was going to live with, his wife,
6 just to impress her, he lied to her. He lied to the credit
7 bureau people. He lied to district attorneys. He lied
8 before a trial judge and a jury. He lied to the INS to get
9 his immigration status. He lied to the FBI to get into
10 these investigations to make money. He lied to journalists
11 to make himself a big shot. He even lied to a psychologist
12 for a few bucks in order to convince the psychologist he was
13 having memory loss and amnesia.

14 What is really amazing is that by the time he
15 gets to this case, he's lied to almost every type of human
16 being whose job it was to assess credibility professionally.

17 You have to assess credibility; I have to assess
18 credibility every day of our lives. We do it in a million
19 ways. But there are some people whose jobs on a daily basis
20 are professionally designed to catch and make sure that
21 they're dealing with truth-tellers, and by the time we got
22 to this case, Emad Salem had fooled every single one of
23 them.

24 I am not going to discuss again what Mr. Ricco
25 did, but why would somebody have a polygraph beater in his

1 house, a machine that he practices on?

2 From the very outset, the first phase of the
3 investigation, Emad Salem made tapes on a regular basis.
4 The FBI agents claimed that he didn't really know what he
5 was doing. This was done without their knowledge and
6 without their consent. During the second phase of the
7 investigation, he continued to make tapes on his own.
8 Again, the FBI agents who were supposedly handling him
9 attempted to claim that it was done without their knowledge,
10 without their consent.

11 Ms. Amsterdam and Mr. Jacobs spent time
12 demonstrating to you that this was not really the case. And
13 they, I'm sure, will discuss it in depth on their
14 summations, and I am not going to do it justice. I am going
15 to let you wait to hear from them on that.

16 One of the great examples of how he got away with
17 it all was that when Salem presented to Nancy Floyd this
18 incredible detailed picture of every country in the Middle
19 East, much of which were lies, much of which was not true.
20 Nobody ever came back and said: Hey, Emad, we checked you
21 out. Some of the story doesn't check out. What's amazing
22 about it is that this is a man who sits back, feeds this to
23 the FBI, and waits, and he knows in time that nobody is ever
24 going to check it out.

25 The reason is that they wanted results, and he

1 got to know that early on, that what counted was results --
2 results for him, results for them. People would close their
3 eyes to certain things.

4 Your Honor, would this be an appropriate time?

5 THE COURT: All right.

6 Ladies and gentlemen, we are going to break for
7 lunch. Please leave your notes and other materials behind,
8 please don't discuss the case, and we will resume after
9 lunch.

10 (The jury was excused)

11 MR. SERRA: Your Honor, Mr. Alvarez is again not
12 feeling well. He would like to make the sick call at the
13 MCC this afternoon, so he has --

14 THE COURT: Rather than come back this afternoon?
15 In other words, he does not want to come back for the
16 afternoon?

17 MR. SERRA: He does not want to come back, and he
18 consents to us proceeding in his absence.

19 THE COURT: Is that correct, Mr. Alvarez?

20 DEFENDANT ALVAREZ: Yes.

21 THE COURT: OK. Hope you feel better.

22 (Luncheon recess)

23

24

25

1 AFTERNOON SESSION

2 2:10 p.m.

3 (Pages 19560-19561 sealed)

4 (In open court; jury present)

5 THE COURT: Good afternoon, ladies and gentlemen.

6 JURORS: Good afternoon.

7 THE COURT: Mr. Bernstein.

8 MR. BERNSTEIN: Yes, Judge. All right. When we
9 left off this morning, we were beginning to talk about the
10 tapes. What I really want to talk about are the missing
11 tapes, particularly the missing tapes regarding my client
12 and a pattern that exists. As I said earlier, when you set
13 up the safe house and you miss the introductory tapes like
14 we described in the possible Pennsylvania scenario, you come
15 in in the middle of a movie and you are missing what the
16 opening part of the movie is. You can't tell, if somebody
17 has cut the beginning, what it means when you see the
18 middle. In effect, Salem has acted as a film director, as a
19 film editor, and kept from you those introductory tapes, the
20 beginning tapes. Those are critical to understand what Amir
21 Abdelgani was told, what he heard before the safe house.

22 Look at these chronologically. From March to May
23 there is not one tape produced by Emad Salem, even though we
24 know he is a taping machine. This is a man who has taped
25 from day one. The only tape that is ever produced from that

1 period is 641-1, which is a Siddig Ali tape, and even though
2 it implicates Siddig Ali, it is not turned over to the
3 government till that fateful day, June 29, 1993. He had
4 that back in his house.

5 But let's go forward. Those aren't only tapes
6 that are missing.

7 Most of the initial meetings with safe house
8 defendants don't show up in the light of day. Salem knows
9 in the very beginning, in CM 4 on May 12 -- that's
10 Government's Exhibit 304 -- that Siddig will not tell people
11 exactly what's going on. They discuss this at pages 13 and
12 14 of GX304. In those two pages, Siddig and Salem talk.

13 Siddig says: So the danger is where? Danger.

14 Salem: Danger is in the tongue and talk.

15 Siddig: Danger is in the tongue and talk, so
16 what do you, we need? We need the people to obey.

17 Salem: Blind obedience.

18 Siddig Ali: Blind obedience without him saying
19 what is this, what is that and what is this.

20 Salem: It is like that.

21 Siddig Ali: You see how?

22 Salem: Good.

23 Goes on talking but they are actually referring,
24 I think, to Haggag. However, there are things that don't
25 need consultation, so when you are the emir, whatever you

1 say.

2 Going further down, Siddig says: Consultation is
3 good in everything, but there are things.

4 Salem: There are things that cannot afford
5 consultation, there are things that not all of us are
6 supposed to know.

7 It goes further on. Salem: OK, it's done.

8 Siddig Ali: And no one will know.

9 Salem: And not Mohammed Abouhalima or me.

10 Siddig Ali: I tell you, no one.

11 Salem: That's it.

12 Siddig Ali: And not even those who are dear to
13 my heart.

14 Salem: Good.

15 Siddig Ali: You are the only one to know how
16 now, and at the correct moment.

17 Salem: Yes.

18 Siddig Ali: The people that I chose it, God
19 willing, will know at the time.

20 So even before there is a safe house in
21 existence, Salem knows that Siddig is going to bring people
22 who he can fool, even people dear to his heart. He must
23 have been overjoyed to hear that Siddig was going to do
24 that. May 27 was the first night of the safe house. It's
25 the first night he ever meets Amir Abdelgani. They meet at

1 the First Avenue mosque at 11th Street before they get in
2 Salem's car. Salem's car has the Nagras wired, he has his
3 briefcase wired. Besides those car machines and the
4 briefcase machine, no one knows what else Salem had on him,
5 because we know he carries his own machines at various times
6 during the investigation.

7 Conveniently, there is no tape recording for the
8 meeting before they go in the car with Amir Abdelgani and
9 when they went into the car. So the first two conversations
10 Salem has with Amir Abdelgani don't exist.

11 By the way, that is CM 17, which is, I think,
12 GX -- no, it's not GX anything. It is in as CM 17. It's a
13 tape. There is no GX translation because there is no
14 translation, it's a blank tape. That's the famous cushion
15 tape.

16 From pages 6621, 22 and 23 of the record, the
17 government on direct examination takes Mr. Salem through the
18 first meeting. Where did the introduction take place? He
19 brought them to my car. We did the evening prayer. First
20 Avenue and 11th Street. Going on and on. He then says
21 where did you go from 11th Street and First Avenue?

22 "A. We went to the safe house in Queens, sir.

23 "Q Who went to the safe house?

24 "A. Mr. Siddig Ibrahim Ali, Mr. Amir Abdelgani
25 and Mr. Fares Khallafalla, sir."

1 Next question:

2 "Q What happened at the safe house?"

3 Something got missing in that, and that's the
4 whole trip from downtown Manhattan out to the safe house,
5 skipped over and skipped over because there is no tape of
6 it. They skipped the entire trip.

7 CM 17, you know, is blank. It is blank, but Paul
8 Ginsberg came into this courtroom -- you remember the excuse
9 they gave for how he explained that this machine didn't work
10 because Fares Khallafalla or Amir Abdelgani sat on it,
11 crushed it, and this machine doesn't work, and that's why CM
12 17 is blank, he says, it's an equipment failure. There is
13 only one problem. You saw Paul Ginsberg demonstrate in this
14 courtroom that you can squeeze on it and stop the tape from
15 running, but when the pressure goes off the machine will
16 start going again, and that means that at a minimum this
17 tape should have had something, even if it was guys getting
18 in and out of the car, getting up off that machine. This
19 shouldn't have been blank. There is a reason: Because it
20 wasn't the original tape.

21 I submit to you that Salem knew that the
22 conversation in the car was devastating, that it was about
23 Bosnia, it was about training, it was about simulations, it
24 was about secrecy, it was about how we are going to do these
25 things, and once that tape was made Amir was hooked. The

1 government may tell you it is sheer speculation about what
2 is in that tape but there is only one problem: I can't
3 prove to you what is in that tape, because it doesn't exist
4 any more.

5 What makes it even plainer about that tape is
6 that Saleh B, which is that tape chart that went into
7 evidence, shows that there is a whole series of tapes from
8 reel numbers 38681 through 38685, which were going in order
9 on that tape chart. For for some reason 38684 is missing.
10 Not only is the envelope missing and the tape is missing,
11 but this is the one that conveniently they sat on and it
12 didn't happen.

13 Or maybe you want to believe the other
14 explanation that they tried to speculate on, which was maybe
15 the wires got disconnected, and they talked about your wires
16 there, but remember, this is a machine that is \$10,000 or
17 \$5,000. The prongs do not go into this by plugging in like
18 yours do. It gets screwed in five or six revolutions.
19 That's what happens with quality equipment. You prevent it
20 from the disconnect.

21 Miss Amsterdam, I am sure, will discuss it again,
22 but the pattern of missing tapes, particularly the first
23 missing tapes, continues, because there is a time that Emad
24 Salem gets Amir Abdelgani alone after the first two nights
25 in the safe house. That is on June 12. That is a tape you

1 don't have either. We know about that tape, we know that
2 there was a meeting because on Government's Exhibit 339T2,
3 CM 37, which was recorded on June 13, pages 1 through 4,
4 Salem alone with Siddig Ali talks about meeting Amir in the
5 safe house June 12, and he says, page 1, no, Tarig came and
6 sat with me. Siddig says who is that? And there are words
7 back and forth. Mohammed? Amir? Yes, Amir. I am saying
8 Tarig, says Salem, it is Amir. How did it happen that I
9 said Tarig? The important thing is that it is Amir.
10 Siddig: Amir, you call him Tarig.

11 The next page he talks about -- page 4 -- Amir
12 said that he was going to meet him, they were going to buy
13 things and Amir never shows up. Salem talks about waiting
14 in the heat and Salem talks about the fact that they will
15 punish Amir for not showing up and they will go on other
16 errands.

17 So what you now have is the first meeting with
18 Amir Abdelgani is not taped, the trip to the safe house is
19 not taped -- he says not taped, I say taped, but nonexistent
20 and not given to you, and now the June 12 meeting where he
21 meets Amir all alone in the absence of Siddig Ali, and that
22 is not taped either. Again, what is the reason for this?
23 Equipment failure. 6988 and 6999 of the record asked
24 Mr. Salem:

25 "Q Sir, June 13, you went with

1 Mr. Khallafalla on Canal Street, correct?

2 "A. I know I went to Canal Street. I don't --

3 "Q Sometime in June?

4 "A. Yes, sir.

5 "Q The night before you had been at the
6 mosque in New Jersey?

7 "A. Yes, sir.

8 "Q And you were approached and spoke with
9 Amir Abdelgani that night, correct?

10 "A. Correct, sir.

11 "Q That is also an occasion on which your
12 taping equipment failed, meaning in the mosque? Correct?

13 "A. Yes.

14 "Q You had some kind of computer chip
15 equipment at that time?

16 "A. Yes, sir.

17 "Q. So the tape recording between you and Amir
18 Abdelgani now on June 12 doesn't exist.

19 "A. I didn't, I never heard it, sir, I never
20 heard the output of it or the coming out of it."

21 So three conversations, the early conversations
22 with Amir gone.

23 You have a clear pattern. Emad Salem, who is a
24 taping machine, has no tapes of the first meetings with
25 Siddig Ali, no tapes of his first meeting with Amir on May 7

1 prior to the entry in the car or with Fares Khallafalla, no
2 meeting in the car with Amir going to the safe house the
3 first night, or with Fares, no tape recordings of his first
4 meeting alone on June 12 in the absence of Siddig Ali, or
5 with Tarig, whoever he is referring to. Coincidence?
6 Absolutely not.

7 How much talk about Bosnia training in those
8 meetings could have happened? Is it like the 20 or 30 times
9 they discuss training on CM 32, Government's Exhibit 333T,
10 which Salem flat out told you when Jacobs asked him, no,
11 there was no discussion of training in Bosnia. What's on
12 those tapes?

13 If you still don't think that he messed around
14 with tapes, and particularly the CM tapes, go to
15 Government's Exhibit 354A in evidence. That is the
16 recording of CM 351. It takes place in the Abu Bakr Mosque
17 on June 19. That is the day Emad Salem is with everyone in
18 Siddig Ali's house and then he spends the rest of the day
19 with Victor Alvarez and Amir Abdelgani. They go from New
20 Jersey to Brooklyn and they stop at the mosque. Salem is
21 never away from them and he has had to change his Nagra tape
22 from his briefcase from CM 48 and he replaces it with CM 51.
23 That is GX354A. Mr. Serra questioned him about that at
24 7594, 95 and 96. Salem admits in that, he says:

25 "Q I am showing you 354A, that is CM 51,

1 correct?

2 "A. That's what's written here, sir.

3 "Q Is that a Nagra tape?

4 "A. Correct, sir."

5 Then there is a stipulation that it was recorded
6 June 19.

7 "Q Mr. Salem, isn't it true -- isn't it
8 true -- withdrawn. Do you recall at any time that day
9 meeting Detective Louis Napoli?

10 "A. I don't recall, sir."

11 Mr. Serra goes on to ask questions that make it
12 clear that CM 48 was replaced in the briefcase by CM 51 and
13 that he had to change the tapes that day because of the
14 length of that day. Both of the tapes were from the
15 briefcase. In evidence are the envelope 352A and 354A for
16 CM 48 and CM 51. They both say they are from the briefcase.
17 Where was Louie Napoli? He was nowhere. But when Mr. Serra
18 played the tape for him in the morning, these were the
19 questions that he placed to him in the afternoon:

20 "Q OK. Do you recall that we played at the
21 end of the morning, in the middle of the morning, a start
22 and a stop in the beginning of the CM tape? Do you remember
23 that?

24 "A. Yes, sir.

25 "Q You identified one of the voices as Louis

1 Napoli's, one of those starts and stops, isn't that right?

2 "A. Yes, sir.

3 "Q That would mean that when you put that
4 tape into your briefcase and you were testing it to make
5 sure that it was going to be running, you would have taped
6 Louie Napoli at some point, is that right?

7 "A. Could be, sir."

8 Louie Napoli wasn't there, Louie Napoli's voice
9 couldn't have been on that tape on the day it was loaded.
10 It had to have been a tape that had been previously used,
11 loaded in the presence of Louie Napoli, possibly with Napoli
12 speaking as the loading was going on, and that tape got used
13 a second time. There is simply no possibility that Napoli's
14 voice should be on there. This is one of those moments when
15 you can actually catch Salem in his carelessness about what
16 he did with tapes. He reused a tape which had been
17 previously recorded and it had been previously loaded in the
18 presence of Detective Napoli.

19 Lastly, when it comes to the tapes, ask
20 yourselves why was Emad Salem so totally enraged on June 29
21 when he found out that it was not just his friend Nancy
22 Floyd who went to the apartment, took the tapes from the
23 chair and left. Why did he need to review them before
24 letting the FBI have them? Was he afraid that maybe if his
25 apartment had been fully searched by a bunch of agents who

1 just went in there willy-nilly that missing tapes, which had
2 been hiding in other places, were still in the apartment? I
3 don't know that Salem really knew on June 23 if and when he
4 was getting back to his apartment. Remember, the case gets
5 taken down, he goes there with agents to get his family.
6 But he didn't clean house and I think -- I am sorry. I
7 can't say I don't think. The reality is that he was
8 enraged -- he said this thing about private photographs but
9 the man was enraged about people searching his house. They
10 didn't, but that's what he was afraid of.

11 Is it live or is it Memorex? Is it real or is it
12 training when it comes to Amir Abdelgani? I told you that
13 in the heart and mind of Amir Abdelgani the safe house
14 scenario was explosives training. Even if Salem and Siddig
15 knew it wasn't, I am going to show you things that happened
16 in the safe house which Amir does, which show you that he
17 believes that this is a sophisticated version of
18 Pennsylvania. Start from the beginning.

19 Amir has been organized into this by Siddig, who
20 earlier had organized him into Bosnia training in
21 Pennsylvania, training which ended because of FBI
22 surveillance, not a terrorist plot. Remember, in hindsight,
23 as we all sit here today, we all know that Siddig is crazy.
24 But we also know that he is a persuasive guy, he has a big
25 image in the Muslim community, he is charismatic, he is

1 prone to great rhetoric, he speaks beautiful English --
2 remember the New York One that was played? You may not have
3 liked what you saw, but what you saw was a handsome,
4 charismatic figure. Even the lawyer Abdullah, Siddig told
5 him he had a master's degree, it was pretty clear that he
6 believed Siddig. Haggag says Siddig got people to trust him
7 and to build his trust among Muslims. He was Siddig Ali's
8 friend for more than a year and it wasn't until Siddig told
9 Haggag that he was going to kill President Mubarak that he
10 finally came to realize that Siddig was nuts. He was
11 concerned that Siddig might get people to do things for him
12 without knowing what it was. That is from the record at
13 10043.

14 Let's move forward. Siddig spends two nights in
15 the safe house, morning of the 28th, 29th, into the 30th,
16 and then they go back and surveil tunnels.

17 By the time you go through the transcripts for
18 those two nights, including the trip back, looking at the
19 so-called targets, you might think that now Amir thought it
20 was real. I submit to you he is acting like it is real just
21 like they did it in Pennsylvania, just like he was told, and
22 if you think I am kidding, look at what Emad Salem and
23 Siddig Ali say to each other when they are alone without
24 Amir on June 3, four days later. This is from Government's
25 Exhibit 329T at page 3.

1 Salem: The plan as.

2 Siddig Ali: You don't have, unintelligible.

3 Salem: Unintelligible. By God it is OK.

4 Siddig Ali: It is good.

5 Salem: The plan as you explained to me.

6 Siddig Ali: Uh-huh.

7 Salem: Is good. The important thing is the
8 execution.

9 Siddig Ali: On the execution.

10 Salem: And on the people who will execute.

11 Siddig Ali: And how you understand it and
12 implement it quickly.

13 Salem: Those people must learn 1, 2, 3, as we
14 said.

15 Siddig Ali: Huh?

16 Salem: These people must learn and must.

17 Siddig Ali: 1, 2, 3, then they will.

18 Salem: Yes. This is it.

19 Siddig Ali: Learn, and it becomes a normal
20 training for them.

21 Salem: As if it is a training exercise.

22 This is four days after Amir spent two nights
23 with him.

24 If you accept Salem's claim and Mr. Fitzgerald's
25 claim on summation that after the boom, boom, boom on that

1 very first night Amir is guilty, then why are Siddig and
2 Salem making it look like normal training four, five days
3 later, when they are talking only amongst themselves?

4 Because they know differently. They know the brothers think
5 it is a simulation. That's a glimpse into what Siddig and
6 Salem have been telling the brothers prior to getting them
7 to the safe house. It's a glimpse into the missing tapes.
8 Constant equipment failures.

9 But let's talk about Amir's past history and how
10 he controls his thinking and interprets the last two nights
11 in the safe house. We are in the early evening hours of
12 June 23. Amir Abdelgani has just picked up the barrels of
13 fuel oil from Yonkers. At that time he is totally aware,
14 you know from the evidence he is totally aware he is being
15 followed. It is not only his state of mind, his belief, we
16 know it is true because of the surveillance agent who
17 testified about having seen Amir at the gas station and
18 there are photos in evidence about it, GX28 in evidence.
19 Amir drives in an evasive fashion, presumably because he
20 knows about the surveillance. What does he do? Drives all
21 the way out to Queens. He is driving in a van owned and
22 operated by Cousins Livery Service, owned by his cousin
23 Nasser and for which he himself works. It may be one of the
24 vans that he purchased a month earlier or it may be the
25 different van from the night earlier. Remember, he goes and

1 gets fuel oil and in the middle of this bombing plot, he
2 gets an air conditioner from the gas station and takes it to
3 their apartment. Not the type of conduct that makes you
4 think he is in the middle of a bombing plot. That is at
5 12038 and 12095 of the record.

6 In the meantime, Amir has on him his wallet and
7 personal ID and everything else that is referred to in the G
8 exhibits. He is so sure he is under surveillance that he
9 even has a list of car numbers that he writes. That is in
10 evidence, I think, as Government's Exhibit 165E, the license
11 plate numbers that he has taken down. When he arrives in
12 Queens he parks around the corner near Wendy's restaurant.
13 You remember I put in the J exhibits of Amir Abdelgani, and
14 they were put in so you would understand the reference on
15 the tape to Wendy's.

16 Despite knowing he has been under surveillance
17 from the very beginning of the trip to the very end of the
18 trip, Amir leaves Fadil alone and walks to the safe house.
19 Amir enters the safe house about 8:30 p.m. and tells Siddig
20 and Salem that he is convinced there is surveillance at the
21 gas station in Yonkers and also at Wendy's just around the
22 corner where he has left Fadil.

23 I have put in evidence Amir Abdelgani's IT, which
24 is the transcript. It is a very short one. You have it in
25 your books. I am not going to take you through it now but I

1 ask you to look at it in the jury room. Siddig enters and
2 he goes on to explain that the street is closely watched,
3 that his plate numbers were recorded at the gas station and
4 that all the street at the Wendy's is full of undercovers.
5 Siddig's response to Amir? My brother, my brother, this is
6 all simple.

7 With that being the scene, let me ask you to
8 place yourselves in the situation of a terrorist. We are
9 going to do a little role playing here. I want you to
10 compare and contrast what Amir does and what he doesn't do
11 as to how it shows his state of mind. Imagine you are a
12 terrorist. The government claims that's who Amir Abdelgani
13 is. Imagine, you are Amir, you believe this is real, that
14 you are going to blow up New York City. You and Amir
15 Abdelgani have obviously now devoted your life, your heart
16 and your soul to the destruction of America. You have one
17 objective, one goal, bombing landmarks in New York. That's
18 what you want to do. For that goal you are going to give up
19 your family, you are going to go to prison for the rest of
20 your life, you are even willing to die in the process. But
21 the goal is what you are about. Failing and going to prison
22 without completing the goal is a waste.

23 When he knows he is under surveillance, does he
24 stop and call the safe house and wait for instructions, that
25 the plan to which he has been devoted has been uncovered and

1 will not succeed? No, he makes no attempt to flee. Fleeing
2 would be a good thing under the circumstances. Warning
3 everybody by calling Emad's cell phone is a good thing,
4 because if the goal is real, if this isn't training, success
5 is what is necessary and you have to warn the people in the
6 safe house. You will sacrifice your life for the sake of
7 success of the plan, but if the plan is discovered, then you
8 must abandon it, regroup at a later time in a different
9 place when you are not going to be destroyed before you can
10 succeed.

11 Now continue. Assume, as the government claims,
12 Amir is involved in this plot, he is fully committed to
13 carrying it out and assuring the success of sedition. Hell
14 bent, this has to happen. What does a terrorist do, 8:00 at
15 night, walking into that safe house, knowing what he knows
16 about surveillance, knowing that the plan will never go
17 forward? This is what the person does. I submit, what you
18 would do, what I would do what everybody else would do, you
19 call the safe house to warn them, or you split, or you walk
20 in the room and say let's get out of here, the plan has been
21 thwarted, there is no chance. Let's run out the back door.
22 Remember, Special Agent Cantamessa, he says there is another
23 door, there is a roll-up door. You can go out the back.
24 None of that is suggested by Amir. You might want to
25 destroy the evidence, pour the fuel oil down the drains,

1 wipe down surfaces, even set a fire, maybe, to destroy the
2 evidence as you are leaving.

3 (Continued on next page)

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 If Amir Abdelgani really believed he was going to
2 blow up New York City, he would have done something
3 different from what he did. If Amir Abdelgani truly
4 believed that his supposed goal was one for which he was
5 prepared to give up his life, he would have said: Allah has
6 willed this for another day. You give up your family. You
7 go to prison, you give up your life, it would make no sense
8 if you are arrested before you carry out your mission.

9 But that action that night was the exact
10 opposite, and so were other actions of his in this case.
11 Sufficient so that they establish reasonable doubts about
12 his true intent about his guilt. They go to his state of
13 mind.

14 Imagine yourself in the other position. You are
15 Amir, you think it's training. You want to go to Bosnia.
16 You want to fight for your people, but you have a life and a
17 family. You live here. You have family obligations. You
18 have a job. In the past, in your history, you've learned
19 two things, two lessons from the training in Pennsylvania.

20 Lesson No. 1, sometimes people should not be
21 trusted about paying you for what they are going to pay for
22 you. Go back to that \$765. Throughout the whole safe house
23 plot, Amir Abdelgani says, in his mind he says he's learned
24 a lesson. \$765 doesn't get paid back. He says to himself,
25 keep your hand in your pocket, Amir. Just put in your fair

1 share. And Amir did. He put in the \$200 shot. As you know
2 from the G documents the thousands that he could put in for
3 whatever they needed, and they needed a lot, and the tapes
4 are consistent with begging, begging for money.

5 Remember, if you are going to be killed, if you
6 are sacrificing your life, if you are going to prison, if
7 you are going underground to a foreign country under a new
8 name, if this is real, do you really care how much money you
9 are going to owe MasterCard? I mean, what's the logic of
10 it? I don't want to leave behind the bill when I go to the
11 Philippines. I don't want to owe money to MasterCard or
12 Visa or the Provident Savings Bank?

13 But for training you can only go so far because
14 you have other parts of your life, and Amir learned that
15 lesson well. He never offers to pay for it, and Siddig Ali
16 knows that Amir won't do it again. Remember, Siddig knows
17 that Amir is out that money. Siddig knows from the meeting
18 at Rashid's house that \$765 was to be paid for him. He's
19 never seen it.

20 You will never hear on those tapes Siddig Ali
21 turn to Amir Abdelgani and say: Hey, this is real. This
22 isn't training. Let's get down. What's the difference
23 about money? We need it. Come up with it. He doesn't do
24 it because he knows Amir is still deluded.

25 Lesson No. 2 that Amir Abdelgani knows, you know

1 it from Pennsylvania, the legitimate training ended because
2 of the surveillance. What was the surveillance? It was an
3 annoyance. It ended the training efforts. But Amir drives
4 to Queens, like he did the night before, in a van which has
5 the livery plates on it, a van which is registered to his
6 own family's business, a van which connects directly to him
7 without any stolen license plates on the back of it to cover
8 his tracks.

9 Whatever is taking place on June 23 as Amir
10 drives from Yonkers to Queens, he knows that half the FBI is
11 going to find him at Cousin's Livery Service anytime they
12 want.

13 He's done nothing wrong in the past. No harm
14 will come to you even if there is FBI lurking around,
15 surrounding you. The real Amir Abdelgani merely reports the
16 surveillance to Emad and Siddig and then does nothing. He
17 doesn't suggest destroying the evidence, pouring out the
18 gasoline, getting rid of the fertilizers, doing anything.
19 You saw in the videotape that night, what's called V11,
20 V12 -- I think it is in evidence as a videotape of GX381.
21 You can watch Amir Abdelgani washing this van down. He's
22 fastidious. He washes the van down.

23 Two things you should know: He's got no gloves
24 on, and when it comes to leaving fingerprints on the doors
25 he could care less. He's just washing it and cleaning the

1 van that he's brought the gas in, because that van is going
2 to take passengers in the livery service sometime tomorrow.
3 The government may say they never intended to use those vans
4 for the explosions, but it shows where and how he conducts
5 himself.

6 Amir doesn't try to flee. He doesn't go through
7 the back door, and that is because he has been in this
8 situation before, the situation in Pennsylvania. All he
9 believes is the training will stop, Bosnia will wait for
10 another day. I would like to play for you the videotape for
11 you to see again what Amir does when he walks into the safe
12 house. There's that three- or four-minute tape. It is in
13 evidence as Abdelgani I. This is the tape that matches up
14 with the IT transcript. Remember, Amir has had plenty of
15 time to think all the way from Yonkers. He's parked the
16 car. He's now in the safe house. And I would like to play
17 the tape for you.

18 I hope you can see it from this position, but the
19 other monitor is right over there. This is Amir entering
20 the safe house. He's just entered the safe house. You can
21 roll the tape. This is a man who knows he is being
22 surveilled all the way from Yonkers all the way to Queens.

23 (Videotape played)

24 In effect, he's explaining as the transcript goes
25 that somebody has taken the number at the gas station where

1 they were standing and filling the barrels. There was a
2 white person with glasses. The man came from the street.

3 Amir certainly doesn't look scared. He certainly
4 doesn't look frightened. He certainly isn't suggesting,
5 we're in big, big, big trouble. And yet you are if this is
6 a bombing plot.

7 He talks about discussion with the man in the gas
8 station. At some point he also goes on to confirm that he
9 believes that the number of his car has been taken. He
10 talks about a man at the gas station talking about
11 explosions and carrying gas in a car can cause an explosion
12 in a car.

13 Then there is some joking around at some point
14 between Amir -- I'm sorry, between Siddig Ali in which Emad
15 Salem throws up his hands and laughs as if he's being
16 threatened by Siddig in a jocular way.

17 (Videotape continued)

18 Ultimately Siddig after his discussion about Amir
19 saying that the undercovers are all surrounding Wendy's,
20 Siddig Ali goes out and brings back the van. If you look at
21 Amir's conduct, it's none of this: Hey, we're in deep
22 trouble. Let's go out the back, Jack. It's over for us.
23 This game is over. Try it another day. We can't do it now.

24 That's his conduct the last night of this.

25 Ladies and gentlemen, one of the things the judge

1 will instruct you about is the lack of evidence in the case.
2 That is a factor in your deliberations. The only thing the
3 government has presented in a five- or six-year
4 investigation about Amir Abdelgani, who's been in this
5 country all that time, is the stuff that came in that safe
6 house and the Pennsylvania training.

7 This is one of the most massive, long-running
8 investigations of all time conducted by an agency which many
9 of us think was one of the most thorough, efficient crime
10 fighting machines ever created. They had surveillance teams
11 as far back as 1989, well in advance of Meir Kahane dying.
12 They had surveillance teams going that we know about in
13 advance of the World Trade Center bombing because Amir was
14 surveilled a month before that.

15 THE COURT: Excuse me, Mr. Bernstein, may I see
16 you briefly at the side.

17 MR. BERNSTEIN: Certainly, Judge.

18 (Continued on next page)

19

20

21

22

23

24

25

1 (At the side bar)

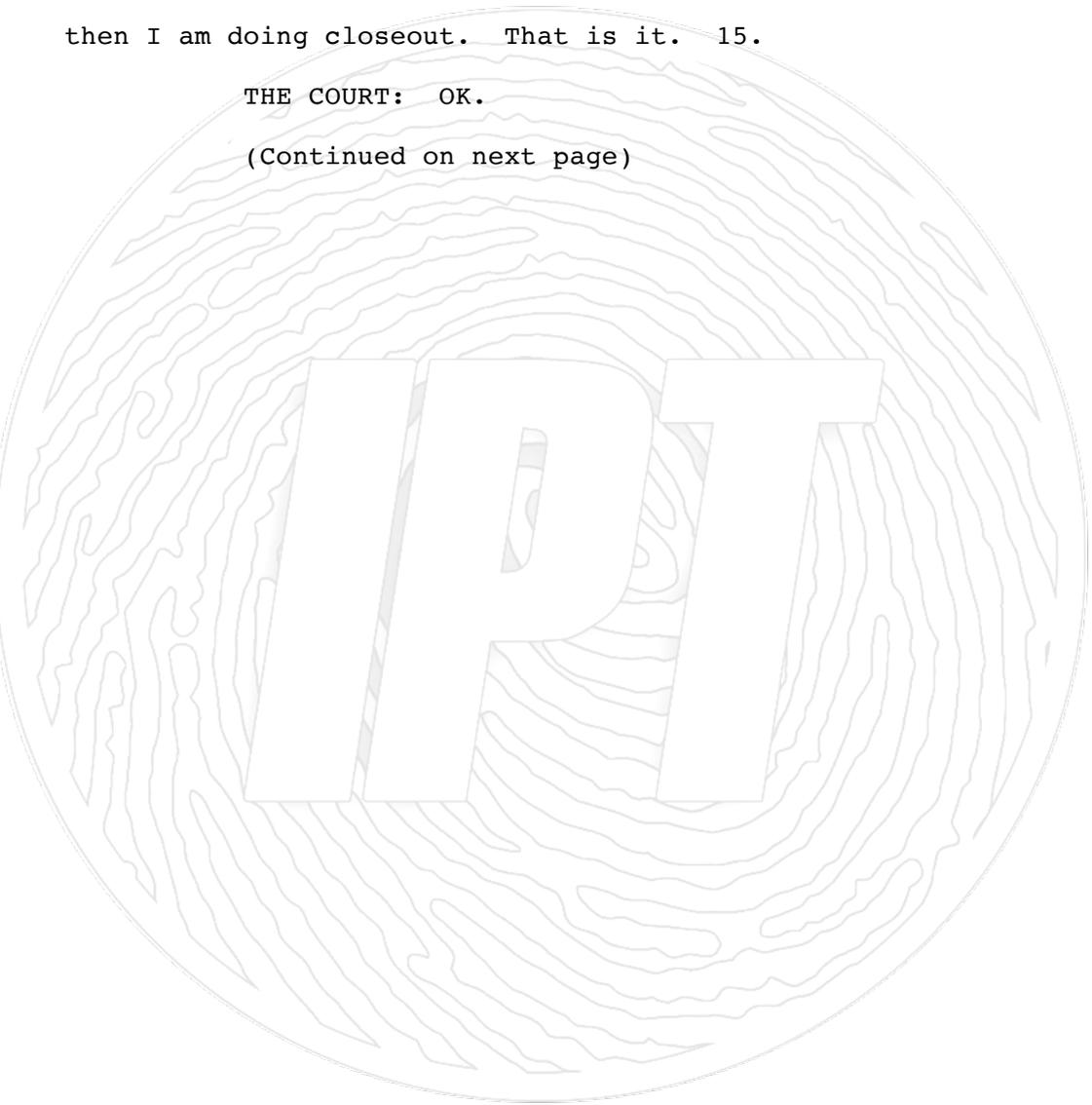
2 THE COURT: How much longer do you have?

3 MR. BERNSTEIN: I would say 15 minutes. I am
4 just doing the lack of evidence the attempted bombing, and
5 then I am doing closeout. That is it. 15.

6 THE COURT: OK.

7 (Continued on next page)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 (In open court)

2 MR. BERNSTEIN: Ladies and gentlemen, we are
3 getting close to the end.

4 This was a massive investigation, and I am going
5 to move through some of this pretty quickly about what kind
6 of evidence might have been produced and wasn't. There were
7 wiretaps. Nothing significant through there. There was the
8 surveillance. You have seen nothing beyond what was
9 presented here. World Trade Center, enormous investigation.
10 There's not a whit or a shred of evidence that Amir
11 Abdelgani had anything to do not only with the World Trade
12 Center investigation, but with the people who were involved
13 in that -- Ramzi Yousef, Mahmud Abouhalima, Mohammed
14 Salameh -- all those names that now are familiar to you.
15 The reason is that without Salem there was nothing happening
16 in Amir's life which was suspicious. Nothing about him
17 doing anything alone, with others, ever, before Emad Salem
18 and Siddig get together and set up this safe house plot.

19 Haggag, their own witness, tells you nothing bad
20 about him.

21 Phone records. Do you remember the massive phone
22 records you have seen in this case showing who called whom
23 and who called what? With the exception of some of Amir's
24 phone calls to Siddig Ali on that FISA stuff, there's
25 nothing about Amir's phone records that connect up,

1 laboratory fingerprint reports, nothing.

2 They have talked about searches in people's homes
3 and bringing in things, guns, bomb materials. Nothing has
4 been presented by the government, nothing from Amir's house,
5 from anyplace else that he hung out in, anything that
6 indicates prior to going into that safe house anything to
7 connect him to sedition or seditious thoughts. The only
8 thing they got you with is the mysterious microphones of
9 Emad Salem.

10 You will even remember one of the things that
11 goes on constantly in this, in both the World Trade Center
12 and even in Siddig's mind is that people run away to avoid
13 being caught. Amir Abdelgani there's not one shred of
14 evidence that this man bought, purchased airline tickets,
15 quit his job, cashed out his checks. He's walking around
16 with two checks he hasn't even cashed. They are two weeks
17 old.

18 Remember a woman named Monira Roshdy? She
19 testified about things called Haj shots. She came in to
20 tell you that Mahmud Abouhalima had gone to this doctor's
21 office to get a shot. Many of us don't necessarily get
22 what's called Haj shots, but when you leave the United
23 States to travel somewhere, you're generally, depending upon
24 where you're going, need some form of vaccination to deal
25 with your visas, particularly if you're going to faraway

1 places like the Middle East. Simply nothing to suggest that
2 Amir ever planned to leave the United States.

3 Not one person was brought in here to show that
4 Amir Abdelgani ever said or acted in a way consistent with
5 the desire to run a war of terrorism against the United
6 States.

7 When you go back to the jury room and begin your
8 deliberations, consider the lack of evidence. Take a
9 careful look at the wealth of opportunities, the wealth of
10 investigative tools that the government has at its command
11 and in this case did use and realize that none of that
12 produces evidence against Amir Abdelgani.

13 There's a grave question: Why is there nothing
14 outside of that produced through Emad Salem? The answer is
15 simple: There is none.

16 I anticipate the government may come back and
17 say: Why bother? You have seen the CM's. You know what
18 it's about. Why did we have to bring in anything more? It
19 is your job, they will say, and I say it to you also, to
20 determine the evidence and the lack of evidence and whether
21 or not the government has established beyond a reasonable
22 doubt everything.

23 And I say to you when you look at the Emad Salem
24 missing first conversations against my client, you have to
25 be concerned. Remember, the burden stays on them, not on

1 me. It never shifts to me.

2 I want to talk about one particular count called
3 attempted bombing, Count Six.

4 One of the things lawyers sometimes have to do,
5 whether they agree with the government's view of what their
6 client's done or not, is to raise arguments against what we
7 call theoretical arguments.

8 The government has argued they have proven beyond
9 a reasonable doubt not only that this was real, but that
10 they've argued under Count Six that you should find that
11 Amir Abdelgani aided and abetted an attempted bombing as
12 that is defined by the court's instructions to you which you
13 will get later on.

14 For purposes of this argument, please assume that
15 everything was real. The government has failed to prove its
16 case by a mile. They must prove that that steps taken were
17 substantial and not merely preparatory to the commission of
18 the actual bombing. Even if the plot were real, from Amir's
19 perspective, you know from the evidence there was no
20 bombing. You also know the stuff in Queens couldn't make a
21 bomb.

22 I am sure that Ms. London will present this
23 argument again and possibly in more detail, but I can tell
24 you this wasn't even close, not by a country mile. On the
25 morning of June 24, when the arrest was made of Amir

1 Abdelgani, you know you had no bomb. Remember Mr. Thurman,
2 the bomb guy, came in and talked about the stages. There
3 was no stage three, there was no stage two. About the only
4 stage you had of the bomb here was the little green fuse,
5 the stage one thing that Emad Salem brought to the safe
6 house. As you know from that testimony, all of it found
7 together in that house couldn't make a bomb.

8 Even if it could, there was no way to deliver the
9 bomb to any target. There were no vans for the so-called
10 plot, no stolen cars, no rented cars, no false
11 identifications, no stolen license plates, no United Nation,
12 embassy or diplomatic plates -- all the things that were
13 talked about. And, more importantly, there was no money to
14 get the things necessary, and Amir had the money.

15 Even though Emad Salem pushed and prodded,
16 orchestrated and told Siddig and others what to do, what to
17 get, and even with his pushing for money and using his own
18 car to drive everyone around, even with his setting up the
19 safe house with the government's money and using virtually
20 all of his own equipment, no matter how much he greased the
21 wheels as far as he could, this plan, real or not, was not
22 an attempt as defined under the law as the court will define
23 an attempt -- even if you should determine Amir Abdelgani
24 believed it was real. Even if Emad Salem had announced in
25 the middle of the night that the so-called bombs were ready.

1 Imagine, he says: OK. The bombs are ready.

2 Let's go.

3 Well, where are we going? We've got nothing. We
4 can't move them. We can't deliver them. We've got no way
5 to go and deliver bombs to any target planned, real or not.

6 After you hear the court's instructions on this
7 count and apply the facts, even on the government's
8 strongest view of their own case, you must acquit Amir
9 Abdelgani.

10 These are my concluding remarks. That will make
11 you happy. When you go into the jury room, please act as my
12 advocate. If I have failed to do something that you have
13 seen with the evidence, raise it with your fellow jurors.
14 If a fellow juror makes an argument that you disagree with,
15 be my advocate in that jury room, raise the argument that
16 you think about, raise the argument that you think I would
17 have raised.

18 Look carefully at what happened in Pennsylvania.
19 See how that impacts on what people did later on. As you go
20 in to deliberate about the case, ask yourself whether you
21 really believe the first introduction wasn't taped. Ask
22 yourself whether you really believe the trip to the safe
23 house wasn't taped.

24 As you go in to deliberate, ask yourself about
25 the June 12 meeting. Was that never taped?

1 As you go in to deliberate about this case, ask
2 yourself whether the government has proven to you beyond a
3 reasonable doubt whether Amir Abdelgani would actually be
4 acting out and building a bomb without Emad Salem's
5 unrecorded inducements on the three missing conversations.

6 Is there evidence beyond a reasonable doubt that
7 Amir Abdelgani ever agreed to, or planned to do anything
8 against the United States government prior to meeting Emad
9 Salem?

10 As you go in to deliberate, ask why in all the
11 hours, all the hours of the CM's, when people talk about
12 things, their lives, things that happened, why is there not
13 one word about anything that Amir Abdelgani says he ever did
14 in the past?

15 Remember, according to Salem: I've set it up.
16 It's safe. It's comfortable. They can be relaxed in the
17 safe house. Tales of sedition should come pouring out of
18 Amir Abdelgani's mouth, and there's not a word of it.
19 Nothing about: Boy, do you remember when we were going to
20 do Mubarak? Boy, do you remember when we were going to do
21 assassinations? Boy, you remember when we were going to do
22 operations? Not one word. Not one word from Amir Abdelgani
23 about his conduct, even though he is supposed to be safe and
24 comfortable there.

25 That's because he never had an intention to take

1 down America. Based upon everything you've seen and you've
2 heard, I can't expect that your job is going to be easy.
3 Some of the conversations in this case are very, very
4 graphic and they're very, very horrible. But you must look
5 at all the facts.

6 All I ask on behalf of Amir is that you carry out
7 the task which you've taken upon yourselves, to be patient,
8 to be fair, to weigh the questions.

9 After you analyze each of the counts, all of the
10 evidence, I am sure you will find that the government, where
11 the burden stays, has failed to prove beyond a reasonable
12 doubt the crimes against Amir Abdelgani.

13 I thank you for your patience and your time.

14 THE COURT: Thank you, Mr. Bernstein.

15 MR. BERNSTEIN: Thank you, Judge.

16 THE COURT: We will now hear the summation in
17 behalf of Mr. Khallafalla from Ms. Amsterdam.

18 MS. AMSTERDAM: I need to get that easel over
19 here.

20 Good afternoon.

21 If timing is everything, I am in a lot of
22 trouble. But my count I am the seventh summation to go in
23 this case. And, if that wasn't bad enough, it's Thursday
24 afternoon, it's 3:15 in the afternoon, and I know you're
25 tired. I am the third person today to talk at you. And if

1 it's true that it's better to be lucky than good, I better
2 be awfully good, because I surely didn't get the luck of the
3 draw here today.

4 There's been a pool among the lawyers as to how
5 many times I was going to say "Fares is not a Fares."

6 THE COURT: Ms. Amsterdam, if you could talk into
7 the microphone, the translators will hear you in addition to
8 the rest of us being able to hear you.

9 MS. AMSTERDAM: I'm sorry. Is that OK?

10 THE COURT: That's great.

11 MS. AMSTERDAM: Thank you, sir.

12 Among all the lawyers -- and there was a pretty
13 wide range of how many times they said I was going to say
14 "Fares is not a Fares" -- Tony Ricco picked zero.

15 I said: Tony, you took zero?

16 He said: Valerie, you don't have to say Fares is
17 not a Fares.

18 I said: Tony, that's the cornerstone of my
19 summation. You don't think I have to say Fares is not a
20 Fares?

21 And Tony looked me in the eye and said: You
22 don't have to say it. You know why?

23 I bit. I said: Why?

24 He said: You don't have to say it because the
25 government's own informant said it for you. When Fares

1 Khallafalla walked out of that garage that day, Emad Salem
2 was caught on tape saying Fares is not a Fares.

3 For those who are counting, that's seven at this
4 point. Fares Khallafalla himself said it four different
5 ways. He said it four different ways when he stood up in
6 front of this very judge and pled not guilty. He said it
7 the night he walked out of the garage on June 21 and never
8 returned. He said it again on June 24 when he was arrested,
9 not in Queens, but at home wearing a "New York, New York,
10 it's a hell of a town" T-shirt. And he said it by his
11 conduct.

12 He said it by his -- you know the expression,
13 actions speak louder than words. He said it by his actions
14 when he walked out of that garage. And he said it by his
15 inactions. He said it when he never participated in buying
16 fuel oil, never participated in mixing, never participated
17 in buying a gun, never participated in surveilling any
18 tunnels or bridges, never watched a video of any targets and
19 never, ever, agreed to wage a war against America.

20 Siddig knew of what he spoke when he said:
21 Fares, we thought he was a Fares. And Emad knew it when he
22 responded: Yes, Fares, he is no Fares. And we know it
23 because he walked out of that garage.

24 The government in its summation said that they
25 wished, they hoped that you wouldn't think this case is more

1 complicated than it was.

2 Actually, in one way it's quite simple. Siddig
3 and Salem agreed: We thought he was a Fares, but Fares,
4 he's not a Fares.

5 You know, if Salem and Siddig had said: Fares,
6 he's some soldier in our little jihad Army, you know that
7 would have been the cornerstone of Mr. Fitzgerald's
8 summation. But when Salem and Siddig say: Fares, he's not
9 a soldier in our Army, the statement is completely ignored.
10 The government doesn't even mention it in their summation.

11 How come, I ask you. Don't the same rules apply?
12 Am I missing something here?

13 Salem and Siddig said Fares was not a soldier. A
14 soldier in what? They said he was not a soldier in their
15 Army, not a soldier in their conspiracy.

16 If Fares is not a Fares, doesn't that mean he's
17 not a player? Doesn't that mean he's not part of the team?
18 Doesn't that mean he is innocent? Maybe it's Mr. Fitzgerald
19 who is making this case a whole lot more complicated than it
20 is.

21 Fares sits in this courtroom over there charged
22 with conspiracy to wage a war against America, conspiracy to
23 bomb bridges and tunnels, and he's been waiting two and a
24 half years. You know what he's been waiting for? He's been
25 waiting for you to say, Fares is not a Fares.

1 I am a lawyer obviously. I have been doing this
2 job for more years, actually more decades than I'd care to
3 admit. It's like any other job: Some days you like it;
4 some days you don't. Some days are stressful. Some days
5 are boring. Some days are filled with tension. But I dare,
6 dare, dare say that there are few moments in our lives that
7 compare to the awesome responsibility that you and I share
8 at this moment. We hold another person's fate in our hands.

9 For me, I am overwhelmed by the responsibility
10 that my ability to show you what Fares did, my ability to
11 explain the evidence which establishes his innocence or my
12 ability just to anticipate the government's rebuttal
13 arguments may change Fares's life forever. For each of you
14 who I have gotten to know in some way over the last nine
15 months, I sense by your attentiveness, your
16 conscientiousness, by your interest that you, too,
17 understand the awesomeness of this moment.

18 We have spent nine months together in this
19 courtroom. I don't know if I am ever going to get to speak
20 to you again. I don't know if we're ever going to meet
21 again. But if the eyes are the windows of the soul, I know
22 each of you in some small way and this is my opportunity to
23 thank you for your open mindedness, for your willingness to
24 listen and your willingness sometimes to laugh. I heard a
25 sermon once entitled, "Angels Can Fly Because They Take

1 Themselves So Lightly."

2 Laughter is a gift from God, and I thank you
3 sometimes for your ability to laugh. I want to thank you
4 for your hard work, your diligence and your decency.

5 I sincerely, sincerely hope that our paths cross
6 again one day, not as lawyer to juror, but person to person.
7 You do deserve to feel proud of yourself. You sacrificed a
8 lot to guarantee to another person a basic fundamental
9 constitutional right. You gave Fares Khallafalla the
10 opportunity to have a fair and impartial jury, and Fares and
11 I thank you for that.

12 You are about to begin deliberations in this
13 case, and the court's going to tell you, his honor is going
14 to tell you that you have to be respectful of one another.
15 You have to listen to one another's arguments. But there
16 are some of you here who have never served on jury duty
17 before.

18 I am telling you, there are going to be times
19 when tempers are going to flare. There's going to be times
20 when people are frustrated, when people get tired, and I
21 have a suggestion for you when you get to one of those
22 moments, I ask that you send a note out and request
23 Government Exhibit 663, a little light music. And I suggest
24 that you guys sit around that table you got back there, hold
25 hands, take a deep, cleansing breath, start to meditate, and

1 relax. And you know what, I bet you after ten minutes
2 you'll feel like a million bucks.

3 This should be the end of my remarks to you. It
4 sounds like it should. But the bad news is it's not. It's
5 just the beginning. And the other bad news is that I am not
6 going to be short. With a little luck, with a little luck
7 and a little patience, I will finish hopefully by tomorrow.

8 The good news, however, is you're never going to
9 have to listen to me again unless you want to. Seriously,
10 however, I want to tell you going up front what I want to
11 discuss and why because I think it's helpful for you to
12 understand my argument, not only to understand my arguments,
13 but to understand where we're going so that you can kind of
14 pace yourself.

15 I know you sit here and you don't know, is this
16 the beginning of the summation, is this the middle of the
17 summation, or is this the end of the summation? So at least
18 if I break it down for you, you'll have some sense of where
19 we are at any given moment.

20 I have sat through enough classroom lectures and
21 enough Sunday morning sermons to appreciate how painful it
22 is to have somebody drone on at you -- not talking with you,
23 but talking at you. I think Ms. Stewart was on to something
24 when she said it would be great if you could just raise your
25 hands and ask what questions you had. We would answer them

1 and be done with it. Unfortunately for you and even
2 unfortunately for me it doesn't work that way. So I want to
3 tell you now what I intend to discuss, and with the
4 agreement of the court, maybe you'll get that break you
5 deserve.

6 Wrong chart, sorry.

7 Low-tech operation, but a new easel.

8 I am going to discuss three areas of evidence
9 with you.

10 Area No. 1. Salem, who he is. Siddig, who he
11 is, and the safe house scenario, how it came to life, how
12 Salem created what I would refer to as the ultimate \$1
13 million con game.

14 It is a bait and switch. You know what a bait
15 and switch is? You read in the newspaper that the store
16 down the corner is offering mattresses for \$69, and you go
17 into the store for the \$69 mattress, and you know what?
18 They just sold the last one. But they got that other \$225
19 mattress which they're trying to sell you.

20 Here, with Salem, the bait was Bosnia. Step
21 right into the store. We're training you to go to Bosnia.
22 And the switch was, once he got you in the store, he tried
23 to sell you a plan about bombing America. He wanted to
24 switch the mattresses on you.

25 Fares figured out the con game, but, make no

1 mistake about it, the safe house scenario was a
2 sophisticated, very expensive version of the average street
3 hustler's bait-and-switch con game.

4 The second part of my summation is Fares -- what
5 he knew, what he said, what he did. And when we discuss
6 Fares, we have to discuss the tapes. We have to discuss the
7 tapes we have and the tapes we don't have.

8 At a minimum, I am going to prove to you the
9 following things:

10 Now, defense lawyers don't ever like to say they
11 are going to prove anything, because the court will tell you
12 that a defendant in a criminal case, any defendant in any
13 criminal case doesn't have to prove anything. The
14 responsibility for proof is always with this table. It's
15 always with the prosecution.

16 But I am telling you I am going to prove a couple
17 of things. I am going to prove that CM17, the tape
18 recording of the first night going out to the safe house,
19 was destroyed, and I am going to prove that there were a
20 series of conversations about training for Bosnia that were
21 destroyed.

22 I am going to prove to you that there was a
23 conversation on June 12 about going to Canal Street to buy
24 timers that was destroyed.

25 And I am going to prove to you that the

1 government's official CM of the conversation on the 13th at
2 Canal Street was tampered with -- not cut, not spliced, no
3 razor blades, but I am going to prove to you it was tampered
4 with.

5 Lastly, part three of my summation is the agents
6 and the agent misconduct and how that misconduct impacts on
7 this case. So you can pace yourself, I am going you an
8 overview. I am going to spend more time on Fares, the
9 middle section, than on the other areas.

10 While you know that I intend to discuss the
11 agents, everyone in this room knows that my other half --
12 and notice I don't say "my better half," but my equal half
13 back there is waiting to put on the show. I am going to
14 discuss the agents, but make no mistake about it, Mr. Jacobs
15 intends to have the last word, and, for my money, he's
16 earned it.

17 For the record, however, as to the agents, his
18 words are my words. I accept, I adopt, I endorse every one
19 of Mr. Jacobs' arguments.

20 On the issue of agent misconduct and the
21 significance of that misconduct to this case, Mr. Jacobs and
22 I stand as one. Now, this should come as no surprise to any
23 of you, but the agent misconduct in this case is especially,
24 especially crucial to the defense of Mr. Khallafalla and
25 Mr. Mohammed Saleh, so I won't to go on record as being

1 behind Mr. Jacobs or beside Mr. Jacobs every step of the
2 way.

3 If this would be convenient to the court, this
4 works for me.

5 THE COURT: It works for me, too.

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

10 (The jury was excused)

11 MS. AMSTERDAM: Your Honor, can I see you in the
12 back for a moment?

13 THE COURT: Sure.

14 (Recess)

15

16

17

18

19

20

21

22

23

24

25

1 (Pages 19606-19607 sealed)

2 (Recess)

3 (At the side bar)

4 MS. AMSTERDAM: I just wanted the court to be
5 aware that the defendants have indicated that they can stay
6 as late as 1:15 tomorrow.

7 THE COURT: Fine. We are going to start at 9.

8 MS. AMSTERDAM: I know, but I am just letting you
9 know.

10 (In open court; jury present)

11 THE COURT: Ms. Amsterdam, go ahead.

12 MS. AMSTERDAM: Thank you, your Honor.

13 All right. For those of you keeping score, I am
14 starting part 1, and with a little luck if we hang in there,
15 we may finish it today. Part 1, Emad, Siddig, who they are
16 and how the safe house scenario came into being.

17 I want you to remember that Fares Khallafalla was
18 not arrested until the end of June 1993, but sometime back
19 in the summer of 1992, the wheels were set in motion for his
20 eventual arrest. This was, if you do the arithmetic, almost
21 a whole year before Fares was to meet Emad Salem.

22 Salem was for many years trying to worm himself
23 into the Muslim community, and I pick that word
24 deliberately, worm his way into. He has met with limited
25 success. He has been taping conversations for months if not

1 years. He has been switching on those little gadgets. He
2 has been peddling scraps of information here and there but
3 he is getting nowhere quick.

4 People in the community and people within the FBI
5 are coming to distrust him and his motives. Only Nancy
6 Floyd is a true believer. Out of loyalty or love, out of
7 inexperience or immaturity, or out of a desire to advance
8 her career, she urges Emad Salem to go out and record
9 virtually everyone he meets, and, probably more
10 significantly, she goes to her bosses and tries to sell to
11 her bosses the whole concept of a safe house scenario.

12 This is the now infamous Khallafalla C,
13 conversation A22. I am not going to take you through the
14 whole part of it but I want you to focus on this particular
15 passage up here.

16 Floyd talking to Salem: Right, and I agree with
17 you, and, uh, I was saying that that's what I told my, the
18 supervisor that handles this, which is not mine, and he
19 agreed with you. I mean, he just, he told Louie that no, he
20 thought it was a dumb idea to try. He agreed with you --
21 which is Salem -- that it was a dumb idea to try to
22 introduce someone undercover. What he needed to do is, uh,
23 exactly what I suggested. I sit down with you -- which is
24 Salem. I told him the scenarios that you -- which is
25 Salem -- had come up with. He felt that they were very good

1 scenarios, but before he wants to meet you, because he's
2 never met you before.

3 Uh-huh, says Salem.

4 And Floyd says: He wants to go hear you, what
5 your ideas are.

6 Salem: Uh-huh.

7 And Floyd says: Hm. Talk it over. I told him
8 about what you thought about with the safe house.

9 When is this conversation? This is not in the
10 spring of '93. This is not when Salem has met Siddig Ali.
11 This is the summer of 1992. And who has an idea about the
12 safe house? Not Siddig Ali, it's Emad Salem who has an idea
13 about a safe house.

14 There are two important points that I want to
15 make about this passage. Mr. Fitzgerald said in his
16 summation that Emad Salem was worth a million dollars you as
17 taxpayers pay him. After all, he said, not any agent could
18 walk into a mosque and talk to people about jihad.
19 Actually, you can tell by here that the FBI in fact wanted
20 to bring in an undercover. They wanted to bring in somebody
21 that Salem could say this is my cousin, this is my friend,
22 this is one of the brothers.

23 The advantages of bringing in an undercover are
24 pretty obvious. The FBI can then control the process and
25 insure the integrity of what's going on. The investigation

1 is not going to be compromised by an informant who is
2 working on his own personal agenda. But as you can see from
3 this conversation, Salem vetoed the idea.

4 Who said it was a dumb idea to introduce somebody
5 undercover? Not the FBI. Emad Salem said it was a dumb
6 idea. And you know why? Because only by working alone does
7 Salem have control over the operation.

8 The second point, I think, is pretty obvious, but
9 it is the most important point I want to make in this part
10 of my summation. Salem had the idea about the safe house.
11 It was his plan, his scenario, and when does he have it?
12 The summer of 1992. That's a year before the arrests in
13 this case. It is nine months before he befriends Siddig
14 Ali. In 1992, Emad Salem has the idea for a safe house.

15 While it goes almost without saying that law
16 enforcement almost every day properly uses informants to
17 investigate and solve crimes, it goes equally without saying
18 that informants and agents aren't supposed to be out there
19 creating the crimes. But Emad Salem back in 1992 had an
20 idea for the safe house. And not only did he have the idea
21 for the safe house, he had his own personal collection of
22 bomb components. At a minimum we know he had his own
23 personal timing device, he had M80's, he had quarter sticks
24 of dynamite, he had cannon fuses, and he had other items
25 that Agent Roth described as nondangerous, nonexplosive bomb

1 paraphernalia. Is that the kind of stuff you have in your
2 house?

3 He brings his stuff in and he shows it to Carson
4 Dunbar, who is a supervisor with the FBI, and no one,
5 including Dunbar, thinks to say, hey Emad, stick to solving
6 crimes, don't go building any bombs, don't be doing anything
7 without our approval. And no one, no one says, you know
8 what, Emad, why don't you leave those bomb components here
9 with us 'cause you really shouldn't be walking around with
10 your own arsenal.

11 Summer comes, the summer goes, and in the fall of
12 1992 Emad Salem is terminated, he's off the payroll. That
13 should have been and would have been the end of the story,
14 but six months later, on February 26, 1993, the World Trade
15 Center exploded, and you can imagine the panic within the
16 Joint Terrorist Task Force. You can imagine the pressure on
17 the FBI to get out and make arrests and solve the crime.
18 But you don't really have to imagine it, because Agent
19 Whitehurst told it to you firsthand.

20 I want to show you three questions and answers.

21 "Q Did there come a time when you began to
22 experience pressure from within the FBI to reach certain
23 conclusions that supported the theory of the investigation?

24 "A. Yes, that is correct.

25 "Q In other words, you began to experience

1 pressure on you to say that the explosion was caused by a
2 urea nitrate bomb.

3 "A. Yes, that is correct.

4 "Q And you were aware that such a finding
5 would strengthen the prosecution of the defendants who were
6 on trial, who were going on trial in that case, correct?

7 "A. Absolutely.

8 "Q But the statements by Mr. Haldimann" --
9 that's the bomb agent that he met. "But the statements by
10 mr. Haldimann at that Christmas party where Mr. Whitehurst
11 was confronted by Mr. Haldimann you felt were a pressure
12 upon you to conform your results and to not hurt the
13 prosecution, correct?

14 "A. I knew there was a pressure on me."

15 So you don't have to imagine, you know what the
16 pressure was like within the Joint Terrorist Task Force to
17 solve that crime.

18 So Salem comes back at the end of February of
19 1993, and no one bothers to question or investigate why
20 Salem is admitted to the hospital three hours after the
21 explosion with a busted ear eardrum. How did this injury
22 occur? Did Salem have a cold? Was it the result of fasting
23 for religious purposes? Or was it just a coincidence? If
24 so, it was quite a remarkable coincidence. I mean, think
25 about it. According to Salem, according to Salem, who was

1 recorded in a conversation with John Anticev, according to
2 Salem the last time he saw Carson Dunbar, Salem was in
3 Carson Dunbar's office talking about how to build a propane
4 tank explosive device with M80's. The next time you hear
5 from the guy you learn that the World Trade Center and his
6 eardrum are both blown out at the same time, and nobody
7 thinks to ask a single question. Some special agents we
8 have here, guys.

9 You know why no one asked any questions? Because
10 people were scared to ask the questions and scared to hear
11 the answers. What if an FBI informant had been involved
12 with building the bomb that blew up the World Trade Center?
13 What if an FBI informant had figuratively or literally stood
14 by and watched six Americans die? Mr. Fitzgerald says it is
15 a cheap shot to suggest that Salem was involved. I say it
16 was a pretty cheap and shoddy investigation that said he
17 wasn't involved without asking a single question.

18 Is there anyone in this entire room who wouldn't
19 have immediately asked some questions about the eardrum,
20 especially when the guy with the eardrum calls up and asks
21 for a reward, demands \$200,000 and says: "I'll tell
22 everyone that the bomb was built by your confidential
23 informant, with the supervision of the FBI." That same man
24 is able to name the people that blew up the Trade Center
25 days within the explosion. You call that a cheap shot, Mr.

1 Fitzgerald? I call that a pretty cheap and shoddy
2 investigation.

3 Unlike Mr. Fitzgerald, I am not going to draw any
4 conclusions about Salem's involvement in the Trade Center.
5 I just don't have the facts. No one ever asked the
6 questions. I just don't know. But let's think about it for
7 a moment. What would have happened if Fares Khallafalla had
8 been at his union clinic in the early afternoon of February
9 26, and what if Fares Khallafalla had been admitted to a
10 hospital at 3:00 in the afternoon the day of the bombing? I
11 submit to you if that had happened he may well be sitting in
12 this room, charged with having been indicted with the actual
13 bombing of the Trade Center. Surely, the one thing you know
14 is that his medical records would have been blown up --
15 pardon the pun. His medical records would have been
16 enlarged to a size taller than he is and some prosecutor
17 would have been standing here saying to you, what do you
18 think, that was just a coincidence?

19 Add to this mix the possibility that Fares
20 Khallafalla was on tape saying I built the bomb with your
21 supervision. A busted eardrum and a confession. The
22 government would have argued that that adds up to a
23 conviction. Think of how they would have laughed and
24 sneered if I had called that a cheap shot.

25 Instead the prosecution here applies the most

1 warped of double standards. Salem with a busted eardrum and
2 a possible confession is summarily cleared of any
3 involvement in the bombing, no questions asked. Cheap shot,
4 says Mr. Fitzgerald. On the other hand, Fares Khallafalla,
5 with no busted ear, no confession and no connection to any
6 of the Trade Center bombers, is charged by the government
7 with being a member of the jihad seditious conspiracy which
8 is responsible for that very bombing.

9 Am I nuts or does the government have this
10 backwards? Where is the evidence that the World Trade
11 Center bombing is connected to any person in this room other
12 than possibly Emad Salem? There is no evidence linking
13 Fares, but he is on trial for being part of that conspiracy.
14 There is some evidence linking Salem, and he is off
15 somewhere counting his money.

16 The stronger, more compelling inference is
17 ignored and the weaker, clearly absurd inference ends up in
18 an indictment. I call that a cheap shot, and I ask you,
19 when the judge charges you on multiple conspiracies, and you
20 will hear that language and you will have the charge in
21 front of you, I ask you to ask yourselves whether or not
22 that wasn't a cheap shot.

23 Instead of doing the most basic of
24 investigations, without asking a single question, the FBI
25 pushed hard and fast for easy, simple solutions, the truth

1 be damned. Any 11-year-old would have asked more questions
2 than the entire Joint Terrorist Task Force put together.

3 Remember when Mr. Fitzgerald took that microphone
4 and went around the room and pointed to each one of the
5 defendants as to what they did? I wish he had the agents in
6 the room so that we could walk around and point to each one
7 of them and say what did you do, what did you ask, what was
8 your part in the investigation? But they are not here.

9 I think that all of us, and I think it is quite
10 unfortunate but I think that all of us have developed a
11 certain cynicism about law enforcement. We look at Waco, we
12 hear about Ruby Ridge, we listen to the Fuhrman tapes, we
13 know about the Rodney King beating, and, you know what, we
14 are no longer shocked. But still, weren't you a little bit
15 surprised when you heard Dr. Frederick Whitehurst, the
16 former dean of the FBI bomb lab and the only person who, I
17 submit, deserves to be called a special agent? Weren't you
18 a little bit surprised to learn that Dr. Whitehurst would
19 have been ordered by the FBI to conform his results to
20 support a theory of prosecution, that he would have been
21 ordered, ordered to weed out anything inconsistent with
22 innocence?

23 Could you have imagined that Fred Whitehurst, one
24 of FBI's own -- we are not talking about some defendant that
25 the FBI believes did it so it's OK to bend the rules, the

1 ends justify the means, but one of their very own would have
2 been pressured and physically threatened into lying. Could
3 you have imagined that Fred Whitehurst would have had to
4 have risked everything to write a memo asking for
5 clarification as to whether or not it was OK to lie.

6 Answer. This is Dr. Whitehurst speaking: "That
7 was the reason I wrote the memo requesting that Mr. Hicks
8 clarify our position on biassing reports." Our position is
9 the FBI's position, and biassing is just a fancy word for
10 lying. "That's the reason I wrote the report requesting
11 that Mr. Hicks clarify our position on biassing reports. I
12 wanted to know if by not biassing my reports I was breaking
13 any federal rule or any FBI regulation. It was such a
14 strong pressure, I thought maybe I'm wrong about this.
15 Maybe there is a reason I am supposed to bias my reports. I
16 didn't know what it was. The memo, I never received an
17 answer from."

18 Could you have imagined that Dr. Whitehurst would
19 have been forced into the embarrassing position of having to
20 urinate into a bottle just to prove to the FBI's own
21 scientists that they were reaching false conclusions, that
22 he had to do that to stop the rush to judgment?

23 Yes, the correct results were ultimately
24 presented to the World Trade Center jury, but why? The
25 reason is:

1 "Q Let me interrupt you for a moment. Did
2 you and Mr. Burmeister actually threaten to expose the
3 conclusions in court?

4 "A. Yes."

5 Yes, the conclusions were ultimately presented to
6 the World Trade Center jury, but only because of the courage
7 of Dr. Whitehurst, and, as I often say, no good deed goes
8 unpunished. Dr. Whitehurst's reward? You know the answer.
9 He is a trainee in paint chips, the former dean of the FBI
10 explosive bomb unit. He taught people internationally, he
11 taught state people, he taught local people, he taught all
12 the FBI agents. He's a trainee looking at paint chips. The
13 same organization that told Whitehurst to lie, to get a
14 program, to get a conviction and the truth be damned, the
15 same FBI, the same Joint Terrorist Task Force then not only
16 ignored Emad as a suspect, they turned to him to salvage
17 their personal and professional reputation. What's the
18 expression? They left the fox in charge of the hen house?
19 The World Trade Center had exploded. The FBI was scrambling
20 hard. The rush to judgment is on, and Emad Salem seizes the
21 moment.

22 As you know, I am fond of saying, timing is
23 everything, and whether he was good or just lucky, the one
24 thing you have to tip your hat to him is, the man had
25 timing. He dusts off that old safe house scenario and he

1 starts thinking about the big sting. It's Paul Newman,
2 Robert Redford and Emad Salem part two, the big sting, the
3 Egyptian connection. I'm not selling potatoes here, he
4 tells the agents. He manipulates and he controls the
5 agents. They are not running him, he's running them. And
6 you know how you know? 'Cause he's repeatedly threatened
7 them that if anything bad should happen to him, he is
8 sending his tapes to CNN. In other words, you better join
9 me 'cause you surely can't fight me.

10 So the stage is set. Back into the Muslim
11 community Salem goes, and who does he happen upon? Siddig
12 Ali. And I will say it one last time: Timing is
13 everything.

14 Emad Salem had spent a year trying to set up the
15 safe house scenario but nothing had happened. But he
16 remained a true believer and he knew surely as Snow White
17 did that one day his prince would come. Siddig Ali, my
18 prince, my emir. No better part ever took his place in a
19 high stakes chess game. Here Siddig Ali, a man who views
20 himself as one of Islam's greatest figures. He is the man
21 who would be king. He is General Patton, he is Albert
22 Einstein, he is Donald Trump all rolled into one. He
23 describes himself as a commander of men, men who he says I
24 have trained by torture, I have put spikes in their eyes, I
25 have tied them to trees and sprayed them with poisonous gas.

1 I have forced them to dive through poisonous water, through
2 18-inch pipes.

3 Siddig Ali who meets people and tells them he has
4 a master's degree from NYU. Siddig Ali who says I could be
5 a millionaire but if they offered me the presidency of RCA
6 or Sony, I would turn them down. He tells Emad Salem I made
7 \$27,000 a month as a translator. I have an uncle in the
8 Sudan who is a millionaire.

9 You know what, when you listen to Emad Salem, he
10 begins to look a lot like Siddig Ali, and when you look at
11 Siddig Ali, he begins to look a lot like Emad Salem. Emad
12 Salem says I know Muammar Qaddafi of Libya. He tells that
13 to the FBI. Remember all that false information about
14 foreign leaders he knows? He says I know Qaddafi of Libya.
15 You know what Siddig says? He says I can top that. I know
16 Qaddafi personally and I know he drives an Alfa Romeo.
17 Salem says, I had a career as a bodyguard for Sadat. Siddig
18 says you ain't seen nothing yet. I assassinated some guy
19 Francis Dane. And Dane is out there alive and walking
20 around.

21 Both these guys have millionaire relatives.
22 Salem has his Egyptian military friends, Siddig has his
23 close and personal Sudanese contacts. Salem's been shot in
24 the head, the stomach and the leg, and Siddig has been
25 trained on torture.

1 Siddig has these dedicated suicidal followers,
2 including some guy who is going to leave the United States,
3 go to the Sudan, steal a fighter plane. Then he is going to
4 take that fighter plane, fly it into Egypt, dive bomb it
5 into the presidential palace and parachute out at the last
6 moment. And Salem says I can help you, I know the guys who
7 can knock out the radar and I know the guys who can pick him
8 up as it parachutes out.

9 They both want to be big shots. It must be like
10 looking in the mirror.

11 Brick by brick, delusion by delusion, Siddig has
12 built himself a fairy tale castle and inside he's the king,
13 he's the emir. But outside we know who the real Siddig Ali
14 is. He was becoming more and more alienated in the mosque.
15 He was being accused of wanting a title. He was being
16 suspected of being an FBI informant. He hadn't worked
17 steadily in several years. He couldn't afford food in his
18 house for two weeks. A master's degree from NYU? No, but
19 he did finish a computer programming course at the Albert
20 Merrill School. Earning \$27,000 a month? I don't think so,
21 because he has filed for bankruptcy, owing over \$39,000.

22 Here the emperor not only has no clothes, the
23 emperor has no credit.

24 It is this Siddig Ali, it's the real Siddig Ali
25 that Salem stumbles upon, and this Siddig Ali is slowly

1 losing his grip and cannot deal with his failure.

2 Haggag, as we know, who testified here, was
3 Siddig's best friend, and Haggag is holding Siddig together.
4 But in May of 1993, Haggag leaves to go on a pilgrimage, and
5 who steps in to take the place of a new best friend: Emad
6 Salem.

7 And, as I have said before and as I think I said
8 I said for the last time, timing is everything. Salem goes
9 to work on Siddig. Do you remember what he said to him?
10 You are a hot young youth. You have big strong muscles.
11 You are my emir. I am here to serve you. I am withering
12 next to you. You are so handsome. You can just hear him
13 saying it.

14 Salem pushes Siddig over the edge to get his safe
15 house, the safe house that he has wanted and planned for
16 since 1992. Don't worry, he tells Siddig, leave -- and this
17 is a quote -- leave the house and the money to me. And when
18 Siddig resists telling Salem, quote, "Wait a little, this is
19 just talk," Salem says, "By God, sheik, I want to start, my
20 hand is itching." That's a quote. I bet you those hands
21 were itching. They were itching for the million dollars
22 that were coming his way.

23 One of the paralegals in this case, not
24 Mr. O'Brien but one of the paralegals in this case wrote a
25 poem that kind of sums up Salem and it goes like this: I

1 couldn't believe even though I saw it myself. I work all
2 day long and my taxes pay for that man's wealth. I have to
3 bill 50,000 hours to take home what he made. But when your
4 word's worth nothing, talk is cheap, unless you got a tape
5 to trade.

6 It may not be great poetry. It sounded better
7 put to a guitar. But I will tell you that the sentiment
8 rings true.

9 Salem saw opportunity where you and I and even
10 Haggag would have seen something pitiful.

11 (Continued on next page)

12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Siddig is the kind of guy who, if left alone, you
2 find on Sunday morning standing on a soap box in the park
3 speaking out against the injustices of the world.

4 Salem's the kind of guy that walks over, puts his
5 arm around him, befriends him, says: Let me take you out
6 and buy you a meal, flatters him, hands him a gun, and then,
7 not only encourages him, gets down on his hands and knees
8 and begs him to act out his anger.

9 Why? So he can step in, call the police, solve
10 the crime and get the reward. I am not here to defend
11 Siddig Ali, but it is very important to understand how the
12 safe house scenario came to be. It is a plan that was
13 hatched out of greed, and it was set in motion by a crazy,
14 but persuasive pawn.

15 To cement their friendship Salem gives Siddig a
16 ring and a promise that, no matter what, they will always be
17 together. Didn't keep that promise.

18 Siddig didn't have any money and he didn't have
19 any experience. He had no knowledge of guns, no knowledge
20 of explosives. He didn't know the difference between C-4
21 and bullet powder. Salem explodes a firecracker and
22 convinces Siddig, easily, that it is a test bomb.

23 And Siddig doesn't have any contacts either. He
24 claims to know important people. He's got contacts inside
25 the Park Avenue armory. Only, as you know, the armory is

1 not an armory. It is a high-priced flea market, selling
2 antiques. He claims to be able to get a million dollars in
3 counterfeit money, nothing happens.

4 He claims he's got contacts within the UN, both
5 in the Sudanese and the Egyptian missions. Siddig promises
6 for two months to get photos, blueprints, diplomatic license
7 plates, a diplomatic van and an entry card to the UN parking
8 lot. Two months later, nothing. He couldn't even get a
9 Xerox of the "you are here" elevator signs.

10 Finally, the day before the arrest, Siddig turns
11 to Emad and says, "Emad, if you have a camera, why don't you
12 go do it." Some contacts.

13 After being six weeks together, every day for
14 hours and hours, Salem steps in and says, out of
15 frustration, I thought Ahmed Yousef -- remember who Ahmed
16 Yousef is? That's the name of that guy from the Sudanese
17 mission that Siddig knows and is going to help him.

18 Salem says: I thought Ahmed Yousef was helping
19 you. When Siddig is forced to admit, and I'm quoting, "I
20 cannot talk to these people," Salem steps in and says, "Let
21 us do, let us go one step at a time instead of dreaming and
22 flying."

23 Let us do something. It is as simple as that.
24 You know when that conversation happens? Ten days before
25 the arrest. Let us go one step at a time instead of

1 dreaming and flying. Ten days before the arrest.

2 Siddig Ali promises that he can get money from
3 Abu Dhabi. I don't even know where Abu Dhabi is. I presume
4 most of us don't know where Abu Dhabi is, and it doesn't
5 even matter because the government shows you some faxes
6 recovered in Emad Salem's apartment and says, "Aha, this
7 proves that Siddig Ali has contacts in Abu Dhabi."

8 Well, this is a variation of a story that Ms.
9 Stewart told you. The story I will tell you is this: A man
10 calls the police and says: Help, help. Bruce Willis has
11 just come in, tied me to a chair, ransacked my apartment and
12 taken all my money.

13 The police come over.

14 They go: Bruce Willis the movie star?

15 He goes: Bruce Willis the movie star.

16 They go: He came into your apartment, tied you
17 to a chair, ransacked the apartment and took all your money.

18 And the guy says: Yeah.

19 They go: You got any proof of this?

20 And the guy goes: Yeah, there's the chair.

21 Now, it's a variation of the pen and the bear
22 story, but you get the point.

23 The point is Siddig Ali says I got these very
24 important contacts in Abu Dhabi who are going to send me
25 millions of dollars to do bombing in America, and the

1 government says, here's the chair. It's the fax. We know
2 he's got those contacts. No one ever responds to the fax.
3 No one ever sends a penny.

4 Siddig Ali talks about killing Saddam Hussein.
5 That is the guy over in Iraq. And you know what Salem says
6 to him: No. Leave that for another operation. There's not
7 going to be much money coming Salem's way if Siddig goes to
8 Iraq to assassinate Saddam Hussein.

9 Siddig wants to smuggle weapons in from Jordan,
10 and Salem keeps him on track. This is another project he
11 says. Basically, I don't want to branch out. And when
12 Siddig suggests killing Boutros Ghali, you know what our
13 man, Emad Salem, says: "To kill just one person, man, I'm a
14 busy person."

15 Over and over Salem says to Siddig: "We must
16 concentrate and accomplish."

17 "We must stay with the issue."

18 "You must focus."

19 Why? So that he can capture the head of an elite
20 paramilitary cell?

21 No. The answer to why he tells him to keep going
22 and going and going is because if Siddig Ali abandons the
23 plan, Salem loses the money. It's like a used car salesman.
24 There's no commission unless you sell the car. You got to
25 wax it, you got to wash it. The fact that it has no tires

1 and all the screws are loose, that's not Salem's problem.
2 He's trying to move that car off the lot.

3 Siddig says at one point within days of the
4 arrest, I'm thinking of going to the Sudan. And you know
5 what Emad Salem says: "What's that going to solve?"

6 When Siddig on June 12, 11 days before the
7 arrests says, "I think I will go to the Philippines to do
8 jihad there," Salem pleads with him, "Don't leave me here
9 by myself."

10 "Don't leave me here by myself."

11 Why? Because if Siddig Ali leaves for the
12 Philippines, on that plane with him is Salem's
13 million-dollar ticket.

14 And what does Salem want from his new best
15 friend? What is the price of the friendship? Siddig's only
16 got to bring one thing to the table: Bodies. The bounty
17 hunter wants bodies.

18 Salem says over and over again: Bring me your
19 troops. I need men to guard the door, lift the equipment,
20 listen to the radio, to hammer the nails, to get the wire.

21 He even promises, this is a personal favorite of
22 mine, he even promises, and this is May 19, this is when
23 they are getting the safe house, it is a week before Fares
24 goes to the safe house for the first time. Salem says: God
25 willing, when we take this place and start working there,

1 whoever comes in must bring food with him.

2 Siddig says: OK.

3 Salem says: To feed the brothers.

4 And Siddig says: Of course.

5 Salem says: I will make some eggplant for the
6 brothers which will calm their head. It's going to be a
7 wonderful gathering.

8 Siddig says: Yes, of course.

9 And Salem says: It's going to be a spiritual,
10 intellectual, emotional and a jihady get-together.

11 Bring me people. I will make them eggplant, we
12 will have a spiritual and intellectual and emotional jihady
13 get-together.

14 Salem testified in an answer to a question by me:
15 I pretended to be upset so that Siddig would bring me his
16 people.

17 And when I called Agent Mahaffey to the stand --
18 that was the man who came in to explain how they came to
19 give Salem back his timer because Salem had stamped his
20 little feet and said, I'll close down the safe house unless
21 I have my personal timer returned to me.

22 Mahaffey says at one point --

23 Sorry.

24 (Pause)

25 Oh, I was doing so well, too.

1 All right. Hold on for one second. I know I
2 have it here.

3 OK. Salem and Mahaffey are having a conversation
4 an Mahaffey says: Let's play the scenario.

5 And Salem says: Can I talk, please?

6 And Mahaffey says: Go ahead.

7 And Salem says: When this guy, and when this guy
8 will enter the place today, and he's talking about the safe
9 house, we have three individuals because I requested an
10 extra one.

11 Mahaffey says: You requested what?

12 And Salem says: I, I requested an extra guy,
13 extra guy to come with him.

14 And Mahaffey as an agent should and would say:
15 You requested or did they offer?

16 And Salem said: No. I requested. I said two
17 persons not enough to help me, I need three persons to help
18 me.

19 A mere seven days before the arrest in this case,
20 one short week, Salem says out of disgust, again this is a
21 quote, he says this to Siddig: Don't you have any troops?
22 Who wants this heartache? Are we playing games here? That
23 is the elite terrorist paramilitary cell that Salem is
24 stepping in to uncover.

25 Why does Salem want all these people? Salem

1 wants all these people in part because Anticev himself has
2 given Salem his marching orders.

3 Special Agent John Anticev said: We don't want
4 to do the safe house scenario for just one guy.

5 Anticev says: I don't want it, you know, now,
6 we're just talking, just talking, me and you. This is
7 another one of those "not official here, we're just talking
8 me and you."

9 Salem says: Right.

10 Anticev says: I don't want to take down just one
11 person.

12 In other words, don't give us just Siddig Ali.
13 Bring us bodies. If we're going to pay you a million
14 dollars, we want you to fill up the courtroom, or at a
15 minimum we want you to give us that back table. That's
16 Anticev's instructions to Salem.

17 And Siddig Ali was in a unique position to help
18 Salem do that. Siddig Ali was what's called a Judas goat.
19 A Judas goat is the goat that leads a heard of sheep into
20 the slaughter house. The Judas goat itself has, for a goat,
21 leadership qualities. The sheep will follow it. So the
22 Judas goat is never slaughtered. The sheep go in, they get
23 slaughtered, and the Judas goat goes out the back to lead in
24 another flock of sheep. It can be used again and again.
25 It's used to bring another lamb, the way Siddig brought

1 Fares into the safe house.

2 That's what Siddig Ali is. He's a Judas goat.
3 For two and a half months Siddig Ali is not arrested. He's
4 just used to lead those lambs like Fares into the safe
5 house. He has leadership qualities. He has the verbal
6 skills to lead a Fares Khallafalla into the safe house.

7 That's Siddig Ali.

8 The government's own witness, Haggag, who was
9 Siddig Ali's best friend, this is how he described Siddig:

10 "He was somebody you could take to, easy to
11 like."

12 "He had charm and charisma."

13 "He appeared very educated. He was very
14 articulate."

15 "He appeared very dedicated to Islamic causes.
16 He wanted to be recognized as an important person within the
17 Muslim community."

18 "He was a good speaker. He lectured often about
19 Bosnia and the responsibility of Muslims to be trained to
20 defend themselves and their Bosnian brothers and sisters."

21 Siddig Ali, according to Haggag, spoke often
22 about politics, but even Haggag, his best friend, the only
23 person Siddig trusted, thought he was just talking. His
24 best friend saw Siddig Ali every day for years and didn't
25 realize to the very end that Siddig was crazy.

1 My point is that Haggag, who knew Siddig best,
2 Haggag, who is educated, a member of the board of trustees
3 at his mosque, Haggag, who was with Siddig every day, was
4 taken in by that charm and charisma.

5 As Mr. Bernstein said, you saw the New York One
6 interview. I put that interview in not to say to you Siddig
7 Ali is innocent. I put it in so that you could see that
8 this guy could look you right in the eye, straight in the
9 eye, put on that million-dollar smile, be extremely
10 articulate, and that you could see firsthand how in another
11 time and another place he was somebody that was easy to
12 like. He was a Judas goat.

13 Siddig got Haggag to go to training. Siddig got
14 Haggag to give him his car so that Siddig could use it to go
15 buy weapons. Siddig even got Haggag to go with him to look
16 for weapons.

17 "He put some pressure on me," testified Haggag.

18 "He changed the plan without consulting me,"
19 testified Haggag.

20 Haggag testified that eventually he sensed that
21 Siddig was losing control.

22 "I tried as much as I could to control him."

23 He was concerned that Siddig might get other
24 people to do things without their knowing what Siddig
25 intended to do.

1 He said: "I didn't want Siddig to hurt the
2 Sudanese brothers who trusted him."

3 He didn't say the Sudanese brothers were members
4 of a well-oiled terrorist paramilitary cell, committed to
5 destruction and murder. He said that the Sudanese brothers
6 trusted and respected Siddig:

7 "Q And you were concerned, were you not, that
8 he, Siddig, might get other people to do things for him
9 without their knowing what it was he intended to do,
10 correct?

11 "A. Yes."

12 The government wants you to convict Fares
13 Khallafalla because Fares should have figured out what
14 Siddig intended to do when Haggag said that he was worried
15 that Siddig could get people to do things without their
16 knowing what Siddig intended to do.

17 Haggag didn't figure it out for months and
18 months. Haggag went to Pennsylvania, crawled on his stomach
19 in the middle of the night with bullets being sprayed
20 overhead to take over a power plant.

21 And the government accepts the fact that
22 Pennsylvania was training. Yet Mr. Fitzgerald comes to you
23 and says that you should be convinced, beyond a reasonable
24 doubt, that:

25 One, Queens wasn't for training.

1 Two, Fares knew it wasn't for training.

2 Three, that Fares knew what Siddig intended to
3 do; and,

4 Four, Fares intentionally and willfully joined a
5 conspiracy to bomb and wage a war against America.

6 Haggag didn't figure it out, not really, even
7 though he was Siddig's best friend, even though he was
8 educated, even though he spent every day with Siddig. Yet
9 Fares is supposed to have doubted Siddig and Salem, who were
10 both articulate, well-respected members of his community.
11 He was supposed to have figured out the con game, even
12 though no one ever told Fares what the targets were and no
13 one ever told Fares that any action was supposed to occur in
14 America. Fares was supposed to have figured out not only
15 the bait, but the switch.

16 I submit all Fares knew was that Siddig had
17 lectured repeatedly regarding Bosnia. And all he knew is
18 contained in the ride out to the safe house on May 27.

19 This concludes the first part of my summation,
20 and I think I've discussed amply who Emad is, and who Siddig
21 is. You have seen one, you've seen them both.

22 And you know whose plan it was. It was Salem's
23 plan. He had it back in 1992. He said repeatedly: I got
24 to do it the Middle Eastern way. I got to be me. I can't
25 play by the rules. I got to do it the Middle Eastern way.

1 As I close, I want to leave you with one final
2 quote. When the safe house was going on, that same agent,
3 Mahaffey, in the same conversation that I just referred to
4 said to Salem the following:

5 In fact -- to Salem he's saying this -- you have
6 a plan in the back of your head and you were going to wait
7 till, ah, to get his input, Siddig's input into it, but
8 you're thinking right now that when you build the thing,
9 when the groceries come together and you build the thing,
10 you thinking about seeking his help.

11 Who's the "you"? The you is Emad Salem.

12 Mahaffey when the safe house is going on says:
13 You, Emad Salem, have a plan in the back of your head. You,
14 Emad Salem, are going to wait and get Siddig's input into
15 your plan. You, Emad Salem, are thinking about building the
16 thing. And you, Emad Salem, are waiting to get his help
17 after you've built it.

18 Whose safe house is it?

19 With that, and with the court's permission, I'd
20 like to adjourn.

21 THE COURT: All right.

22 Ladies and gentlemen, we are going to break for
23 today. Tomorrow we are going to start, if we can, early, a
24 half hour early, 9 o'clock, so that we can be sure to try to
25 keep the schedule that I told you yesterday we would try to

1 keep to. I will ask you, please, not to see, hear or read
2 anything about this matter or any related matter. We will
3 see you tomorrow hopefully at or near 9 o'clock.

4 Good night.

5 (The jury was excused)

6 THE COURT: Mr. Wasserman, do you have the list
7 of exhibits that were to be put to the jury for them to
8 decide on the issues of Arabic. You said you had spoken to
9 the government about that.

10 MR. McCARTHY: Your Honor, I don't know if
11 Mr. Wasserman has a list. We went through last night, and
12 this is what we came up with.

13 MR. WASSERMAN: I will be glad to look at it. I
14 did look at the transcript this morning, but I didn't have
15 time to make notations.

16 THE COURT: Why don't you go over it and give it
17 to me tomorrow on the break.

18 Mr. Jacobs?

19 MR. JACOBS: I had a dispute on some other than
20 the CM32, the one word that your Honor is going to charge.
21 But I didn't bring them up on my case, so I have withdrawn
22 it. There is some I confronted the interpreter with.
23 Obviously, I didn't put anything in, so I am not asking for
24 that.

25 THE COURT: OK.

1 MR. McCARTHY: Your Honor, Ms. Stewart and I
2 agreed last evening, 311, which is CM10, the jury was asked
3 to listen to it. It was not for a translation dispute.
4 They were asked to listen to a conversation --

5 THE COURT: I am interested only in the tapes
6 that they were asked to listen to for the purpose of
7 deciding what was said in Arabic, and we will talk about
8 that on the break tomorrow.

9 MR. McCARTHY: Thank you.

10 (Proceedings adjourned to Friday, September 15,
11 1995 at 9:00 a.m.)

12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

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

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

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

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

S5 93 Cr. 181 (MBM)

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

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

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

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

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

Defendants.

-----x

September 15, 1995
9:10 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

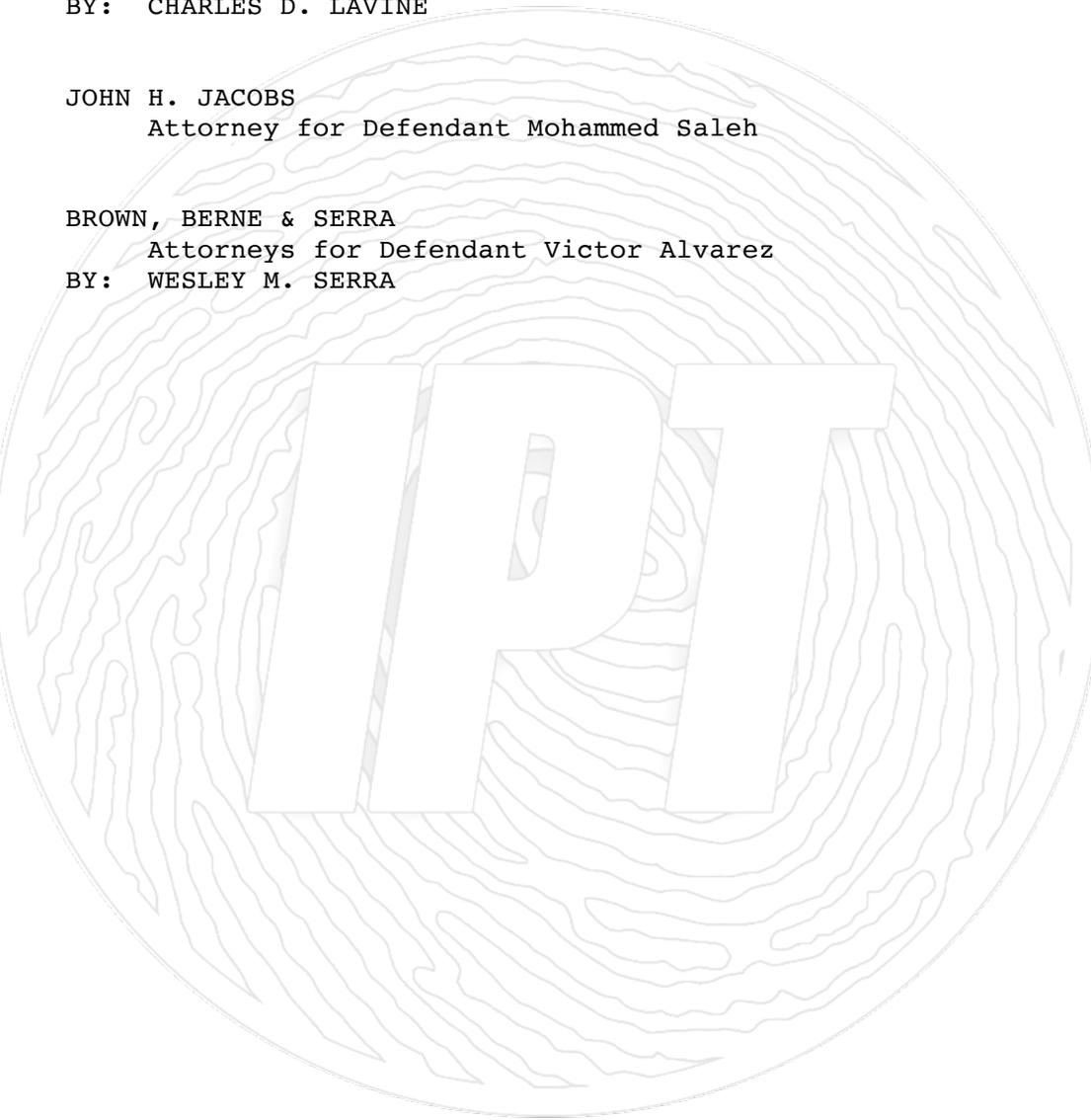
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Trial resumed)

2 (Pages 19644-19648 sealed)

3 (In open court; jury not present)

4 MR. BERNSTEIN: Your Honor, may I step out and
5 Mr. Wasserman will cover for me.

6 THE COURT: Is that satisfactory, Mr. Abdelgani?

7 DEFENDANT AMIR ABDELGANI: Yes.

8 THE COURT: Thank you.

9 (Jury present)

10 THE COURT: Good morning, ladies and gentlemen.

11 JURORS: Good morning.

12 THE COURT: Ms. Amsterdam.

13 MS. AMSTERDAM: Good morning, your Honor.

14 You know that nightmare we all have still, even
15 though we are grownups, about losing our homework or
16 forgetting our locker combination? Imagine the fear you can
17 have if you wake up in the middle of the night and you
18 remember that you forgot your summation.

19 Good morning again. We are now into part 2 of my
20 summation, which as you recall yesterday, is the longest of
21 the three parts, but the good news is that the third part is
22 my favorite part, the agents, and I hope that you will enjoy
23 that part.

24 The second part that we have to talk about is
25 Fares, what Fares knew, what Fares said. And there is going

1 to be four sections to this part of the summation, so you
2 can pace yourself. The first part is that we are going to
3 talk about the tapes, the tapes we have and the tapes we
4 don't have and what happened tooth tapes. The second part
5 of this part of the summation is that we are going to talk
6 about the first night in the safe house, the night of May
7 27. The third part is we are going to talk about the trip
8 to Canal Street. And the fourth part is, we are going to
9 talk about the events of June 19 through 21, which
10 culminated in Fares walking out on Siddig and Salem.

11 First we are going to discuss the tapes, and, as
12 I have said repeatedly, we need to look at not only what
13 tapes we have but what tapes were destroyed.

14 Before we begin, I want to remind you of
15 something Mr. Fitzgerald said. He said that the government
16 should not ask you to judge a defendant based on just the
17 words of Salem or Siddig. As Mr. Fitzgerald said, and I
18 quote, "When you focus on the tapes, watch how much of the
19 evidence depends on the words out of the mouths of the
20 defendants, what they said and what they agreed to do."

21 You know what? In Mr. Fitzgerald's summation he
22 focused on what the con man Salem said, what the Judas goat
23 Siddig said, or what many of the other defendants said. But
24 I don't think he quoted to you a single passage that Fares
25 Khallafalla said. So I want to spend some time talking

1 about what Fares said and what Fares did.

2 Before I begin, I want to stop and make a point
3 here, and it is an important point to be made, I think. Mr.
4 Fitzgerald took a number of conversations, conversations
5 that go on for pages and pages without any attributions to
6 Mr. Khallafalla. Attributions is just a fancy word for
7 speakers. There are no attributed lines that
8 Mr. Khallafalla is saying during these parts of the
9 conversation. But he concludes a very long passage and he
10 will end up with, and Fares Khallafalla was present for that
11 conversation.

12 If you check your notes you will see how many
13 times you made a note, and Fares Khallafalla was present.
14 Mr. Fitzgerald did that again and again. But he doesn't
15 show you at any time where Fares is during part of that
16 conversation. He doesn't show you, for example, if Fares is
17 eating or praying or talking to someone else. He doesn't
18 show you whether the conversation was in English or in
19 Arabic, or whether the conversation was a lecture or a
20 conversation that was private and being whispered to another
21 person.

22 In Government's Exhibit 352, which is the meeting
23 in Siddig Ali's house on June 19, 1993, Fares Khallafalla is
24 the last person to arrive. He enters on page 79 and he
25 says: Did you guys pray yet? And you don't hear another

1 word from him until page 110.

2 Isn't it reasonable to think that when he said
3 did you guys pray yet, and Siddig said yes we have, and you
4 don't hear from him for another 30 pages, that he might have
5 been praying? Yet Mr. Fitzgerald goes through and describes
6 an entire conversation that takes place between Salem,
7 Siddig and Mr. Victor Alvarez, and ends up saying, and Fares
8 Khallafalla was present for that conversation. He even adds
9 it to his chart of important exhibits that you should
10 consider for Fares Khallafalla. Here it is, June 19, pages
11 84 to 85, 106 to 117. Fares walks in at 79 and says have
12 you guys prayed yet, and you don't see him again to page
13 110. And Mr. Fitzgerald says he was present for that
14 conversation. Present, participating or praying? You know,
15 there is a difference.

16 Mr. Jacobs and I sat at this table, which is
17 what, two feet away from you, for many, many, many days, and
18 we talked among ourselves -- we even talked loudly at times.
19 But I daresay that no one could have said you participated
20 in that conversation. There is a difference, and I ask you,
21 let's say focused on what Fares said and what Fares did, and
22 not try to blur all the defendants into a composite safe
23 house defendant.

24 A friend of mine told me a couple of years ago,
25 he confessed to me that he had always wanted to run the New

1 York marathon. This guy is no athlete, and if you knew him
2 you would know he was never going to spend the time to
3 train. What he confessed to me was that years ago when it
4 wasn't such a big event, he once went over to the park and
5 with a mile to go before the end of the race, he pinned a
6 number on his chest, he joined the group, and he raced over
7 the finish line. And he was greeted by the same shouts and
8 the same applause and the same hurrahs that greeted all the
9 other true runners.

10 My fear from the beginning of this trial was that
11 the government would pin a number on Fares Khallafalla and
12 try to blend him into a group and that you could be tricked
13 into seeing him as just another one of the runners.

14 I submit to you that if the government can't
15 prove to you that Fares was part of a conversation or
16 understood the conversation or agreed with what the other
17 said, I ask you not to let them pin a number on him and make
18 him into one of the runners. He is an individual and he is
19 entitled under our laws to your individual consideration
20 about his case.

21 Let's talk about the tapes. I apologize. I feel
22 as if they ought to give this to me intravenously.

23 Mr. Fitzgerald in the very beginning of his
24 summation said it's not whether you like Emad Salem but
25 whether you believe him. And he went on to say that one of

1 the things you should use in evaluating Emad Salem's
2 believability is whether or not he was corroborated. Mr.
3 Fitzgerald says that corroboration means caught on tape.
4 Caught on tape. Let's think about that for a moment. I
5 don't know how many of you have young children or have had
6 young children, but imagine for a moment a home video of
7 your seven-year-old running into the kitchen. You can see
8 in the home video him coming into the kitchen, he climbs up
9 on the stool, he puts his hand in the cookie jar, he pulls
10 out a cookie. There he is, caught on tape, caught
11 redhanded.

12 Step back for a moment and imagine that before
13 the video camera went on he actually went into the other
14 room and said mom, could I have a cookie? And mom said
15 sure, go get the cookie.

16 The home video that you see of him in the kitchen
17 climbing up on the stool, putting his hand in the jar and
18 taking the cookie, that home video wasn't tampered with,
19 nobody took a razor blade, nobody spliced the video. But in
20 a trial for cookie theft it is as misleading and as false
21 and as distorted a view of the evidence as any spliced tape.

22 In a nutshell, I use this example to show you
23 what the significance was of the outrageous misconduct of
24 the agents and Salem and the taping process that they used.

25 Nancy Floyd told Salem in the now infamous

1 Khallafalla C, but anyway, I guess it is no problem for you
2 to tape whatever you want to tape or whatever. That, that,
3 those tapes are yours and they will never become part of the
4 evidence.

5 She told him that he could do anything he wanted
6 to do with the tapes. He could erase them, he could throw
7 them out. And to make sure he got the point, Agent Floyd
8 said, you know those tapes you gave me, the ones I made
9 copies of? I'm going to probably throw some of them away.
10 That was an ongoing investigation and another special agent
11 of the FBI, Nancy Floyd, was telling Emad Salem that she was
12 probably going to throw some of those tapes away. That's
13 the message she was giving Salem: You can erase, you can
14 alter, you can toss them.

15 John Anticev, another special agent of the FBI,
16 said it's not me talking official here, but if you happen to
17 turn on one of your gadgets, we will keep it on the side.
18 Meaning we will tape the conversation when mom says you can
19 get the cookie and we won't enter that into evidence.

20 Detective Louie Napoli knows enough to pat down
21 Salem for a wire. Napoli knows that because Salem himself
22 told him in a car that he had hundreds of tapes, and that
23 was just fine by Louie Napoli.

24 To borrow a phrase from Mr. Fitzgerald himself,
25 hear no evil, see no evil, speak no evil. That should have

1 been the motto of the Joint Terrorist Task Force, hanging in
2 their office, that's what it should have said. Hear no
3 evil, see no evil, speak no evil.

4 But it is not just the impropriety of the taping.
5 It's not just the matter of bending the rules. It's not a
6 matter of crossing your T's and dotting your I's. Uh, uh,
7 uh. It's a lot more evil and it's a lot more insidious than
8 that. Because Special Agent John Anticev sever said we can
9 cleanse the evidence to prevent the information from getting
10 into the hands of the defense attorneys.

11 Take a look at what your Special Agent John
12 Anticev said. I said to him:

13 Mr. Fitzgerald asked you about the Brady rule and
14 whether or not you had explained to Mr. Salem that
15 exculpatory evidence had to be turned over to the defense,
16 correct?

17 He says: Yes.

18 I say: Isn't that a fact that in that very same
19 conversation with Mr. Salem you told about cleansing
20 information so that the defense could not get it?

21 Yes.

22 The answer was yes?

23 Yes.

24 Cleanse the evidence, cleanse it, get rid of
25 anything and everything that undercuts your chances of

1 making arrests, get rid of anything or everything that
2 undercuts your chances of getting a conviction. Lose the
3 part of the video where mom says it's OK to take the cookie.

4 Dr. Fred Whitehurst was told to cleanse his
5 results and Emad Salem was told to cleanse his evidence.
6 Dr. Whitehurst sought honor and justice and he now examines
7 paint chips. Emad Salem sought money, fame and a book deal,
8 and Mr. Fitzgerald is right, he does now lead a new life.
9 But I submit to you it's a new and much improved one he is
10 leading. Dr. Fred Whitehurst went against the program and
11 was professionally if not personally destroyed. Emad Salem
12 embraced the program and was as handsomely rewarded as any
13 informant in the FBI's history.

14 When a lawyer writes his or her summation, you
15 know we like to turn to the world of art and literature and
16 get some fancy quote to make us look good to tell you. Mr.
17 Fitzgerald in his summation said he didn't want to use any
18 Shakespeare and he wracked his brain and looked for
19 something that you would appreciate, and he came up with the
20 example of Mr. Magoo. I am not putting him down. It was a
21 very funny example. But I think you are capable of handling
22 a little Shakespeare. In fact during the last nine months I
23 bet you there were plenty of times that all of you would
24 have appreciated that great line from Richard III which
25 goes, "The first thing we do let's kill all the lawyers."

1 How many times would you have appreciated that remark during
2 the last nine months?

3 But let me turn to another one of Shakespeare's
4 great truths. "Some rise by sin and some by virtue fall."
5 Salem rises by sin. Dr. Frederick Whitehurst by virtue
6 falls.

7 The World Trade Center exploded. The FBI wanted
8 quick results and its reputation restored. It was between a
9 rock and a hard place, as Mr. Fitzgerald would say. So they
10 rewrote the rules, and the message of the day in big, giant,
11 bold print was cleanse the evidence.

12 On his return appearance, his return guest
13 appearance called by Mr. Jacobs and me, Emad Salem came in,
14 and when asked this question, gave this answer. I said to
15 him: That you had repeated conversations not only with my
16 client but with the other defendants in this case about your
17 willingness to train them to go to Bosnia?

18 And Mr. Salem on August 29, on that witness
19 stand, said: Absolutely not, ma'am.

20 Let's take a look at what Mr. Salem said when he
21 originally testified back on April 4, 1995, before the issue
22 of the missing tapes and before the issue of Bosnia had
23 become so significant in this case. This is questioning by
24 me and this is what he said back in April on the stand.

25 Do you remember telling Mr. Khallafalla that you

1 also were not prepared to go to Bosnia?

2 I may have said that, he answered.

3 Do you remember telling him -- Fares. Do you
4 remember telling him that you were going to do your part,
5 however, to help the brothers by helping them train?

6 Yes, ma'am.

7 And he went on to say: We had conversation
8 numerous times with different members of this investigation,
9 that I am willing to help, I am willing to train the people
10 who want to get training.

11 Training, training. Remember how they keep
12 saying every time Mr. Fitzgerald's summation where as the
13 language about training, where as the language about Bosnia?
14 Here it is from Salem's own mouth.

15 We had conversations numerous times with
16 different members of this investigation that I am willing to
17 help, I am willing to train the people who want to get
18 trained. I did stated that numerous times, ma'am.

19 Question: So on other occasions you did talk to
20 people about your willingness to train them to go to Bosnia?
21 Bosnia, Mr. Fitzgerald, Bosnia. What's the answer?

22 Absolutely, yes, ma'am.

23 Where are those tapes? Before the issue of
24 Bosnia and the tapes was so significant, Emad Salem took the
25 stand and said he had talked to my client about going to

1 Bosnia, he had talked to my client about training him to
2 Bosnia, and we don't have a single one of those tapes.

3 Those were the tapes that were the bait. What
4 you have here are the tapes that represent the switch.
5 Salem got the message, cleansed the evidence. The Bureau
6 wanted arrests, they wanted convictions. The Bureau wanted
7 its reputation restored by stepping in and preventing the
8 day of terror. Salem wanted money. That's all he wanted,
9 money. A devil's pact was made. Do what you have to do to
10 make the case. It's OK to do a bait and switch. Just make
11 sure you cover your tracks. You can erase tapes, you can
12 throw them out. You can cleanse the evidence. Salem knew
13 what to do and he knew how to do it. He got rid of the tape
14 when mom says you can have a cookie.

15 It's easy. Either you start the video after
16 the -- let me start over. It's easy. Either you don't
17 start the video until the kid's inside the kitchen or, if
18 you happen to inadvertently record mom saying take the
19 cookie, you just erase that part. Or, if all else fails,
20 you can say the home Camcorder got squished.

21 Twenty agents were called in this case on the
22 defense case by John Jacobs and myself. They were called
23 not to distract you from the evidence but to focus on the
24 crucial issue of evidence being cleansed. The government
25 said in its summation that it was afraid that you would

1 think this case was a whole lot more complicated than it
2 really is. You know what? This case is a whole lot more
3 complicated than it really appears, and it is a whole lot
4 more complicated than the government is willing to admit.
5 If the government is afraid of anything, it's that you will
6 realize how complicated the issues are.

7 Imagine for a moment going into a restaurant.
8 You served a bowl of soup and you look down and inside there
9 is a dead roach. You call over the waiter. He takes his
10 spoon, he scoops out the roach and leaves the soup on the
11 table and says bon appetit. Now, are you going to eat that
12 soup?

13 The government served you up a bowl of evidence
14 and inside is some garbage-encrusted CM 17, some missing,
15 shredded, chopped up pieces of the Bosnia tapes, and a whole
16 heap of "cleanse the evidence." Your waiter Emad Salem
17 brings the soup over to you, and before you can even put
18 your spoon to the soup his trusted busboys, John Anticev,
19 Louie Napoli and Nancy Floyd, come rushing over and they
20 scoop out the offending CM 17, the offending Bosnia tapes,
21 the offending cleanse evidence. And your maitre d' Pat
22 Fitzgerald says enjoy your soup. Do you eat that soup? I
23 wouldn't, and I submit that you shouldn't. I submit that
24 you send it back, leave the restaurant -- and you know what,
25 don't pick up the check, because a million dollars is pretty

1 expensive soup.

2 Mr. Fitzgerald said that Paul Ginsberg, our tape
3 expert, found no cuts or tampering with the CM's, but think
4 about it. There are a hundred ways of manipulate tapes and
5 tape recordings other than physically cutting them with a
6 pair of scissors, and it is easy to do if you control the
7 taping process. That is what Salem needed and that's what
8 the agents gave him. It was a devil's pact. Let's not use
9 a backup transmitter like a Kel transmitter for the agents
10 to monitor the conversation.

11 You remember, I asked Napoli about that. Can't
12 you wire these guys up and have somebody sitting in a truck
13 so that you can listen to what's going on with the
14 informant? That's called a Kel transmitter. Uh, uh, uh, we
15 don't want to use one of those here. Let's introduce an
16 undercover as Salem's partner, then you can kind of have
17 control over the situation.

18 (Continued on next page)

19

20

21

22

23

24

25

1 But, as Emad Salem said, that would be a dumb
2 idea. Let's not use those Nagra white envelopes. In fact,
3 let's not keep any record of what tapes we give Salem or
4 what tapes we get back. Let's make sure we don't do
5 anything to insure the integrity of the taping process.

6 Instead, we'll give this guy, Emad Salem, this
7 guy who likes to do it his way, the guy who wants to do it
8 the Middle Eastern way, the guy who doesn't want to obey any
9 rules, let's give him total control over the process with no
10 accountability whatsoever.

11 He gets to choose which parts of the conversation
12 with a party he records. He can turn off the machine
13 anytime he wants. He can start the conversation in the
14 middle or he can stop it in the middle. He can even take
15 out his personal bug detector and check the walls on the
16 safe house.

17 Remember when Ms. London called James Goward, her
18 assistant, to the stand, and he had made a video of all the
19 things that Emad Salem had personally brought into the safe
20 house? There was a time that you saw Mr. Goward said, you
21 heard Mr. Goward say: And here's Emad Salem taking out his
22 bug detector and he's checking the walls.

23 Do you remember that?

24 Didn't that seem strange to you? Salem's alone
25 in the safe house, and he's got a bug detector, and he's

1 checking the walls. Why? Why is he sweeping the walls in
2 the safe house if he's got nothing to worry about?

3 I think if you think about it the answer will
4 become clear. He wanted to know where the microphones were
5 located. This way he could position the talkers to capture
6 their conversations regarding explosive training, and move
7 them if he needed to out of range to produce a whole series
8 of unintelligibles that we have throughout these transcripts
9 when and if the topic of Bosnia comes up. You record the
10 switch, you lose the bait.

11 Who set up the workbench? Who's the teacher?
12 Emad Salem. And if any of you ever taught school, the
13 teacher always gets to pick where the front of the classroom
14 is.

15 However, if all else fails, you can simply resort
16 to erasing the tapes. There were at least three ways in
17 this case that Salem himself erased tapes.

18 I want to give you a couple brief examples of
19 what he did. No. 1, and you know it, is Khallafalla C, A22,
20 it has two deliberate erasures. Paul Ginsberg came in and
21 testified to it. You got to put the headphones on, you
22 could see where the noise went down and the noise went up,
23 and you could hear those erasures. This tape was sent in by
24 Salem ten months after the arrest went down in the case. I
25 think he said he found it among his household goods. I

1 guess within the Tupperware he found this, A22.

2 Ask yourself this question: If you had a tape
3 where you had made two deliberate erasures and they were
4 significant, what better way to kind of camouflage what you
5 have done then to hide them? Let's erase 18 more
6 references. Let's erase some references when you're talking
7 to the travel agent or when you're talking to the wife, that
8 will throw people off the trail. After all, Salem's got the
9 time, the means, and the opportunity, because ten months go
10 by before that tape turns up in the Tupperware.

11 The second way to erase tapes is just to switch
12 them. This way you erase them, but you erase them
13 permanently. Agents take tapes from Salem's house. Of
14 those tapes, Salem, when he stamps his feet up and down gets
15 them to give back 18 tapes, which are all initialed J.R.R.,
16 James Roth, the chief attorney for the New York office of
17 the FBI.

18 You can bet your bottom dollar he initialed every
19 one of those tapes. His assistant, Agent Harris, said all
20 those tapes ended up on a table and Roth that day went on
21 record as opposing giving back the tapes. Roth and Salem
22 almost came to blows. Roth looks around and he finds
23 himself with an informant who is going to get a million
24 dollars, and this guy's threatening to walk out of the
25 program because he's going to he a take a principled stand

1 about having his personal tapes returned to him.

2 Roth has seen firsthand an agent out of control:
3 Nancy Floyd fighting him in the apartment, fighting him
4 about taking the tapes. You can only take the chair tapes,
5 she tells him. You know Roth was suspicious. You know he
6 went on record as saying, I don't want to give back these
7 tapes, and you know he initialed each and every one of them.

8 When asked to return the tapes, Salem turns back
9 17 and three of them have initials -- have no initials on
10 them. Switched. It's just another word for erased.

11 Does anyone in this room for a moment think that
12 Salem would have walked away from a million dollars to keep
13 his meditation tapes? After all, why bother? The man's
14 still got his personal home lie detector test so he can do
15 his biofeedbacks and relax with that. A million dollars is
16 a pretty pricey meditation tape.

17 Who switched them? Salem? Maybe. But let's not
18 forget there were a lot of agents who had a motive in this
19 case, and Anticev himself had the means and the opportunity.
20 He's with Salem for five days. He's with Salem and the
21 tapes for five days, and he drives home alone in his car for
22 six hours. You don't think he listened to those tapes? You
23 don't think he said: Salem, you got any recordings of me on
24 those tapes?

25 The third way to erase a tape, erase it

1 permanently and for all time, is simply to to throw it away.
2 Toss it in the garbage. It's no different than Fred
3 Whitehurst being told to lose the results that don't support
4 the theory of prosecution.

5 Mr. Fitzgerald looks at you and he says to you:
6 The CM's are clean. I say to him, they should be. They
7 went through the cleansing process.

8 May 27, 1993 is the first meeting between Fares
9 and Salem. The only other mention throughout all of the
10 transcripts and throughout all of the witnesses that
11 testified in this case, the only other mention of Fares
12 Khallafalla before May 27 was about a week earlier when
13 Siddig Ali says to Emad, I heard that there's a brother from
14 the mosque, a brother Fares who is sick. He's a nice guy.
15 He helped me move. It's a duty. I should go visit him.

16 And Salem says: Yes. Visiting him is a duty.
17 That's the only mention of Fares Khallafalla
18 before May 27, 1993. CM17 should have been the recording of
19 that meeting, and Detective Louis Napoli in answer to a
20 question from me said that he agreed that the first meeting
21 between an informant and a target would be the most crucial
22 meeting to record.

23 Where is that meeting? Where is that recording?
24 It was cleansed. It was erased. It was personally and
25 forever altered and I can prove it to you. I can prove it

1 to you.

2 Remember Paul Ginsberg's testimony?

3 He came to the witness stand way back, I mean, we
4 called him so many times, but at the very beginning when he
5 came he said that he had testified in numerous cases, was a
6 witness for the prosecution. He had received letters and
7 thanks and commendations from the FBI. He said he had the
8 highest level of security clearance of any independent tape
9 expert, and he had actually lectured to both agents and
10 prosecutors.

11 Paul Ginsberg told you in all his years as a tape
12 expert, he had never ever, ever seen an FBI investigation
13 which used those Daniel Nagras where the serial Nos. and the
14 reels didn't match. Never.

15 And the government called no expert to challenge
16 that testimony. Instead, the government would have you
17 believe that Anticev and Napoli and all the other agents who
18 picked up tapes were either sloppy or inexperienced. Salem
19 would have you believe that this was all the result of the
20 fact that he was bad at dates and numbers.

21 Remember him on the stand back in April? You
22 could say to him: Good morning, Mr. Salem, how are you?

23 And he would say: Not so good at dates and
24 numbers. I mean, he said it over and over again. Not so
25 good at dates and numbers.

1 I want you to think about this: To convince you
2 that the erasures in A22 were accidental, the government
3 played you a whole series of conversations which also had
4 erasures. Do you remember that call to the travel agent?

5 Well, Emad Salem, the man who claimed to be so
6 bad at dates and numbers, knew his MasterCard number, all 12
7 digits, and its expiration date, by heart.

8 Can any of us here say that? I know I can't.
9 The man of the "not so good with dates and numbers" says to
10 the person on the other end of the phone: I know my
11 MasterCard number, and its expiration date by heart.

12 Remember also that his ex-wife Barbara Rogers
13 came in here and testified. She testified about being near
14 the West Side Highway, and how Emad was so compulsive he
15 made her take a photograph of him changing the Nagra
16 machine, and she said he was compulsive about those little
17 white envelopes and the reels.

18 Emad Salem wasn't bad with dates and numbers, and
19 the agents weren't as sloppy or inexperienced as the
20 government would have you believe. What better way to hide
21 the significance of two erasures than sprinkling 18 more
22 throughout, and what better way to camouflage missing tapes
23 than to scramble up all the envelopes and all the reels and
24 go: Oops, sorry, ma'am. I'm just bad at dates and numbers.

25 What's the expression? Crazy? Crazy like a fox.

1 At a minimum here, we know that at least six
2 reels were destroyed, because there were six envelopes that
3 made it back to the FBI without the matching reels, and you
4 have that chart in your book, the Saleh/Khallafalla exhibit
5 book, and you can look at it yourself if you want in the
6 jury room.

7 Napoli testified that he never gave Salem an
8 empty envelope. Salem got an envelope and a reel and the
9 numbers matched. That's how they are manufactured, that is
10 how they're sold, that's how they're given to the informant.

11 If Salem got an envelope with a reel in it and
12 only the envelope comes back, you know he had to have thrown
13 out the reel. It's just that simple.

14 Where are the Bosnia tapes? Where are the reels?
15 I have no idea. Maybe they're still in the Tupperware
16 somewhere.

17 I say this to you: If you are convinced beyond a
18 reasonable doubt that you have all the tapes in this case,
19 and you are convinced beyond a reasonable doubt that all of
20 the relevant conversations between Salem and Fares were
21 recorded, then take those books that you have and go back
22 into the jury room and study those transcripts word by word.

23 But if you have a reasonable doubt that the tapes
24 may have been destroyed or that conversations may have been
25 deliberately not recorded, the transcripts become

1 meaningless. Don't lose sight of the forest for the trees.

2 If you have a reasonable doubt that tapes have
3 been destroyed or conversations may deliberately not have
4 been recorded, then I submit to you, you must find Fares not
5 guilty. It's that simple, because no one, no one can ever
6 prove to you that you don't have the tape where mom said:
7 It's OK to get the cookie.

8 CM17 should have been the recording of my
9 client's first meeting with Salem and it's gone. And the
10 government says to you: What are these? The missing
11 kryptonite tapes?

12 I want you to take a look at the first meeting,
13 recorded meeting with Mohammed Saleh. I am not going to go
14 through it with detail with you now, because I know Mr.
15 Jacobs is going to do that. But in the first meeting
16 between Salem, Siddig and Saleh, Bosnia is mentioned four
17 times and training is mentioned 22 times.

18 When they leave Saleh's house, this is what they
19 say. I didn't get to mark this board up because it's Mr.
20 Jacobs'.

21 Salem says, and this is, they've left the house,
22 they've spoken about Bosnia four times, they have spoken
23 about training 22 times, and Salem says: A question: Do
24 you want to do jihad? If he says, I want to do jihad, then,
25 what do you have to offer?

1 And Siddig says: You are unbelievable to Salem.
2 It is good like that. You corner them. One comes from
3 here, and the other hops on him. What you have done is
4 great.

5 One comes from here, meaning Siddig, and the
6 other hops on him, meaning Salem. What you have done is
7 great. We know from Salem's own testimony that I just
8 showed you that he had numerous conversations with Fares and
9 others about Salem's willingness to train people for Bosnia,
10 and we know what a first meeting with Salem looks and feels
11 like. It looks and sounds like Bosnia and the
12 responsibility of Muslims to their brothers. It sounds like
13 the con man's bait.

14 Why is CM17 so important, and what happened to
15 it?

16 First, why is it so important? Let me give you
17 another example about the dangers of only having snippets of
18 conversations.

19 Imagine you and I work in the same company and we
20 have the same boss. And we have the following conversation,
21 on a day where, God forbid, my mother has died.

22 I say to you: That son of a bitch of a boss
23 won't give me the day off to go to my mother's funeral.

24 And I say to me: You ought to kill him.

25 And I say to you: I wish I could. I would like

1 to rip his eyes out.

2 Now, imagine that you and I are on trial for
3 conspiracy to murder the boss. Our conversation was
4 recorded, but only in part. The tape recording starts where
5 you say, "You ought to kill him" and where I say, "I wish I
6 could. I'd like to rip his eyes out." Well, that's a
7 pretty damning piece of evidence. That's what Mr.
8 Fitzgerald would call corroboration.

9 You know, if you cleanse out the first part of
10 the conversation, the words that are left could send us to
11 jail for the rest of our lives.

12 When you weed out all the parts of the
13 conversations that prove innocence, how does any defendant
14 get to walk out that back door? The Bible says: And the
15 truth shall set you free. But what if the truth is lying on
16 the cutting room floor?

17 What if the truth joins CM17 in Salem's garbage
18 pail? What if the truth is lying with all of those other
19 tapes for Bosnia? What if the truth is still among all
20 those things not taken out of Salem's apartment on June 29?

21 Remember what Salem said to Roth? He said, you
22 guys think you're so smart, well, you missed a whole lot of
23 stuff. What if the truth is with that whole lot of stuff
24 that Roth missed or Floyd wouldn't let him take?

25 The agents turned over control of the taping

1 process to Salem, and they did this deliberately, not
2 naively. Napoli told Salem not to -- let me start again.

3 Napoli didn't tell Salem not to tape. He told
4 him something different. What he said to him is: If you
5 give us the tapes, we'll have to turn them in. That's a
6 difference. That's a difference. If you go back and you
7 look at Napoli's recorded testimony, Napoli doesn't say to
8 Salem: Don't tape. What he says to him is: If you give us
9 the tapes, we'll have to turn them in. Salem was never told
10 not to tape. He was just told not to turn over the tapes.
11 Keep them on the side. Those were his marching orders.
12 Don't do anything to hurt the case.

13 Listen to Salem's own testimony. This is back in
14 April 6, 1995. I don't know who asked the question. I
15 think it was Mr. Jacobs.

16 And Mr. Jacobs says to Emad Salem:

17 "Q And you were given very specific
18 instructions about what to do and what not to do, correct?"

19 Salem said: "Yes, sir."

20 And Mr. Jacobs says: "Things like you were told
21 don't tape people without our permission and authority.
22 Were you told that by the FBI in the spring of 1993?"

23 Do you know what Salem's answer is?

24 "No, sir."

25 He wasn't told not to tape. He was just told:

1 Don't give us the bad ones.

2 Floyd, Anticev and Napoli were going to make the
3 biggest case in the history of the FBI. Salem was going to
4 get a million dollars plus. Everybody wins. Nobody loses.
5 Nobody who matters. Only people like Fares. But to Salem,
6 Anticev, Napoli and Floyd, Fares was just some African
7 immigrant. He was a nobody. He was expendable. It was a
8 small price to pay for money and glory.

9 So what happened to CM17? Let's try to figure it
10 out.

11 All those charts that we went over, the reel
12 number, the date recovered, the date retrieved, the envelope
13 number, you knew they'd come in handy one day. Here it is.
14 Here is four CM's in order.

15 You'll see something interesting. You'll see
16 that CM15 has this reel number. They are all the same
17 numbers except for the last two digits. This is 81. CM16
18 is 82. CM17 is 83. And CM18 is 85. You can go through
19 your chart and you'll find that there's 86s and 87s and
20 there's some before this with the 81s.

21 But you know what you don't have anywhere? You
22 don't have 84. In an entire sequence of numbers, you're
23 missing 84. And do you know what it corresponds to? It
24 corresponds to the car ride out to Queens. It corresponds
25 to that meeting at the mosque that first night. You are

1 missing 84. In an entire sequence of numbers, you're
2 missing that tape.

3 I suggest to you that what happened was that the
4 Nagra was never squashed. What happened was he actually
5 made a recording of the first meeting. He actually made a
6 recording at the mosque.

7 And you do you know what? That recording was the
8 con man's bait. He's talking training, training, training;
9 Bosnia, Bosnia, Bosnia. And he says to himself, Emad, this
10 is one of those tapes that they want me to keep on the side.
11 So 84 goes in the garbage, and it's substituted with what we
12 now have as the CM17.

13 Now let's look at what we have in evidence as
14 CM17. That's the FBI's brown official custody envelope.
15 You open it up and, surprise of surprises, there's no white
16 matching number. But inside with this reel is this little
17 piece of paper, written by some unknown person somewhere
18 that says: This Nagra sounds like it was disconnected.

19 Notice it doesn't say: This sounds like it
20 malfunctioned. It says: This Nagra sounds like it was
21 disconnected. We got CM17, the new and improved CM17
22 wrapped in a piece of paper that says: This tape was
23 disconnected.

24 Nowhere does it say squashed. Nowhere does it
25 say malfunctioned.

1 Salem testified, and you remember, he testified
2 that Mr. Khallafalla is a very big man and he squashed the
3 machine, and, he added gratuitously, the agents, the agents,
4 the agents, they told me that. They told me it was
5 squashed.

6 What agents? Who? Where?

7 He demonstrated to you the machine, he pushed it
8 down and said, voila, it stops.

9 However, we put Paul Ginsberg on the stand. He
10 told you that if you shift at all off of that perfect sweet
11 spot, the machine will start to record. He demonstrated it
12 to you. He came down here and he showed you. It was hard
13 for him to find the sweet spot. He had to look around, and
14 he finally got it. He pushed down, the machine went off.

15 But if you shifted ever so much, it started
16 again. So if Mr. Khallafalla is in a car and he's squishing
17 that machine, you would have expected if he leaned forward,
18 went over a bump, started to fall asleep, just shifted his
19 weight a little to the left or a little to the right, Mr.
20 Ginsberg said you would have had a whole series of partial
21 recordings.

22 In fact, he said, just entering or exiting the
23 car should have been recorded. There's nothing on this
24 tape. In Mr. Ginsberg's professional opinion, the
25 nonrecording was not and could not have been the result of a

1 squished Nagra.

2 Now, despite the fact that Salem says squished
3 and the paper says disconnected, Mr. Fitzgerald, to his
4 credit, gave it one last try. He suggested, of course, that
5 the microphones could have come undone. That's almost
6 impossible, testified Paul Ginsberg. Not one, but two
7 connecting screws would have each had to have been rotated
8 counterclockwise five times.

9 In effect, the machine is tamperproof. Now, to
10 borrow some advice from Mr. Fitzgerald's summation, this is
11 one of those times you ought to throw some cold water on
12 yourself and ask yourself does this make any sense?

13 And after you dry yourself off, ask Mr.
14 Fitzgerald where his expert is. Where's the government's
15 expert that says this was a squashed Nagra? Where's the
16 government's expert that says this was rotated screws?
17 Where's the government's expert that can give you any
18 theory, any theory whatsoever other than the fact that that
19 tape was deliberately tampered with?

20 However it happened, CM17 was cleansed, and I
21 submit to you that's why you heard no government expert.

22 Now, the question is why? Why cleanse the tape?

23 It's easy, and we've talked about it. The tape
24 contained, I submit, conversations about going to Bosnia.
25 It's like the bait and switch conversation with Mohammed

1 Saleh. You've got four mentions of Bosnia, 22 mentions of
2 training. You come at him from the left, I come at him from
3 the right, we corner him, we hop on him.

4 The government's summation ignores and never once
5 addresses the fact that one of its "official" CM's was
6 obviously destroyed. Mr. Fitzgerald simply sidesteps the
7 entire question. Instead, what he does is he moves right on
8 to CM19, and he shows you bits and pieces of conversation
9 from that first night.

10 He reads from five or six pages of the whole
11 transcript, and during that whole time he shows you a lot of
12 what Siddig said and a lot of what Salem said. And he even
13 played you an excerpt from the video, and from these little
14 pieces, these little words here and there, he wants you to
15 make a leap of faith. He wants you to jump to some
16 conclusions.

17 Now, let's think about this for a second.
18 Imagine you go to buy a car. You walk in, and you want to
19 do a test drive.

20 You say to the salesman in the showroom: Bring a
21 car out.

22 He comes out and he's carrying a windshield, a
23 steering wheel, part of a carburetor and one tire.

24 You say: What's this? I'm making a big decision
25 here. I'd like to see the whole thing.

1 The salesman says to you: The whole thing? What
2 do you need to see the whole thing for? Just looking at
3 these pieces you can tell it's a great car.

4 Would you buy that car?

5 Of course not. And that's why you shouldn't buy
6 the government's theory about the first night in the safe
7 house. Tell the government you want to see the whole thing
8 or it's no sale.

9 Now, speaking about that night, May 27, finishing
10 the tapes, now we are going to talk about the three parts of
11 what Fares did during this case.

12 Having remembered, having removed the official
13 CM17 out of this case, Mr. Fitzgerald has now told you enjoy
14 your soup. But even then, you know what, he doesn't want to
15 tell you what all the remaining ingredients are. He doesn't
16 want you to read the side of the package that lists what's
17 in the soup.

18 He shows you six pages, and I ask you, did he
19 show you this page?

20 This is the boom, boom, boom -- you know, "the
21 world's going to go crazy" conversation. The first thing
22 you see here is that Siddig is telling Fares that everything
23 they're doing is with the consultation of the shar'ia
24 authorities. That's like somebody saying to you, I've
25 talked to your minister, I have talked to the bishop, I've

1 talked to the priest, and we've got their OK. Everything
2 we're doing here is religiously good.

3 Then Fares says -- here is actually a line from
4 Fares: The consultation, he says.

5 Now, does Mr. Fitzgerald show you this. Siddig
6 Ali in the "boom, boom, boom" conversation says: I am
7 thinking about the other things. He's talking to Salem
8 here. I consulted him about the same operation we are
9 talking about, the target that you and I spoke about which
10 they don't know about.

11 Do you know who this "they" is? This "they" is
12 Fares and Amir. This is the, "boom, boom, boom"
13 conversation and Siddig turns to Salem and says, I am
14 talking about the operation to you that they don't know
15 about.

16 And Salem says: Fine. That's up to you if you
17 don't want to tell him.

18 And Siddig says: But I will tell them in a little
19 bit.

20 Salem says: God willing.

21 Siddig says: I'll tell them in a little bit.

22 Salem says: God willing.

23 And you know what Siddig says: Or in a suitable
24 day, as there is no reason to tell, there is no reason to
25 talk about it at all.

1 He serves you up the soup, he ignores CM17, he
2 gives you a couple of words, and he doesn't think he ought
3 to mention the fact that in the same conversation Siddig Ali
4 says to Emad Salem, I'm not telling them the targets.

5 Now, if you remember, and it's been forever, but
6 if you have any memory whatsoever of when this happened with
7 Salem, Salem says to me: Ma'am, you got this all wrong.

8 Yes, he said this, but you know what, I remember
9 now that I didn't turn on the Nagra in the briefcase until
10 after we had been in the safe house for a few minutes. And
11 I know, Salem says, I'm positive that we discussed the
12 targets before I turned the Nagra on.

13 He says, if you check that video, those words are
14 going to be in there. You are going to hear Lincoln Tunnel,
15 Holland Tunnel and whatever bridges, whatever, Disneyworld.
16 It's all in there. Trust me, ma'am, it's in the video.

17 So the government goes and prepares a new and
18 improved transcript of the video, the video before the Nagra
19 in the briefcase gets turned on.

20 Let's take a look at what Mr. Fitzgerald didn't
21 show you in that part of the conversation. Entire page.
22 Here's Khallafalla: Unintelligible. Unintelligible.

23 So let's talk about what Salem and Siddig say.

24 Salem decides to tell the guys the bomb is called
25 a hadduta, which, of course, we now know is fairy tale. He

1 tells them we're calling our bomb here a fairy tale.

2 Siddig says: We agree there is nothing called
3 bomb. We are making the hadduta.

4 And in the video before the Nagra gets turned on,
5 Siddig says to Fares and Amir: Yes. Also, there are
6 specific targets, God willing, that the hadduta is to be
7 placed at.

8 There is one target that we, God willing, have
9 determined -- "we" meaning Emad and Siddig have determined.
10 It is called the big house, God willing.

11 He doesn't tell them what the big house is. It
12 is called the big house, which is going to be, by almighty
13 God's permission, after a while -- I'm getting ahead of
14 myself. I do not want to talk about it. I am still working
15 on it. I want to put it aside for a while until we plan it,
16 God willing.

17 So, Emad Salem said, I promise you absolutely,
18 ma'am, that if you check the video you'll see the targets.

19 So we checked the video, and what you see is that
20 Siddig Ali does say the word "big house." So in some ways
21 he's right. The word "big house" is there.

22 But what does he say about the big house? He
23 said, I don't want to get ahead of myself. I don't want to
24 tell you what we're planning.

25 Then we go to the conversation that follows where

1 they say to each other, another one of those conversations
2 where Fares Khallafalla is present, but, of course, he's not
3 involved, Siddig says to Emad: I don't want to tell him the
4 targets.

5 Emad says: OK. Don't tell him the targets.

6 Siddig says: Maybe a little bit later.

7 Emad says: God willing.

8 Siddig says: Or on another day or on a suitable
9 day or some other day because they don't need to know.

10 That's CM19.

11 So you got your bowl of soup, you got your CM17
12 in it, and they don't want to tell you the rest of the
13 ingredients. Not once, but twice Siddig says, I'm not
14 telling Fares the targets, and the government never thinks
15 it should mention that to you in its summation.

16 Sorry. Two-bottle day.

17 Let's step back for a moment.

18 The government team between them, the three
19 lawyers, have approximately -- what do you get? 60 years of
20 education, and they come to you and they argue that Fares is
21 in that safe house that first night. Fares, who they
22 specifically say not once, but twice, they're not going to
23 tell him the targets.

24 Fares should have figured out that when they said
25 "lanes," they meant lanes in the tunnel and not country

1 lanes. Like a light bulb should have gone off on top of his
2 head, and he went: Oh, yeah, that's it. Lanes. I got it.
3 Fares should have realized that beepers and cars couldn't be
4 used to plant bombs in Bosnia. How come? Why not?

5 I mean, Bosnia was Yugoslavia up until a couple
6 of years ago. I mean, remember Sarajevo? Remember the
7 Winter Olympics?

8 I mean, this isn't some country living in the
9 stone ages, despite the fact that you might think so looking
10 at what their citizens are doing. This is a real country
11 with real cars, and, if you are planning on doing training
12 for Bosnia, the fact that you might use a car bomb doesn't
13 take a rocket scientist to figure out that this is not such
14 a bad plan.

15 But the government says, ah, ah, ah. They are
16 talking about beepers and cars. He should have figured it
17 out.

18 There is a certain arrogance of intelligence
19 about the government's argument. They hold Fares
20 Khallafalla to their standards of education, their standards
21 of experience, their standards of knowledge and even their
22 standards of Monday morning quarterbacking because they now
23 know the whole picture. It's like Fares stood at a door and
24 looked through the peephole and saw that sliver of the
25 apartment.

1 The prosecution team got to open the door, walk
2 in the apartment, look from room to room to room and see the
3 whole picture, and yet they say to you, he should have
4 figured it out.

5 Fares, as you could see from this transcript, is
6 told he's making a hadduta. To Fares, to anyone who speaks
7 Arabic, a hadduta is a fairy tale. It's something
8 imaginary, not real. It's something pretend.

9 And who chose that word? We just read it. Who
10 says, we're going to call it hadduta? Emad Salem.

11 Is this just a coincidence, just another
12 coincidence, or is it an example of his trickery, is it an
13 example of his ability to throw people off the track?

14 Would you in a million years have thought it was
15 a coincidence to pick for the name of a bomb the word "fairy
16 tale"? Something that by definition means imaginary.
17 Something that by definition means pretend.

18 The government says: Where's the word
19 "simulation" in all these transcripts? I say, in absolutely
20 every single page. Hadduta, hadduta, hadduta. Fairy tale,
21 fairy tale, fairy tale.

22 This is the "jihady" get-together.

23 If you want to talk about words, if you want to
24 look at transcripts, I ask you to ask Mr. Fitzgerald why he
25 didn't show you these choice selections from the

1 translations. On May 23, four days before they go to the
2 safe house, Emad and Siddig are driving along. As you know,
3 they drive along endlessly in the car, and Siddig is trying
4 to figure out how he's going to get some information from
5 the guys at the UN.

6 You know what he says? He says, I must invent
7 something. I am going to tell him, meaning that guy in the
8 UN, that I need information regarding what? I will tell him
9 I want to get the Serbs. The Serbs, the Serbians in Bosnia.
10 So we can tell by this conversation that Siddig is willing
11 to lie and that the lie that he is going to use to get
12 people to help him is to tell them it's about Bosnia to get
13 the Serbs.

14 How about this conversation, which is the first,
15 the first official CM, 1. Siddig says, talking about the
16 brothers, those, you know, suicidal followers that he's got
17 out there, his paramilitary elite terrorist cell. In CM1 on
18 page 10 he says: You know, because they considers it
19 training, you know. You have an idea until the operation
20 takes place, it looks like training. They find themselves
21 in an operation executing location, that's it. They did not
22 know.

23 And Salem says: They did not know if it's an
24 actual execution or not.

25 Siddig says: Yes, that's my rule. I will tell

1 them that it's training. They do not need to know.

2 And then on June 3, which is after the first
3 night in the safe house, this is like a week plus after the
4 first night in the safe house, and what is Government
5 Exhibit 329, on June 3, 1993, Salem and Siddig have another
6 conversation about training. They are talking about the
7 plan, and Salem says, those people must learn and must --

8 And Siddig says: One, two, three, then they
9 will.

10 And Salem says: Yes, this is it.

11 Siddig says: Yes, they will learn. It becomes a
12 normal training for them, as if it is a training exercise.

13 Where are those words, Mr. Fitzgerald?

14 Well, I don't doubt that with two and a half
15 years of hindsight, with the amount of knowledge that Mr.
16 Fitzgerald and the government team possesses, by having
17 gotten to walk through the apartment and not just look
18 through the peephole, I don't doubt that Mr. Fitzgerald can
19 say to you when he looks at CM19 and circles the word
20 "brothers" and goes, you know what they mean when they say
21 "brothers" there? They mean the World Trade Center
22 defendants. As if you know, like, by lightning that should
23 have struck Fares Khallafalla, the word "brothers" of course
24 means the World Trade Center defendants.

25 They can pick up a piece of cardboard that looks

1 like my seven year old scribbled all over it, and it's made
2 not by Fares but by Siddig, and they say: Look, there are
3 the arrows. There are the lanes. It's like the Bruce
4 Willis story; here's the chair, you must have robbed me.
5 Here's the pen; I must have fought the bear. Here's the
6 cardboard; you can tell these are the lanes and the arrows.

7 And they say that even though in the conversation
8 they say they're not going to tell him the targets, he
9 should have figured out by these arrows and lanes here --
10 which, by the way, if you look at it, aren't arrows and
11 aren't lanes. They're scribble scrabble.

12 They can point to what they regard as the most
13 damning of words. They point to the words, "the world will
14 go crazy." The world will go crazy, and all America will be
15 on standby, and, bingo, Fares should have said right away,
16 I'm out of here. I know you guys are planning on blowing up
17 America.

18 Now, first of all, couldn't a military operation
19 in Bosnia have caused the world to go crazy? And if there
20 had been a military operation in Bosnia, might not America
21 have been on standby to see what happens next?

22 They don't even say, all America will go crazy
23 and the world will be on standby to see what happens next.
24 They say it the other way. They say the world will go crazy
25 and all America will be on standby to see what happens next.

1 And bingo, Fares is supposed to get it.

2 These are word games we're playing. We're
3 playing a game of words, and there's a man's life at stake
4 here. Imagine for a moment a young immigrant woman who is
5 not very smart, not very sophisticated, separated from her
6 family. She begins attending her local Catholic parish
7 church. One of the boards of trustees befriends her, and
8 one of the priests' aides encourages her to participate in
9 their anti-abortion activities.

10 She shows up as directed, she's lectured to,
11 talked at for two hours, but she's very respectful and very
12 flattered by these people she admires. She's encouraged not
13 to ask any question. She is the student, they are the
14 emirs. They assure her that everything they're doing is
15 approved by the bishop. We have a shar'ia consultation.
16 They say everything is approved by the Bible. They tell her
17 to stop going to church regularly because the police have
18 been harassing pro-life demonstrators -- not unlike the FBI
19 breaking up the training in Pennsylvania. Be cautious, they
20 tell her, keep a low profile.

21 They tell her again and again, what we're doing
22 here is under the flag of God. Surely, surely, surely we
23 know that that unsophisticated woman could have sat in that
24 room wholly unaware that others were planning to resort to
25 violence. Surely we know she could have been taken in.

1 Fares is on trial not for being stupid and not
2 for being too trusting. He's not on trial charged with
3 acting out of mistake or out of accident. He is charged
4 with intentionally joining in a conspiracy to wage a war
5 against America.

6 He's charged with intentionally and voluntarily
7 participating in a conspiracy to bomb bridges and tunnels
8 without ever once having been told the targets.

9 The government stands before you and argues that
10 Fares could have been convicted on CM19 alone, even though
11 not only once, but twice, they say: Let's not tell him the
12 targets.

13 The government has the audacity -- and I do use
14 that word deliberately -- they have the audacity to say that
15 to you, even though they know that the conversation en route
16 on the garage was destroyed.

17 Mr. Fitzgerald said during his summation that
18 you, the jury, have learned a lot about Bosnia and whether
19 people really thought it was for Bosnia.

20 Make no mistake about it, he said, there's a real
21 tragedy going on in Bosnia, and a lot of people in this
22 courtroom, the defendants included, were very concerned
23 about what was happening in Bosnia. But what went on in the
24 safe house, he said, was not about fighting Bosnia. It was
25 about fighting America.

1 I say to you that Mr. Fitzgerald, with his
2 education, his experience as a prosecutor, with his two and
3 a half years of hindsight, having evaluated all the evidence
4 in this conversation, may see it that way.

5 But how is Fares Khallafalla, the man who's
6 looking through the peephole, supposed to have known it? No
7 one ever, ever, ever mentioned an American target to him.
8 The no Lincoln Tunnel, no Holland Tunnel, no Federal Plaza,
9 no UN, no targets.

10 How was he to have known?

11 (Continued on next page)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MS. AMSTERDAM: (Continuing) We have learned a
2 lot about training in this case. We know that many
3 respectful, law-abiding Muslims trained for Afghanistan and
4 Bosnia and some of them actually went overseas to fight. I
5 think it is noteworthy, not the most significant thing but I
6 think it is worth pointing out that no witness ever
7 testified that Fares had ever gone to any other training.
8 He didn't go to the Calverton range, he didn't go to the
9 martial arts classes, he didn't even go to Pennsylvania.
10 The important thing is that even by the government's
11 standards, Fares had no point of reference. He had no idea
12 what any other training looked like.

13 Imagine a child going into their first day of
14 kindergarten -- you remember that feeling. We all remember
15 that feeling. You're a little shy, you're a little nervous,
16 you're a little frightened, you're a little wide-eyed. If
17 the teacher sits you down on the floor and lectures to you
18 for two hours, would any of us have raised our hands and
19 said teacher, Mr. Salem, I don't think this is what
20 kindergarten is supposed to look like? Of course not.

21 Fares is not on trial for being dumb or naive or
22 trusting. I ask you where is the evidence that he acted
23 intentionally, voluntarily, willfully and with a bad
24 purpose? Where is the evidence that he did not act out of
25 accident or mistake or some innocent purpose, believing that

1 they were training for Bosnia?

2 The court will instruct you that the government
3 must prove that Fares acted intentionally and willfully, and
4 they must prove it to you beyond a reasonable doubt, and
5 they must prove to you beyond a reasonable doubt that Fares
6 knew at least one of the purposes or objects of the charged
7 conspiracy. I ask you, when you listen to the court's
8 charge, think about that.

9 I submit to you that in the absence of mentioning
10 any targets, indeed in the face of Siddig saying I am not
11 going to tell them, the government cannot prove to you
12 beyond a reasonable doubt that Fares joined the conspiracy.
13 I submit to you that without the tapes about Salem telling
14 people I'm going to train you to go to Bosnia, they cannot
15 prove to you beyond a reasonable doubt that Fares joined the
16 seditious conspiracy. And without the tapes of that first
17 meeting with Salem they can never prove to you beyond a
18 reasonable doubt that Fares didn't think this was training
19 for Bosnia.

20 Lastly, before we leave the discussion of the
21 first night, I want to leave you with this final thought.
22 Fares was in the safe house that first night for two hours,
23 and he was lectured at. Remember we used that expression,
24 talked at, not with.

25 To be truthful, my feelings will not be hurt. Is

1 there anyone among you who has heard my every word, who has
2 not drifted off, who has not snuck a look at their watch or
3 peaked over at the clock or glazed over, closed their eyes
4 or even nodded off? Even the reporters, even people I know,
5 I am sure, during this last hour and a half have nodded off
6 from time to time. That's a normal experience if somebody
7 is speaking at you and you can't contribute.

8 Remember those feelings whether you consider what
9 Fares knew or should have known that night. When one person
10 speaks at you, especially if it is technical or complicated,
11 they are talking about billions and balloons, you glaze
12 over. You hear words here, but if don't have some kind of
13 reason to be suspicious, you know, some of them wash over
14 you. That's a good expression. The words tend to wash over
15 you. To pick out as the government did five or six words
16 and say uh-huh, he should have understood, that doesn't
17 really stand up to our own common experience.

18 And remember also what Miss Stewart told you
19 about context. This night, that first night in the safe
20 house, Fares is there. We know that Siddig and Salem were
21 thought to be respected members of the mosque. They tell
22 Fares that they have spoken to learned scholars, that they
23 are a Shuria consultation. They tell them that they are
24 training under the flag of God. I submit to you, there
25 would have been no reason for him to be suspicious, no

1 reason for him to have doubted their motives.

2 And on the drive back to New York that night
3 Salem refers to himself as the exterminator. It is in what
4 is CM 18. And he laughs at some part. I mean, they drive
5 back to New York, there is no conversation about anything,
6 somebody points out how beautiful the New York skyline
7 looks. They talk about the midtown tunnel, the Triboro
8 Bridge, the Lincoln Tunnel, and nobody ever says in that
9 conversation this is great because next week we will be
10 blowing them up. They are driving in the car, talking about
11 directions, and Emad turns to Siddig, and at a very telling
12 point he says, he calls himself the exterminator and he
13 laughs, he says those guys in the back, they don't even know
14 what I'm talking about. He was right, Fares didn't know.

15 For the next two weeks Fares is nowhere to be
16 found, and surely you would have expected the man who had
17 taken the secret handshake on May 27, who had vowed to take
18 down America would have been around for the next couple of
19 weeks, would have been around when they were looking at
20 targets, making plans, doing whatever they do. Instead --

21 Do you want to break here? I'm pretty much on
22 schedule. It's up to you.

23 THE COURT: All I heard was the beginning of a
24 sentence.

25 MS. AMSTERDAM: I am at the beginning of a

1 sentence but we have been going for an hour and a half and
2 it would work here if it works for you. It's up to you.
3 It's up to you.

4 THE COURT: Miss Amsterdam, I don't know what is
5 in your summation. Do you want to break now?

6 MS. AMSTERDAM: Yes. This would be an
7 appropriate time.

8 THE COURT: Fine. Ladies and gentlemen, please
9 leave your notes and other materials behind. Please don't
10 discuss the case, and we will resume in a few minutes.

11 Spectators are to rere-main seated until the jury
12 leaves.

13 (Jury excused)

14 (Recess)

15 (In open court; jury present)

16 THE COURT: Ms. Amsterdam, go ahead.

17 MS. AMSTERDAM: Thank you. We are in the home
18 stretch. I'm getting you out by lunch, I promise.

19 We have two more time periods that we have to
20 cover about Fares and then we are moving to the agents. The
21 next area that I have to talk to you about is Canal Street
22 and going to buy the timers. The arrangements to go to buy
23 the timers -- let me back up for a second, sorry. They go
24 to buy the timers on June 13. The arrangements to go buy
25 the timers are made on June 12 and they are made at the

1 mosque on the night when the elections are being held, and
2 that is the next time Emad Salem sees Fares. Between May 27
3 and June 12, he doesn't see Fares. Next time he sees Fares
4 they are at the mosque at the elections, and they speak, and
5 I asked Mr. Salem about this conversation. I will point out
6 here also that this is also the first night that Emad Salem
7 meets Tarig Elhassan. They meet at the mosque at the
8 election. Salem meets Fares and Salem meets Tarig.

9 I asked him in open court, Mr. Salem, I said:
10 The next time you saw him, meaning Fares, sir, was at the
11 mosque the night of the elections, correct?

12 Salem says: Correct, ma'am.

13 And I said: You recorded the part of the
14 conversation until you got to the mosque, is that correct,
15 outside the mosque?

16 He said: Could be.

17 And I said: The conversation inside the mosque
18 is not recorded.

19 That's the conversation where he is talking to
20 Fares and he meets Tarig. You know what his answer is?

21 No. I did record it, some of it, but I don't
22 know what happened to it. I don't know what happened to it.
23 Is it one of those Nagra reels that came back in an envelope
24 missing its reel? I recorded the conversation in the mosque
25 when I spoke to your client. I recorded the conversation in

1 the mosque when I met Tarig Elhassan, and I don't know what
2 happened with it.

3 Once again I ask you, where is the missing
4 conversation? Is it another piece of cleansed evidence?
5 Just give us those tapes that support the theory of guilt,
6 make sure you lose anything that the jury might consider as
7 an alternative theory. It's the Whitehurst message again
8 and again.

9 I don't have that much to say about the recording
10 of June 13, the day they go to Canal Street. I just want to
11 hit a couple of high points with you. The first thing Mr.
12 Fitzgerald said in his summation, that he referenced back to
13 my opening statement and he said that I had mentioned that
14 Mr. Khallafalla had been on Canal Street to buy some sheets
15 for his mother and he called that a sob story. I just want
16 to point out that in the government's own transcript Fares
17 says I'll leave, I'll go back to New Jersey, I'll try again
18 to buy things. We have one of our brothers traveling to the
19 Sudan. I'll try to buy some things and I will write one or
20 two letters and I'll give them to him. He lives in
21 Brooklyn. Sob story.

22 The reason I don't have that much to say about
23 June 13 is that I went over it with Salem when he was here,
24 and we will see a couple of things.

25 I said to him: When you were on Canal Street

1 that day, Mr. Salem, you and my client never discussed the
2 purpose of the timers.

3 And he said: No, ma'am, we didn't.

4 And I said: And no discussion about the targets,
5 correct?

6 And he said: No, ma'am, no discussion about the
7 targets.

8 And I said: After you finished on Canal Street,
9 you drove Mr. Khallafalla down Broadway, past 26 Federal
10 Plaza, and dropped him off at the World Trade Center. Yes,
11 ma'am. You passed 26 Federal Plaza?

12 Could be, yes.

13 And you came up close to the World Trade Center.

14 Correct, ma'am.

15 At no time did you say to him Fares, these are
16 the targets we will be bombing. Did you? The World Trade
17 Center, the 26 Federal Plaza?

18 No, we didn't talk about that.

19 I submit to you that it is easy to see why Salem
20 that day steered clear of any mention of targets, and I will
21 show you how you know it. Early in the conversation when
22 they first get together, they are talking about the night
23 before at the mosque, and Salem floats what I call a trial
24 balloon. He says to Fares, you know, we were talking about
25 the laughing cow issue. You remember the laughing cow issue

1 that is supposed to be code for Mubarak? And Fares says no,
2 I don't know it. And Salem says, you don't? So, OK, OK, we
3 keep it that way.

4 I think that this is interesting because Fares
5 responds no, I don't know anything about it. Fine, Salem
6 says, keep it that way. What I submit to you happened was
7 that Salem floated a trial balloon. He wanted to know what
8 if anything Fares knew, because after all the recording is
9 running at this point. Once Fares makes it clear that he
10 doesn't know anything about the laughing cow, an alarm goes
11 off in Salem's head. Watch it. Be careful. This guy
12 doesn't know, so let's not talk about any targets. He
13 doesn't want any recording, doesn't want any recording of a
14 conversation where Fares says no, I have no idea what the
15 plan is. So he steers clear of any discussion about
16 targets.

17 You could imagine as they are driving down
18 Broadway and they are passing 26 Federal Plaza, one of
19 their, you know, prime targets, you can imagine those
20 itching palms of Emad Salem. He is thinking to himself, can
21 I say it, can I say it? I can say Fares, there's our first
22 battle zone. Nothing. He drops him off at the World Trade
23 Center. He could say Fares, that is our shining moment.
24 We'll be doing that again. That's what we stand for.
25 Nothing. He is in a car by himself, there is nobody except

1 him and Fares and the little machines are running. He can't
2 do one of those squished Nagras again, so he's got to stay
3 clear of the targets. Silence. Absolutely calculated,
4 shrewd silence. Fares doesn't know the plan, the Nagras are
5 running, he can't dust off the squished Nagra excuse one
6 more time, and so he spends the whole day with him, never
7 once saying anything about here we are at the site of our
8 next glorious jihad adventure.

9 I have two last points to make about June 13.
10 The timers. Salem, as you know, had all of the electric
11 circuit board timing devices that he needed. He stamped his
12 little feet up and down, ah, you happy, diligently returned
13 the timer to the safe house. They didn't need any more of
14 those fancy circuit boards, you know, the ones that are so
15 fragile that they are like a piece of fine china the way
16 Mahaffey described them to be. So why are they on Canal
17 Street shopping for timers?

18 I want you to remember about a conversation I
19 asked Special Agent John Anticev about. John Anticev had a
20 conversation with Salem and he, Anticev, explained to Salem
21 what he thought, what Anticev thought the law of conspiracy
22 was. I am not telling you the law of conspiracy. That is
23 Judge Mukasey's job, he will explain it to you. But Anticev
24 says to Salem, talk does not a conspiracy make. You can't
25 just have talking. You got to get people to go do

1 something. And he uses an example. If there is a bank
2 robbery, you got to get the guy to go out and get a mask,
3 get the get-away car, take some photographs, or buy a gun.
4 We are not going to be able to make a case if there is just
5 talk. So that's why Fares is taken to buy timers.

6 Does Fares come back with one of those fancy
7 dancy fabulous circuit boards? No, this is what he comes
8 back with. This is Government's Exhibit 678A. See this
9 timer? See this timer? Know what they are? They are
10 24-hour lamp, as in light bulb, lamp and appliance timers.
11 So at the circuit boards, these are the the electrical
12 technical devices. These are the things that make light
13 bulbs and haddutas go off. You know what you have to do
14 with these little timers? You got to plug them into the
15 wall. So unless you are planning on running a 20,000 foot
16 extension cord from the Queens garage to the Lincoln Tunnel,
17 this thing is not really going to do you much good.

18 It's a prop. It's a prop in a play that Emad is
19 running where Emad is the director. He set the stage, he
20 brought in the prop, he has written the lines, and he has
21 told the big players what to say.

22 I don't know if any of you have ever had any
23 experience with being in plays or movies or TV shows, but
24 when a bit player has a part, very often they don't get the
25 whole script. Dustin Hoffman gets the whole script, but if

1 you are walking on to say hello, am I in the right place,
2 you get the part that says hello, am I in the right place.

3 Fares is a bit player. He gets the bit part that
4 says here I am getting the timer. He doesn't have the big
5 picture. The director always has the big picture. Make no
6 mistake about it, everyone in this room, I submit, knows who
7 the director is. It's Emad Salem.

8 The only reason I didn't just leap right over CM
9 13 is that there is something about this transcript that has
10 always bothered me and I don't have the answer, but I'm
11 going to show you the puzzle. June 13, CM 38 and 39. I am
12 sorry. That is Government's Exhibit 340, but it is the
13 events of June 13.

14 Remember Emad Salem told us he picks Fares
15 Khallafalla up at the Path train at 32nd Street and they
16 drive to Canal Street, they wander around, they go into a
17 couple of stores, and if you think back, remember I spoke to
18 him about a rocket that was chained, a missile that was
19 chained in front of the army navy store on canal. That's a
20 big, big thing here and I showed him a photograph, and he
21 said no, no, no it was much bigger than that, it was on
22 Canal Street. They pass it, there is some discussion about
23 the rocket missile. Fares doesn't say we ought to get one
24 of those things, Fares says wow, they sell these things,
25 they're selling danger in the street. He goes, this looks

1 like an abuse of freedom to me.

2 They go on and what Mr. Salem testifies to -- and
3 you can go back, and have the record read to you, but what
4 is crystal clear is that Mr. Salem goes with Fares, they buy
5 the timers on Canal Street, and then they drive down
6 Broadway to the Path at the Trade Center. That's the
7 sequence of events. I am not going to play you the tape
8 because of the time, but you can have the tape brought back
9 in and you can listen to the tape to make sure that the
10 government's own transcript is correct.

11 But I want you to take a look at this. I don't
12 know the answer but I want you to see it. Here they are on
13 Canal Street, and you know it because Fares says look at
14 this. Salem says, all of this military stuff. And Fares
15 says, look, he has a rocket. So you know where we are. We
16 are standing on Canal Street outside the army navy store.
17 Country, abuse of freedom. And the next thing
18 that happens and you can take the tape in and listen to it,
19 are some door chimes, and there are people talking, and the
20 people who are talking are the salespeople, and the
21 salesman, whose name is Henry, is talking to some guy who is
22 probably a customer -- UM stands for unknown male. The
23 unknown male says -- remember we are on Canal Street here.
24 The next thing that is said is the unknown male says this is
25 34th Street, man. If you time the lights right, you can get

1 it up about 85 miles an hour and the lights change with you
2 as you go down the road. Henry says I won't do that. The
3 unknown male says you got to go in the back sometime Henry,
4 we'll take you for a ride, and Henry says no, that's all
5 right.

6 Take a look at this and you can take the tape
7 inside and listen to it. Door opens, door chimes, and there
8 are two guys having a conversation where they are making
9 about making the lights up Sixth or down Seventh, one or the
10 other. But what is obvious from this conversation is that
11 the starting point is 34th Street. These guys are on 34th
12 Street. They are not on Canal Street, they are on 34th
13 Street. How is this part of the conversation here, right
14 after we know missile, rockets, army navy store, Canal
15 Street, what are we doing with this 34th Street there right
16 in the middle?

17 I don't know the answer. And I know Mr. Ginsberg
18 said that he didn't find any physical cuts and splices and
19 razor blades. But was this part recorded earlier so as to
20 make it seem like they were in a store and then Salem
21 recorded before and recorded after? Is this one of those
22 stop start things where if you control the device you can
23 put it together in all sorts of ways? I don't know the
24 answer, but as my father used to say, where there is smoke
25 there's fire, and as Bill Kunstler used to say, and Miss

1 Stewart told you this, funny business is funny business.
2 This is one of those CM's cleaned and cleansed, and there is
3 something wrong here. It's out of order. At a minimum
4 there is something wrong. Funny business is funny business.

5 When someone like Salem has total control over
6 when and how and what to tape, I submit to you that you can
7 end up with a picture of events which looks as distorted and
8 misleading as the cookie jar video.

9 Lastly, before I move on to the agents, I want to
10 talk about the events of June 19 to June 21, which end up
11 with Fares walking out of the safe house. But before I move
12 on to that, I want to just reference here the concept of
13 entrapment, because as Agent Whitehurst told us, one should
14 always give people alternative theories. Make no mistake
15 about it, my theory of defense is that Fares did not know
16 and did not willfully join the charged conspiracy. But I
17 ask you to listen to the court's instruction on entrapment,
18 because an alternative theory of innocence is that Fares may
19 have done something wrong but that he was tricked into doing
20 it by the government informant.

21 I am not going to explain the concept of
22 entrapment to you, but the court will tell you that you have
23 to look at two things. Inducement, did he get sucked in,
24 and I submit to you there is a lot of evidence of
25 inducement. The missing tapes of their first conversation,

1 the missing tapes about Bosnia and training, the Mohammed
2 Saleh tape, you come at him from the left, I come at him
3 from the right, we hop on him. That's inducement. The
4 court will tell you that if you find evidence of inducement,
5 then you have to be convinced beyond a reasonable doubt that
6 the person charged was not entrapped into doing it, and what
7 you have to look at is whether or not the person charged was
8 already inclined to do it, whether he was predisposed to do
9 it, whether he would have done it anyway even without the
10 informant, and I say to you now that there is absolutely not
11 a shred of evidence in this record that Fares Khallafalla
12 was ever predisposed to do anything before Emad Salem
13 arrived in his life.

14 So I tell you that as a point of reference, just
15 so that you pay attention. When the court charges you with
16 entrapment, I submit it to you the way Agent Whitehurst
17 would submit to you an alternative theory.

18 Before we do the agents, let's move right to the
19 last couple of days, June 19 to June 21. As I already said,
20 June 19 is the day where everybody meets up at Siddig's
21 house. Fares walks in, and we have already gone over this,
22 and says if you guys prayed. Thirty pages go on and he
23 doesn't say another thing, and I submit to you he is praying
24 during that time. When he returns to the conversation the
25 meeting is breaking up and people are being given their

1 assignments. The teachers, Siddig and Salem are discussing
2 getting fertilizer and oil.

3 I ask you, when you look at those conversations,
4 to say to yourselves, where is the evidence that Fares was
5 told that the training had shifted from learning and
6 demonstrations and simulations to something that was real?
7 Remember, if you are training for Bosnia, learning how to
8 build or construct explosives from readily available things
9 like oil and fertilizer, it seems like a pretty smart thing
10 to learn if you are going off to Bosnia to join a war. If
11 you are training for Bosnia, learning how to put explosives
12 in a car to blow up, like, Serbian supply lines, I say to
13 you that also should strike you as a smart thing to know if
14 you're going off to fight a war.

15 When some of us think back to those awful days in
16 high school chemistry, if you were there you probably don't
17 want to remember it, but there were days when teachers
18 lectured and there were also days when teachers taught by
19 example. Sometimes they stood here and talked the way I am
20 and sometimes they took out a bunch of chemicals and they
21 mixed it and did a demonstration. However, I submit to you
22 that if you trusted the teacher and you thought you were
23 there for a learning experience, and you also feel pretty
24 honored to be asked to join the chemistry club, you are not
25 in any way suspicious about what's going on.

1 Remember again, Siddig and Emad appeared to be
2 honored, respected, religious members of an immigrant Muslim
3 community. Remember that Siddig had talked over and over
4 and over again about the responsibility of brothers to train
5 and support their brothers in Bosnia. Remember what Haggag
6 told you: I was afraid he might hurt the Sudanese brothers
7 who trusted him. I was afraid they would not know what
8 Siddig intended to do. They wouldn't know.

9 If Fares is guilty of anything he is guilty of
10 being stupid, a bit too slow, a bit too trusting. If
11 anything Fares isn't a terrorist, Fares is a jerk, and I say
12 that with no disrespect, but I submit to you that that is an
13 accurate depiction of what went on here. And I agree with
14 Mr. Fitzgerald, there is nothing on your verdict sheet where
15 you check off stupid versus not stupid. You are here to
16 decide whether you are convinced beyond a reasonable doubt
17 that Fares acted intentionally, with a criminal purpose, and
18 not out of mistake or accident.

19 Perhaps Mr. Fitzgerald would have figured it out
20 on May 27. Perhaps Mr. McCarthy would have figured it out
21 on June 13. Perhaps any one of you might have figured it
22 out on June 19. However, there is an expression, better
23 late than never.

24 I submit that Fares was naive and trusting and a
25 little stupid, but he nonetheless figured it out, and when

1 he figured it out he did exactly what Mr. Fitzgerald, Mr.
2 McCarthy or you or me would have done, he walked out.
3 Actions speak louder than words.

4 Remember, it is easier to get into things than it
5 is to get out of them. It is true in so many aspects of our
6 life. You fall in love, you go deaf, dumb and blind to the
7 faults of the person you love. Eventually it dawns on you,
8 the guy's a dope, or this girl is not for you. It's a lot
9 easier falling in love than getting out of a relationship.

10 In a manner of speaking Fares fell in love with
11 Siddig Ali and Emad Salem. He was infatuated. They swept
12 him off his feet. They appeared to sophisticated. Their
13 English was impeccable. They were big shots. They were
14 leaders in their community. They had millionaire relatives.
15 And they wanted him, lowly little Fares. He was caught up
16 in the moment and he was slow to be suspicious. Remember on
17 Canal Street, if you look at the transcript of that day,
18 Fares volunteers. Trust is a problem among the Muslims. He
19 wants to trust, he wants to belong.

20 But you know when he begins to figure it out?
21 When they send him out to search for stolen cars. Maybe
22 Fares doesn't fully understand what Siddig and Salem are up
23 to but he begins to feel that something doesn't make sense
24 and he doesn't want any part of it. Siddig and Salem sent
25 Fares out to buy a stolen car and this is what Fares says

1 when he comes back. Fares comes back having been sent on
2 his assignment to buy a stolen car and he walks in and he
3 says, what I'm trying to say, the cars is difficult for me.

4 The government would have you believe that Fares
5 not only agreed to blow up buildings, blow up tunnels and
6 commit mass murder, but it's kind of like a new age
7 pacifist, moralist, terrorist, he is going to draw the line
8 at stealing cars. I mean, murder and mayhem I'm right
9 there. Give me the special handshake I take the pledge.
10 But when it comes to stealing cars I got my principles. I'm
11 drawing a line in the sand and I'm not stepping over it. No
12 stolen cars for me. Murder, mayhem, destruction, the
13 killing of thousands of innocent people I'll do that, but
14 don't ask me to buy a stolen car.

15 As I said in my opening, and it's a line I love,
16 when you hear the sound of hoof beats, think horses, not
17 zebras. What it means is, stick with the obvious and avoid
18 the absurd. If the man refuses to go out and buy a stolen
19 car, I think, I submit to you that you can safely assume
20 that he wasn't prepared to bomb half of New York City and
21 kill thousands of people.

22 And what do they say about Fares that night?
23 They say brother Fares does not understand the many bad
24 things that could happen. No kidding, that's right,
25 brothers Fares doesn't have the message. This, for those

1 who are writing, is June 21, the night he leaves. It is
2 Government's Exhibit 362T, it's CM 58.

3 That's right, he doesn't understand, and when he
4 does understand the many bad things that could happen, not
5 to him but that could happen, he walks out.

6 Salem said about that night that I had
7 misunderstood the conversation completely. He said that I
8 was twisting his words, had gotten it all backwards. When
9 he came here the first time to testify to you, I was asking
10 about the conversation about take a vacation and are you in,
11 are you out, and Fares says I'll tell you tomorrow, and he
12 says it four times, and then they say take a vacation and he
13 says the cars are difficult and then they say Fares is not a
14 Fares, that conversation. Salem says I got the whole thing
15 backwards.

16 The government uses Salem's testimony in their
17 summation to say again, Miss Amsterdam, she's got the whole
18 thing backwards. This is what Salem said:

19 Do you recall that conversation, sir?

20 He says: This conversation is completely out of
21 the right order. When Mr. Khallafalla said shame on us, he
22 was saying shame because we were talking in Arabic and they
23 were putting Mr. Alvarez down, and he said shame on us,
24 speak in English, and he starts speaking English. When
25 Mr. Khallafalla laughed and say I will tell my opinion

1 tomorrow, Mr. Siddig told him that's serious business, it's
2 not a joke, because he was laughing and he was joking about
3 it. But the way you read it, ma'am, I disagree with about
4 that.

5 The government says to you when Fares says shame
6 on us, shame on us, what he really means is that he is upset
7 that they are speaking Arabic, not English. And when Fares
8 says I'll tell you tomorrow, that's all a joke, he's just
9 fooling around, and when they say take a vacation, that is
10 aimed at Mr. Alvarez, not at Mr. Khallafalla. Their
11 argument comes from the reading of the transcript.

12 Let's put aside for a second how ridiculous that
13 argument is on its face. Let's put aside for a moment the
14 fact that it is Fares who never comes back, it's Fares who
15 Siddig says hit the road, take a vacation. And let's put
16 aside the fact that at the end they don't say Siddig Ali is
17 not a Fares, they don't say Emad Salem is not a Fares, they
18 don't say Valerie Amsterdam is not a Fares, they say Fares
19 is not a Fares. So in case I misread this conversation, I
20 think something must have happened.

21 I asked Mr. Salem, you weren't even part of this
22 conversation, I said to Mr. Salem. You were sleeping,
23 weren't you?

24 Hm-um, he says.

25 I ask him, I say, you indicated that there were

1 actually two conversations going on at the same time, right?

2 He says yes, ma'am.

3 And I said, and you were actually party to one of
4 those conversations.

5 Yes, ma'am.

6 Question: You remember taking part in that
7 conversation?

8 Answer: Absolutely, yes, ma'am.

9 Question: Weren't you sleeping during that
10 period of time?

11 Answer: No, ma'am.

12 Question: I direct your attention, sir, to page
13 2 -- this is of the same transcript that we are talking
14 about, the last night, June 21 -- and Fares says three times
15 I'll give you my opinion tomorrow. Correct? Do you see
16 that?

17 He says yes, ma'am.

18 Question: Then Siddig Ali says this is not a
19 joke, not a joke, it's serious, serious.

20 That's right, ma'am.

21 Question: And three times Khallafalla says shame
22 on us, right?

23 Yes, ma'am.

24 This is a question: Turn the page over to the
25 next page. See where 1, 2, 3, 4, 5, 6 attributions from the

1 bottom Siddig Ali says to Fares, Fares, please, take a
2 vacation. He's telling Fares to get lost, right?

3 No, no, no, ma'am. He was talking to Mr. Victor
4 Alvarez.

5 Question: He said Fares take a vacation, three,
6 four days. And that was directed to Victor Alvarez?

7 Absolutely, ma'am. You're mixing up the words,
8 he says.

9 You're clear about that?

10 Absolutely, he says.

11 I say let's go to the very next page, sir, 1, 2,
12 3, 4, 5, 6 attributions from the top. Siddig says, let me
13 ask him now, sheik, and right after that in the official
14 government transcript it says trying to wake up Salem.
15 You're Salem, correct, I ask?

16 I beg your pardon, he says.

17 You are Salem, correct? Salem?

18 Yes, ma'am.

19 Question: The transcript indicates that Siddig
20 was trying to wake you up, correct?

21 That is incorrect, ma'am.

22 Question: Does the transcript indicate that,
23 sir?

24 Answer: The transcript, the translator wrote
25 that down. I never slept in the safe house.

1 Remember Mr. Khuzami played a video for you with
2 Emad Salem, feet up on the work bench, and we heard that
3 snoring noise, that snoring noise? That's this
4 conversation. That's this conversation where the man is
5 snoring, and the man gets on the stand and says to you I got
6 the conversation all mixed up.

7 I say to you, if the government thinks this
8 conversation when he says I'll tell you tomorrow was joking
9 around, they should think again. The government's whole
10 argument is based on Salem and Salem's snoring. When a con
11 man can't destroy the tapes he does the next best thing, he
12 gets on the stand, looks you in the eye, and he lies.

13 The conversation goes on. Are you in or are you
14 out?

15 Siddig says: This isn't a joke, this is real,
16 Fares.

17 And what does Fares say? Take a look at this.

18 Siddig says: No, this is not a joke, this is not
19 a joke, this is serious, serious.

20 And the moralist pacifist won't steal a car,
21 terrorist says, then shame on us. Then shame on us brother,
22 shame on us. By God shame. Islam is my brother, Islam my
23 brother, shame, shame, shame.

24 Imagine some guy who is the get-away driver in a
25 bank robbery. He walks inside the bank and he says what are

1 you guys doing? They say we're robbing a bank. He goes are
2 you real? Are you serious? They say this is serious, we're
3 robbing a bank. He goes shame, shame, shame, shame, shame,
4 shame. Does that sound like a bank robber to you?

5 Imagine some guy in his marine recruiting office.
6 He walks in, sees all the pictures, see the world, join up,
7 and he says I'm ready to join up, I want to sign, where do I
8 sign? And they say OK, sign right here, we're shipping out,
9 we're going off to fight a war and you're going to have to
10 kill some people. And he says you're not serious are you?
11 And they say yes, I am. And he goes I'm not joining, shame
12 on you, shame on you, shame on you.

13 Then imagine that as he walks out the door,
14 having said shame on you, shame on you, shame on you, the
15 guy sitting behind the desk, boy, we thought that that John
16 Smith was going to be a soldier, and the recruiting sergeant
17 looks up and says yeah, go figure, that John Smith, he
18 wasn't any soldier.

19 Am I nuts here or do we have an innocent guy on
20 trial?

21 They tell Fares, after he says shame, shame,
22 shame, shame, shame, shame, they tell him why don't you go
23 home and read the Koran, that will help you.

24 And then, as the hours pass by, Siddig Ali says
25 let's ask them one by one, Fares, come over here. And Fares

1 doesn't come over here. Salem says wait, I didn't finish.
2 And Siddig is yelling listen, listen Fares, we will come to
3 you. The door opens, the door closes, and Siddig Ali says
4 Fares, we thought he was a Fares, and Salem says no, he is
5 not a Fares.

6 Two and a half years later, they make made this
7 case a whole lot more complicated than it was.

8 Instead of looking at what Siddig said and what
9 Salem said and what other people around him said, look at
10 what Fares said. Fares said cars is difficult for me.
11 Fares says I'll tell you tomorrow. And you know what Fares
12 did? Fares walked out. He never, ever came about back.
13 Actions speak louder than words.

14 The government is going to come back. They are
15 going to show you some words, here is a snatch of
16 fertilizer, here is a snatch of oil, Fares, don't tell
17 Mohammed Saleh what the plan is, and that's it. I am going
18 to tell you, a picture is worth a thousand words.

19 Here he is, the pacifist moralist won't steal a
20 car terrorist, Fares Khallafalla, and for those who cannot
21 see the pacifist moralist will not steal a car, Fares
22 Khallafalla terrorist is wearing a "New York, New York, it's
23 a hell of a town" tee shirt. A terrorist committed to the
24 destruction of bridges and tunnels, committed to the deaths
25 of thousands of innocent people. Angry with America, Mr.

1 Fitzgerald said. These are people who have a motive to kill
2 you. They are angry with America. And what is he doing?
3 He is wearing his New York, New York tee shirt.

4 Before you buy into the government's trap of
5 analyzing word for word whether Fares should have figured
6 out the plot, take a look again at this picture. Ask to
7 have it sent in. This is the picture of reasonable doubt.
8 You can see it. Actions speak louder than words. If you
9 want proof positive that Fares didn't know the plot,
10 consider what happens when he is first confronted with any
11 language about America should go change. You know what he
12 does? He walks out.

13 Mr. Fitzgerald is right. Perhaps each defendant
14 was given a choice to say in or out. In Fares's situation,
15 he chose the right thing, he walked out.

16 Consider Mr. Fitzgerald told you what each
17 defendant did. By Salem's own testimony he establishes that
18 he never saw Fares again after that night, even though
19 Siddig tried to reach him, that Fares was never there when
20 the oil was purchased to the garage, that Fares never
21 participated in getting any weapons, that Fares never
22 participated in the famous firecracker test bombing
23 explosion, that Fares never missed anything, that Fares
24 never surveilled any targets, that Fares never drove around
25 any buildings. In fact, he drove right past buildings and

1 didn't know they were the targets. That Fares never watched
2 the tunnel video. That Fares had \$20,000 in his bank
3 account when Siddig can't get money for the fertilizer, the
4 oil, the weapons, or the escape. What does Fares do? He
5 buys \$30 worth of timers that have to go plugged in.

6 Consider also that Fares never had an escape
7 plan. In fact, Siddig tells Wahid Saleh that Siddig will be
8 leaving the country but he will talk to Fares about running
9 his hot dog truck. This is June 21. This is the day that
10 Fares leaves, and as crazy as Siddig is, he knows Fares is
11 not down for the count, because Siddig is going off with
12 Emad into the sunset, to the Philippines, to the Sudan,
13 where they are going to meet Siddig's family, and they are
14 going to be together forever, and what does he tell Wahid
15 Saleh? Well, I'm going off, I won't be back, I can't work
16 the hot dog truck but I will talk to brother Fares, maybe he
17 will work the hot dog truck for you.

18 Siddig was crazy but he wasn't stupid. He knew
19 Fares wasn't going, he knew Fares was joining. It wasn't
20 his jihad difficult experience.

21 Thank you. I am now turning to the last part of
22 my summation, the agents, and after a lot of work by Mr.
23 Jacobs and I, I am looking forward to this part of the
24 summation. He will have the last word but I have a couple
25 of things to say.

1 Mr. Fitzgerald came before you last Thursday
2 morning and he said to you that agents of the FBI had not
3 engaged in any coverup regarding the tapes. Oh, he
4 suggested perhaps the agents were a little inexperienced,
5 they were under a lot of pressure, they were between a rock
6 and a hard place, and maybe they didn't act up to their
7 professional standards of excellence being special agents.
8 But coverup, never, not then, not now. Everything was out
9 in the open, the government said. Everything was out in the
10 open.

11 I ask you, when the government closed its case in
12 June, was everything out in the open? Did the jury have all
13 the facts, all the evidence? Who called 20 FBI agents cold
14 without having had the opportunity to speak to them in
15 advance? Mr. Jacobs and me. Not the government.
16 Everything was out in the open? No coverup? Even after the
17 witnesses testified the coverup continued, 'cause the lies
18 continued.

19 The government called on its case one witness
20 about taping. They called Detective Louie Napoli. And was
21 even he honest and open with you? He denied knowing about
22 the taping, and I submit to you that was an out and out
23 blatant lie. Napoli under oath lied to you.

24 When called by the government back in March
25 Napoli takes the stand and said I didn't know Salem was

1 privately recording defendants and targets before June 23,
2 1993, the day of the arrests. Judge Mukasey interrupts and
3 clarifies a question, and in answer to a question by the
4 court he says I didn't know Emad Salem was recording agents
5 before June 23, 1993. Those answers were lies. I submit
6 you know it.

7 When called to testify in March, he said to you,
8 under oath, I thought Salem was making only a couple of
9 personal dictation tapes. Quote, personal dictation tapes,
10 that's all I know. That testimony, I submit you know is a
11 lie. Yet the government argues that there was no coverup,
12 never was a coverup on the part of the agents, everything
13 was out in the open.

14 When Napoli was called by the government to
15 testify, did Napoli volunteer that he had been feeding Salem
16 boxes of 120's? Did Napoli volunteer that he had talked to
17 Salem in his car in March of 1993, and that Salem had said
18 to him I got to go home and check my hundreds of tapes? Did
19 Napoli volunteer to you that he patted Salem down, checking
20 for a wire, because Napoli knew, he always knew that Salem
21 was taping. That's why Napoli would never speak to him on
22 the phone. That's why Napoli said in a recorded
23 conversation, I want to see you in person, because when you
24 see him in person you can pat him down, on the phone you
25 know he's taping.

1 And when we called him back last month, Napoli
2 had the absolute arrogance to get up on the stand and not
3 even to have taken the time to remember what lie he told
4 last. Gone was the story about the dictation tapes. No, he
5 didn't even bother to look over his testimony to make sure
6 he remembered. This time he says to you, I thought Salem
7 only had answering machine tapes. He comes to the witness
8 stand, he raises his right hand, he places his left hand on
9 the Bible, he swears to tell the whole truth and nothing but
10 the truth. Then he tells you two completely different
11 stories and both of them are out and out lies. As my
12 grandmother used to say, only the truth doesn't have to be
13 rehearsed. He not only didn't rehearse his story, he didn't
14 even bother to look at the transcript. That's the arrogance
15 that that man had for the judicial system.

16 In this courtroom, Judge Mukasey has a number of
17 rules and one of them is a hard and fast rule. When someone
18 takes the stand, everyone stops talking, everyone stops
19 writing, everyone solemnly pays attention. Why? To
20 acknowledge the sanctity of the oath. Thousands of years
21 carved in stone tablets are the words thou shalt not bear
22 false witness. Those are the historical roots of the oath
23 taken by every witness in every courtroom on every day in
24 our country, and I submit to you that it is a tragedy, it's
25 a tragedy for us here, it's a tragedy for a system of

1 justice and it's a tragedy for the men who sit in this room
2 that the only people who didn't obey Judge Mukasey's rules
3 were the agents in this case. They had no respect for the
4 oath. The agents, Napoli, Floyd, Anticev, swore to tell the
5 truth and looked you in the eye and lied repeatedly.

6 Mr. Fitzgerald talks to you about terrorism?
7 Make no mistake about it. The conduct of the agents, the
8 conduct of special agents for the FBI who were sworn to
9 uphold the laws and the Constitution of the United States,
10 and who ignore their oath and lie, that, too, is terrorism.
11 It was said many, many, many years ago that power corrupts
12 and absolute power corrupts absolutely. Those agents from
13 the FBI had come to believe that they answered to no one but
14 themselves. They can make up the rules as they go along.
15 They are the police policing the police. When Agent Fred
16 Whitehurst is sent to paint chips, that's terrorism. But of
17 course the government says to you, "The conduct of the
18 agents is for others to look at in a different forum."

19 Where? When? Who? The government says to you
20 not in this courtroom, there is no coverup going in this
21 courtroom. But right up until the close of testimony agents
22 lied to conceal the truth. Where was everything out in the
23 open? Was it out in the open in that unknown place before
24 that unknown person who those agents are going to be
25 answering to at some unknown time? To quote another

1 American president, Harry S. Truman, the buck stops here.

2 My client is on trial for his life and it's not
3 for another unknown person at some other unknown place and
4 time to consider the conduct of the agents. The issue is
5 here before you. The buck stops here.

6 You know the facts of the pact between Salem and
7 the government to conceal evidence because Mr. Jacobs and I
8 called 20 agents into this courtroom who wouldn't talk to us
9 in advance, to drag the truth --

10 MR. McCARTHY: Objection, wouldn't talk
11 beforehand. There is no evidence of that.

12 THE COURT: That is stricken.

13 MS. AMSTERDAM: I will take the statement back.

14 THE COURT: Go ahead.

15 MS. AMSTERDAM: We called 20 agents into this
16 courtroom to drag the truth from out from underneath some
17 rock and into the light of day so that you the jurors would
18 know the whole story.

19 You can accept or reject, in whole or in part,
20 anything I say, but at least now you get to make the
21 decision. Don't wait for that other person at that other
22 time and that other place. Don't rely on anyone but
23 yourself to insure that justice is done. If you believe
24 that the conduct of the agents contributed to the
25 destruction and alteration of evidence by Salem, and if you

1 believe that crucial evidence is missing as a result, I
2 submit to you that you must acquit my client, because you
3 cannot be convinced beyond a reasonable doubt of his guilt.

4 Mr. Fitzgerald came to you last Thursday and said
5 that the system worked, that Agent Whitehurst, his reports
6 were corrected, the lawyers in the World Trade Center were
7 informed of relevant information. The system didn't work.
8 The system failed miserably. Agent Whitehurst is in paint
9 chip analysis. He was continually pressured. He was
10 physically threatened by agents -- an agent of the bomb
11 squad. The system failed.

12 You and the World Trade Center jury know of Agent
13 Whitehurst's existence only because he threatened to go
14 public. You saw the transcript yesterday. He and
15 Burmeister said they were going to go public in court.
16 That's why you know about what happened. The system didn't
17 work. He threatened to go public and it cost him dearly.
18 And who called Agent Whitehurst to the stand? I did, me and
19 Mr. Jacobs.

20 Don't give the jury any alternative theories of
21 innocence. Don't give the defense anything it can use
22 against you. Shorten the evidence. The jury can't
23 understand that stuff anyway. They'll get confused.
24 They'll think the case is so much more complicated than it
25 is. That's the Whitehurst message. The ends justify the

1 means, especially when you find yourself, as the government
2 says, between a rock and a hard place. When that happens
3 you can throw out the rule book and let the police make up
4 the rules as they go along.

5 Mr. Fitzgerald came to you and defended Agent
6 Nancy Floyd's testimony. A22, Khallafalla C. Floyd got on
7 that stand and under oath she said that she only pretended
8 to tell Salem that it was OK to tape or erase or destroy and
9 that she was pretending to do that to put him at ease to
10 permit him to convince him to give her the tapes. I submit
11 that is hard to believe and not a person who heard it
12 believed it. You can perhaps understand why. She is
13 fighting for her job, her career, and possibly her life.
14 She is fighting against possible criminal charges. But ask
15 yourselves this question: How does the government defend
16 that testimony? Does the government honestly maintain that
17 Nancy Floyd told the truth? Do they honestly maintain that
18 Nancy Floyd was telling the truth when she testified about
19 her remarks about chicken shit and gutless? She said that
20 wasn't been my superiors, that was about the government in
21 general. Who? The IRS, the Department of Agriculture, the
22 Department of Transportation? Not her supervisors? Was
23 that the truth? Does the government credibly defend Floyd
24 as a truth teller when she said her relationship was
25 strictly professional or, I ask you, must the government say

1 this, in spite of common sense, to protect its agents and
2 protect its case?

3 Can the government look you in the eye and say
4 that Floyd told the truth when she testified that she never
5 advised or assisted or helped Salem negotiate a book deal?
6 When I asked you -- I went through a litany of things.
7 Wasn't that negotiation, wasn't that advice, wasn't that
8 assistance? No. I said, you said to the man, Emad, if you
9 want to get what you want to get, go in there and tell them
10 that unless they give you what they want, the only person
11 who is going to be rich is you, Emad, because you'll be
12 writing your book. That's not advice, she said. That's not
13 negotiations. Those were just words, she said. She, I
14 submit, should know. Floyd's testimony on the witness stand
15 was just that. It was just words, no truth.

16 Ask the government to get up here next week in
17 rebuttal and get up in front of you and tell you that Floyd
18 was simply inexperienced, simply naive, but not a liar. Ask
19 the government to get up here again and tell you that Floyd
20 never engaged in any coverup to conceal evidence from you.
21 Ask the government to get up here one more time, look you
22 straight in the eye and tell you that her explanation about
23 Khallafalla C was the truth. Ask the government to tell you
24 one more time how Floyd innocently and naively argued to the
25 chief attorney for the New York office of the FBI when she

1 said to him, you can't take those tapes, that's an illegal
2 search. Do you think Agent Floyd would have had the
3 temerity or the guts to question the authority of the FBI's
4 chief attorney on a legal issue? Don't you think that both
5 she and Salem were scared to death that Roth might find the
6 tapes that showed the agents saying Emad, do what you want,
7 we'll look the other way, just get us the case.

8 The government in its summation looked you
9 straight in the eye, stood behind its agents, argued there
10 was no coverup. The truth be damned, win at all costs, the
11 ends justify the means. That's what the government did in
12 this case, that's what the government is still doing, and
13 that is the Fred Whitehurst message. The government defends
14 Agent John Anticev's testimony that he was concerned about
15 the rights of the accused, that he was concerned about
16 preserving the integrity of the attorney/client privilege.
17 The government says said that Agent Anticev was concerned
18 about the Brady rule, that he wanted to make sure the
19 innocent was not convicted and that the attorney-client
20 privilege was respected.

21 Are we talking about the same John Anticev here?
22 Is this the same John Anticev who had been previously
23 disciplined for having signed off, having witnessed payments
24 to an informant when he wasn't present? Is this the same
25 John Anticev who swore under oath that Louie Napoli didn't

1 know about the taping when in fact he knew Napoli had not
2 only patted down Salem looking for a recorder but also knew
3 because he was there that Napoli had heard Salem say that he
4 had hundreds of tapes? Is this the same John Anticev who
5 told Salem if you happen to turn on one of our little
6 gadgets, this isn't me official talking here, we'll keep it
7 on the side, not enter it, not enter it into evidence.
8 That's not me official talking here.

9 I submit to you that's a pretty scary thing to
10 hear. Agents and informants are supposed to have only
11 official relationships. It's not me official talking here.
12 Does Anticev have official testimony and unofficial
13 testimony? And which did you hear? Does Anticev have
14 official evidence and unofficial evidence? And which did
15 you see? Does Anticev have official tapes and unofficial
16 tapes? And which did you get? Does Anticev have official
17 rules and unofficial rules for informants? And which did he
18 give Salem? Salem told those agents over and over again, I
19 can't follow the rules, I got to be me, I got to do it the
20 Middle Eastern way, and you know what they said to him?
21 That's OK, just cover your tracks.

22 The same John Anticev who says we will have to
23 cleanse the evidence to prevent it from getting into the
24 hands of defense counsel, to prevent it from becoming
25 discoverable evidence.

1 Ask yourselves, does the government believe its
2 own arguments about the sincerity of Anticev's motives to
3 protect the innocents or is it circling the wagons? What
4 did John Anticev mean when he talked about cleanse the
5 information?

6 As I am almost done, I want to leave you with
7 some thoughts. I put together what I thought you should
8 consider as the David Letterman top 10 reasons to cleanse
9 the evidence.

10 Reason number 10 to cleanse the evidence, one
11 million dollars.

12 Reason number 9 to cleanse the evidence is, don't
13 give the lawyers anything they can use against us, because
14 the lawyers are the enemy.

15 Reason number 8 to cleanse the evidence, the jury
16 can't understand that stuff anyway, 'cause you know what,
17 guys, you're the enemy.

18 Reason number 7 to cleanse the evidence, don't
19 complicate the case. Let's keep it simple.

20 Reason number 6, cover your informant and his
21 tracks.

22 Reason number 5, eliminate all evidence of Bosnia
23 and training.

24 Reason number 4, hide the agent misconduct.

25 Reason number 3 as to why you should cleanse the

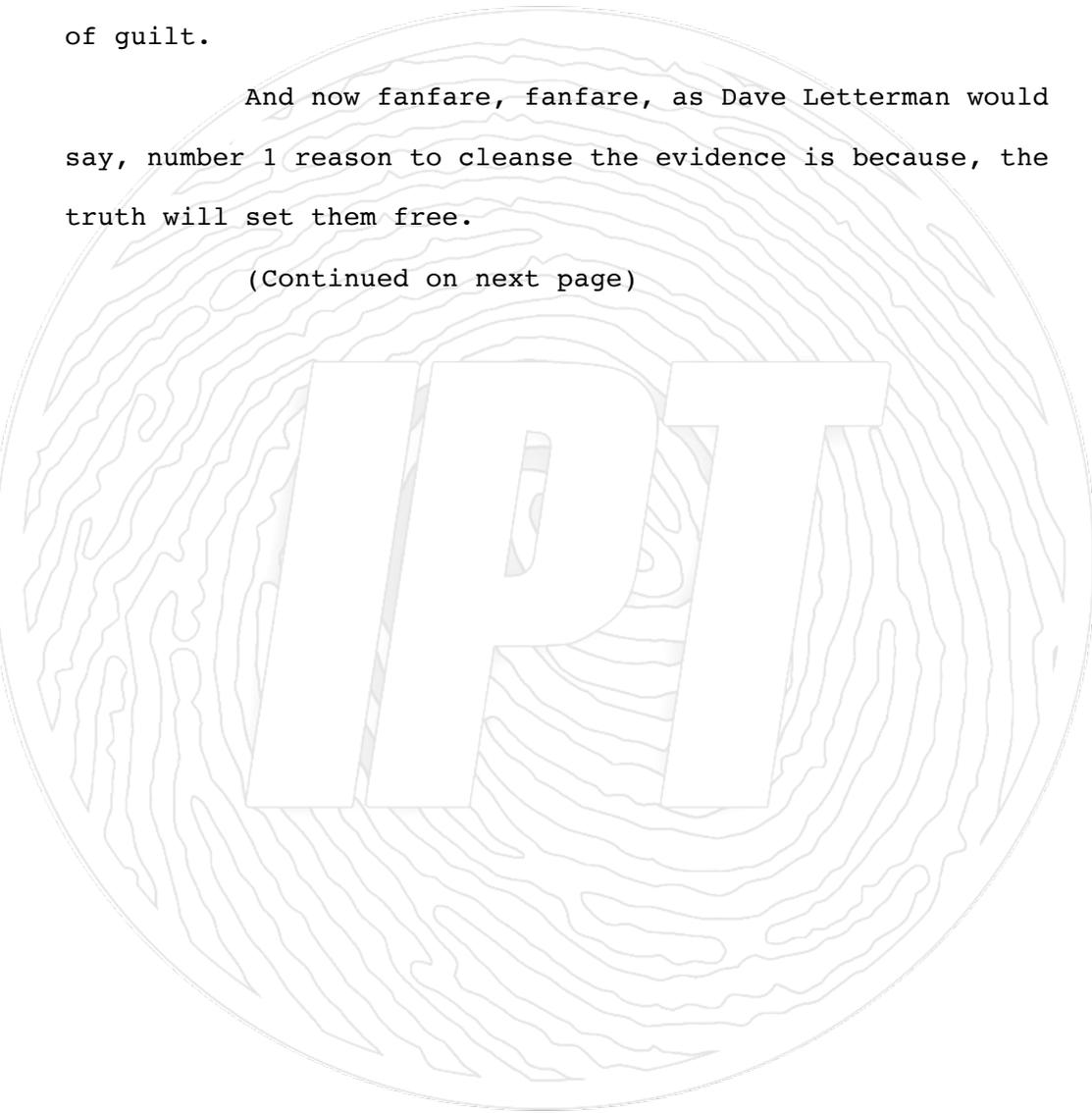
1 evidence? So you can bias the results, as Fred Whitehurst
2 would say.

3 Reason number 2 as to why you should cleanse the
4 evidence is, get rid of anything which undercuts your theory
5 of guilt.

6 And now fanfare, fanfare, as Dave Letterman would
7 say, number 1 reason to cleanse the evidence is because, the
8 truth will set them free.

9 (Continued on next page)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 Have we learned nothing from the Agent Whitehurst
2 story? Do we simply continue on as if it's business as
3 usual? Don't ignore Fred Whitehurst's courage. Don't let
4 the destruction of his career stand for nothing.

5 If he had the courage, the honesty and the
6 decency to look at alternative theories of evidence, of
7 innocence, so, I submit, should the jury.

8 If he had the courage, the honesty and the
9 decency to stand up against the rush to judgment, so I ask,
10 must you.

11 If he had the courage, the honesty and the
12 decency to honor his oath as an agent, I urge you to honor
13 your oath as jurors. He, and almost he alone of all the
14 special agents, honored the laws and the Constitution of our
15 country. Follow his example.

16 His honor will tell you that you must acquit my
17 client unless you are convinced beyond a reasonable doubt of
18 the guilt of Fares Khallafalla.

19 If you have a reasonable doubt, a doubt that
20 would cause you to hesitate, you must acquit.

21 If you have a reasonable doubt that he didn't
22 know about at least one of the objects of the conspiracy,
23 you must acquit. If you have a reasonable doubt that it is
24 possible that he acted out of innocence or accident or
25 mistake, you must acquit.

1 If you have a reasonable doubt that it is
2 possible that Fares believed he was going to training for
3 Bosnia, you must acquit, or, if you have a reasonable doubt
4 that my client was entrapped by Salem in that first ride out
5 to Queens, you must acquit.

6 As I close, I want to give you the following
7 images of reasonable doubt:

8 A picture is worth a thousand words;

9 Number two, better late than never;

10 Number three, actions speak louder than words;

11 Number four, Fares is not a Fares. Salem and
12 Siddig said it, I didn't make it up. The government's own
13 informant said it.

14 Number five as to reasonable doubt, Exhibit 663,
15 a little light music, where are the real tapes? Salem said,
16 I had many conversations with your client and other targets
17 regarding the training, my training people for Bosnia.

18 Where are they?

19 Reason number six as to reasonable doubt, CM17.
20 It's gone. In the middle of a whole sequence of numbers,
21 it's not there, and it wasn't squished, and two separate
22 screws didn't turn five times each to disengage the Nagra.
23 It was disconnected. It was permanently and for all times
24 erased. It was concealed. It was tampered with. Why? To
25 eliminate all evidence that doesn't support a theory of

1 guilt, to eliminate a theory of innocence, and to make sure
2 that defendants don't get the tools to defend themselves.

3 Dr. Fred Whitehurst believed in our American
4 system of justice. He believed you could come in front of
5 the jurors and give them the facts and that they would do
6 justice. In his name, and the name of the laws and the
7 Constitution of this country, I am asking for justice. I am
8 asking that you acquit Fares Khallafalla. I am asking that
9 you find him not guilty. I am asking you to stand up in
10 this court and tell the government, Fares is not a Fares.

11 Thank you.

12 THE COURT: Thank you, Ms. Amsterdam.

13 Ladies and gentlemen, we are going to break for
14 the day now. Please leave your notes and other materials
15 behind, and please don't let the message get lost through
16 repetition. Please don't see, hear or read anything about
17 this case or any related matter. And obviously, please
18 don't discuss it on the outside or in here. We are going to
19 resume again on Tuesday. See you then.

20 MR. JACOBS: Your Honor. What time on Tuesday?

21 THE COURT: The usual time on Tuesday.

22

23

24

25

1 (Jury not present)

2 THE COURT: Before we leave, Mr. Wasserman, do
3 you have the exhibit numbers?

4 MR. WASSERMAN: The government has them.

5 THE COURT: The government has them.

6 MR. WASSERMAN: I have to speak with them, your
7 Honor. Your Honor, if I may, it would take two minutes, but
8 we have it.

9 THE COURT: Fine. I will wait.

10 (Proceedings adjourned to Tuesday, September 19,
11 1995 at 9:30 a.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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

3 v.

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

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

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

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

S5 93 Cr. 181 (MBM)

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

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

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

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

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

Defendants.

-----X

September 19, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

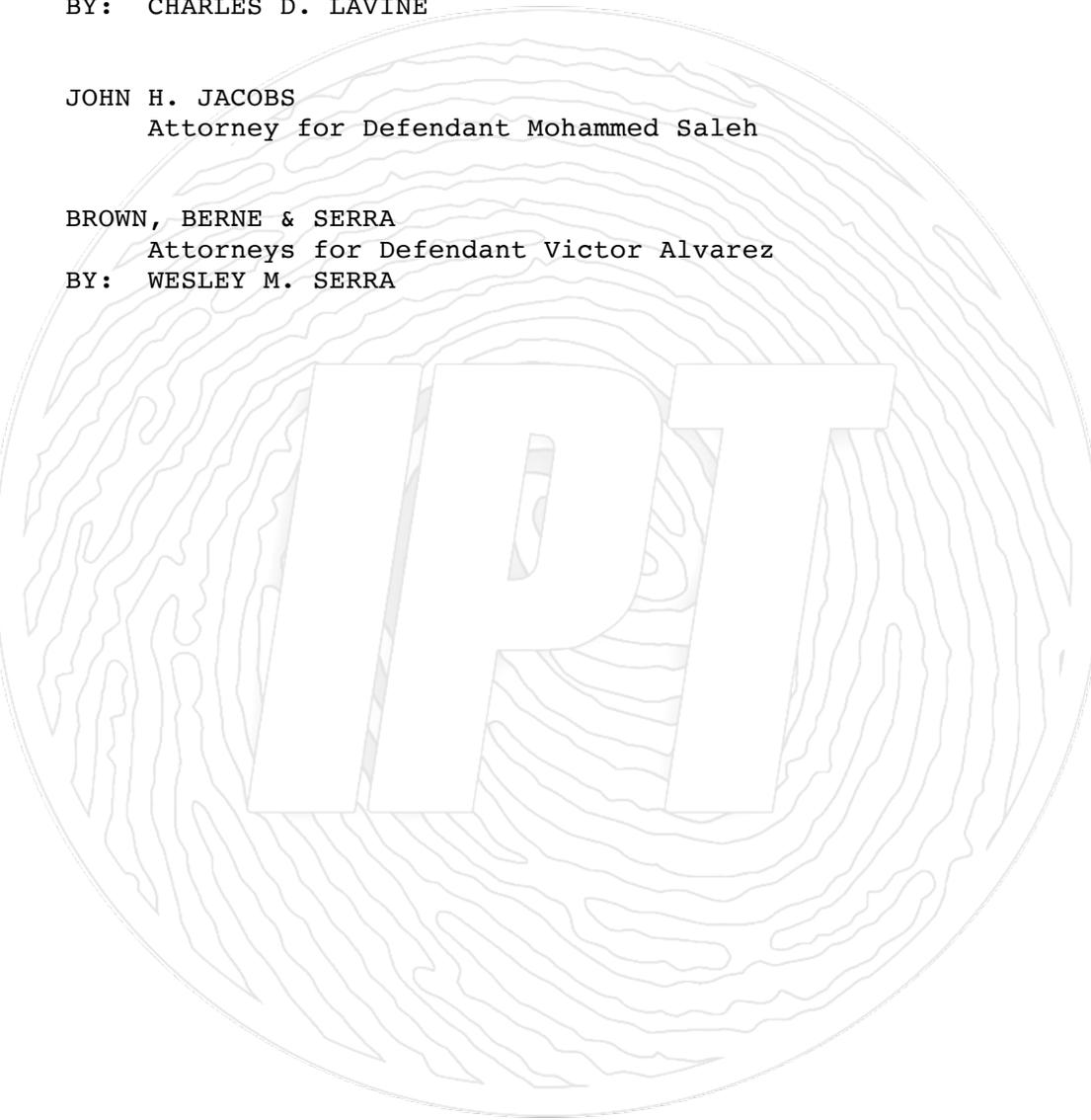
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Trial resumed)

2 MR. JACOBS: Your Honor, I am going to, with the
3 court's permission, step out for some part of the morning's
4 summation to work on my own summation.

5 THE COURT: Is that all right with you,
6 Mr. Saleh?

7 DEFENDANT MOHAMMED SALEH: Yes.

8 MR. LAVINE: Your Honor, I am in the same
9 position with respect to Mr. Abdelgani.

10 THE COURT: Mr. Abdelgani, is that all right with
11 you?

12 DEFENDANT FADIL ABDELGANI: Yes, sir.

13 MR. MCCARTHY: Your Honor, may I have a moment
14 with Mr. Jacobs?

15 MR. JACOBS: Your Honor, Miss Amsterdam will
16 cover for me.

17 MR. LAVINE: Ms. Amsterdam will cover for me as
18 well. Thank you, Judge.

19 (Jury present)

20 THE COURT: Good morning, ladies and gentlemen.

21 JURORS: Good morning.

22 THE COURT: You will now hear a summation in
23 behalf of Tarig Elhassan, from Ms. London.

24 MS. LONDON: May it please the court, members of
25 the prosecution, my fellow defense counsel and Mr. Elhassan,

1 and ladies and gentlemen, good morning. I guess I got a
2 little lucky because you have had a three-and-a-half-day
3 break, and I trust that most of you spent the weekend
4 eagerly awaiting what the rest of us have to say to you. We
5 are in the home stretch here, and I would say sit back.
6 Don't relax, I have some important things to say to you.

7 My summation will not be long in terms of some of
8 the summations you have heard here. I would estimate about
9 two hours.

10 Just to give you an outline, too, of what I will
11 be talking about, where I am heading, we will be talking
12 about Pennsylvania, about Bosnia, about Emad Salem, of
13 course, and also, obviously, the events of June 19 through
14 June 23 of 1993, and finally we are going to talk about
15 bombs.

16 As you probably know, Mr. Elhassan is charged in
17 three counts in the indictment here. He is charged in the
18 same count that every defendant is charged in, the
19 all-encompassing seditious conspiracy count, which is Count
20 1. That is the count that charges him with conspiring to
21 wage a war of urban terrorism against the United States or
22 conspiring to oppose the authority of the United States by
23 force.

24 He is also charged in Count 5, which is the
25 bombing conspiracy count, a conspiracy to bomb buildings,

1 vehicles, and real property in New York City. And finally
2 he is charged in the attempted bombing count, Count 6. The
3 conspiracy to bomb New York property is Count 5.

4 Mr. Fitzgerald told you in his summation that the
5 government is relying on pretty much the same evidence,
6 namely the tapes, the transcripts and the videos from June
7 19 to the 23 of 1993, to prove each of the three counts
8 against him.

9 Ladies and gentlemen, as you recall, Mr. Elhassan
10 testified here before you in this case, and as you know, a
11 defendant has no obligation to prove anything, no obligation
12 even to put on a defense case, no obligation even to
13 cross-examine the government's witnesses. That is because
14 the government has the burden of proving each and every
15 element of each and every count beyond a reasonable doubt.

16 Certainly, as the judge is going to instruct you,
17 a defendant has no obligation to testify. But Tarig
18 Elhassan chose to testify so that he could tell you about
19 the events of the spring of 1993 from his perspective. Only
20 he knows what was in his head and what he was thinking as
21 the events charged here unfolded.

22 I want to quote Mr. Fitzgerald's summation to
23 you, but, don't panic, not his entire summation. I am
24 reading from page 18780 of the record. He said, concerning
25 Tarig's testimony: I submit to you his testimony that this

1 was all simulation was a crock. I would say that is one of
2 the poetic references we have had in the course of the
3 summations. It makes no sense. He tells you he was
4 thinking this was all pretend. Then he continues. Never
5 once do you see pretend. You never see make believe. You
6 never see simulation. You never see him at 1:00 in the
7 morning saying this is awfully late for make believe, can't
8 we go home.

9 Mr. Fitzgerald has asked you to evaluate the
10 testimony in this case by looking for corroboration in the
11 transcripts. Ladies and gentlemen, I would like to
12 demonstrate to you here this morning that there is evidence,
13 and plenty of it, from the transcripts and from the
14 testimony, from which you can conclude that Tarig Elhassan
15 did believe that he was participating in a training
16 simulation, and this evidence corroborates his testimony.

17 I am going to lay it out for you, but first I
18 want to remind you of something that Miss Stewart said in
19 her summation and repeated to you a number of times, because
20 it is very, very important in this case, and that is,
21 context is everything. You cannot take a conversation and
22 put a frame around it and say look at this, it proves guilt.
23 You have to fit that conversation into the entire context,
24 into the entire situation that unfolded.

25 If you are going to take snippets of transcripts

1 to rely on and say this proves guilt, I submit to you that
2 it is like coming into a movie 10 minutes before the end.
3 Then you have to guess what happened during the whole first
4 hour and 25 minutes of the movie. Don't do that here. I
5 mean, if you think of a movie, and maybe it dates me, but
6 Saturday Night Fever, if you take the last 10 minutes of
7 Saturday Night Fever, some guy jumps off the Brooklyn Bridge
8 and John Travolta stops working at the hardware store. I
9 don't think that is what the movie was about.

10 First we are going to talk about Pennsylvania.
11 You have heard about the training there. Mr. Bernstein
12 talked to you a little bit in his summation about
13 Pennsylvania, too. I am sorry that I am probably going to
14 repeat some of the things that he said, but there is a
15 context that I want to fit them into.

16 Although the first evidence that implicates,
17 according to the government's theory, Tarig Elhassan and the
18 crimes charged in this indictment is to all extents and
19 purposes June 19 of 1993, just four days before his arrest,
20 predating that is the all-important Pennsylvania training
21 camp, of late 1992, early 1993.

22 First I would like to point out something to you,
23 ladies and gentlemen. Mr. Fitzgerald in his summation
24 didn't talk to you at all about Pennsylvania, yet attendance
25 at the Pennsylvania training camp is charged as overt act BB

1 of Count 1 of the indictment. Here is the indictment.
2 Overt act BB reads that between in or about December 1992
3 and in or about early February 1993, Siddig Ibrahim Siddig
4 Ali, Amir Abdelgani, Tarig Elhassan, Fadil Abdelgani, and
5 coconspirator Mohammed Abouhalima, among others, trained in
6 a location in New Bloomfield, Pennsylvania.

7 All of the testimony that you have heard about
8 this training camp in Pennsylvania over the last several
9 months, there is not one shred, not one ounce, not one iota
10 of testimony that this training was in furtherance of either
11 the bombing conspiracy or the seditious conspiracy charged
12 in Count 1 of the indictment. Not one single word.

13 Everything that you heard about Pennsylvania pointed to
14 training for Bosnia.

15 The first witness who testified about
16 Pennsylvania was the government's witness, Haggag, Abdo
17 Rahman Haggag. You recall, Haggag is a young who runs to
18 the government, the authorities, when he thinks he smells
19 something rotten in the air. He had run to the government,
20 he had spent time being debriefed by the government. He
21 didn't have a single thing to report wrong about
22 Pennsylvania? Why? Because there was nothing wrong to
23 report about it. He told you that he attended that training
24 camp in Pennsylvania on one occasion. How did he get there?
25 He got there the same way that everyone who went there got

1 there: through his good friend Siddig Ali.

2 You were told that Siddig Ali was lecturing at
3 New Jersey, New York mosques. He wanted to be a leader in
4 organizing Bosnia relief efforts. Let's look at what Siddig
5 himself had to say about what he was doing. This is taken
6 from Khallafalla M, CM 29, dated May 31, 1993. Siddig Ali
7 is talking to Emad Salem, talking about a lecture that he
8 gave at Warren Street. In this lecture he tells Emad that
9 the people on Warren Street told me don't come here any
10 more, they got nervous, and it creates problems. They said,
11 this man is the leader of the emirs, he came to me, a strong
12 language lecture with the topic of Bosnia. I told him all
13 of you are sinners. If you don't make a quick plan for
14 demonstrations and we go to the Islamic embassies and break
15 them even if we get arrested, I want that on the pulpit. We
16 have to organize violent demonstrations, not against
17 America, against the Islamic countries, because they -- OK.

18 Back in late 1992, Siddig Ali's mission was
19 Bosnia. Siddig Ali hand-picked the people he wanted to go
20 to Bosnia. Again, looking at the trial transcript at page
21 5112, which is also a reading of Government's Exhibit
22 641T -- 641T, if you recall, is not a CM tape, it is the
23 first recorded but unauthorized taping that Emad did of a
24 conversation between him and Siddig. But, if you recall, it
25 is not the first conversation they had, it is the first one

1 where he pushed the button. And 641T, ladies and gentlemen,
2 one of the earlier conversations between Emad and Siddig, is
3 full of Bosnia. Siddig keeps talking about Bosnia training,
4 Bosnia and Bosnia.

5 Siddig says here we brought people, people were
6 dropping out, the people we got were good, I didn't get
7 anyone, no, only people I know, whom I have known for a long
8 time.

9 He continues. Siddig Ali says: What was the
10 reason to expedite this thing? They have a goal. I have a
11 goal, or we have a goal -- it sounds like an English lesson.
12 Our goal is that these people get extensive and very, very
13 good training, so that we can get started anyplace where
14 jihad is needed.

15 Salem, I guess, gets excited and says: Where
16 that?

17 Siddig Ali says: Where there is a benefit for
18 the nation.

19 Salem: Uh-huh?

20 Siddig Ali: And after they receive their
21 training they go to Bosnia.

22 I want to review fairly briefly with you the
23 testimony that Haggag gave about Bosnia. This is important
24 because I am going to come back to this later on in another
25 context. Haggag is asked on his direct examination: What

1 happened when you arrived at the training camp the time you
2 attended? This is from the trial transcript, Haggag's
3 direct examination at page 9979.

4 Haggag answers: We got there and familiarized
5 ourselves with the place. Abdul Mohaimon came after awhile
6 and spoke about the camp and the training, and spoke about
7 the situation that you will encounter in Bosnia and the
8 situation over there in Bosnia will be different. And we'll
9 try to make some of this, create some of this difficulty
10 here in the training.

11 Further down, he spoke about what we may see in
12 the Bosnia and we have to be prepared in ourselves for
13 anything that we might encounter.

14 Then Haggag also told you about the power plant
15 mission during his direct exam.

16 During the training did you make any runs or
17 excursions to a power plant?

18 The basic training, answers Haggag, was that we
19 were going to run to the electrical center, the power plant,
20 and we were going to imagine that this power plant was in
21 Serbian territory. Until we reached, they were not supposed
22 to be seen by anyone because of the snipers. And your
23 mission is to go and explode this power plant in Serbian
24 territory. Must be very careful that no one sees you
25 because anyone could be a sniper.

1 You know, it sounds like simulation, it looks
2 like simulation, but the word simulation isn't there.
3 Haggag didn't testify the simulation was to do this, the
4 simulation was to do that, because when he was down in
5 Pennsylvania, obviously they weren't saying constantly this
6 is a simulation, this is a simulation.

7 He continues to describe how they ran. We made
8 two rows for two columns, and we made two rows. We began to
9 run in the fields. At the beginning, some of us were going
10 to faint from the running and becoming very tired. Then
11 after I vomited. Then we continued to the end. We
12 continued until the end, until we got to the power plant.
13 At the power plant Mohaimon was waiting for us at the side
14 of the street and we were hiding underneath the tower of the
15 power plant until he gave us the signal for us to run and
16 get in his car. It would a training similar to the type of
17 situation you would see in Bosnia.

18 You heard about this power plant run from at
19 least two other witnesses, from a witness called by Mr.
20 Wasserman, Abdullah, and from Tarig himself. You recall
21 Tarig told us on cross-examination that in the preliminary
22 instructions Mohaimon drew a blackboard sketch of the plan
23 of attack. I remind you right now that Siddig copied this
24 procedure when he made a plan for Siddig and Fares in the
25 garage. He also told us how they were taught hand signals,

1 one to lie down, another for get up and run, another for
2 don't move. Most importantly, you can see from what Haggag
3 said there that Haggag took the training seriously, as did
4 the others. They didn't say this is ridiculous, it's just
5 training, why are we lying down in the snow, why are we
6 lying down on a cold mountainside in the middle of the
7 night? They acted as though it were a real live situation.
8 In fact Haggag told you that he got so exhausted that he got
9 faint and vomited. But still he didn't say this is all
10 make-believe, it's late, I am cold, I want to go home. But
11 as you saw, he continued. He like the others acted as
12 though the situation were entirely real.

13 Ladies and gentlemen, I have a dollar sitting
14 there in my wallet that says if Emad Salem were along on
15 that trip carrying his briefcase, panting his way up the
16 mountain, and they were arrested before they got to the top,
17 there would be another count in this indictment for you to
18 deliberate on. I have another dollar in my wallet that the
19 government would be arguing to you that thanks to Emad
20 America was spared an attack on a real power plant in
21 Pennsylvania. But as you heard, ladies and gentlemen, the
22 trainees got to the top of that mountain, they lay in wait
23 for the camp director to pick them up, take them back to the
24 camp and prepare for another simulation. Nothing happened
25 on that mountaintop. The power plant is still standing.

1 There was no attempt to take it out. No guards were killed.
2 But I'll wager, if you were to hear tape recordings of that
3 evening out of context, the government would be arguing
4 guilt. Based on that, context is everything.

5 What else did Haggag tell us? He told us about
6 code names, how code names were used in Pennsylvania.
7 Everyone attending the camp had a code name. Siddig's idea
8 it was, because he didn't want people to know the true names
9 of the people who were going to Bosnia. Look at some of the
10 other training that Haggag testified about.

11 Was there any other exercises using guns at the
12 training camp?

13 Yes.

14 What was that?

15 Besides hitting the moving target and climbs an
16 elevated plot of land or piece of land and being shot at,
17 then you go down and then you penetrate, penetrate, two of
18 the people who are at the camp are training on long-distance
19 shooting.

20 That, too, was simulation.

21 He also told you about the watch duty, camping
22 out on the hillside, taking turns, rotating. They
23 simulated. They pretended. They made believe they were in
24 Serbian territory.

25 And, very briefly, the other episodes in

1 Pennsylvania that I will not go into in detail also point to
2 the realism of that training, the incidents you heard of the
3 trainees being sprayed in the face with pepper mace in a
4 surprise attack. Taking long runs at night, having to dive
5 in a ditch if a car was coming by, running through the state
6 park, crawling through a pond, only to be punched in the
7 abdomen at the end of it by Abdullah.

8 When you consider the kinds of activities that
9 took place there, they leap to one conclusion, that Tarig
10 Elhassan --

11 THE COURT: Ms. London, the microphone is not
12 picking you up.

13 MS. LONDON: I will put this one down -- that
14 when you consider the activities that were going on in
15 Pennsylvania, they point to one conclusion: that Tarig
16 Elhassan reasonably and rationally believed that the
17 activities in the Queens garage were also for training.
18 Code names were used in Pennsylvania. Why should he be
19 suspicious of using code names in New York? In Pennsylvania
20 they were constantly in every activity, hiding, ducking,
21 dodging snipers. Why should he be suspicious in Queens
22 about not wanting to have people see them entering and
23 leaving the garage so as not to attract attention?

24 And the government has also pointed to the
25 defendants' vigilance or lookout for FBI surveillance as an

1 indicator that this was no training. But remember, ladies
2 and gentlemen, the FBI also surveilled Pennsylvania, and to
3 such an extent that the owners closed it down.

4 Also, don't forget the intensity of FBI
5 surveillance on the Muslim communities and mosques after the
6 World Trade Center explosion. People were afraid. Just to
7 give you an idea of this, let's look at a conversation
8 recorded in Government Exhibit 342T, CM 40, on June 4 of
9 1993, where Siddig Ali talks to Mohammed Abouhalima about
10 the fear of Muslims, even the fear of training for Bosnia.

11 Siddig says: I was telling somebody, let us go
12 to Bosnia, somebody, one good Muslim. Siddig is still
13 talking about Bosnia. June 14. Abouhalima: He will tell
14 where is Bosnia. I submit that means he will ask where is
15 Bosnia.

16 Siddig: He used to be so brave, this man used to
17 be so brave, I told him let us go to Bosnia. He said don't
18 talk to me. He will tell you where is Bosnia brother? Huh?
19 Where is this Bosnia? Where is it? Bosnia? What? What do
20 you mean Bosnia? I told him let us go to Bosnia, brother.
21 So he told me by God, don't talk about this subject, don't
22 talk to me, brother.

23 What was the impetus for Pennsylvania? Why did
24 Tarig Elhassan go to Pennsylvania? Ladies and gentlemen,
25 the answer is the B word. It was Bosnia. What was

1 happening over there in 1992 and 1993 is still happening,
2 and the word, as Tarig told you, is genocide, the
3 coldblooded, ruthless extermination of a group of people,
4 the Muslims, by another group. It's sickening, but in a
5 nutshell, Bosnia is the reason that Tarig Elhassan is
6 sitting here today in this courtroom before you on trial.

7 You have heard some testimony about what a
8 Muslim's obligation is in the face of a situation like this.
9 You heard Mr. Stavis talk about the Muslim obligation in his
10 are summation with respect to the obligation in Afghanistan,
11 an obligation that is a duty for Muslims to protect their
12 brothers and sisters, and it is an obligation that crosses
13 national borders. You heard how Sheik Abdallah Azzam came
14 here to stir the souls of Muslims to act for Afghanistan.
15 Similarly, other Muslim leaders came here from Bosnia in
16 1992 and 1993, for the same reason.

17 Tarig Elhassan testified here to you. You recall
18 him speaking in his simple, halting English, how he heard
19 lectures, saw videos on Bosnia in various mosques in 1992
20 and early 1993. These lectures and videos were designed to
21 stir the conscience of Muslims to come to the aid of their
22 brothers and sisters in Bosnia who were in desperate need.
23 I am sure you can recall the images of the mutilated bodies
24 and the piles and piles of children's clothes of thousands
25 of dead children. The pathetic sight of mothers putting

1 their children on rafts and buses, hoping to send them to
2 safety but expecting never to see them again.

3 Tarig also saw these images in late 1992, and
4 these videos were followed by a call to Muslims, a call that
5 you heard, given by the narrator, an impassioned plea that
6 went O Omar of Mohammed, your people are being slaughtered
7 in the heart of Europe, which claims to call for peace while
8 accusing us of terrorism and extremism. O people of the
9 Muslim Omar, Allah will not forgive your feebleness in
10 failing to come to the aid of the women of your community
11 living in Bosnia, whose honor has been violated, and the men
12 and children of your community who have been slaughtered
13 there. It is not enough only to grieve while the Serbians
14 take pleasure in executing the imams and those who call the
15 people to Islam. Allah will not forgive your inaction.
16 Will you still remain silent while Bosnia burns?

17 I submit, ladies and gentlemen, that is a very,
18 very powerful appeal to a Muslim.

19 Mr. Fitzgerald suggested to you in his summation
20 that it was offensive to show you that video. Ladies and
21 gentlemen, that was not a maneuver to evoke your sympathy.
22 Tarig Elhassan is not asking for your sympathy. We showed
23 you this video because it is important for you to understand
24 the context, it is important for you to understand why Tarig
25 Elhassan went to Pennsylvania to train and why Tarig

1 Elhassan went to that garage in Queens. The government
2 argues that he went there to plan a war of urban terrorism
3 on America, and Tarig Elhassan sat before you and behave you
4 a resounding no to that answer. Everything you have heard
5 in this trial supports his testimony that Pennsylvania was
6 about Bosnia and that for him the Queens garage was also
7 about Bosnia.

8 I would ask you right now to reflect back on what
9 you heard about Tarig's life. This is a man who throughout
10 his life, and you have heard it on the witness stand, has
11 demonstrated compassion and understanding and a willingness
12 to help the downtrodden and the down and out and the needy
13 of this earth, and, I submit to you, without regard to
14 religion. Think back to the testimony of William Antalics,
15 the young man who came here to testify on behalf of
16 Mr. Elhassan in our defense case, the young man who worked
17 with the homeless in various social agencies in New York for
18 most of his adult life. He came in here and told you that
19 he first met Tarig approximately 10 years ago, soon after
20 Tarig arrived in this country, and Tarig lived and worked
21 alongside of him in a place called the Catholic Worker,
22 which is a Lower East Side refuge for the homeless and the
23 needy. What did Tarig do there? He helped prepare food for
24 the homeless. He helped feed them. He helped clean up.
25 Bill Antalics told you that Tarig was an excellent worker

1 there. I asked him, how did Tarig relate to the homeless
2 people? His answer, I think that was Tarig's main asset.
3 He was very friendly, very gregarious, very outgoing, very
4 easy-going personality with the homeless.

5 This is not the angry young man in America as the
6 government would have you believe, and this is even
7 corroborated in the transcripts, where the government asks
8 you to look for corroboration, where on the evening of June
9 21 Emad and Siddig go to pick up Tarig at the Masjid Medina
10 and Siddig is telling Emad how Tarig knows all the homeless
11 people by name and he talks to them and how the homeless
12 people are his friends. What happens? Emad and Siddig
13 laugh at him.

14 Also, in Tarig's testimony, he told you how he
15 worked for another social welfare agency here, Saint Francis
16 Friends of the Poor, working the night shift on weekends,
17 handing out money, taking care of problems. And he also was
18 associated with a program called Habitat for Humanity, a
19 Lower East Side homesteading project, where Tarig spent four
20 and a half years helping to renovate an abandoned building
21 again on the Lower East Side, and with Siddig's approval.
22 From this you see the portrait of a young man integrated
23 into American society, perhaps not the society that you or
24 that I live in, but nonetheless solidly integrated into
25 American society, and, even more importantly, ladies and

1 gentlemen, working within the system.

2 When Tarig heard these appeals for help, he had
3 no money to give. But he did resolve not to turn away, and,
4 even stronger than that, he believed it was his absolute
5 duty, an Islamic duty that he had to help.

6 You may ask yourselves, what could he do? But
7 remember, Tarig Elhassan is a simple man, even somewhat
8 naive, as another witness, Hamid Orabi, told you. He grew
9 up in the Sudan, 50 miles from Khartoum in a tribal village.
10 I would submit to you, ladies and gentlemen, that 50 miles
11 from Khartoum is not like 50 miles from in New York City.
12 As you heard, a descendant of the ancient, proud, Nubian
13 tribe. He told you about his life growing up, the
14 irrigation ditch from the Nile that provides water, and no
15 electricity. He is a simple man you but he heeded a very
16 power call addressed to him and others, and decided that he
17 must go, and for that the training was necessary.

18 But what else did he do? He took a basic weapons
19 safety course that you heard about here are at the Kalifa
20 Mosque that was given by Mr. Ferguson. He had to fill out
21 an application to go to that class, and if you recall,
22 Mr. Ferguson told you how he gave all his records to the
23 government. Also note, that is not charged as an overt act
24 here.

25 Then Tarig testified, told you how Siddig came to

1 him after the training had started in Pennsylvania and
2 offered him an opportunity to fulfill his obligation by
3 training there.

4 After the Pennsylvania camp closed, Tarig
5 continued to pursue his Bosnian goal by participating in
6 further training at Lincoln Park. Haggag told you about
7 that training. Open-air, physical training in Lincoln Park.
8 It was a public park open to anyone, but that physical
9 training was also for Bosnia.

10 The context that I have given you, the context
11 now that takes us up to the spring of 1993 is a context of
12 training and Bosnia, pure and simple.

13 I want to briefly run through with you a number
14 of the CM transcripts where you will see the theme of
15 training and Bosnia running through. First let's look at
16 Government's Exhibit 641T, the first conversation again,
17 which was read into the transcript. Here in one of the
18 first, or earlier conversations with Emad, look how Siddig
19 Ali again is bringing up the topic of Bosnia, and he says to
20 Emad, do you see what's happening over there in Bosnia?
21 They are burning them, brother, by God, alive, casualties.

22 I submit to you, ladies and gentlemen, that in
23 early 1993, Bosnia was certainly on Siddig's mind.

24 Government's Exhibit 309, CM 8, May 18, 1993.
25 Siddig Ali and Salem are having a conversation concerning

1 how Rashid is upset because the Pennsylvania project is not
2 going forward, and Siddig Ali talks about Bosnia, about the
3 one for Bosnia. Further down, the Bosnia story is another
4 thing. When we went there, we went from here.

5 And he tells you about the aim of training the
6 people. We are supposed to train people, training. Train
7 people. Troops. And we lead them in missions and sorties.
8 That's how it's supposed to be. When we go there, meaning
9 when we go to Bosnia, we are supposed to train people and
10 train them and lead them in missions and sorties.

11 Again, Government Exhibit 329T, CM 27, June 3,
12 1993. Salem is again talking about Siddig Ali, saying:
13 These people must learn, 1, 2, 3, as we say.

14 Siddig Ali: Huh?

15 Those people must learn and must.

16 Siddig: 1, 2, 3, then they will.

17 Again Siddig: Then they will learn and it
18 becomes a normal training for them.

19 Salem: As if it is a training exercise.

20 Continuing on to June 4, the next day,
21 Government's Exhibit 333T, CM 32, June 4. Ladies and
22 gentlemen, this was the first recorded conversation of Emad
23 Salem and Siddig Ali when they went to visit Mohammed Saleh,
24 and it is very significant how in Salem's early
25 conversations that he had with any of the defendants in this

1 case, always focus on Bosnia. Miss Amsterdam mentioned to
2 you the bait and switch routine, talk about Bosnia, find out
3 their interest in going to Bosnia. That's his bait. That's
4 the hook he puts out, and then he reels them in. And the
5 same thing, I am sure Mr. Jacobs will talk more about it but
6 you will see the same thing here in the conversation with
7 Mohammed Saleh. Siddig Ali is telling Mohammed Saleh that
8 their American brothers in Afghanistan, some of them are now
9 in Saudi Arabia and some are here. And when the Bosnia
10 problem took place they contacted us or me personally. I
11 personally told them, me, brother Siddig, we want manpower
12 to train them, we send them where, to train people over
13 there.

14 It continues: They train people there. They
15 train people in Bosnia.

16 He continues: We were successful in training a
17 good number of the brothers.

18 Very, very clearly, ladies and gentlemen,
19 abundantly clear when you trace the scene through that
20 Bosnia and training are constantly recurring, even as late
21 as June 4, 1993.

22 And Mohammed Saleh obviously gets a benefit of a
23 lot of Bosnia talk. They really do give it to him. We
24 undertook a long-range training at an encampment,
25 approximately five months, four days a week, sheik, four

1 days. Live ammunition. Training, training on all types of
2 weapons, assaults, encirclement, recon, reconnaissance, and I
3 don't know what such, unintelligible. Back to what you did
4 here about Pennsylvania, four days a week for five months.
5 Siddig does have the power of exaggeration. Continue with
6 us training and explosions. What happened was that
7 unfortunately the program did not continue because of the
8 incident that occurred in New York.

9 Again I would bring to your attention Emad
10 Salem's testimony during his cross-exam by Miss Amsterdam,
11 and she referred to this in her summation, because don't
12 forget, ladies and gentlemen, there are conversations
13 between Emad Salem and defendants in this case that are not
14 recorded, and this bears it out. Miss Amsterdam asked
15 Mr. Salem:

16 Do you remember telling him, Mr. Khallafalla,
17 that you were going to do your part to help the brothers by
18 helping them train?

19 Of course, yes, ma'am.

20 Further down Emad continues: We had conversation
21 numerous time with different members of this investigation
22 that I am willing to help, I am willing to train the people
23 who want to get training. I did state that numerous of
24 times, ma'am.

25 Question: So on other occasions you did talk to

1 people about your willingness to train people to go to
2 Bosnia?

3 Answer: Absolutely, yes, ma'am.

4 Where are those tapes, ladies and gentlemen?

5 Where are those tapes? Emad Salem is a man who tapes his
6 own family's personal recordings and keeps them. We tapes
7 Pay Per View. Where are these tapes, ladies and gentlemen?
8 You didn't hear them. But he did tell you that he had
9 conversations with people being investigated in this case
10 about training for Bosnia. I submit right then and there
11 that gives you cause for a reasonable doubt.

12 I want to spend just a few moments talking about
13 Emad Salem. I know you have heard about him from the other
14 lawyers as well, but I also want to say my few words about
15 Emad Salem, a man, I submit to you, who is as dishonest, as
16 deceitful, as devious and scheming as Tarig Elhassan is
17 straightforward, simple, sincere, and honest.

18 Emad Salem at age 37 retired suddenly from a
19 successful career in the Egyptian military, divorced his
20 wife -- that may have come before his retirement -- and came
21 to the United States.

22 I have sat here during the summations and I am
23 sort of intrigued because different defense lawyers have
24 focused on different things in his testimony that have
25 struck them as being, to quote Mr. Fitzgerald in another

1 context, offensive. I am going to talk to you about what I
2 find particularly offensive in the testimony of Emad Salem.

3 He came into this courtroom, sat on the witness
4 stand, took an oath to tell you the truth, and right at the
5 beginning he told you that when he left Egypt he came to the
6 United States for one month or less, as a visitor. He is
7 here as a tourist and he is on his way to Denmark. Yet the
8 evidence shows, ladies and gentlemen, that within a few days
9 of being here -- not weeks, a few days, he sent a tape home
10 to his wife, and on this tape he talks about shaking on the
11 airplane before he arrived here because he was afraid what
12 to tell the immigration officers at the airport. Maybe I am
13 a sophisticated tourist, but I submit to you, ladies and
14 gentlemen, that when you are taking a vacation somewhere and
15 you are going to land in an airport and you are going to
16 take a vacation, whether it is Mexico or Europe or anywhere,
17 you don't shake at the airport in front of the immigration
18 officers.

19 He also said in this tape that he was afraid of
20 getting his luggage searched. I asked him about this on
21 cross-examination and his answer was, because his resume, a
22 resume in Arabic was in his bag. Silly me, I just don't
23 pack my resume when I go on a two-week vacation, maybe you
24 guys do.

25 On tape, then, he asks his exwife to relay a

1 message to his mother, and the message is that he is here to
2 make money for his children, he hopes to marry quickly and
3 get a green card -- we don't give out Danish green cards in
4 this country. But in spite of being asked about this on
5 cross-examination, Emad Salem held to that position, that he
6 came into this country, he was only planning on being here a
7 few weeks and he was leaving. He was married within two
8 weeks, ladies and gentlemen.

9 So I submit when he sat on the witness stand
10 there and told you this, he was lying to you without regard
11 for proceedings in this court. And if you want to talk
12 about offensive, I think that is offensive. But should it
13 surprise you? I don't think so. We know that he has lied
14 in criminal court. He has already shown his willingness to
15 lie for prosecution in a criminal trial, why not a second
16 time? State court, federal court. He has lied in a civil
17 suit, he has lied in family court. But it should offend
18 you. You should find it offensive.

19 You are here to evaluate the evidence. Evaluate
20 what he has to say. And most importantly of all, evaluate
21 his motives. Why was he really here in the United States?
22 Why was he here? What is he doing here? He is a successful
23 military officer with a fine career there and good social
24 contacts, as he told you, and when he came here, remember
25 how he said he had to go through the third door to

1 immigration where the trash goes through? This arrogant man
2 came here to consider himself trash? I don't think so. He
3 had an agenda here, ladies and gentlemen, and the defendants
4 here, Tarig Elhassan here is simply a pawn.

5 What did he do when he came here? Very quickly
6 when he started working at the Hotel Woodward, he is turning
7 in coworkers to Immigration and Naturalization. Not for
8 money. I mean, think about how offensive that is. He is
9 telling immigration who the illegal workers are in the
10 building, not for money but for contacts.

11 Who is his contact? Nancy Floyd, and as they say
12 at the end of Casablanca, that was the start of a beautiful
13 friendship. Over the next few years he totally duped, as
14 you have heard, Nancy Floyd, John Anticev, Louie Napoli.
15 These are all experienced law enforcement agents. He fooled
16 them, he controlled them. If he can fool them, ladies and
17 gentlemen, just think how easy it is for him to fool a man
18 like Tarig Elhassan, who, as he described to you, is a
19 person you peel. Think of the arrogance of that comment on
20 a person from the Sudan.

21 I want to talk to you a little bit, because it is
22 significant here, about when Emad Salem met Tarig Elhassan.
23 Emad told you in his direct examination that he first met
24 Tarig Elhassan the night he picked him up with Siddig at
25 Masjid Medina and Tarig was there and trying to get buckets

1 and garbage pails from the street. As the tapes and
2 transcripts show, ladies and gentlemen, that night was June
3 21, 1993. But as you recall, or, if not, I will remind you,
4 that was not the first time he met Tarig, because we have
5 taped conversations between Emad and Tarig and others from
6 the night of June 19. But Emad doesn't care. He just says
7 to you I'm not good with dates and numbers. I submit to
8 you, ladies and gentlemen, for \$1 million, he can try a
9 little harder.

10 He told you he has been listening to the tapes
11 and reviewing them. I mean, he told you he had a bunch of
12 memory tapes. He doesn't care because he thinks he can do
13 things, what he calls the Middle Eastern way. He doesn't
14 have to get dates and numbers right, but I will bet you one
15 thing, if they left a couple of zeros off his million dollar
16 paycheck, he would be really good with numbers.

17 He testified on cross-examination that he had
18 seen Tarig one time, and this was at the Masjid Medina when
19 he went with Siddig Ali, but that he only saw Tarig from
20 across the room, didn't speak to him, Siddig Ali went there
21 to speak to him. I will refer you to Government's Exhibit
22 329T, dated June 3 of 1993. Emad testified he wasn't
23 introduced to the person that Siddig spoke to, and Siddig
24 later says in the car as they drive away from there that the
25 code name of the person he spoke to was Abu Aisha, his real

1 name was Tarig, and, I quote, "He is one of the brothers,
2 but he doesn't know."

3 He also testified, Emad did-- this is on cross
4 exam -- that he had seen Tarig at Masjid El Salaam the night
5 of the dispute between Sheik Omar and the board of
6 directors.

7 According to Emad's testimony we have him seeing
8 Tarig one night around June 3, seeing him the night of the
9 dispute with the board of directors. Tarig's testimony
10 differs from that, ladies and gentlemen. Tarig told you
11 that he first met Emad Salem when Emad stopped by Masjid
12 Medina by himself. Sometime in April he came in to pray,
13 and at the end of the prayers he had a casual conversation
14 with Tarig, introduced himself, they exchanged pleasantries.
15 Of course Emad ran through his usual fictitious list of
16 great achievements, the big shot speech that he gave to
17 whomever would listen, and that was that.

18 Tarig testified that his second meeting with Emad
19 Salem occurred at the Masjid El Salaam the night of the
20 elections, and that is the night of June 12 of 1993, and
21 that that night they had a long conversation. I submit to
22 you that the date there is important, June 12 of 1993. It
23 is important. Tarig told you that Emad recognized him from
24 their first meeting and said, you know, I know you, how come
25 you are here, and Tarig told him I'm a friend of Amir's, he

1 asked him how you know Amir, and the subject of Pennsylvania
2 came up.

3 At that time, according to Tarig's testimony,
4 Emad says to him, I'm going to reactivate the training, and
5 he wants to include Tarig.

6 As you know, there are no tapes from the
7 conversations inside the mosque on the night of June 12. We
8 have no tapes of that night, and again, Miss Amsterdam
9 covered this in her summation, because there is no tape of a
10 conversation with Fares Khallafalla on that night. Miss

11 "Q. Had asked: And the next time you saw him,
12 sir, was at the mosque on the night of the elections?
13 Correct?

14 "A. Correct, ma'am.

15 "Q You recorded the part of the conversation
16 until you got to the mosque, is that correct? Outside the
17 mosque that is recorded.

18 "A. Could be.

19 "Q. The conversation inside the mosque is not
20 recorded, is it?

21 "A. No, I didn't record it. Some of it, but I
22 don't know what happened with it.

23 "Q You don't know what happened to the tape?

24 "A. No, I don't. It wasn't a tape, it was a
25 chip, ma'am.

1 "Q You don't know what happened to that
2 computer chip?

3 "A. No, I don't, ma'am."

4 Is it destroyed? Is it in Egypt? Do you believe
5 for one minute that this obsessive, compulsive, highly
6 trained Egyptian military intelligence officer doesn't know
7 where those tapes are?

8 So now the first long conversation that Emad
9 Salem has with Tarig is missing. Well, what a surprise,
10 ladies and gentlemen. The first conversation with Siddig
11 Ali is missing, the first conversations with Fares, with
12 Amir, with Sheik Omar, with Rashid are missing, and so the
13 list grows.

14 Tarig told you that in that conversation Emad
15 tells them that he is reactivating the Bosnia training,
16 reactivating the training and that Tarig believed him. The
17 government would say to you why would Emad possibly say
18 that, why would Emad talk about reactivating training?
19 Well, let's see if we can get some corroboration, and we
20 can.

21 Government's Exhibit 329T, CM 27, June 3, 1993.
22 Emad and Siddig are talking about training that was
23 happening after Pennsylvania with Ali Abdul Karim and Abu
24 Ubaidah, who were getting training on the offense. Emad
25 says: I mean, we've got to reactivate all of that again.

1 There it is, ladies and gentlemen. The government says look
2 for corroboration, we have corroboration.

3 I would like to point you to some more
4 corroboration of Tarig's testimony. I told you to think
5 about, to remember the night of June 12. The situation is
6 this: According to Emad Salem, as of June 13 he has never
7 met Tarig but he has seen him twice. Never had a
8 conversation with him.

9 On June 13, which is the day after Tarig says he
10 had a long conversation with Emad and Emad says I'm starting
11 up training, come along, on June 13, Emad Salem is talking
12 to Siddig about a conversation that he had had with Fares
13 and the arrangements that they were making.

14 Then he says to Siddig: Who came with me?
15 Tarig?

16 Siddig, I guess, is puzzled, and says: In his
17 place?

18 Salem: No, Tarig came and sat with me. This was
19 at the mosque when we were talking about it last night,
20 what's new, we said thanks be to God. He said I did not
21 bring the thing that Siddig asked for. And I told him you
22 are?

23 And Siddig is now puzzled: Who is that?

24 Salem: Tarig.

25 And Siddig says: I did not tell him anything.

1 What is this?

2 Salem: I don't know. Not Tarig? What's his
3 name? Oh, I'm mixed up with the names.

4 So Siddig says: Mohammed or Amir?

5 Salem says: Yes, Amir, Amir, yes, Amir. Saying
6 Tarig, it is Amir, sheik. How did it happen that I said
7 Tarig?

8 Ladies and gentlemen, why would the name Tarig be
9 on Emad's mind? If you believe his testimony, he has never
10 met the man, he has never talked to the man, and here the
11 day after he is throwing his name into a consideration.

12 He keeps doing it. We continue on the same
13 conversation: I told him OK, he must have given the --
14 Tarig. Salem: I mean to Fares, to Amir. He keeps throwing
15 in Tarig's name, the name of a man he has never met?

16 Again he continues: I then went there at 12 to
17 meet your brother, Tarig. Siddig Ali says: Amir.

18 Repeatedly through that conversation he keeps
19 throwing in the name of a man he has never met. Why does he
20 do that? Why does do it not once but several times? But if
21 Emad met Tarig the night before and set out to induce him,
22 trick him, persuade him to come to the safe house under the
23 guise of reactivating the training, that makes sense, and I
24 submit to you that on June 12, 1993, Emad Salem offered
25 Tarig a bait, come come with me, I'm reactivating the

1 training, and now he wants to make sure that Tarig gets
2 reeled in there.

3 Again, June 19, the afternoon of June 19 there is
4 a meeting at Siddig Ali's house. Tarig is not present, and
5 after the meeting breaks up, Emad leaves, gets into his car,
6 and records a tape that is part of Government's Exhibit
7 352T, which is a composite tape, and it is the segment also
8 known as CM 49, and at the beginning of that tape he makes
9 an introductory comments, and again confuses the names and
10 talks about Tarig, as an individual who is going to go and
11 purchase stolen cars. But he still has not met Tarig and
12 there has been no talk of Tarig Elhassan stealing cars. But
13 he again is using the name of a person that he hasn't met,
14 of Tarig Elhassan.

15 I submit to you that again, ladies and gentlemen,
16 Emad Salem just flat out lied to you about the meeting with
17 Tarig Elhassan, and I submit to you that you should not buy
18 into a minute that he is bad with names and dates. He is
19 very good with names and dates.

20 I submit to you, too, that if there is a bunch of
21 testimony that is a crock in this case, look to Emad Salem.

22 June 19. As you know, there was a meeting at
23 Siddig Ali's house. That meeting was recorded and read to
24 you as the first segment of Government Exhibit 352T. Tarig
25 Elhassan was not present there. But during the course of

1 this meeting, Amir Abdelgani telephones Tarig at the El
2 Salaam Mosque and asks him to come over to Siddig's house.
3 If you recall Tarig's testimony, he had been going to meet
4 Amir earlier that day and visit a relative of Amir's, but
5 that had fallen through. You can read Amir's side of that
6 conversation in the transcript where he is on the phone,
7 says: How are you, Sheik Tarig, how are you, thank God.
8 And then he says: Emad told me Tarig has just left and was
9 about to catch you by car, you disappeared from the street.
10 I believe he is referring to the fact that they failed to
11 meet up that morning.

12 Then Amir says: Listen, do you have a way to
13 come with the car or is there someone from the mosque to
14 bring you here to this building?

15 We don't hear Tarig's part of the conversation,
16 but Salem interjects: Tell him to come for a half hour and
17 he will leave immediately.

18 Siddig says: No and, unintelligible.

19 And Salem repeats: Tell him.

20 Sounds like an order to me, ladies and gentlemen.

21 But you would think, given the government's
22 theory of the case, that Tarig Elhassan, this terrorist
23 eager to blow up New York City, is going to drop everything
24 and rush over to Siddig's, but that didn't happen. He
25 didn't go over there.

1 He continues. Salem says: He is missing. He
2 doesn't know what it is. He is setting a bad example. I
3 submit to you that the "it" that Salem is talking about, the
4 "it," the scheme that Salem has is not the same "it" that
5 Tarig believed in.

6 Salem knew just what was being hatched in that
7 safe house between him and the FBI. That is not why Tarig
8 believed that he was going there. And even as late as June
9 19 of 1995, Siddig -- I questioned Emad Salem about this on
10 my cross-exam and said to him even as late as June 19, 1995,
11 Siddig is still saying that the people who will participate
12 do not know because of the secrecy of the subject. And
13 Emad's answer is yes, ma'am.

14 Later that evening, Tarig meets Emad Salem at
15 Atlantic Avenue in Brooklyn. He drives in Emad's car to
16 Queens with Siddig. But significantly, and there is a
17 transcript of this, when Tarig gets into Emad's car -- and
18 according to Emad this would be their first meeting -- there
19 is no introduction. They speak as though they know each
20 other and have met before. Why? Because they have met,
21 just as Tarig testified to you.

22 Just briefly, Tarig testified to you that on June
23 19, before he went over to Atlantic Avenue, Siddig Ali came
24 to the El Salaam Mosque to do his prayers. He saw Tarig
25 there, invited him back to his house for dinner and invited

1 him to come along that evening. It was that evening during
2 dinner that Siddig told him again that Emad is reactivating
3 training, Tarig should participate, and he went on to say
4 that the training would be different from Pennsylvania, it
5 is going to be indoor training, it is going to focus on
6 learning about explosives, learning about exploding
7 buildings and construction, but there will be simulations
8 similar to Pennsylvania. And in fact Siddig told Tarig that
9 they would be doing simulations on tunnels and buildings and
10 bridges, and named the Lincoln Tunnel and the Holland Tunnel
11 and the United Nations as their training targets for that
12 simulation. This was Tarig Elhassan's understanding when he
13 went to the garage in Queens that evening.

14 If you recall, when he got there what did Emad do
15 right away? He starts giving Tarig a lecture on how a hand
16 grenade works and how a timer works, and he demonstrated for
17 Tarig the timer by counting to 60 and the light bulb goes
18 on. Then you saw the videotape where he talks about placing
19 a bomb and he is pushing and pulling Tarig, where you have
20 to place it so that it explodes correctly.

21 Again, when you consider all this, just keep
22 bearing in mind who Tarig Elhassan is, this very simple,
23 unsophisticated man from a very different background in the
24 Sudan, who has lived for a number of years in America, down
25 on the Lower East Side, a very simple, unsophisticated life.

1 Remember also, it was that day June 19 when they drove to
2 the safe house that Emad stopped at a McDonald's close to
3 that garage and Tarig told you it was the first time in his
4 life that he had ever been to a drive-through restaurant,
5 and you contrast this to Emad Salem, who wants to portray
6 himself as sophisticated, wealthy, educated, successful, and
7 again, highly qualified to train because of his military
8 background.

9 You have heard the transcripts of the
10 conversation there on June 19. He asks Tarig if he knows
11 what the targets are, and Tarig says yes. Tarig does not
12 deny these conversations, but what he does deny, and
13 emphatically so, is that he believed, because he did not,
14 that there was a real bomb plot with real targets.

15 June 20, they go back to Manhattan in the early
16 hours of the morning, and then you hear about the
17 conversation that Tarig has with Siddig Ali when he makes a
18 phone call early in the morning after the early morning
19 prayers, to say that he has talked to an engineer about
20 giving some blueprints and plans for bridges and tunnels.
21 But Tarig told you that yes, he knows a man by the name of
22 Seed Ahmed but he drives a taxicab in New York and Tarig
23 knows him purely as an acquaintance but knew that he had
24 gone to engineering school in the Sudan, and jumped upon
25 that knowledge to make the phone call to Siddig to

1 ingratiate himself, to impress them. He was eager to
2 impress, because, if you recall, Haggag told you Siddig had
3 set up two teams for Bosnia. Team one is the team that is
4 going first and Tarig was on that team, and he wanted to
5 stay on it. He was really wanting to show Emad and to show
6 Siddig that people come up with ideas and he is a good
7 trainee. He is a 4-year-old giving the teacher on apple.

8 Tarig told you, too, that he never intended to
9 get studies. He doesn't even know if this guy would have
10 studies of bridges and tunnels. Remember, he is a
11 taxidriver here. When Emad asked him what do you want to do
12 with these studies, where do you want to send them, in a
13 conversation a couple of days later, he caught Tarig off
14 guard and Tarig comes up with answers, I will send them to
15 countries, Sudan, Afghanistan, Pakistan, I will send them
16 all over. Don't forget, Emad is ever conscious of having
17 his tape recorder going and is a master for directing and
18 steering conversations.

19 Tarig told you that on the night of June 20 he
20 went again to the garage with the others for about an hour,
21 hour and a half, and they sat around and talked, June 20.
22 The government has shown you no videotapes of June 20, no
23 transcripts, no tape recordings of that evening. Why? I
24 submit, because they sat around and it was just idle, boring
25 chatter. The safe house wiring agent told you, told you

1 that the tape recorders and the video cameras were always
2 running. They just sat around with their coffee, sat around
3 on their chairs, talking, talking away.

4 June 21 is the night after that, which is an
5 evening where Emad and Siddig come to the Masjid Medina,
6 pick up Tarig and Amir and they drive to Queens. You have
7 heard the transcripts about this drive and the crossing of
8 the Williamsburg Bridge, Tarig talks about the suspension
9 bridges and again mentions the engineer. But something
10 important happens on June 21 when they get to Queens. On
11 June 21, Emad drops Tarig, Siddig and Amir off at the
12 McDonald's, and he drives over to the garage and puts his
13 car aside and leaves them to walk over. This is part of
14 their routine, not having people see them arriving in a
15 group.

16 Tarig testified to you that while he is walking
17 from the McDonald's over to the garage with Siddig, that he
18 has a conversation with him and that he tells Siddig
19 something is bothering him and he is feeling uncomfortable
20 and has some doubts about the situation with Emad and
21 Siddig. Siddig then gets upset with him -- this is Tarig's
22 testimony -- and tells Tarig to wait outside the garage
23 because he needs to talk to Emad about something.

24 How do we know that Tarig is telling the truth?
25 Because the government has told you that whatever you hear

1 from Tarig is a crock. Well, let's look for the
2 corroboration, and there is corroboration of this
3 conversation that Tarig had with Siddig, and the
4 corroboration is in Defendant Elhassan Exhibit E, also known
5 as CM 56 -- I am trying to find my pointer, it's in my hand.
6 I'm surprised I'm not looking for my glasses, too.

7 Ladies and gentlemen, this is a very significant
8 tape recording. Siddig Ali goes into the garage -- this is
9 after he leaves Tarig on the street. He goes in and he says
10 to Emad, brother Tarig says you guys do everything without
11 consulting me. Siddig: He is very angry now.

12 The conversation continues, and Siddig says: I
13 mean all of us, we will meet together to consult each other.
14 However, he thinks that we are hiding something from him.

15 That's corroboration, ladies and gentlemen.

16 And then Salem says: Once he comes we should all
17 sit. Then he changes it. You sit them down, explain to
18 them, calm them down and clear their minds.

19 Salem continues: To eliminate the doubt which
20 might create a mess.

21 Ladies and gentlemen, the government didn't read
22 that transcript to you. It was read to you on our defense
23 case.

24 When Tarig Elhassan enters the garage that night,
25 Siddig and Emad sit him down and they give him a speech, and

1 as Tarig told you, they talk to him about faith and belief
2 and duty and what his Islamic duty is. Emad knew just how
3 to get to Tarig Elhassan, by questioning his faith, because
4 for Tarig Elhassan, his faith is everything. And they
5 questioned it. And you have heard the testimony here, that
6 a bad Muslim doubts. It is unIslamic to think bad or to
7 doubt another Muslim brother. Even Siraj Wahhaj who came in
8 here to testify told you about how trust is a duty for a
9 Muslim.

10 Think about the effect of this on Tarig. Here he
11 is, still has one goal in his mind, and that's going to
12 Bosnia. He is a simple, straightforward man having his
13 faith doubted by these two educated, charming, charismatic
14 men, the all-Islamic pair, Emad and Siddig. They are the
15 ones who can get him to Bosnia, and they have doubted his
16 faith. That, ladies and gentlemen, for Tarig Elhassan would
17 be the fear of going off team one, not to go to Bosnia.
18 They made him feel guilty for doubting him, and what is the
19 logical offshoot for that? What do you do when you have
20 been made to feel guilty and you want to please? You try
21 harder to please. That is just what Tarig Elhassan did that
22 night.

23 Regardless where the conversation went, Tarig
24 participated in it. He wanted to please them and he went
25 along with whatever they said. Maybe he was naive, maybe he

1 was stupid. But you are not here to judge naivete or
2 stupidity.

3 But he believed he was there in the context of
4 simulation, in the context of training sessions, no
5 different than the mission to attack that power plant in
6 Pennsylvania.

7 Others arrive, the talking goes on, and you have
8 heard the transcript, the code routine, the beeper system
9 routine they went through that none of them got right. They
10 were all unsophisticated. What's your name, what's his
11 name, what's his name, what's the beeper number. Tarig told
12 you, he doesn't know about a beeper, he doesn't know how to
13 use a beeper. Then they got tired and Tarig told you they
14 wanted to leave. But Siddig said no one is leaving until he
15 has finished his speeches. This is all on Government's
16 Exhibit 362T. Siddig goads them and he is saying to them
17 let me speak, listen, listen, listen, and he chants to them
18 the La La illa-la chant, which you heard Tarig tell you
19 about. And he gives it to them 9 times, 10 times, going
20 over it over and over, repeating it each time.

21 Then he starts regaling them with stories of
22 torture and tells them about the story, an Islamic story,
23 the story of the lover of death who begged his captors for
24 more pain, and at the height of this he says free Mahmoud,
25 Nidal, inshallah, inshallah, and he is talking very quietly

1 but very emotionally. And Tarig, who is still feeling
2 guilty for doubting Emad and Siddig, went along with him,
3 and then continued and said the lines that the government
4 has quoted to you here so often. And he says one thing we
5 have to do is, we have to get the name of America. The
6 people have to understand America has to change. They have
7 to understand America can break down, can come down, that's
8 it.

9 Mr. Fitzgerald said to you in his summation that
10 these words were said repeatedly at the safe house. I
11 submit to you, ladies and gentlemen, they were not. Yes,
12 Mr. Elhassan said those words on June 21 at that time. But
13 I want to remind you, ladies and gentlemen, of Tarig's
14 answers when I questioned him about what he said, on direct
15 examination:

16 They have had to understand America can come
17 down.

18 And I asked him if he said that.

19 Yes, I did.

20 When you said that, did you mean those words?

21 Answer: No.

22 Question: Do you want to break America down,
23 Tarig?

24 Answer: There is no way for me to break America
25 and I had no intention to break America down.

1 Question: Do you want to bring America down,
2 Tarig?

3 Answer: I have no intention. At the time I was
4 training to go to Bosnia.

5 Question: Let me directly -- I think it should
6 be direct you -- specifically to the question. Is bringing
7 America down something you wanted?

8 Answer: No.

9 Question: Do you want to wage a war of terrorism
10 on the United States?

11 Answer: No.

12 Question: Do you want to defy the authority of
13 the United States by force?

14 Answer: No.

15 Question: Are you sure of that?

16 Answer: Very positive.

17 Question: At that time, did you know Nidal?

18 Answer: No.

19 Question: Did you know Mahmoud?

20 Answer: No.

21 Question: Did you know who they were?

22 Answer: Yes.

23 Would this be a good time?

24 THE COURT: Ladies and gentlemen, we are going to
25 take a short break. Please leave your notes and other

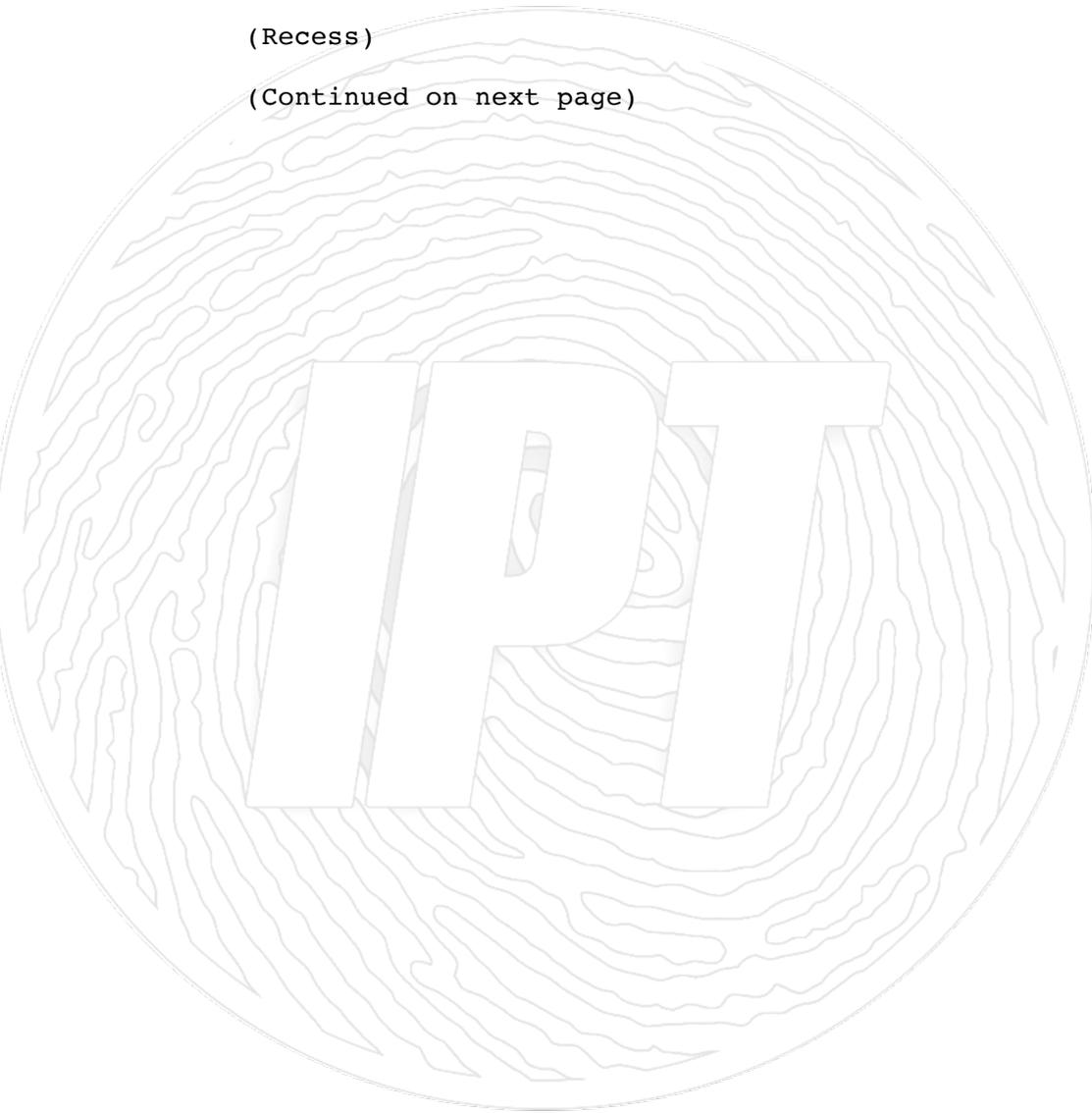
1 materials behind. Please don't discuss the case, and we
2 will resume shortly.

3 I ask everyone to remain seated until the jurors
4 leave.

5 (Recess)

6 (Continued on next page)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 (Jury present)

2 THE COURT: Ms. London?

3 MS. LONDON: Thank you.

4 Ladies and gentlemen, I told you a little earlier
5 in the summation, when we discussed the testimony of Haggag
6 about the trip up to the power plant and the events there,
7 that I was going to come back to it later. Well, I am now
8 going to come to the topic of Siddig Ali. We are going to
9 examine a little bit about him through the transcripts. Mr.
10 Fitzgerald told you in his summation that Siddig may
11 exaggerate a little. Those were his words. Well, I submit
12 to you that is an understatement if ever there was one.

13 You know, in a country called New Zealand, which
14 is far away from here at the other end of the world, there
15 is a group of Polynesian people there called Maoris,
16 sometimes called Maoris here. Among these people, some are
17 great rugby players, some are great singers. But the rest
18 are all great orators and speakers. Among some of these
19 Maori speakers there are a number of them who, when they
20 tell the stories that get handed down from generation to
21 generation, exaggerate a lot and tell wildly interesting, to
22 us funny, stories.

23 The Maoris are used to their fellow exaggerators.
24 They have a saying that they use about them. They will
25 point to one of the speakers and they will say: When he

1 opens his mouth, the wind blows his tongue around. I submit
2 to you that that is a saying that was tailor-made for Siddig
3 Ali. He is a person that, when he opens his mouth, the wind
4 blows his tongue around.

5 One of the reasons that I want to go back to the
6 Pennsylvania power plant testimony, in relation to Siddig,
7 is to show you just how wildly, exaggeratedly, Siddig Ali
8 speaks.

9 Now, you will recall from the testimony that
10 Abdullah Haggag and Tarig basically had the same things to
11 say about the trip up to the power plant. Now, ladies and
12 gentlemen, let's view it through Siddig's eyes. The
13 transcript in which he talks to Emad Salem about this
14 training in Pennsylvania is Government Exhibit 308T, CM7B,
15 May 19. It starts, again a typical -- this is just the
16 introduction to it, but I had to put it in so you get a
17 flavor of Siddig. Siddig says, "But it is OK, right?
18 Nobody will ever talk. Nobody will know anything, these
19 people who are coming, they don't know what's going to
20 happen."

21 Salem: Of course they know." And Siddig totally
22 changes his tune.

23 They are not going to talk about the subject in
24 the open.

25 And Siddig, one of Siddig's favorite topics is

1 torture. "They are also used to be tortured. They are
2 trained on torture" -- and he is talking about
3 Pennsylvania -- "beating, slapping, with spike in their eyes
4 like this, stretching their necks and gases.

5 "Salem: All of this in Pennsylvania?.

6 "All of that in this country. They are used to
7 torture. They are used to hunger, three days in a row
8 without eating. I put them in the woods and came to pick
9 them up, three days, yes, of course. Training is not a
10 joke. These people want to reach the highest level in
11 training."

12 Remember, it is Siddig who talks to you about
13 torture.

14 Siddig: Supplies were not available, so what is
15 available is very minimum, good things. I am telling you
16 that they are not a hundred percent. I really wanted them
17 to be a hundred percent but so far you can say they are 50
18 percent.

19 Salem: Yeah.

20 Siddig goes on: Oh, 45 percent.

21 We go down here. "They are waiting for their
22 turn, brother, you see? This is the training. They used to
23 be sprayed with gas."

24 "Siddig Ali: Do you know how much?

25 "15 percent."

1 Siddig continues: "Do you know that 3 percent of
2 it will do what? 3 percent of the gas.

3 "Salem: It will blind you, of course."

4 I believe you recall the pepper mace incidents we
5 are talking about here.

6 "God forbid, you will lose your breath, 15
7 percent if you got sprayed with it, the spray will remain,
8 one and a half minutes."

9 It goes on: "It must be one and a half minutes,
10 he will remain motionless for 90 seconds, waiting far away.
11 He is tied, of course. He is not going to stand still. He
12 has to deal with it, one and a half minutes, he gets sprayed
13 with gas, and he is screaming with, and crying, and it is
14 dark."

15 And listen to this, which no one else testified
16 about.

17 "He is tied up to a tree, after he gets sprayed,
18 and he has to search for, unintelligible, to get in it."

19 And then he talks about, remember, there was the
20 exercises in the pond. "I know that, but these people did
21 well, thanks to God, in cold water 15 below zero."

22 I mean, what is the survival rate in that, ladies
23 and gentlemen? But it is no different than the Maori
24 fisherman who catches the fish that is a hundred feet long
25 in waves that are 60 feet high. So the temperature, it is

1 15 below zero. All of them used to die.

2 "Get out of pipes, unintelligible, pipes which
3 does not allow a little kid to go through it, they get in it
4 and get out from the other side. They got good training."

5 And what does Salem say? "Thanks to God."

6 Let's go to the next page here.

7 Oh, and then Siddig Ali is again reassuring Salem
8 that they are not going to know any details, he is not going
9 to know the details, he will help us only in specific
10 things. He is not going to know the day, the time, and all
11 of that. What I am going to do, he is not going to know
12 these things. This one I will let him know two hours before
13 to get these people out by himself.

14 So you now get a sense, juxtapose what Abdulla
15 told you about Pennsylvania, juxtapose it with what Siddig
16 says. And this is not the only time he talks about the
17 Pennsylvania training. Later, Exhibit Khallafalla M CM62,
18 June 23, Siddig gets literally on another roll, and listen
19 to this, what happened in Pennsylvania, our Pennsylvania
20 right here in America.

21 Siddig: We used to go out at night. All black
22 in black. I'll show you the things I have got, God willing.

23 So even in Pennsylvania there were disguises.

24 Siddig: All of my cloths are, like Tarig says,
25 Ninja-like clothing. I have clothing for the jungle and

1 forests and also ones for night operations. And listen to
2 him. It is called recon -- reconnaissance. You bring
3 information and you come back from behind the enemy lines.
4 We used to go out on missions, Emad, incredible. Oh, Emad.
5 In New York, in -- what is its name -- in Pennsylvania.
6 There is an electric power station three times the size of
7 this building. And it has soldiers on it. It has heavy
8 security. Today we went out to collect reconnaissance. God,
9 we want to get complete reconnaissance reports, everything.
10 From the place -- now listen to this -- between our base and
11 the location there, there is 18 kilos, 18 miles between us
12 and it, there are fields and valleys and trees, spiders --
13 no less -- and crawling animals and, as Emad adds, snakes.
14 "Siddig: Snakes" -- he always picks up on the
15 beat. "There are narrow streets, people ride cars, people
16 are like this. And anyway you have exactly how much?"
17 Let's go down. Talks about how the outfits must
18 be gray and they dyed them but he gets back to Pennsylvania.
19 Let's go over to the next page.
20 He talks about "We went quarter of the way, and
21 did you mean Pennsylvania man, Abdel Rahman was far behind.
22 Man, you are just -- move, move a little bit. He fell
23 asleep on the ground. There are two others. I moved the
24 people and stuff. Anyway, we got there. And when a car
25 passed by, the people used to -- the whole area was a

1 military zone. Look where we are now. It is all Aryan
2 Nation, white KKK. They have these clubs, you know, these
3 clubs so when a car passes by sheik, hoop, and everyone runs
4 in the street. One goes like this, one goes like that. And
5 a car comes and goes by and no one notices. And look how he
6 goes on. We conducted our reconnaissance four or five times,
7 sheik, and we executed the operation. I mean, if we had
8 something to place it there ha.

9 You could have hunted them?

10 We could have done catastrophes.

11 We reached as far as the guard, sheik. There was
12 between me and him this much, we were crawling by then.

13 Ladies and gentlemen, this is Siddig's version of
14 Pennsylvania, the fiction version of the fact version that
15 you heard here in this courtroom. And when you evaluate the
16 conversation of the night of June 21, Government Exhibit
17 362T, the conversation where I just read to you Tarig's
18 comments that the government is relying on so heavily, there
19 are pages there and pages where Siddig gives Tarig and the
20 others his torture speech. I mean, the man is so fixated on
21 the torture and the spraying and the spikes and the gas, and
22 he is going on and on and on there. Put that speech of June
23 21 in the same context as what you saw here about
24 Pennsylvania.

25 Now, obviously, to be around Siddig, is to know

1 the way he talks, to know that he speaks in this
2 exaggeration, in this out-of-control fashion. Emad can say
3 to you "I believed every word he said," but -- I don't even
4 have to say anything more about that. I mean, you are not
5 sitting here, you don't come to us here as people with no
6 common sense. But put those conversations, and especially
7 the conversation of the night of June 21, into that context.
8 It is a conversation where Siddig Ali is again verbally out
9 of control, and there's a bunch of people sitting around him
10 and it's late at night, and they are laughing and they are
11 talking. I submit to you, ladies and gentlemen, context is
12 everything. Tarig Elhassan that night was never there
13 intending to agree to wage a war of urban terrorism,
14 agreeing to oppose the authority of the United States by
15 force, or agreeing to bomb.

16 Siddig Ali, as I repeat to you, opens his mouth
17 and the wind blows his tongue around. Keep it in that
18 context.

19 Also, the government has said to you, has told
20 you that these conversations are about waging a war of urban
21 terrorism and are about defying the authority of the United
22 States by force. But I am going to ask you, ladies and
23 gentlemen, return the burden of proof where it belongs, to
24 the government, and ask yourselves where, in all of the
25 conversations that you have heard -- and you heard

1 conversations about going into tunnels and how long it takes
2 to drive through and what is the best time to go -- they fit
3 into the context of simulation, the same kind of thing as
4 Pennsylvania. But where, in all of these conversations that
5 you hear on tape, where are the anti-American speeches?
6 Where are the endless discussions saying America must change
7 its Middle Eastern policies? Where are all those
8 discussions in the safe house, in that garage? You don't
9 hear talk there about forcing America to change policies,
10 about people unhappy with their lives in America. You just
11 don't hear that. The conversations focus on plans,
12 simulations, and targets. But they are not, I submit to
13 you, conversations that are filled with anti-American
14 sentiment on June 19, June 20, June 21 or June 23, when
15 Tarig Elhassan was at that stage.

16 And here is another important point, ladies and
17 gentlemen. On those nights where you have heard on June 19
18 and June 21 Emad Salem drove Tarig Elhassan to the safe
19 house, and you heard the conversations that were
20 tape-recorded in the cars they went there, where, ladies and
21 gentlemen, are the tape recordings after the training
22 sessions are over and they are on their way home? There is
23 not a single tape recording of the conversations on the way
24 home on those nights.

25 Only Emad Salem knows where those tape recordings

1 are. But you didn't hear them, we don't have them. Ask
2 yourselves that.

3 I submit to you, ladies and gentlemen, there is a
4 lot of reasonable doubt that you must focus on here.

5 June 23, the last night, Emad Salem is at the
6 garage with Siddig Ali and Amir Abdelgani and Fadil
7 Abdelgani. The diesel fuel is there and Siddig is very
8 annoyed that the others are not there and he tells Siddig to
9 start calling them. Now, there is absolutely no evidence
10 here before you that Tarig Elhassan had any idea that diesel
11 fuel had been brought there. At around 9:30 that evening,
12 as he told you, he receives a phone call from Siddig.
13 Siddig asks him to come over that evening and arranges to
14 pick him up in about an hour, and, as you heard the
15 testimony, Siddig drives back to New York, with Fadil
16 Abdelgani, they pick up Tarig, go to the Masjid Medina to
17 pray. Siddig leaves, and Fadil then drives Tarig and Victor
18 out to the garage in Queens. And they get there around
19 12:40 a.m. on the evening of June 24. When they arrive
20 there, ladies and gentlemen, the garage is unlocked. When
21 they walk up there, they just open the door and walk right
22 in, right into a trap that Emad Salem has set. And then he
23 starts giving his orders. Because he is aware of what is
24 going to happen in a very short time, he is telling them,
25 open this barrel, pour this, mix this. He gets every one of

1 them working.

2 Now, I submit to you, ladies and gentlemen, you
3 saw on the cross-examination the government played a
4 videotape where Emad Salem's feet weren't moving and they
5 were sitting around. I submit to you, ladies and gentlemen,
6 that in all of this time at the safe house, the snippets of
7 the video you saw of that night are the only time that
8 anything happens. Nothing happens there in all of these
9 nights because they just sit around and endlessly talk. But
10 that night, with the arrests imminent, Emad Salem gets each
11 one doing something, opening barrels, stir this, pour this,
12 mix this. He directs the scene.

13 Just finally, you know, I told you this and I
14 will tell it to you again: The government, Mr. Fitzgerald,
15 keeps telling you that the word "Bosnia" is not in the
16 transcripts. But think about it, in the context of a
17 simulation, putting yourself into an actual simulated event.
18 Why would the word "Bosnia" appear? This is the last word
19 that Emad Salem wants to hear on those tapes. And Emad
20 Salem admitted to you on cross-examination that he had
21 techniques. He knows techniques to make people say what he
22 wants them to say, while he secretly records them, and whose
23 ex-wife, Barbara Rogers, told you that he boasted to her
24 that he could get anyone to say anything he wanted them to.

25 Also, the government in its summation talked to

1 you about the disguised conversation in Government Exhibit
2 362. Why would they have to dress up as a sikh in Bosnia?
3 But, you know, I submit to you, that is not the question
4 here. First of all, for a Muslim going to Bosnia to help,
5 there may well be a very good reason for a Muslim to use
6 some kind of a disguise, not necessarily a sikh, but Muslims
7 get killed in Bosnia. Disguises could be important. But
8 the important thing is, in a training situation, in a
9 simulation situation, you adapt to the circumstances of that
10 simulation.

11 Briefly, to talk about the garage, also known by
12 the government as a safe house. In April of 1993, Emad
13 Salem is a paid informant for the FBI. This means he gives
14 information to the FBI and, in exchange, he receives money.

15 Well, ladies and gentlemen, what happens when a
16 paid informant has no information to give? The answer is
17 easy: He makes it up. So Emad Salem had the idea of the
18 safe house as early as the summer of 1992, almost ten months
19 before the arrests in this case. He had the idea of the
20 safe house even before the government had the idea of the
21 safe house. He told it to them. We know this from the
22 transcripts.

23 This is Khallafalla C on page 6, where Emad Salem
24 is having a conversation with Nancy Floyd, who says to him
25 that she had spoken to Louie and told him about the

1 scenarios Emad came up with, felt they were very good
2 scenarios but wanted to meet Emad because he had never met
3 him before. Napoli wants to, as Floyd says, he wants to go
4 to hear what your ideas are. And Floyd says: I told him
5 what you thought about with the safe house.

6 It's a lot of money riding on information for
7 Emad Salem. He told his mother he came here to make money.
8 He doesn't earn it the old-fashioned way.

9 Now, just think about what you know about the
10 safe house. The FBI rented -- Emad suggested it, the FBI
11 rented it and located it. The FBI paid for it. Only Emad
12 and the FBI had the keys. And you saw in the videotape how
13 it was stocked by Emad Salem. I am not going to go through
14 all of the evidence, but he brought Exhibit Q11 into the
15 safe house, and he brought many other things --

16 THE COURT: Ms. London, talk into the microphone,
17 please.

18 MS. LONDON: He brought Q-11 into the safe house.
19 Can we just lift up this box. I am not going to take
20 everything out of here, but these are a number of the things
21 that Emad Salem brought to the safe house: wires, hammers,
22 nails, the lights. If you were going into that garage for
23 training, you could reasonably believe that this was set up
24 for training. Circuit boards, wires. It's all here. They
25 are listed as Q exhibits, Q1 through 14. And you saw in

1 that video how Emad Salem had set the place up.

2 Now, the judge told you in an instruction after
3 that video, and he will repeat it again to you in his
4 charge, that there is nothing illegal about the government
5 providing this if Tarig Elhassan is ready and willing to
6 commit the crime. But if a defendant went there for
7 training, as Tarig believed he went there, then I submit to
8 you that Emad's staging certainly reinforced that belief,
9 and that is why Emad did set the safe house up that way. It
10 is part of his bait and switch technique. He wanted it to
11 look as if it was a training place.

12 What did Tarig bring there? A couple of rubber
13 gloves. But, more significantly, and you heard about this,
14 Tarig Elhassan brought to that safe house a small bag that
15 was shown to you, a small plastic bag with change in it.
16 This was not money to fund a war of urban terrorism. As
17 Tarig told you, it was a bag of change to help pay for the
18 coffee and the milk that Emad was providing. It tells you
19 something about Tarig Elhassan. He wasn't looking to get a
20 free ride off anybody, not even Emad Salem.

21 Contrast the two: a man who gives a lot of
22 change, for him a lot of change -- he is not a rich man; and
23 Emad Salem, who is plotting and hatching and giving birth to
24 a disgusting routine to get a million dollars.

25 I would like to remind you about Carson Dunbar

1 from the FBI, about his testimony concerning instructions to
2 Emad, and they were that Emad was not to purchase materials
3 and not to tell defendants how things should be done.

4 Look at the video of the last half hour in the
5 garage and see how carefully Emad Salem followed those
6 instructions, open this, pour this, stir this, mix this.

7 Look at these bags. Look at the video again, if
8 you want, and see how much materials Emad Salem purchased
9 and brought there.

10 Emad Salem was completely in charge of that
11 garage. Any assistance that was provided there by Tarig
12 Elhassan was minimal and at the specific direction of Emad.
13 Without Emad, nothing would have come to that garage.
14 Without Emad, nothing would have been done in that garage.
15 Without Emad, Tarig Elhassan would never have come to that
16 garage.

17 Just briefly, June 20 you heard some testimony.
18 Emad Salem and Siddig Ali drove to Connecticut and Emad
19 Salem did give a demonstration of a test bomb to Siddig Ali.
20 It was a firecracker in a tomato juice can. Significantly,
21 Tarig Elhassan was not told about this beforehand. At the
22 garage, on the night of June 20, not a word was mentioned by
23 Emad, and he was not invited to go along.

24 And the same thing holds true for the Lincoln
25 Tunnel video that you saw. Tarig Elhassan was not told

1 about it, didn't know about it afterwards, wasn't invited to
2 go along, and was not shown that video.

3 I am not going to talk to you in detail about the
4 taping, but I will say that the FBI was anxious and unhappy
5 after the World Trade Center, as well they should be. You
6 can see that by the pressure that was put on Agents
7 Burmeister and Whitehurst. Emad seized upon the perfect
8 opportunity to make his fortune. And the FBI had the
9 perfect opportunity to redeem themselves and save New York.

10 With the tapes, Emad controlled the off-and-on
11 switch. He recorded what he wanted when he wanted. He
12 turned it off when he wanted. And he kept the ones he
13 wanted, discarded those he didn't. He had copying and
14 dup'ing equipment. There was no record of the number of
15 tapes given to him and no record of the number of tapes -- a
16 record of the number of tapes returned but not the number
17 given. Emad kept no log; the FBI kept no log of this. If
18 Emad didn't like what was on the tape, I submit to you,
19 ladies and gentlemen, it just went missing, pure and simply,
20 as easily as that. He had the control. When he taped
21 unauthorized tapes, the FBI closed their eyes. With Emad
22 the FBI lost control. He was too powerful for that massive
23 organization. If he can cause the havoc that he caused at
24 the FBI, the agent said, he worked with, it stands to
25 reason, ladies and gentlemen, that Tarig Elhassan was no

1 match for him.

2 But that's why he sits before you and has sat
3 here in this courtroom over the last nine months listening
4 to words that he spoke being woven into a context that just
5 wasn't there and certainly a context that he never intended.

6 I suggest to you, ladies and gentlemen, you have
7 to have reasonable doubt about the counts in which Tarig
8 Elhassan is charged.

9 Finally, I told you we were going to talk about
10 bombs. We are going to talk a little bit about bombs. I
11 guess it is mindful of a 3-year-old who once told his
12 mother, If I tell you everything I know and you tell me
13 everything you know, we will never stop talking. But you
14 have only half the equation here: we are doing all the
15 talking.

16 You heard about the World Trade Center searches.
17 I am just briefly going to hold up some exhibits for you.
18 The search of the Salameh apartment. Take a look at
19 Government Exhibit W841A. Look at the kind of things that
20 were tested, weighing pans, boxes of tools, scales, jeans,
21 and look at the results -- all chemicals which Agent
22 Burmeister testified to you, had uses in bomb-making. So
23 there is a search of 34 Kensington Avenue.

24 .

25 There is a search of 40 Pamrapo Avenue,

1 Government Exhibit W840A. Again, take a look at this chart.
2 If you need it, call back for it. But, again, what you see
3 is are items all tested for chemicals, and chemicals found.

4 There was another search. With the size of this
5 chart we know it was a big search. This is space station
6 storage. Government Exhibit 839A. This was found, ladies
7 and gentlemen, after the explosion at the World Trade
8 Center, and look at the chemicals that were in the space
9 station storage: sodium acid, sodium cyanide,
10 methenamine -- I mean, the list goes on. Take a look at
11 this.

12 And you heard the testimony about how the agents
13 went in, the bomb dog walked in, the bomb squad went in
14 first, bomb squads from a number of enforcement agencies.
15 And you will recall the testimony: they swabbed the insides
16 of closets, the door handles, bathtubs, faucets, and in some
17 instances they took air samples from the freezers and the
18 inside of refrigerators. There were very, very extensive
19 searches done. And in all of the chemicals that were found,
20 all of them had some kind of use in bomb-making manufacture.

21 Why do I mention that? Contrast that to this
22 case. There was no bomb squad, no SWAT team, no bomb team
23 that went to Tarig Elhassan's residence. They didn't swab
24 his doorknobs, his faucets, his refrigerator. He had no
25 bomb-making manuals with him. He had no computer chips.

1 What did he have with him at his arrest? He had a wallet,
2 he had a few cards with phone numbers in it, first and
3 foremost of which, top of the list, was Habib Falafel, or, I
4 guess as the government calls it, it is fla fla, as their
5 interpreter says, a Koran and a prayer book.

6 Mr. Stavis asked you in his summation and I am
7 asking you now: What does this case have to do with the
8 World Trade Center? You saw Tarig Elhassan's passport, a
9 Sudanese passport which was expired. But also in evidence
10 is his alien registration card, Elhassan D. He is legally
11 in this country. He can't get out of it. He's got an
12 expired passport. He's got a wife and three children here.
13 He has no money to buy a ticket out, he had no plans to
14 leave. Everything indicates he was planning to stay here.
15 He had rebuilt an apartment for himself and his family on
16 the Lower East Side.

17 Contrast this with Mohammad Salameh from World
18 Trade. \$2,000 in his pocket, one-way ticket out.

19 In the events connected with the safe house,
20 think about money. There was no money. Siddig didn't have
21 money available to him. They even had to exchange large
22 coffees for small ones at McDonald's -- and the government
23 was buying the coffee. There was no storage locker filled
24 with chemicals. They didn't have the money to pay for a
25 storage locker. They didn't even have the know-how or know

1 what chemicals to buy. And in fact Siddig Ali, in
2 conversations with Emad Salem, differentiates the World
3 Trade Center.

4 The Government Exhibit 641T, trial transcript
5 page 5129, when he is discussing with Salem, and Siddig
6 says, line 19:

7 "So what happened was the thing, the incident.

8 "Salem. By God. Meaning this bomb was not part
9 of the preparations at all?

10 Siddig Ali: No.

11 Salem: It just happened like that on the way?

12 Siddig Ali: Yes, of course. It has nothing to
13 do with the matter.

14 Salem: Oh, God.

15 Siddig Ali: Um. It is unrelated.

16 Salem: But that's -- that's a strange way of
17 thinking, I mean strange, I mean, I'm unable to understand.
18 does this mean that Mahmoud planned this using his own wit
19 just like that.

20 Siddig Ali: No, I am telling you right now that
21 Mahmoud was not with us.

22 Salem: He was not with you.

23 Siddig Ali: Never."

24 (continued on next page)

25

1 MS. LONDON: (Continuing) Mr. Fitzgerald in his
2 summation told you that the World Trade Center was not a
3 sophisticated bomb. The World Trade Center defendants were
4 knuckleheads, made knucklehead mistakes, did an
5 unprofessional job, and it was bungling. But, they had
6 money to buy chemicals, money to rent apartments, money to
7 rent and get a storage locker, money to buy tickets out of
8 the country, and they had knowledge, they knew what
9 chemicals to buy, what equipment to buy, and then they knew
10 how to mix them. In fact, Agent Williams, the government's
11 explosives expert, testified about the gas enhancement of
12 the World Trade Center bomb.

13 Those bungling knuckleheads at the World Trade
14 Center even knew how to use a gas enhancement. And
15 Williams, who has been dealing with explosives for a lot of
16 years, told you that he didn't think he could do it.

17 Agent Burmeister said you have to know what you
18 are doing with sulfuric acid. They had sulfuric acid. You
19 remember Burmeister testifying if you pour the sulfuric acid
20 into the urea mixture, it will start bubbling and you will
21 have a lot of problems.

22 The bomb experts testified that some of the
23 chemicals at the space storage station were so dangerous
24 that they had to take them to Liberty Park that night to
25 detonate them.

1 The government also told you that the message of
2 World Trade in many ways was so show you how frightening it
3 is not to have an informant telling you what is going on.
4 In that case, yes, it was. But it is not in this case
5 because the contrasts were overwhelming. There was no safe
6 house, no garage without Emad and the FBI. They located it,
7 they paid for it, they supplied it, they furnished it, and
8 Emad recruited the people for it.

9 The message in this case is how dangerous it is
10 for our government to pay one million dollars to an
11 unscrupulous, greedy Middle Eastern double agent with a
12 Middle Eastern agenda and no loyalty to this country, no
13 loyalty to any single one of you, ladies and gentlemen.
14 Bear in mind, it was Emad Salem who had bomb making
15 materials, nondangerous, nonexplosive, but nonetheless bomb
16 making materials in his apartment, not Tarig Elhassan.

17 In fact, the only possible explosive material in
18 that safe house was this, Q4, this little thing,
19 hand-wrapped in duct tape, brought to the garage by Emad
20 Salem against FBI orders. Their explosive materials.

21 The bomb that you heard about in the safe house
22 was an ANFO, ammonium nitrate fuel oil explosive device.
23 The idea of that even came from Emad Salem. Originally he
24 had discussed with Siddig a bomb made with dynamite or C-4
25 but there was no money for that kind of bomb.

1 So Emad Salem changes his mind, and in CM 37,
2 June 13 is when Emad Salem first brings up the idea of an
3 ANFO, Government's Exhibit 339T, and says: Siddig, you know
4 that the heating oil which is used to heat homes?

5 Siddig: Yes.

6 This is number one.

7 Siddig: Unbelievable.

8 Salem: This is the first material.

9 Siddig: Unbelievable. Go down. Fertilizer.

10 Salem: I don't want to to say it in English.

11 That is because he is taping and it will sound
12 better for you in Arabic.

13 Salem: Fertilizer.

14 Siddig: Where could we get this fertilizer? Is
15 this fertilizer available?

16 Salem: Yes.

17 Emad told you that he changed to an ANFO for two
18 reasons: Because there was no way that a bomb that he
19 planned could get off the ground, ANFO was cheaper, and,
20 significantly, an ANFO needs more people to help build it.

21 Even just a few hours before the arrest Siddig
22 Ali still didn't know what an ANFO was. When Emad brings up
23 the word ANFO, Siddig says oh, yeah, that means information,
24 info.

25 You have learned that making an ANFO is a

1 three-stage process. Here we go, our final chart. This is
2 Government's Exhibit W853. Can you see that?

3 The ammonium nitrate and fuel oil constitute the
4 box number 3, the main charge. What do you know about that?
5 Mr. Serra called Agent Thurman, the government's bomb
6 expert, and he told you that it was not possible to
7 construct the third stage of the ANFO from the materials
8 present in the safe house. The fertilizer there didn't have
9 enough ammonium nitrate in it. It had only point 6 percent.
10 That fertilizer contained other materials. The normal ratio
11 of ammonium nitrate to fuel oil is 94 percent to 6 percent.
12 They would have needed at least 12 more tons of fertilizer,
13 if the fertilizer had been pure ammonium nitrate.

14 So you have a main charge that will not detonate.
15 As you know, even if they had put a match to the fuel oil it
16 would not burn.

17 The booster, there was no C-4, there was no lead
18 azide. There was nothing recovered from the garage that
19 could serve as a booster. They had no money to buy it, they
20 had no one to supply it to them. The second stage is
21 nonexistent, and the first stage, the detonator, the
22 government's witness testified that hobby fuse or cannon
23 fuse could be used, and there was hobby fuse at the safe
24 house. Emad brought it. That doesn't count. Remember
25 Dunbar's instructions, he is not to provide the materials.

1 There were no bomb-making manuals, no recipes, no computer
2 chips with bomb-making instructions, no do-it-yourself
3 manuals. Yet this is all readily, commercially available.

4 In respect to Count 6, which is the intent count,
5 the judge will instruct you that factual impossibility, the
6 fact that this could not have been a bomb, is not a defense
7 to attempt. But in order to prove an attempt, the
8 government must still prove certain elements which the judge
9 will instruct you on, and they must prove them beyond a
10 reasonable doubt.

11 I want to talk about two of those elements, the
12 first being the intent. I submit to you, ladies and
13 gentlemen, that it is clear from Tarig's testimony that he
14 had no intent to bomb buildings or real property in New York
15 City. It was not something he wished to bring about.

16 But another element that I want to talk to you a
17 little more about is something required in an attempt called
18 a substantial step towards completing the act. That
19 substantial step must be taken in order for there to be an
20 attempt. The government has virtually conceded to you that
21 Tarig Elhassan did not make a substantial step towards an
22 attempt. He basically said to you in his summation that it
23 was Siddig Ali who committed the attempt. I quote Mr.
24 Fitzgerald's words: One thing an attempt, a lot of evidence
25 focuses on what is in someone's mind. Siddig Ali committed

1 an attempt and the others aided and abetted him.

2 Those are dangerous words, ladies and gentlemen,
3 and I say that Siddig Ali committed an attempt. That is a
4 conclusion and you cannot and you must not accept those
5 conclusions at face value. You have to find that Siddig Ali
6 not only had the intent to bomb but that Siddig Ali
7 performed a substantial step before you can even consider
8 whether Tarig Elhassan aided and abetted an attempt. I
9 submit to you that Siddig Ali did not perform a substantial
10 step. There were no cars to drive the bombs, no condenser,
11 no detonator, the wrong fertilizer, the wrong proportions.
12 Not one single stage of that bomb would work. A substantial
13 step goes beyond mere preparation. Mere preparation is not
14 enough for an attempt.

15 And I would remind you when you consider that
16 substantial step, Agent Thurman's testimony. It was not
17 even close to being a bomb. I submit to you that Siddig Ali
18 did not commit a substantial step.

19 Based on that alone, you must find Tarig Elhassan
20 not guilty of Count 6.

21 I think with respect to Count 1 and Count 5, I
22 think it is clear from the evidence before you that Tarig
23 Elhassan went to the garage in Queens believing he was
24 furthering his training to go to Bosnia and I submit that he
25 simply did not have the necessary intent to wage a war of

1 terrorism on America as the government has charged, and
2 similarly he did not have the intent to bomb real estate and
3 buildings in New York City. He was induced to go to the
4 safe house by Emad Salem and was not ready and willing to
5 commit the crimes charged.

6 But everything and the testimony that I have
7 shown you today point to his willingness to help his fellow
8 Muslims in Bosnia, and I submit to you, ladies and
9 gentlemen, that you must find him not guilty on Counts 1 and
10 5.

11 And finally, in my opening I talked to you about
12 the word hadduta. I told you in my opening that you would
13 learn that the hadduta means fairy tale. I promised you
14 that by the end of the case the bomb that the government had
15 talked about was in fact a hadduta, a fairy tale, and,
16 ladies and gentlemen, that is just what we saw by the close
17 of this case.

18 This is the last time I am going to get to speak
19 to you and perhaps that is one of the reasons that makes us
20 lawyers keep talking, because we can't back there and pull
21 on your sleeve and tap your shoulder and say remember this,
22 think about this. We have to rely on you to think about our
23 arguments for us, make them for us. And we have to rely on
24 you to hold the government to the burden that they have of
25 proving each and every element, of each and every count

1 beyond a reasonable doubt.

2 You promised us you would. We are relying on you
3 to do it. The system only works if you do hold the
4 government to its burden, and I submit to you, ladies and
5 gentlemen, that if you do, you are going to find that Tarig
6 Elhassan is not guilty on any of the charges here.

7 I thank you for your time and your patience. You
8 have done a lot of work. Sitting here is work. For some of
9 us lawyers now, the bulk of our work is over and you have
10 even harder work to do. We have watched you come in from
11 your breaks, sometimes smiling, we have watched you through
12 the testimony sometimes puzzled, always following. We are
13 very, very appreciative, both Mr. Elhassan and myself, of
14 the attention that you have paid, the willingness to listen
15 and absorb over long days and long nights. We thank you for
16 that. Again I will ask you one more time, please hold the
17 government to the burden that they must meet.

18 Thank you, ladies and gentlemen.

19 THE COURT: Thank you, Ms. London. Ladies and
20 gentlemen, we are going to break now for lunch. Please
21 leave your notes and other materials behind. Please don't
22 discuss the case. We will resume this afternoon.

23 (Luncheon recess)

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION

2:15 p.m.

(Trial resumed; jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

THE COURT: We are now going to hear a summation on behalf of Fadil Abdelgani from Mr. Lavine.

MR. LAVINE: Thank you very much, Judge.

Good afternoon, folks. Just so you know, I hope to be finished with you by the afternoon break. I just ask you to bear with me. With that in mind, let me say this: It seems that on almost every high-profile case -- and that is a case of national or international importance -- that there is a danger that the myth that starts to surround the case begins to take on a significance that is greater than the facts of the case themselves.

There is no case that has a higher profile than this case. The issues here -- sedition, free speech, religion, association, Middle Eastern politics, entrapment, guilt or the lack of guilt -- are as profound as are imaginable.

Listening to Mr. Fitzgerald's remarks on the subject of fear, you could conclude that we have to be careful, as Ms. Stewart wisely cautioned you, to resist the us against them mind-set. After all, has not almost every

1 one of us -- and if not us, a parent or grandparent or
2 someone back on your line -- been the "them" in the "us
3 against them" equation? The answer is: certainly. That is
4 part of the genius of America and that is part of the genius
5 of what goes on with an American jury.

6 When you were selected to sit on this jury, Judge
7 Mukasey asked almost every one of you: Would you want
8 someone like yourself to sit in judgment? You all said yes.
9 I have watched you. I believe sincerely that you have lived
10 up to your promises, and more than lived up to whatever
11 expectations we have in you.

12 But I do fear that the myth that might be brewing
13 here is that a message must be sent, a message must be sent
14 to the Arabs, a message must be sent to those who believe in
15 Islam, and that message is that the United States will not
16 soon forget the bombing of the World Trade Center.

17 Mr. Fitzgerald spoke of fear, and I tell you that
18 I have a concern about this. I represent the defendant here
19 who may very well be the most peripheral to this entire
20 case. He appears a couple of hours, a few hours, before the
21 arrests in the early morning of the 24th. Amazingly enough,
22 Mr. Fitzgerald spent over an hour of his closing remarks on
23 my client. That's remarkable, in the sense that the amount
24 of time that Mr. Fitzgerald spent on Fadil represents a good
25 chunk of the total amount of time that Fadil spent getting

1 himself involved in this case. He was only there for a few
2 hours.

3 There are times that I have felt as if I am
4 trying a small case in the eye of a huge storm, in the eye
5 of a hurricane. And I worry, I worry very much, that the
6 myth of fear can descend upon your deliberations. If that
7 happens, I fear that when it comes time to determine whether
8 the prosecution has proved the guilt of my client, that you
9 will find him guilty. And that will be unjust.

10 I want to thank each of you for participating in
11 this trial. For me it has been a privilege to have the
12 chance to work on this case and work with this jury.

13 Believe it or not, you have often been an awful lot more
14 attentive than some of the defense counsel in this case,
15 including myself. Just as it has been a privilege to work
16 with you, it has been a privilege for me to work in Judge
17 Mukasey's courtroom as well. And he has my gratitude, as
18 does his staff.

19 Has the prosecution met its time-honored burden
20 of proving my client's guilt beyond a reasonable doubt? The
21 answer is no. There is no better place to begin to show you
22 than with 383. When Mr. Fitzgerald talked about Fadil, the
23 first thing he dealt with was remarks about him on 383. 383
24 is the transcript of the video, and it is the transcript of
25 what transpires literally minutes before the arrest.

1 Mr. Fitzgerald knows that there is a couple of
2 problems for the prosecution. And, amazingly enough, you
3 might ask yourselves, they have got my client on tape, you
4 see him on tape, you see him walk in, you see him mixing.
5 For goodness' sake, convicting him ought to be just about as
6 difficult, shouldn't it, as shooting a fish in a barrel with
7 a shotgun? But you know that it hasn't been quite so easy
8 for the prosecution. The reason it hasn't been is that they
9 have not been able to establish his guilt beyond a
10 reasonable doubt.

11 There are remarks about him on this last section
12 of transcript, and those remarks are -- you know, later on
13 when you see the stuff that I have got here to show you,
14 this won't seem impressive to you at all. Just wait. Now,
15 here is what they say about him, if we can find it. And
16 this is page 39 of 383T2.

17 Now, Siddig is saying: Because yesterday I came
18 to know that he was -- speaking of Victor -- he was speaking
19 with this man in the presence of Fadil, his cousin. His
20 cousin has nothing to do with that matter, is what this
21 transcript says. And then Salem says, "Shit."

22 Now, Mr. Fitzgerald was very, very kind to me.
23 Even though it's not Christmastime quite yet, he said:
24 We're going to give Mr. Lavine something. Over here, where
25 it says "that" we are going to give him "this." Now, that

1 was real nice, especially in light of the fact that
2 Mr. McCarthy, at page 17,273, stipulated with me that the
3 word is not "that," the word is "this."

4 Now, that will take on some significance. But
5 you know that a stipulation is an agreement and you are to
6 accept it as fact.

7 So, ladies and gentlemen, it is not: His cousin
8 has nothing to do with that matter. It is: His cousin has
9 nothing to do with this matter. What does that mean?

10 Mr. Fitzgerald knows that that is a problem, and
11 he does the most creative thing that he can do, and I will
12 give him credit for that, because I was waiting to hear how
13 he was going to handle that aspect. He says, they're not
14 talking about bombing, they're not talking about sedition.
15 They're talking about stolen cars.

16 Now, bear with me for one second.

17 Before we get to this, let me say something.
18 When I talk about Mr. Fitzgerald, I don't speak about him or
19 Mr. McCarthy or anybody on the prosecution team with anger.
20 They are good lawyers, they are great lawyers. They have my
21 respect, for what that is worth.

22 Now we are on that same transcript and we are
23 only a couple of pages later on. And this little
24 conversation happens.

25 Siddig: Let's account for the people who have

1 knowledge of this. Who?

2 Salem says, Siddig. Fadil. Amir says: He is
3 not going to know. And then Siddig says, Wahid? Check.

4 How can they be talking about stolen cars when
5 Wahid is the car thief? Is Wahid not supposed to know about
6 the stolen cars? If you look at the transcript itself that
7 is in evidence -- and I am not going to ask you to look at
8 it now, but I am going to give you some page references,
9 before these remarks occur -- and, again, these remarks are
10 not long before the arrest -- before these remarks occur, at
11 pages 20, 21, 22, and 29, with Wahid there, there is express
12 explicit discussions about stolen cars. And even after
13 Wahid leaves, at 32 and 33, there are more discussions about
14 stolen cars.

15 So it flies in the face of logic, ladies and
16 gentlemen, to suggest that what is being said about my
17 client here is that he doesn't know about the stolen cars.

18 To just briefly touch upon something that
19 Ms. Amsterdam mentioned to you: If it were that way, if it
20 were the way the prosecutors want it, it still doesn't make
21 sense. If we are going to rob a bank, and that means that
22 we are going to have to jaywalk in the City of New York to
23 enter the bank, do you think we are going to be hesitant to
24 tell our crimees, our crime mates, that we are going to have
25 to jaywalk for fear that they are not going to go along with

1 the program if it means violating the Municipal Code of the
2 City of New York?

3 If they are right about Fadil Abdelgani here, ask
4 yourself another question: If he is down for sedition, if
5 he is ready to conspire, to bomb, and to attempt to bomb,
6 what are they concerned about that he is going to find out
7 about stolen cars? It doesn't make much sense. What makes
8 much more sense, ladies and gentlemen, is, as you have seen
9 and as you have heard on so many of these CM's leading up to
10 the days of the arrest, there is discussion about who is
11 involved, who is with us, who do we have, who can we count
12 on. And you know that Fadil's name is never mentioned. Not
13 even, ladies and gentlemen, minutes, literally minutes,
14 before the arrest.

15 So who do you trust here? Do you trust Emad?
16 Because when it comes to corroboration with respect to my
17 client, other than for the fact that you will see him, and
18 you do see him, on videotape, Emad does not deliver and
19 cannot deliver.

20 Those couple of conversations that we just looked
21 at, interestingly enough, when Emad is confronted with those
22 conversations, Emad says, oh, no, they are not there.

23 When when Tom Nooter -- if you remember Tom
24 Nooter and Wahid -- when Tom Nooter asked him about the
25 second conversation, because Tom's old client is mentioned,

1 Emad's response was: Oh, I don't remember that. I just
2 don't remember that.

3 This is a lie, ladies and gentlemen. When the
4 matter was brought to Emad's attention during his
5 examination, he said it wasn't there. The day after there
6 was a stipulation between the government and myself that
7 what I read and, and what I read was what you just saw, was
8 read correctly.

9 THE COURT: We are going to take a short break,
10 ladies and gentlemen. Please leave your notes and other
11 materials behind. Please don't discuss the case. We will
12 resume in a few minutes.

13 (Recess)

14 (Jury present)

15 THE COURT: Mr. Lavine?

16 MR. LAVINE: Thank you, Judge.

17 So the question that I have got for you is this:
18 Why would the prosecutors spend over an hour of their
19 closing remarks on Fadil Abdelgani, the guy who is hardly
20 mentioned at all in their case? The reason is that he
21 becomes important. And he becomes important because if a
22 man like Emad Salem will lie about my client, who is way out
23 on the edge, then what does that say about the others? My
24 client's name is known in his own house, and that's it, in
25 his own household. His name isn't known on the world stage.

1 His name is not known to the presidents of countries. What
2 does that say about Dr. Abdel Rahman? What does that say
3 about someone like Nosair? I am here, ladies and gentlemen,
4 to represent my client and my client alone. I am going to
5 try to restrict my remarks to my client and my client alone.

6 What we just saw in these conversations on 383,
7 it's a lie when Salem says they're not there. And he says
8 they're not there because they don't help him, they don't
9 fit into his agenda. And he has his own agenda. We all
10 know that.

11 More importantly, there is a little chunk of this
12 case that you have hopefully forgotten. Months ago, when
13 Salem was on the witness stand, Salem claims that he met my
14 client in Brooklyn on, I think, the 20th of June, either the
15 19th or the 20th. Not only does he claim that he met my
16 client there; he says my client spoke to them. He came up
17 to the car and he spoke to them.

18 We reviewed this with him when he was on the
19 witness stand, and sometimes my ears are not so good, so we
20 asked him: Listen to the tape. And he showed us on the
21 transcript words supposedly spoken by Fadil Abdelgani. And
22 you know that Salem went over the transcripts, he did the
23 attributions, he said who's who, he checked them. He says,
24 oh, yes, my client was there. And he came to the car and he
25 spoke.

1 Now, if any of you could remember this, I'll be
2 shocked, but it's there. We listened to the conversation,
3 because the conversation at that point is in English because
4 Victor is there. And wouldn't you know that we listened
5 two, three, maybe four times with Mr. Salem, to the point
6 where Mr. Salem himself had to say: Gee, the remarks that
7 he said were Fadil's were not there. And that was a lie.
8 It was a lie when he said they were there in the first
9 place.

10 Fadil was mentioned in one of the overt acts
11 stemming from that day. You will see, if you can remember,
12 when you hear the overt acts, Fadil is no longer in the
13 overt acts.

14 MR. McCARTHY: Objection.

15 MR. LAVINE: I am sorry.

16 THE COURT: That is sustained.

17 MR. LAVINE: At any rate, the tape itself proved
18 that Fadil was not there on the 20th. So who do you
19 believe? Do you believe Emad Salem?

20 Let me just briefly discuss his credibility with
21 you. When you look to credibility of a witness or anybody
22 else, what do you look to? You look to their character, you
23 look to their heart, and you look to their soul. Put
24 yourselves in these couple of situations and see how much
25 would you trust Emad Salem? Because to convict these men

1 you have got to trust Emad Salem more than the examples I am
2 going to give you.

3 You are walking out of the building.

4 Unfortunately, the beer truck gets you, you end up in the
5 hospital. You open your eyes, you look up. Who is your
6 doctor? Emad Salem. How trusting are you? You are not too
7 trusting at all. And what you are doing is trying to get to
8 a phone, ladies and gentlemen, to increase your life
9 insurance, because you are not on his agenda, and that is
10 looking into his heart and that is looking into his soul.
11 And you can say to me, well, Mr. Lavine, that really doesn't
12 translate into exactly what we have got to do here to figure
13 out, can we believe him or not.

14 You got to pay your rent, you got to pay your
15 mortgage. Do you trust him to take the money to the bank or
16 to the landlord? I don't think any of you would be going
17 into your pockets. That, you say, maybe that is a little
18 closer. Maybe that will give us some cause for concern
19 here. Let me take it. And with him I can take it to the
20 ridiculous and it still rings true.

21 Judge Mukasey tells us he wants us here tomorrow
22 at 8:30. Mercifully enough, the hope is that you will be
23 finished with the defense summations if you get here at 8:30
24 and put in a full day. We're all walking into the building.
25 It's 8:35, we are a little late. Who do we see? Emad.

1 Emad looks at us and he says, "Slow down, there's no court
2 today. The judge doesn't want you." Not one human being in
3 this courtroom would believe him, because, ladies and
4 gentlemen, the truth is not on his agenda. What goes into
5 his pocket is on his agenda. And let's not forget that.

6 Now, Fadil took the witness stand and Fadil
7 testified. You saw a young man, a young man who comes from
8 a good family, a young man who has got a pretty good
9 education. But you saw a young man who is anything but
10 worldly and you saw a young man who is naive in his own way.
11 You saw a young man who is very prideful in his own way. He
12 sat up there, he stood up for his rights. And Mr. McCarthy
13 challenged him nose to nose. My client didn't shrink, he
14 didn't shirk. He looked him eye to eye in an amusing and
15 interesting few minutes. He was challenged.

16 The prosecutor tells you, oh, he is a blood
17 analyst, he has learned about blood analysis, so therefore
18 he must know all about chemistry. And yet we know that he
19 doesn't. We know that what he knows about his basically
20 what is required to be a lab technician. And that does not
21 involve any tremendous knowledge about chemistry,
22 electricity, or anything like that. These are studies that
23 deal with the human body.

24 Yes, yes, he is guilty. You know, the
25 prosecutors, they are sometimes a hundred percent right

1 about my client. But the problem is, ladies and gentlemen,
2 they are only right about him about 1 percent of the time.
3 He is guilty of submitting some false information to the
4 Immigration and Naturalization Service. Now, that is an
5 interesting double-edged sword for the prosecutor, because
6 this man hates this country so much, ladies and gentlemen,
7 that he will lie in order to be able to stay in this
8 country.

9 There have to be at least a good handful of
10 people in this courtroom who have a relative who believes
11 that they came to this country and they didn't exactly
12 completely tell the truth on their immigration documents.
13 What a sin. It doesn't, ladies and gentlemen, mean that
14 they are terrorists. It doesn't, ladies and gentlemen, mean
15 that they are guilty, of, of all things, sedition. There
16 have got to be plenty of people in this courtroom who have
17 relatives who would never walk into a post office for fear
18 that they would be gobbled up by the federal authorities and
19 sent back to wherever they came from.

20 The prosecutor makes a great deal about my
21 client's truck, out of his van. Fadil leaves his van with
22 Magdi, the mechanic, and he goes with Amir. It sounds like
23 Emad. So many times was he asked by the prosecutors, well,
24 when were you going to go back and get your van? Weren't
25 you worried about your van? It's your livelihood, it's your

1 business. Weren't you worried? How come you stayed in
2 Queens? Why did you go to Yonkers? You should have gone
3 back and gotten your van.

4 Ladies and gentlemen, let me ask you a question.
5 Do you think that when Fadil Abdelgani goes to bed at night
6 and he goes into his little terrorist bedroom, do you think
7 he takes his little terrorist van with him, or do you think
8 he leaves that van out on the street exactly where it was
9 left when it was left by Magdi, the mechanic?

10 And while we are on the subject of fear, ladies
11 and gentlemen, is fear one-way street? Magdi Hamdi, the
12 mechanic, was subpoenaed to come in here and to testify. He
13 sat in the witness stand. I don't think any of you got the
14 impression that he was real happy about having to be here.
15 He runs a one-man operation, and this is costing him money
16 to be here, aside from the pressure that follows anybody who
17 walks into this courtroom.

18 Did he deserve, ladies and gentlemen, to be
19 cross-examined as to whether he had paid his taxes or not?
20 You think there may have been a little fear on Mr. Magdi
21 Hamdi's part when the federal prosecutor asked him about
22 that? Or is fear, ladies and gentlemen, just a one-way
23 street that runs in the direction of the clients, the
24 defendants in this case?

25 Fadil was trusting. He had no reason to believe

1 that these people he was with were up to no good. And that,
2 ladies and gentlemen, is corroborated. It is corroborated
3 much more than is anything Emad has to say bad against him
4 corroborated. And unless the rules have changed
5 substantially in an American court of law since this trial
6 started -- and we have been here a while -- but unless the
7 rules have changed substantially, unless guilt is
8 established beyond a reasonable doubt, the vote is not
9 guilty. And what I tell you is that when you look at what
10 Emad has to say and you measure it as against what my client
11 has to say, Emad does not come up to the level of proof that
12 is required for you to convict.

13 Now, let me just discuss with you somewhat the
14 issue of corroboration. Now, I don't know if you have with
15 you these blue books that are marked F. Abdelgani B, because
16 the information that I want to discuss with you is in them.

17 Let me direct your attention, if I can, to the
18 date of June 22, and that is in Exhibit F.

19 We know that Fadil has gone to the Sudan from
20 February to late May of 1993. And that may be significant,
21 because he is not in the United States, ladies and
22 gentlemen, at the time of the World Trade Center experience.
23 He is in Sudan. You could reason that he is not as aware as
24 would many people that are here or were here of what
25 surrounded the World Trade Center explosion.

1 Let's go to the 22nd of June. I don't want to
2 deal with days before then, because you have got the CM's,
3 you have got discussion about who is, who is not, you have
4 got names, who is involved, who is not, and his name is not
5 there. So let me just take you to the last 24 hours.
6 Actually, there are a few more but not that many more.

7 This is a call between Siddig and Amir at 1:43 in
8 the afternoon on June 22. This is the call about whether
9 they would use the truck that Fadil has. Nowhere in this
10 conversation is there any discussion about Fadil being
11 involved. It is his truck that is going to be used. If we
12 look to page 3, let's look and see, as of the afternoon of
13 June 22, is Fadil a conspirator or is he not a conspirator?
14 It is pretty easy to see that the answer is he is not.

15 Let's go to the middle of that page. It is Amir:
16 Shall I bring him over with me.

17 And Siddig is saying: He talks a lot, brother.
18 And don't you think he will be speaking too much?

19 The alternative translation is: No, he won't
20 have the opportunity.

21 It doesn't really matter very much, because the
22 gist of what is said there is clear: that as of, certainly,
23 the afternoon of the 22nd, Fadil is not one of Siddig's
24 suicidal soldiers. But they do want to use his car.

25 Now, that night, ladies and gentlemen, Fadil told

1 you that he went with Amir and he went with Victor, and they
2 went to New York City, and it had something to do with cars.
3 Fadil took the witness stand. He did not have to take the
4 witness stand. Had he not taken the witness stand, you
5 might never ever have spoken about that. There would have
6 been less knowledge on your part about Fadil. But he took
7 the witness stand and he told you something he didn't have
8 to tell you. The night of the 22nd he goes with his cousin
9 and he goes with Victor. And Victor is looking for
10 something having to do with cars. But he tells you
11 something else, ladies and gentlemen. He tells you that
12 what is occupying his mind and what is occupying his
13 thoughts at that time is the news that his wife has just
14 become pregnant.

15 Now, let's go to number G. It is now the morning
16 of the 23rd. It is 10:30 in the morning. It is less than
17 24 hours before Fadil is arrested. This is Siddig calling
18 the base, calling Cousins Livery Service. And who gets the
19 phone? My client, Fadil. The conversation that occurs here
20 is conversation that corroborates innocence. If my client
21 is involved with Siddig, and you know Siddig -- well, you
22 actually did see him for a while, but you know him, you have
23 known him as well as you need to know him, you have known
24 him better than you would like to know him, based on this
25 case. Is Siddig a guy that is not going to make a veiled

1 reference to my client's involvement? His sense of
2 self-importance is so great that he certainly would, if my
3 client were involved, say something about it. But he
4 doesn't. And in fact he corroborates what it is that Fadil
5 told you about what happened the day before, when Amir and
6 Siddig dropped him off at the hospital with the third seat,
7 the middle seat of the truck. Because in the middle of page
8 2, a third of the way down, it is Siddig saying: Did the
9 man come to you yesterday? Did he come over for the car
10 seat? And that is what Fadil told you happened.

11 Now, in no part of this conversation between my
12 client and Siddig Ali is there any reference to Fadil's
13 involvement.

14 Interestingly enough, let's go to the next page,
15 page 3, about a fourth of the way down we have Siddig asking
16 Amir if Amir will be going alone, and in fact telling him to
17 go alone. And what they are talking about there, ladies and
18 gentlemen, is, I assume, going up to Yonkers.

19 Fadil told you that on the 23rd his van broke
20 down. He told you that he took the van to Magdi, the
21 mechanic; that the mechanic was a couple of blocks away from
22 where the van broke down. Naser Abdullah testified that he
23 helped push the van to Magdi, the mechanic; and Magdi, the
24 mechanic, the man who was cross-examined about his taxes, he
25 told you that that's what happened, that Fadil brought the

1 van in and he told him he would try to fix it for him, it
2 would take a couple of hours, that he would leave it out on
3 the street.

4 Now, H is a conversation that takes place between
5 Amir and Siddig from Magdi's garage.

6 The government interpreter tells us that, in the
7 middle of this page, there is a conversation that goes
8 something like: Should Fadil come, and Siddig says yes.
9 Then Amir says: Then it does not matter. And Siddig says:
10 Yes, if he wants.

11 Now, Fouad Keir told you that he listened and he
12 listened many times and the language was not "if he wants,"
13 the language was "if you want." And if you view that
14 conversation in the context of the few lines that follow, it
15 becomes pretty obvious that it should be "if you want," not
16 if he wants."

17 But, before that, let me just talk about Gamal
18 Abdel-Hafiz, the government's chief interpreter. I don't
19 worry that Mr. Abdel-Hafiz is being fair to the government.
20 I, ladies and gentlemen, worry that maybe, just maybe,
21 Mr. Gamal Abdel-Hafiz is being a little too fair to the
22 government. Fouad Keir listened, you saw him. And he gives
23 you on the next page even his translation, his Arabic
24 transliteration, that the language was not, yes, if he, if
25 Fadil wants. The language was, yes, Amir, if you want. And

1 what follows makes it clear, because the rest of the
2 conversation concerns what is going on in Amir's mind. And
3 it is Amir saying that he is afraid that the matter would
4 eventually become obvious to him if what is known to the
5 insiders is known to the outsiders.

6 So, ladies and gentlemen, the prosecutors would
7 like you to have it that my client is guilty, he is guilty
8 from Pennsylvania, he is guilty from before anything happens
9 here. But the fact of the matter is that, even though you
10 see him on video, ladies and gentlemen, when you look to
11 corroboration and you look to the objective facts, maybe,
12 just maybe, he is really not guilty at all. What reasons
13 are there here for lies? What reasons are there here for
14 half-truths in this conversation? They are concerned that
15 what is known to the insiders will become known to the
16 outsiders.

17 Fadil, unfortunately, does accompany Amir. And
18 you saw photos of what occurs at the gas stations in
19 Yonkers. And consider, if you will, that in those photos,
20 Fadil is out in the open, he is not hiding in the van, he is
21 not hiding. You see his face, you see him smiling, he is
22 there. To him, this is no big deal, ladies and gentlemen,
23 no big deal. This is a man whose preoccupation as of that
24 moment is with his family. It is with his wife, it is with
25 the impending birth of a child.

1 Now, there are also in these books some photos,
2 and I think those are C and D in evidence. Those are photos
3 of the gas station and a little pizzeria that is near the
4 gas station. Fadil tells you that when they went to the gas
5 station, he got out of the car and he got pizza. And
6 wouldn't you know it? Lo and behold, shock of shocks, there
7 is a pizzeria right where he says there is a pizzeria. That
8 in and of itself does not prove innocence. Anything to the
9 contrary would not prove guilt. But it is a little thing,
10 it is a little thing, that substantiates what it is that
11 Fadil had to say.

12 Now, the prosecutors tell you, well, Fadil should
13 have known. He should have known when he came back from the
14 mosque and he was with, of all people, Tarig and Victor.
15 And I ask you to consider, was he with Arnold Schwarzenegger
16 and Jean Claude Van Damme? Was he with Muammar Qaddafi and
17 the Ayatollah Khomeini? What on earth would have led him to
18 believe, as the prosecutors would want you to believe, that
19 he is with the soldiers who are in the front lines of the
20 war of sedition against the United States? You have seen
21 both those men, they both testified. If anyone in this
22 courtroom were with them, the farthest thing from your mind
23 would be that these two guys are going to take on the United
24 States. After all, they have nothing. The United States
25 has an Army, Navy, satellites. You wouldn't really come to

1 the conclusion, ladies and gentlemen, that these two guys
2 are a dead giveaway that sedition is about to occur. In
3 fact, just the opposite.

4 What happens now, though, is very interesting,
5 because Fadil goes to the safe house in Queens. And you saw
6 it. You saw it on video. He took you through the videos.
7 He showed you where he was. He went through every piece of
8 video which occurred while he was there. The government,
9 after he testifies, brings on 381.

10 While he was on the witness stand, he was fair
11 game, ladies and gentlemen. You know, a defendant has the
12 right in this country to confront his accusers or her
13 accusers, but in the very same sense, if you are a defendant
14 and you take the witness stand, your accusers have got the
15 right to confront you. He sat on the witness stand, the
16 videos were in evidence, he went through the videos. He
17 told you what was going on. The prosecutors did not play
18 those videos when they cross-examined him. They did not.
19 Instead, they submit a transcript to you. And this is
20 381DT.

21 What this is, ladies and gentlemen, is -- if I
22 have the right chart here and I hope I do -- is a red
23 herring. You might ask -- we use that word all the time --
24 what does that mean? What is a red herring? Well, as I
25 understand it, when the NormansNormans invaded Britain about

1 a thousand years ago, they subjugated the Saxons. And the
2 Saxons were a tough people and they didn't like the Norman
3 ways. And the Normans Normans brought with them not only
4 subjugation but they brought with them their favorite
5 pastime, which was fox hunting. They used to get on their
6 horses, they'd have a fox, they'd let it go, their dogs
7 would chase the foxes, and they would have a great old time
8 while the Saxons would sit and watch. They are a conquered
9 people. But the Saxons, you know, decided they would have a
10 little fun. They would take a herring, which is a little
11 fish, and they would put it out in the sun, and they would
12 bake that fish for day after day after day until that fish
13 got bright red. And then what they would do was, to take a
14 string and they would tie it to the fish. And as the
15 Normans on their beautiful horses, with their beautiful
16 hunting dogs, were chasing this poor little fox, the Saxons
17 would take that string and they would drag the red herring
18 right across the trail of the fox. And wouldn't you know
19 that those dogs would chase the trail of the red herring.

20

21 Now, the Normans stayed in control for an awfully
22 long time, but the Saxons did have at least a little bit of
23 fun.

24

25 But red herring means, when you distract, when
you lead somebody off the trail. And that is, ladies and

1 gentlemen, what this is, because they didn't go over the
2 video with Fadil when he testified. They didn't.

3 Let's go up to page 10 of 381. What does this
4 mean here? We don't know where anybody is while this
5 discussion is going on. Mr. Fitzgerald says, if you will
6 look at the van and you check the reflections that are on
7 the side of the van, then you might be able to see -- if I
8 get too close to this, give me a sign -- you might be able
9 to see where everybody is sitting. But that doesn't really
10 answer the question as to where is my client, what does my
11 client say, and what is being said about him?

12 This is what the prosecutors tell you is about
13 Fadil: They say at the top that somebody says, I am with
14 you. We will see if there are preparations. First he said,
15 I am with you. And then Salem says, what did he say? And
16 then you get a long, unintelligible statement -- much, I
17 guess you are thinking, like my summation -- whether he
18 wants or not, now he is going to go pray and see, go and
19 invoke the exalted God for guidance. See if you want Salem
20 amuse himself with us. Four or five days and the work will
21 be ready. If you want to come, we need people to work.

22 Siddig: We need people, we need drivers. One to
23 be standing, one to be from New York City.

24 Fadil is not from New York City. Fadil is living
25 in Jersey City. It doesn't mean he doesn't know his way

1 around New York City, but interesting, much more
2 interesting -- oh, "Amuse himself with us for four or five
3 days." Earlier, earlier in this conversation, is there
4 somebody else who talked about four days? Is there somebody
5 else who talked about 75 percent probability in four days?
6 And that is at page 31 of 383T. Don't look because I don't
7 think you have it right in front of you right now. But it
8 is there. It is at page 31 of 383T. And that person who
9 talked about four days and 75 percent probability, that is a
10 guy named Wahid. That is not Fadil. So you don't know, you
11 don't know who they are talking about there, when the words
12 "I am with you" are mentioned, you don't know, and it
13 doesn't, the way the electronics were rigged at the safe
14 house, it was sight that they concentrated on, not sound.
15 And yet now the prosecutors tell you, assume the worst,
16 assume the worst about the defendants, when you don't even
17 know what is being said about them. There is a basic
18 unfairness to that, that I know that you are aware of.

19 But there is something else that you know from
20 this conversation, and Gamal Abdel-Hafiz told you that when
21 you go through the CM's, and there are hundreds of hours of
22 this stuff, it is rare to hear anybody whispering. And yet
23 when you go through this conversation that takes place while
24 my client is there, there is a lot of whispering. There is
25 only one conclusion that you can deduce from that, and that

1 is that whoever was talking didn't want to talk in front of
2 Fadil. And you know, it shouldn't come as a big surprise
3 when you remember that Haggag tells you, Siddig didn't like
4 Fadil, he didn't trust Fadil. They had had the fight, they
5 had had the fight at Pennsylvania training. Fadil had a big
6 mouth. Siddig didn't like that. No reason to believe that
7 Siddig had a sudden change of heart to the point where Fadil
8 is now his favorite.

9 After all, Fadil is back in the United States for
10 almost a month before this occurs. Siddig doesn't seem to
11 be too interested in looking for him, and he knows where he
12 is.

13 This is the business about the istakhara, if I am
14 pronouncing that even close to correctly. Oh, but I forgot
15 something.

16 Prosecutors don't bring this line to their
17 attention, do they? If they are talking about my guy, if
18 they are talking about Fadil, where it says, "Salem: Well,
19 let us not get into details with him till."

20 Is that supposed to be my client, the man they
21 tell you is guilty of sedition? The man they tell you is
22 guilty of conspiracy?

23 All right, now we are over at page 12. And
24 again, later on, if you want, and I hope you do want, and
25 you look at these documents, you are going to see more

1 whispering, whispering throughout, and then it gets to page
2 12. Here we have something interesting. This may be indeed
3 the proof of the red herring. And I believe that they are
4 here referring to Fadil.

5 Salem: Did you tell this brother about the
6 things we are intending to do -- meaning the targets. Now
7 you have Amir saying: No, not exactly. And Salem, and
8 remember, even Gamal Abdel-Hafiz tells you that this is in a
9 harsh tone of voice. I would suggest to you that if the
10 government's translator says harsh, it was a little angry.
11 "What does not exactly mean? I mean, either you told him or
12 not." And Amir is saying, "I propose that someone will
13 bring us the cars and after that someone else will take the
14 one who did the, unintelligible, could took, unintelligible.
15 It is possible to follow us with this other car, uh, that's
16 it. And he agreed, no, uh, Yousry, who testified as to
17 this, said -- there is no yes here -- but then it says
18 "meaning that he became comfortable with it."

19 Now we are getting to the good part, the
20 istakhara part. And Salem says: But he is still telling
21 you an hour ago, I am still going to pray the istakhara
22 prayers and see whether I will come or not.

23 First of all, it is not an hour ago that Fadil is
24 there talking about whatever is being talked about, and
25 Yousry tells you that the expression here in Arabic is, not

1 an hour ago but rather the person will be telling you every
2 hour. Every hour you ask him he will tell you, it is
3 another hour, another hour. He is putting you off.

4 Now, Amir says, "So he is not comfortable yet."

5 And Amir then says, "He has to know."

6 Now, what Amir is saying is a follow-up and it is
7 part of the context of Amir saying he didn't tell him
8 exactly. And what Amir is saying when he says he has to
9 know, he has to know in order to pray the istakhara, is that
10 he doesn't know yet and he cannot pray the istakhara yet.
11 But that doesn't stop Salem from taking advantage of an
12 opportunity to do whatever he can to get in on his
13 number-one target, and that is Dr. Abdel Rahman. And you
14 have Salem expressing concern to Amir that Fadil knows where
15 they are.

16 If indeed, ladies and gentlemen, Fadil had been
17 involved in a explicit conversation with Salem earlier in
18 which Fadil said, Count on me, guys, I'm one of you, then
19 none of this conversation would have ever occurred, because
20 Salem isn't stupid. You know, if somebody has joined the
21 cause and is one of the counted number, Salem isn't going to
22 do whatever he can here to let the guy hem and haw and edge
23 out of it. Salem is anything but stupid. But he may indeed
24 be a little too smart for his own good. Salem is saying,
25 yes, he knows everything, he knows what we are doing and

1 where our house is. And again, just because Salem says he
2 knows what we are doing, that doesn't mean that Fadil or
3 anybody else that Salem talks about does know what they are
4 doing. You know you cannot trust what Salem says, and you
5 know also that what Salem says about a defendant is not
6 evidence against that defendant.

7 It is not a problem. And Amir is counting his
8 fears now, because, remember, this is the man who was angry
9 with Amir just moments before when he said, "What is not
10 exactly?"

11 One must do, Amir says, the istakhara prayer. Do
12 you do the istakhara prayer?

13 Salem says: Of course, I did the istakhara
14 prayer and I asked the sheik.

15 I guess he couldn't resist that one.

16 And then Amir says, "All right, one asks the
17 sheik as well, unintelligible. And you pray to istakhara."

18 Now, what the heck is the istakhara? I know
19 little enough about a lot of things, but the istakhara is
20 one thing I know nothing about.

21 Judge, if I can call on Mr. Patel and Mr. Stavis
22 to help me just to hold something for the jury.

23 THE COURT: All right.

24 MR. LAVINE: I give you, ladies and gentlemen,
25 low budget. Take a look. It is low budget. But all these

1 lawyers give you living stereo vision.

2 What is the istakhara? Now, the prosecutors must
3 have thought it was important, because they asked Mr. Emad
4 Salem what it is, and this is what Mr. Emad Salem says, in
5 response to a prosecutor's, Mr. McCarthy's, question, at
6 page 5675. "It's a special kind of prayer you do before you
7 go to sleep, and during your prayer to ask God to give you
8 the wisdom, if this deed is good for you, then God give you
9 a sign, and if it is not good for you, God during your dream
10 will give you a sign as well."

11 The prosecutors told you, ladies and gentlemen,
12 that Fadil Abdelgani went back to the Medina Mosque and he
13 prayed to Istakhara and he decided to commit himself and
14 that he came back and he was one of the number, he was
15 guilty of everything they say he is, because he prayed to
16 istakhara. Now, I don't know the Istakhara and I don't know
17 if you know anything about the istakhara, but I am assuming
18 that the witness Emad Salem, who was asked by the
19 prosecutors about what istakhara means, knows what the
20 istakhara means. And there is no proof here that Fadil
21 Abdelgani went to sleep, there is no proof that he had a
22 dream, there is no proof that he had a sign. He just shows
23 up again. Thank you, gentlemen.

24 He shows up again with those notorious,
25 well-known world terrorists, Victor and Tarig.

1 Now, when he gets back to the safe house, there
2 is no mention by Salem, "I'm glad to see you. You prayed to
3 istakhara. You are back, you are one of us, blah blah blah.
4 Absolutely not. Absolutely not.

5 I am not going to be with you that much longer.
6 What I am going to try to do is be serious for a little
7 while longer, and then, depending on the audience I have
8 here, be a little amusing, and then I will be serious again.
9 If you are mildly amused, you will know it is almost over.

10 Fadil showed you on the videotape what he was
11 doing. And I submit to you that what he told you was,
12 believe it or not, believable. You see him on the
13 videotapes. You see he has the clueless, dumfounded look on
14 his face. You see, ladies and gentlemen, at times he says,
15 I asked what they were doing. And you can see his body
16 movement and you see that he is asking a question, and he
17 tells you he was ignored. And that is what you see also on
18 the videotape, that he is ignored. Do we now have a new
19 rule in American law that if you see somebody mixing diesel
20 fuel and fertilizer, that you don't know and you don't know
21 what fertilizer is, that you are supposed to know that this
22 is a bomb factory? I don't think everybody in this
23 courtroom knows that. I don't think that that is so
24 obvious. And I question whether you will think it is so
25 obvious yourselves.

1 Now, the prosecutors, they say, well, he is there
2 when they are talking about big house. And he says yes, I
3 heard big house. The word big house he doesn't know what it
4 means. They say he is there when other words are spoken.
5 Now, I am going to play a little bit of video for you, just
6 a little bit, and you will see that he is there when the
7 word "tunnels" is mentioned in English, and you will see if
8 you are doing what he is doing, where he is, that you would
9 know that they are even saying the word "tunnel."

10 This is 383 at 104.

11

12 (continued on next page)

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. LAVINE: (Continuing) We are going to have
2 the sound on for this so that you can see where the word
3 tunnels comes up, and when you are doing this, I urge you to
4 remember what Agent Cantamessa, who had set up hundreds of
5 sites, said. He said that when you watch the video you are
6 getting a composite of sound that is coming from every
7 different direction so that you don't know where the speaker
8 actually is and you don't know, because of the acoustics,
9 whether what is said is being heard or not heard. Thank
10 you.

11 (Videotape played)

12 MR. LAVINE: There is going to come a time where
13 Siddig says the word tunnels -- as a matter of fact, I think
14 he may have said it already. Can we go back to 104.

15 If you listen carefully during your
16 deliberation -- and you can, it is at 104 -- you will hear
17 Siddig say the word tunnels, and you will notice that while
18 he is talking, Fadil and Victor are stirring away, churning
19 away, and they are not part of this conversation. Nor does
20 it look by their reaction as if they even are listening to
21 him.

22 Thank you.

23 This leads us back again to 383T. It leads us
24 back again to what is said about him just shortly before he
25 is arrested. It leads us back again to Fadil not knowing.

1 What are they talking about? They are obviously not talking
2 about any bombing plot.

3 You know, Fadil tells you that when he went back
4 there he was under the impression this was more of Siddig's
5 training, and the prosecutors tell you he should have known,
6 he should have known this was more than training. I ask you
7 to consider something.

8 When these guys went out to Pennsylvania, they
9 slept in the cold, in the freezing cold. They didn't have
10 tents, they didn't have sleeping bags, they didn't have
11 equipment. They had to go in water up to their eyes. They
12 had to go through pipes that were full of water. They got
13 punched in the stomach. They got maced in the face. They
14 had to run carrying telephone poles.

15 It seems to me that what was going on in Queens
16 was a whole lot more palatable and civilized and that it was
17 basically easy street compared to what these guys had been
18 used to in Pennsylvania. Yet the prosecutors tell you he
19 should have known, he should have known.

20 Moments before the arrests, minutes before the
21 arrests they say the language that we saw before, that Fadil
22 doesn't know, Wahid check, and you know that they cannot be
23 talking about stolen cars because Wahid is the car thief.

24 Sometimes somebody gets arrested and they can get
25 into big trouble, and there is something that they have with

1 them or on them that is sort of a hook to the truth. It's a
2 hook, like an anchor to the truth that can sometimes save an
3 innocent person, and when Fadil was arrested he had one of
4 those. What he had with him was the letter, the letter to
5 his wife that he began to write just before he was arrested,
6 and that proves to you -- and that is A and AT in this book.
7 That proves to you what was on his mind. Maybe if that
8 wasn't on his mind he might have acted differently, we don't
9 know. But we do know that that was on his mind, and you
10 would have to really believe that Fadil Abdelgani of all
11 people was someone that James Bond would look up to if
12 that's a fake. In other words, if that's a fraud, then
13 Fadil Abdelgani is smart enough not to have gotten arrested
14 out at that safe house because he make the Ramzi Yousefs
15 look like two-bit amateurs. His father-in-law testified.
16 He told you what happened. Told you that they heard the day
17 before that she was pregnant. That confirms, it
18 corroborates what Fadil told you.

19 I ask you, I ask you, please, try to look at what
20 happened in that 24 or 30-hour period through the eyes of my
21 client, through Fadil Abdelgani's eyes. It may not be easy,
22 but my worry is that fear is going to permeate your
23 deliberations and that you are not going to be able to do
24 that.

25 Had he testified even without this corroboration

1 that you find when it comes to what is said about him on the
2 transcripts, you would probably have a reasonable doubt. He
3 has the letter. He has the witnesses. What he tells you
4 happened there is corroborated. But you have those
5 references to him, and that is why Mr. Fitzgerald knew that
6 he had to tackle those references first, because if he can't
7 get by those references or how somehow explain them -- and
8 he tried the best he could, give him credit for that -- then
9 Fadil Abdelgani cannot be convicted.

10 If you would believe that Fadil was not telling
11 you the truth, then you still have to consider the defense
12 of entrapment. You have to consider the fact that Fadil is
13 in this country a month, roughly, before the arrests. He
14 only shows up at the very end. According to Salem, Fadil is
15 only involved after a conversation with Mr. Salem, that
16 conversation that is mysterious -- that he is not present,
17 rather, I should say.

18 On the issue of whether there is proof that my
19 client was predisposed to commit a crime, when you look at
20 what is said about him and you look at his lack of
21 participation or involvement, the proof is quite to the
22 contrary. The proof is that he was not predisposed. Why
23 not? Because Siddig did not like him, just as Haggag said.

24 Fear is a powerful force. You can go back and if
25 you are fearful, if you are fearful of my client, I urge you

1 to consider something. Let me bring you back to
2 Pennsylvania. If you are afraid that my client and these
3 men here on trial are a threat to our American way of life,
4 are a threat to the American people, these are guys, ladies
5 and gentlemen, they couldn't start a fire. They didn't know
6 how to sleep outside. American Cub Scouts, American
7 Brownies would have fared a whole lot better up on that
8 mountain than any one of these guys. I think that whatever
9 happens here, you may all be able to, hopefully, sleep well
10 in the future if my client is someone of whom you have to be
11 fearful.

12 There is more corroboration to establish his
13 innocence than there is to establish his guilt, and that
14 makes for reasonable doubt.

15 I know you are all on the edge of your seats,
16 heavy with anticipation because my old friend John Jacobs is
17 about to get up next and you are probably saying enough of
18 this low key approach here, give us fire, give us passion,
19 give us rhetoric. That was supposed to be the amusing part,
20 so that means that you are close to the end here.

21 When I had the privilege to be able to stand up
22 here at the beginning of the trial, I mentioned to you that
23 if you go outside the courthouse you find what is left of
24 what was called the old Sugarhouse which may also have been
25 called the old Provost Jail. It was a place where colonists

1 were put in jail.

2 You must have thought I was really nuts, why am I
3 talking to you about these things from American history.

4 But I do believe that now that you have sat here for the
5 better part of a year and you have had a chance to watch the
6 way that this trial has been conducted, that you understand
7 the reference that we must have for what occurred here on
8 this spot, and when you consider also that, I suppose, a lot
9 of the people who served time in that jail served a lot less
10 time than you people have in this case, I think you
11 understand even better.

12 I am not all that big on messages, but I am
13 worried that you may want to send a message by an
14 unjustified guilty verdict. With that in mind what I want
15 to do is, I just want to read to you what it was, this hook
16 to the truth that Fadil had when he was arrested, and it is
17 A-T. It is the letter to his wife. I am not going to
18 criticize it from the point of view of what those of us who
19 are here who are westerners might think is a good love
20 letter, but nonetheless this is it.

21 In the name of God, the merciful, the
22 compassionate, praise be to God who guided us on the right
23 way, and we would not have been rightly guided had it not
24 been to God guiding us. Praise be to God who practiced
25 patience and made us obedient Muslims accepting his

1 predestination and charity and hardship. Praise be to God
2 who blessed us with an offspring. We ask God praise be his
3 name to make it a virtuous offspring. My delightful wife
4 Nagla, peace, God's mercy and his blessings be upon you. My
5 dear, I wish I was sitting near you the moment I heard this
6 happy piece of news so that I would have carried you in my
7 arms. No matter how much I say to you, you will never
8 believe how happy I was. I swear to God and particularly in
9 these days I have been missing you a lot. O UMM Abdel
10 Rahman. I wish I was with you, I would have pampered you a
11 little. Incidentally, talking of the happy occasion, I
12 would like to tell you that Baba and Mama are feeling very
13 happy these days. As far as I am concerned, you very well
14 know that with the passage of time my love and commitment to
15 you grow larger and larger, and remember that I am not
16 saying this because you are pregnant but I am in fact saying
17 it because I would have said it to you even if you were not
18 pregnant. You must also know that I am still not believing
19 the news. This may be due to the tremendous joy that I am
20 experiencing. What is important, O UMM Abdel Rahman, is
21 that I ask God, praise be his name, to get us together in
22 the very near future, I ask the almighty God, exalted be his
23 name, to make us the praiseful, the grateful, for all his
24 blessings on us.

25 Love letters that those of us have hidden away

1 wherever, they might not go over so well in the Sudan, but
2 somebody would recognize them for what they are worth. This
3 is what was on Fadil's mind that last day, day and a half.
4 And, as I said, I am not one who is all that big on sending
5 messages, but I would suggest to you that the ends of
6 justice would require that you find him not guilty and send
7 him back to that kid.

8 Thank you.

9 THE COURT: Thank you, Mr. Lavine. Ladies and
10 gentlemen, we are going to take a short break now. Please
11 leave your notes and other materials behind. Please don't
12 discuss the case, and we will resume in a few minutes.

13 (Jury excused)

14 (Recess)

15 (Jury present)

16 THE COURT: We will now hear a summation in
17 behalf of Mohammed Saleh from Mr. Jacobs.

18 (Tape played)

19 MR. JACOBS: Ladies and gentlemen, those are the
20 sounds of reasonable doubt. A wise judge said that we
21 shouldn't thank jurors for their service, but I think when
22 ladies and gentlemen like yourselves have served nine months
23 in this complex and obviously very serious trial, a thank
24 you is in order.

25 A couple other quick thank you's. I want to

1 compliment my adversaries, Mr. McCarthy, Mr. Fitzgerald and
2 Mr. Khuzami, for their decorum and their courtesy. We are
3 on opposite sides in this case, very serious case, but they
4 have conducted themselves as gentlemen and as professionals
5 in the finest tradition of their office.

6 I can't thank the judge because it is his sworn
7 obligation to give both sides a fair trial but I can express
8 some thanks to Miss Franci Schwartz over here, who has put
9 up with all of us in this trial.

10 Also I also want to thank some of the deputy U.S.
11 marshals over here, who have been gracious enough at times
12 to even laugh at some of my jokes.

13 Now that I have done the thank you's, let's begin
14 the war. Not the war of urban terrorism that is in the
15 indictment but our fight to the finish in this case with a
16 lying, rotten scoundrel named Emad Salem and the agents of
17 the Joint Terrorist Task Force who allowed themselves to
18 break the laws that they were sworn to protect.

19 I have been looking forward to this argument for
20 sometime. Many of the statements that I may make over this
21 afternoon and tomorrow may make you giggle. I brought along
22 a couple of props. But they are here to illustrate serious
23 points. I hope I am not going to be too loud. I brought
24 along my little ear plugs. I am certain Judge Mukasey will
25 let me know if I am too loud.

1 I am going to try not to get too mad and I am
2 going to try not to get upset. But I am not here to
3 apologize, because the conduct of the FBI in this case was
4 so totally wrong.

5 Somebody asked me outside the courtroom what kind
6 of summation I was going to give, how I planned to talk to
7 you folks. And I basically said what some famous general
8 once said concerning the prediction of the outcome of a
9 battle: There is going to be scorched earth in this
10 courtroom and I am not going to take any prisoners. There
11 are no prizes for second place in this trial.

12 The evidence in this case showed that members of
13 the Federal Bureau of Investigation lied, committed perjury,
14 obstructed justice, and tampered with evidence. Then, the
15 same agents who did those things attempted to pull off a
16 disgraceful coverup in their attempt to convict the
17 defendants in this case.

18 You will hear about reasonable doubt. Reasonable
19 doubt comes in many forms. One way reasonable doubt can
20 arise is when an investigation is run so poorly that none of
21 the evidence derived from it can be trusted. I ask you, can
22 you ladies and gentlemen trust the FBI's investigation in
23 this case? Can you trust the evidence in this case?

24 I am holding in my hand Khallafalla C in
25 evidence. There is no evidence envelope for it. It comes

1 in what I would best describe as the official FBI A & P
2 ziplock freezer bag, the kind of freezer bag you go to the
3 store and buy, same kind.

4 Let me play for you how this case was run by the
5 Federal Bureau of Investigation.

6 (Tape played)

7 MR. JACOBS: That's a member of the Federal
8 Bureau of Investigation saying that the private tapes Emad
9 was making were not going to come into evidence, authorizing
10 the private and illegal taping of targets and defendants in
11 this case.

12 The case against Mohammed Saleh is a textbook
13 example of reasonable doubt. Reasonable doubt in this case
14 flows from the lies, perjury, and misconduct of agents of
15 the Federal Bureau of Investigation and their attempt here
16 in this courtroom, under oath, to cover up their mistakes.
17 Reasonable doubt flows from the government's star witness
18 Emad Salem. It flows from the missing tapes, the erased
19 tapes, and the tapes that were pampered with. You just
20 heard Nancy Floyd giving Emad Salem the green light to tape
21 anything he wanted to. This directive, what you just heard,
22 led Emad Salem to throw away or erase critical conversations
23 with my client Mohammed.

24 But most important, ladies and gentlemen,
25 reasonable doubt flows from Mohammed's innocence. When you

1 review the evidence in this case, you will find that the
2 government has not overcome its burden of proving its case
3 against my client beyond a reasonable doubt. You will
4 conclude that my client is innocent, you will find him not
5 guilty.

6 What I am going to do, ladies and gentlemen, in
7 this summation is to break the case into two parts, two
8 arguments. In the first section I am going to talk about
9 the evidence regarding my client Mohammed. In the second
10 half of the summation, I am I will discuss the conduct of
11 the Joint Terrorist Task Force and the FBI. You will see
12 that their conduct led to an informant out of control,
13 evidence that cannot be trusted, tapes of my client that had
14 been erased and destroyed.

15 Let me give you a little preview of what you are
16 going to hear tomorrow about the agents.

17 You know, a judge in this building once told a
18 jury like yourselves that the trial is nothing more than a
19 sacred and solemn search for the truth. What truth did you
20 ladies and gentlemen get? Did you get the truth from
21 Detective Napoli when he said he did not know about private
22 taping? Did you get the truth from Napoli when he said that
23 the private taping was memos and dictation tapes and then
24 months later switched the story and said they were telephone
25 tapes? Did Anticev tell you the truth when he swore that he

1 knew nothing about private tapes?

2 There is one question that hangs over this trial,
3 and I ask the government if they care to answer it. Mr.
4 McCarthy, who I think is going to give the rebuttal, has no
5 obligation, and I mean it in the rhetorical sense. But the
6 question is this: Do we have all the tapes in this case?

7 I am not going to make up an answer. I will tell
8 you how Emad Salem answered that question.

9 "Q Did you have the ability to rewind tapes
10 and tape over conversations that you didn't want to keep?"

11 Under oath:

12 "A. Yes.

13 "Q Did you do that at times?

14 "A. Sometimes, yes."

15 April 10, page 7330:

16 "Q So you on your own made tapes with the
17 targets, erased some of them, and didn't tell the FBI that
18 you were doing it?

19 "A. Yes, sir."

20 Not tapes of Paragon TV, not tapes of pizza
21 orders. Tapes of the targets of this case where he said
22 under oath that he erased. Further, August 23, when he came
23 back here, concerning my client who sits over there. Here's
24 what he had to say:

25 "Q Where is the tape of that? You spoke to

1 Mohammed Saleh -- this is after June 4 -- and you said I
2 have the address where you can go. Where is the tape?

3 Under oath.

4 "A. I don't have it, sir."

5 That's my client on a tape and we don't have it.

6 You may ask yourselves a very fair question and a
7 reasonable question, and that is, why would the agents do
8 this? Why did they cover up? Why did they submit false
9 statements, and we are going to put them up here and we will
10 go over them tomorrow.

11 Why was Khallafalla C made? The answer was given
12 by Special Agent Fred Whitehurst when he told you how the
13 FBI operates. He told you there were no alternative
14 theories. Agents are instructed only to help the government
15 prosecutors. He told you he received pressure to alter
16 reports, pressure to make biased reports, and pressure by
17 FBI supervisors to confuse the jury. Whitehurst even told
18 you how I think one of the witnesses in this case David
19 Williams tried to railroad into evidence false testimony
20 about the nitroglycerin.

21 To the credit of the prosecutors in this case,
22 they made sure the evidence came out correctly concerning
23 the laboratory results of the World Trade Center. I have no
24 fault with the prosecutors. It's the fault of the FBI that
25 we are here to talk about. It is not assistant U.S.

1 attorneys who are the problem. Whitehurst said to you, and
2 I quote, "I am not going to lie in a court of law, fire me."

3 He told you about misconduct within the FBI
4 regarding this case. He told you that the FBI made
5 alterations of the data, alterations. Doesn't that sound an
6 awful lot like erasing tapes?

7 The misconduct of the FBI, and I do disagree with
8 my colleague Mr. Fitzgerald, should be addressed by you
9 ladies and gentlemen of the jury now. Judgment day is not
10 months away or years away. Judgment day for the FBI in this
11 case is here and it is now. It is justice for the
12 defendants who are out here who have been in jail for months
13 while FBI agents lied, committed perjury, obstructed
14 justice, and then covered up what they were doing.

15 Let's talk about my client. Well, the government
16 started off in their opening statement nine months ago, and
17 I quote from Mr. Khuzami, it's right up here on the board,
18 you can see it. The money man had been contacted to finance
19 the bomb. That is how they described it. That was their
20 theory in the opening statement, that my client Mohammed
21 Saleh was the money man. It was wrong back in January when
22 Mr. Khuzami stated it, and it is wrong eight months later
23 after the testimony in this case. Instead you have learned
24 that Mohammed Saleh never gave a dollar to anyone.

25 I saved this. I didn't forget to bring it with

1 me. I used it in my opening and I use it now. That's what
2 my client gave money in this case for, zero.

3 I suggest that after the testimony was concluded
4 that the government realized that they had a problem with
5 their money man theory. After all, not a single witness
6 that they called testified that Mohammed gave any money.
7 Mr. Fitzgerald in his summation tried to justify the theory
8 by stating that, well, Mohammed didn't give any money, he
9 donated the fuel. How can it be, ladies and gentlemen, that
10 the money man in this case, their theory in the opening
11 statement, their supposed financier, never gave any money?
12 It is relatively simple. The government had one theory in
13 their opening and when they couldn't prove it, went to
14 another theory.

15 When we take you through Mohammed's case -- I
16 think we distributed some transcripts. I am not going to
17 have them brought out again. We don't have that kind of
18 time to go over it line by line. We tried to put some of
19 the highlights on some of the boards. We are going to try
20 to take you through the conversations about my client and
21 with my client that began May 23 through the last call, the
22 MCC call that the government introduced a couple days after
23 his arrest. In these conversations we will show you that
24 Mohammed Saleh was set up to believe that he was being asked
25 for a contribution for people to train to Bosnia. He was

1 cornered by Siddig Ali and Emad Salem and asked for a
2 contribution, and we will show you that obviously Mohammed
3 gave no money.

4 Further we will show you that Mohammed was never
5 told, and this is so important, that the fuel oil was for a
6 bomb. He was told it was for a boiler. We will show you
7 Siddig Ali's words to him about that, I think June 22, and
8 we will show you how a lot of other people referred to that,
9 including Siddig Ali, numerous times with Emad Salem. It is
10 not my argument, it is what is in the evidence.

11 You will see over and over again how the
12 participants in these conversations admit that Mohammed
13 Saleh doesn't know anything about the so-called plot.

14 Let's begin with May 23, 1993, 735T in evidence.
15 Let me summarize to you the tape and the transcript that you
16 heard.

17 On May 23, Mohammed telephoned Siddig Ali to ask
18 Siddig if he would give a lecture in the mosque where
19 Mohammed attended Friday services. Four pages into the
20 transcript, Siddig Ali figures out who Mohammed is. He
21 doesn't even know who Mohammed is for four pages. Mohammed
22 has to tell him who he is. The men clearly are not good
23 friends.

24 Mohammed, you learned from this transcript and
25 others, being a family man, called to Siddig's house.

1 Mohammed, it is clear, is taking care of his children. He
2 is interrupted on the call. As the conversation goes on,
3 the two men discuss getting together with some other people
4 and their families to have a picnic.

5 At times in the government's summation they have
6 talked about this mysterious Sudanese Mission, and they tell
7 you that somehow Mohammed Saleh has some illegal or improper
8 contact with the Sudanese Mission. I think the government
9 put some phone chart in. What the government has tried to
10 do is create an illusion. I think some of my other
11 colleagues talked about it, I think Mr. Ricco did, too, and
12 it is worth mentioning again. You know, we get the
13 testimony from the witnesses who are participants in
14 conversations, and sometimes, if we are lucky enough, some
15 of the tapes that Emad didn't throw out.

16 You know, there is no testimony from anybody
17 directly about what he did with the Sudanese Mission. Phone
18 charts are meaningless. They present an idea to you, the
19 government, and the idea is that somehow the Sudanese
20 Mission is behind some of their theories, but they don't put
21 anybody on the stand. That's where the evidence comes from.
22 I respect their creative thinking, but people aren't found
23 guilty in this country on creative thinking. They get it
24 from the witness stand. Or they play the tapes with my
25 client in the Sudanese Mission. They didn't, because they

1 don't have any, and they didn't call anybody.

2 The reason Siddig Ali approached Mohammed is
3 clear from the transcript. It's clear that initially what
4 took place is Mohammed had invited him, Siddig Ali, to speak
5 at a lecture. But Siddig Ali was coming because he knew
6 Mohammed owned a gas station. Siddig Ali wanted money, and,
7 as you will see in the transcripts that follow, throughout
8 the month of June Siddig Ali approached other Muslims in the
9 community about money.

10 Government Exhibit 329, which is CM 27 -- and I
11 know these numbers are moving along and they probably moving
12 along quickly -- this is a conversation between Siddig and
13 Salem on June 3, the day before the meeting with my client
14 June 4, the day before they go up to Yonkers. Siddig had
15 invited, as you will learn, the next day his good buddy Emad
16 Salem. Siddig, what he does and what is so important, he
17 lays out on June 3 that Mohammed has no idea on that date
18 why they are coming. He says, it's in a surprise meeting
19 with him. He says, we are not going to open the subject
20 about it with him now. When it comes to money, we will ask
21 him to give us the money. That is it.

22 Siddig Ali had his own private agenda. He was
23 going to ask Mohammed for money with no strings attached.

24 Let's talk about the famous CM 32, the
25 conversation of June 4, 1993, between Mohammed, Siddig and

1 Salem. Detective Napoli acknowledged that of all the CM's
2 in this case, CM 32 was held the longest by Emad Salem.
3 Napoli didn't pick up the tape until the 7th of June. The
4 conversation, as you will see when we start putting up the
5 boards, is obviously June 4. Emad, as you recall from his
6 testimony, threatened not to turn over the tape until
7 special arrangements were made for him, monetary
8 arrangements, and Detective Napoli testified to it, too. We
9 suggest that during those three days Emad tampered with the
10 tape. As you remember from CM 32, it has no beginning, it
11 has no end. It has no introduction, and it has no end by
12 Salem at the end.

13 What you learned, and let me give you the setting
14 for this June 4 meeting at Mohammed's house, was that on
15 June 4, Emad Salem, Siddig, and Siddig's wife Shema, if I am
16 pronouncing it right, made the trip to Yonkers, New York.
17 You will learn from CM 32 that Emad was embarrassed that
18 Siddig had not shown up at the mosque to give the lecture on
19 time. But you learn from CM 32 that he brought Emad, whom
20 he had never met, Siddig and Siddig's wife back to his home
21 for a meal. They accepted the invitation and this is the
22 conversation, or at least the part of the conversation,
23 because we never had the full tape because Emad didn't
24 record the beginning and the end. You will never be certain
25 what was stated at the beginning with all those multiple ons

1 and offs and you will never be certain about the end, with
2 all the ons and offs, because Emad was playing in the
3 machine.

4 I suggest that Emad was making himself out to be
5 a big shot. I suggest that he was talking about Bosnia,
6 setting the stage, setting the stage for what I described,
7 my good friend Valerie described as the bait and switch.
8 Judge Mukasey will tell you all about entrapment whenever we
9 get the charge. Bait and switch.

10 You have to look at the setting of this
11 conversation. Where did it take place? It took place at a
12 one bedroom apartment. Three young children were present,
13 interrupting the conversation. A lot of noise going on in
14 the background. Interruptions, meals being served.
15 Mohammed's wife, Siddig's wife are present throughout.
16 Mohammed is constantly asking his guests if they like the
17 food, if they have had enough food. It was not a secret
18 meeting between mad bombers. My client was showing
19 hospitality, nothing more, nothing less.

20 During this conversation a lot of political
21 issues are discussed. You have learned it is not uncommon
22 for people from that background to discuss politics. In
23 Middle Eastern culture political issues are routinely
24 discussed and people have very strong and passionate views.

25 After the meal Mohammed interrupts Siddig and

1 tells him that he has to call the mosque to apologize for
2 not giving the lecture. Siddig tries to call the mosque and
3 doesn't get through. Mohammed has to dial the phone for
4 Siddig. That's what my client thought the meeting was
5 about.

6 But when you get down to it, the nitty gritty, as
7 I guess we could say, what it comes down to, CM 32, is a
8 clash. It's a clash between the government and Mohammed's
9 defense. They claim that Mohammed agreed to participate in
10 a war of urban terrorism, we say he did not. They say he is
11 told the plot, we say he was not.

12 But to understand what happened on June 4 and CM
13 32, you have to understand, ladies and gentlemen, what is on
14 everybody's mind, because I suggest the evidence shows that
15 everybody didn't have the same agenda. Everybody didn't
16 have the same thing in their mind set. All three of the
17 participants, Emad, Siddig and Mohammed, had different
18 agendas.

19 Let me explain what we say happened in CM 32.
20 Siddig and Emad both went to Mohammed Saleh with the
21 intention of getting money. Emad, working for the FBI in
22 this so-called plot theory, was trying to get as much good
23 stuff on tape as he could.

24 As we see from CM 27, which is before you, Siddig
25 had another agenda. He is the coconspirator, according to

1 the government, and he had no agenda to discuss anything
2 with Mohammed.

3 But my client is the one whose mind and whose
4 thinking you ladies and gentlemen are really concerned with.
5 My client, as we will show you in a few minutes, he believed
6 the conversation had to do about politics and Bosnia.

7 Now, this Bosnia is thrown around a lot. It is
8 not just some idle thought. On cross-examination, if you
9 ladies and gentlemen recall, Mr. Khuzami asks Tarig back
10 there, challenged him. He said, Mr. Elhassan, tell me,
11 sir -- let me quote it exactly -- why don't you tell the
12 ladies and gentlemen how many times the word Bosnia appears
13 in those 340 pages of transcript? He is talking about in
14 the safe house. Mr. Khuzami later asked Tarig, and the word
15 training is not there, correct, challenging the defendant to
16 show the prosecutor where it appeared.

17 Let me show you where it appears. You need not
18 look any further, ladies and gentlemen, than CM 32, because
19 it's here.

20 As you have heard before, CM 32, even without its
21 beginning and its end, is 62 pages. In the 62 pages, Bosnia
22 is mentioned four times and training is mentioned 22 times
23 to my client.

24 And it is important, as I will show you, when it
25 was mentioned, and who mentioned it. What was on my

1 client's mind? As the government argues, he is told the
2 plot and agreed to participate in a plot.

3 Let's take a look. Salem says, page 22, I will
4 use all my experience to train soldiers and officers. Where
5 is the bombs? Where is the targets? Train, brought up by
6 Emad Salem first on June 4, 1993.

7 But even more important, what does my client say?
8 This is the case, ladies and gentlemen, right here. You
9 will hear my client say, so we hear about jihad in Egypt and
10 Bosnia. We don't know the ways. Then in America,
11 opportunities are great to train on weapons. There is
12 nobody to train them. That's what is on my client's mind on
13 June 4. This is reasonable doubt in this case.

14 Salem is telling Mohammed that he is available to
15 train people. Salem says over the years he has trained many
16 men to do jihad. Mohammed said that is great because he
17 wants to know about people training for Bosnia. The jihad
18 my client is talking about is not in America. He says it
19 right here. There it is, Mr. Khuzami, when you ask the
20 question. What did my client understand the conversation
21 was about on June 4? The words are right there in front of
22 you.

23 But what happens then is most interesting,
24 because Siddig Ali picks up on this. You see, Siddig Ali
25 wants money, and he is no fool. He hears my client talk

1 about training and Bosnia. Let's look what happens next,
2 page 33 and 34.

3 Salem: There are some people who are physically
4 ready and had physically trained.

5 Siddig says: I'll describe it.

6 Siddig says: So when the Bosnia problem took
7 place, they contacted me personally. They told me brother
8 Siddig, we want manpower to train them. Then we send them
9 where? To train people over there.

10 Mohammed says: Yes.

11 Where is the bombing plot, Salem and Siddig?
12 Where is the bombing plot, fellows? Siddig, he is running
13 with this. He's got the money man and the money man is
14 interested in Bosnia, so Siddig Ali, he goes into his rap --
15 and he's got a good one, 'cause look what he does. They
16 train people there, they train people in Bosnia, so I choose
17 them. We were successful in training a good number. Many
18 people were screened. They have to be physically strong.
19 They went to Bosnia. They went to Bosnia. Siddig Ali, the
20 coconspirator, where is the bomb plot, Siddig Ali?

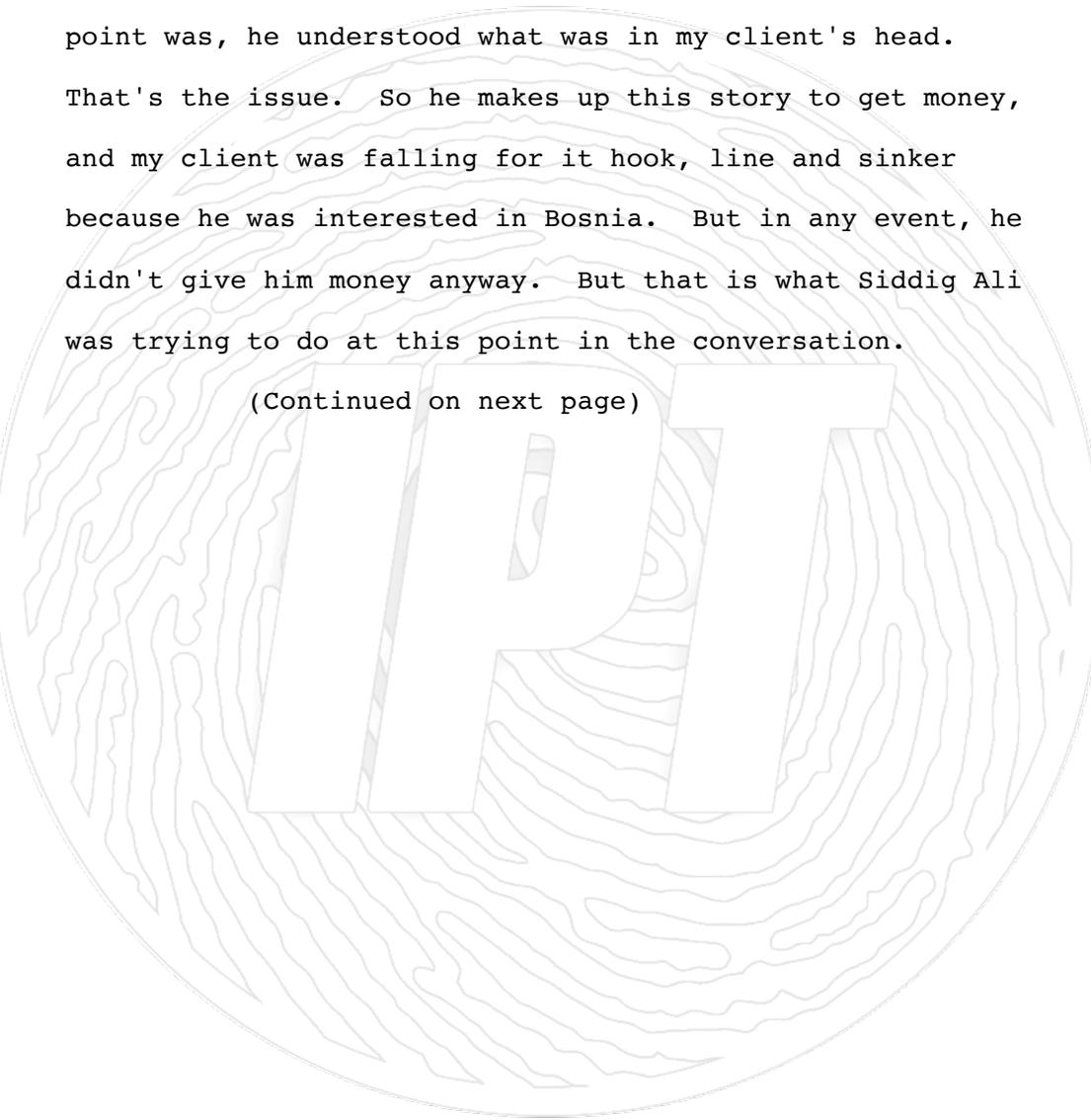
21 Second board. Siddig continues: Nine plus the
22 instructor makes 10. We undertook a long-range training,
23 five months, training, training, weapons, continuous
24 training.

25 Mr. Khuzami, training, training, training,

1 training, training. Reasonable doubt, reasonable doubt,
2 reasonable doubt, reasonable doubt. Where is the bomb plot?

3 Siddig Ali was obviously lying, as you know,
4 because he didn't train anybody to go to Bosnia. But the
5 point was, he understood what was in my client's head.
6 That's the issue. So he makes up this story to get money,
7 and my client was falling for it hook, line and sinker
8 because he was interested in Bosnia. But in any event, he
9 didn't give him money anyway. But that is what Siddig Ali
10 was trying to do at this point in the conversation.

11 (Continued on next page)



12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Now, what you ladies and gentlemen have to
2 remember is that these parts of the conversation and the one
3 I read to you are coming before all this mysterious paper
4 eating and whispers that the government refers to. This
5 goes before the whispers and eating paper. That was on my
6 client's mind.

7 Now, the passage I just put up, on page 50, is
8 very important, because here is where Siddig Ali asks
9 Mohammad to join him. And it's before the so-called
10 whispers and the paper eating and the so-called targets,
11 which we will get into, probably tomorrow, but this is what
12 is interesting.

13 Siddig says, the subject I told you about, page
14 50, we will let you join with us. The subject that they
15 have been discussing is training for Bosnia. This is before
16 the paper eating that we claim Mr. Emad Salem made up, which
17 we will go into.

18 Bosnia had been discussed on page 22, page 23,
19 page 34. To make this point even clearer, let me show you
20 what takes place after the paper eating contest, whatever
21 you want to call it, because I will go into that in a few
22 minutes. After the paper eating contest, let's look at what
23 is discussed. This is after the government claims my client
24 is told the plot, etc., he tells to my client the following,
25 page 54. He tells Mohammad that any money he should donate

1 will be used for projects that are already started and to
2 get a trainer into training. Let's read it.

3 "So we began working on some projects along with
4 our need for a trainer to train. There has to be a trainer
5 to train. People get trained.

6 Now is the big subject: Money. But not money to
7 build a bomb. What's here? What does Siddig Ali tell my
8 client. "Money, it is for protection only. It will not be
9 used."

10 This is after the paper eating? Siddig is asking
11 my client for money for protection, not to be used.

12 If Siddig wanted to say "money to finance a
13 bomb," he would have said it right there.

14 Finally, just to show you the Emad Salem that the
15 government gave you, and to answer Mr. Khuzami's question
16 for the final time, let's look what our boy had to say under
17 oath about Bosnia and training.

18 I think my friend Valerie asked this question.
19 August 24.

20 "Q. Isn't it a fact that you had repeated
21 conversations not only with my client" -- I think she means
22 Fares at this point -- "but with other defendants in this
23 case about your willingness to train them to go to Bosnia?

24 "A Absolutely not."

25 Under oath, before you ladies and gentlemen of

1 the jury.

2 That is what this case is all about. The man got
3 on the stand on perhaps the most important issue to many of
4 the defendants in this case as they sit here now, and he
5 just lied. "Absolutely not."

6 Well, I read to you, he started the conversation
7 about training for Bosnia.

8 It's a big, big lie. And it's very important to
9 my client and to many other defendants in this case.

10 Mr. Salem, Bosnia four times, training 22 times.
11 My client was fortunate he didn't get to erase this part of
12 the conversation. He only got to do the beginning and the
13 end. One can only speculate what is beyond those parts.

14 Now, the government comes along and they twist
15 and they turn little passages and missing pieces of paper to
16 convince you that Mohammad has secretly whispered the plot.
17 But ask yourselves why, on page 54, after the whispering, so
18 the government claims, and eating pieces of paper, he is
19 talking about training?

20 Siddig Ali tells Mohammad in this passage that
21 what he needs is money for training and trainers. Siddig
22 says -- I think we count the training five times in this
23 passage alone. He is not saying that things are going to be
24 bombed. He is telling Mohammad what they need the money
25 for, for a trainer.

1 The reason why Siddig is talking this way is
2 because he never told my client any plot, period, comma,
3 question, and there it is.

4 But there is more in the same transcript, to show
5 you that he has never told the plot: This is page 55.
6 CM32.

7 Siddig Ali: I don't get into details. There's
8 no need for details.

9 Hum.

10 Siddig Ali: It is better for one to contribute
11 without knowing any details.

12 Well, the government says my clients told the
13 plot and the names of the targets. Why is Siddig Ali, at
14 page 55, saying it is better for one to contribute without
15 knowing the details?

16 THE COURT: Mr. Jacobs if you could come to a
17 convenient break point.

18 MR. JACOBS: Thank you. Ladies and gentlemen,
19 tomorrow morning, when we open up this case, I am going to
20 put up on the board -- could I have just have another
21 minute, your Honor?

22 THE COURT: Sure.

23 MR. JACOBS: I want to show you what you are
24 going to see tomorrow morning, and I am going to show you
25 that Emad Salem is a total liar about these so-called

1 targets.

2 What we are going to do, ladies and gentlemen,
3 tomorrow, is the following: You are going to hear that an
4 hour after he left my client -- and I will play the tape
5 tomorrow morning -- he talks to the FBI in CM31 about the
6 names of the targets he makes up. I am going to put up the
7 page of the indictment where the government alleges the
8 overt act about June 4 --

9 MR. McCARTHY: Objection. Withdrawn. Sorry.

10 MR. JACOBS: -- and I am going to contrast that
11 with his actual testimony. And you are going to see
12 tomorrow morning, when I go over them in detail, how Emad
13 Salem gave six different targets, if you add them all up,
14 and how especially the three told the FBI an hour later are
15 not the same three in the indictment in the overt act that
16 were put up before you. It is all made up. And we will get
17 into that tomorrow morning.

18 Thank you, your Honor.

19 THE COURT: Ladies and gentlemen, we are going to
20 break today. Please leave your notes and other materials
21 behind. Please don't discuss this case or see, hear or read
22 anything about this, as I have been telling you. We are
23 going to try to start early tomorrow and the remaining days
24 of this week as well, so that we can get done what we want
25 to get done. If we don't, it won't be for want of trying.

1 9 o'clock tomorrow. Good night.

2 (The jury left the courtroom.)

3 THE COURT: I would like to see counsel briefly
4 in the robing room.

5 (Pp. 19880-19887 sealed)

6

7 (Adjourned to September 20, 1995, at 9 a.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

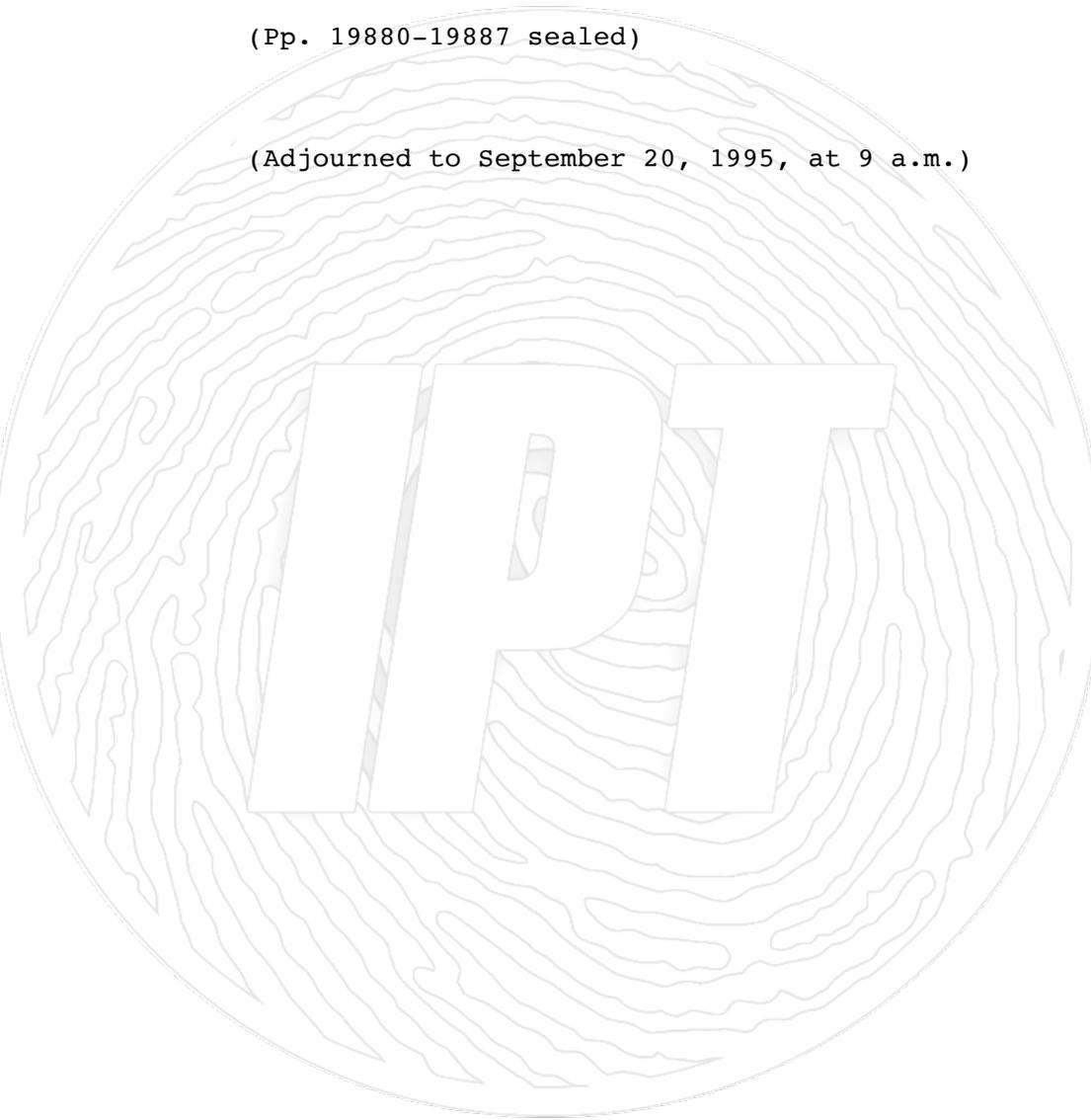
21

22

23

24

25



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,"

S5 93 Cr. 181 (MBM)

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

September 20, 1995
9:10 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

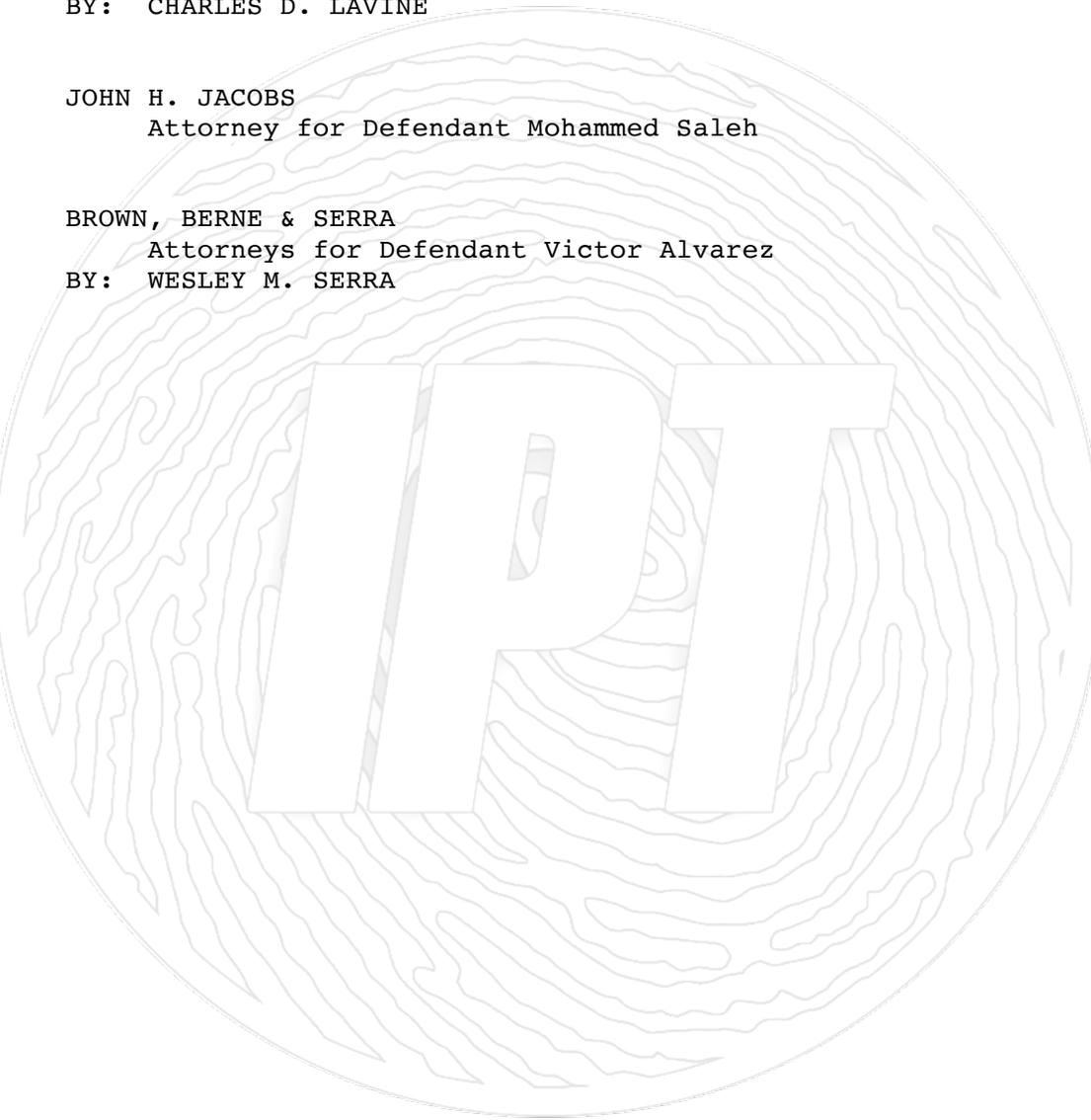
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: I received a letter from Mr. Patel
4 this morning, and I had done some of my own research, and as
5 far as the idea that we discussed in the robing room last
6 night, forget it. There is a 1973 case called United States
7 versus Pfingst.

8 MR. PATEL: Could I have the cite, your Honor?

9 THE COURT: 476 F.2d, around there. Judge
10 Weinstein was out briefly and came back to the courthouse.
11 The Second Circuit said we don't really encourage it, and he
12 was only the gone for a couple of hours, and it was a
13 practice to be avoided. He got away with it in that case.
14 On the other hand, Judge Weinstein is a friend of mine, I
15 know Judge Weinstein, I'm no Judge Weinstein. So we are not
16 going to do it.

17 MR. JACOBS: By the way, he continues to do that.

18 THE COURT: As I said, I am no Judge Weinstein.

19 MR. McCARTHY: Your Honor, if I could raise one
20 matter, at the end of yesterday I got the impression that
21 Mr. Jacobs very shortly is going to make an argument that
22 impeaches Mr. Salem with the indictment, which I don't think
23 is a proper argument, and I would rather not interrupt him.

24 MR. JACOBS: Your Honor, I am not impeaching him
25 with the indictment. I am pointing out to the jury what the

1 overt act that charges my client with the three targets is.

2 THE COURT: Is that overt act in?

3 MR. JACOBS: Yes, absolutely.

4 THE COURT: If the overt act is in, you can argue
5 that Salem's testimony or actions conflict with it or
6 whatever.

7 MR. McCARTHY: Your Honor, that argument can't be
8 made without implicitly using the indictment as evidence.
9 Salem wasn't confronted with that on the stand. Salem
10 didn't testify in the grand jury. It is really an improper
11 argument. The remedy would have been to strike the overt
12 act in the indictment, not to make an argument that he must
13 be lying because the indictment says something different
14 from what his testimony says.

15 MR. JACOBS: Your Honor, this overt act is being
16 sent in to the jury. It is in direct conflict with what he
17 told the FBI an hour later. The fact that their indictment
18 has these three specific targets, I brought this to the
19 attention of Mr. McCarthy during the trial. In fact, I
20 offered it at the time and your Honor, I believe, indicated
21 that it was more proper for argument in summation. I had
22 indicated to your Honor, and in fact I had attempted to
23 examine Mr. Salem on it, and your Honor said it was
24 argument, not to be confronted with the indictment. This
25 indictment is going to the jury. What is this jury supposed

1 to do? I think it is fair comment --

2 THE COURT: All you can tell them is that you
3 will see an overt act that charges A, B and C, Salem says
4 otherwise, period.

5 MR. JACOBS: I understand.

6 MR. BERNSTEIN: Your Honor, one short matter. In
7 the robing room yesterday there was a discussion, I think on
8 the open record, regarding a decision amongst defense
9 counsel regarding prospective problems we may face with
10 juror number 9, I believe. I spoke with Mr. Abdelgani. We
11 do join with counsel, so it is unanimous as to what the
12 defense position would be on excusing the juror if and when
13 that issue arises. There is no dissent.

14 THE COURT: That is something that we are going
15 to have to talk about some more. We don't have to visit
16 that now, but thank you for telling me.

17 (Jury present)

18 THE COURT: Good morning, ladies and gentlemen,
19 both to those of you I can see and to those of you I can't
20 see.

21 JURORS: Good morning.

22 THE COURT: Mr. Jacobs, ready to continue?

23 MR. JACOBS: Good morning, everybody. Let's get
24 down to work. The government tells you in their opening
25 statement and in their closing statement and through the

1 testimony of this Salem person that on June 4 my client is
2 whispered to with missing pieces of paper some plot, and
3 told three specific targets. Let's talk about the targets.
4 I am going to break it down to three different columns.

5 The first column is what Salem tells the FBI a
6 couple of hours later in CM 31, in English, which I am going
7 to play to you. Second column is the overt act in the
8 indictment, which talks about, at page 21, Mohammed Saleh
9 being advised of the targets.

10 This indictment, this particular overt act is
11 SSS, and it says on or about June 4 Siddig Saleh and Salem
12 met in Yonkers at which they discussed among other things to
13 plant the bomb the Lincoln and Holland tunnels and the
14 George Washington Bridge. Siddig showed him a list of the
15 intended targets, and the overt act continues on the next
16 page.

17 The most important point that I want to make is
18 the three targets that are listed in the indictment in the
19 overt act SSS. I put it in the middle chart here,
20 Washington bridge, Holland and Lincoln Tunnel.

21 Let me play for you CM 31, which you can hear in
22 English.

23 (Tape played)

24 MR. JACOBS: OK, ladies and gentlemen. That's
25 Emad Salem, I suggest, lying to the FBI, a few hours after

1 the meeting, because what he tells the FBI is, United
2 Nations, military and FBI. What's in the indictment is the
3 George Washington Bridge, the Lincoln and Holland tunnels.
4 What he testified was the United Nations, Lincoln and
5 Holland tunnels.

6 What you have got, ladies and gentlemen, are six
7 different targets on the three columns.

8 I suggest that if the government in their theory
9 is he is told three, how come we have six? The answer is
10 obvious. The man is making it up.

11 It is clear that he is from what he tells the
12 Bureau, indictment and testimony. But there is more, and
13 let's go into it.

14 I government, I suggest, understood this problem.
15 The government, like me, they listened to CM 31. They know
16 how their indictment reads.

17 So you have what Mr. Khuzami and Mr. Fitzgerald
18 did in their openings and summation on this point, which is,
19 do the dance, the dance of the targets. Let's tell you how
20 they danced on the targets in their opening statement and in
21 their summation.

22 Mr. Khuzami said that Emad and Siddig said that
23 they were going to blow up, quote, the United Nations and
24 other structures, page 1599. He doesn't tell you what they
25 are in his opening. In the closing argument Mr. Fitzgerald

1 says that on June 4 the targets were given in, quote,
2 express and in explicit conversation. The next day Mr.
3 Fitzgerald claimed that the targets had been made plain.
4 That is very interesting. If they have been made plain, why
5 do we have all this difference?

6 Then Mr. Fitzgerald said that they weren't said
7 but were rather referred to. Well, if the conversation was
8 express and explicit, where are the targets? Mr. Fitzgerald
9 in his two-day summation never mentioned the word United
10 Nations. He talked about tunnels. Well, I can understand
11 Mr. Fitzgerald not mentioning the United Nations when his
12 indictment has the George Washington Bridge.

13 It all comes down to this little whispering that
14 the government claims occurs in this tape and this missing
15 paper business that they talk about, unspecified targets, no
16 names, pieces of paper that were eaten.

17 Ladies and gentlemen, we have seen Emad Salem, we
18 have seen his dirty work, but I suggest that this really
19 tops the cake. Eating the evidence is the best one he has
20 done.

21 Let me talk about an instruction that you are
22 going to hear from Judge Mukasey concerning certain words on
23 CM 32. Emad Salem, obviously, was aware of the target
24 problem. This board here. I confronted him and played CM
25 31 for him where the three targets, military and FBI, are

1 mentioned. It wasn't hidden from him, I confronted him.

2 What I suggest is, for a million dollars he will
3 say and he will do anything, and that's what you've got.
4 Because what happened on cross-examination, if you can
5 recall, when I played the tape for him he blurted out, I
6 can't hear the word United Nations, and Mr. McCarthy got up
7 on redirect examination, played the tape for Mr. Salem and
8 he pronounces for you, ladies and gentlemen, that you can
9 hear it. Judge Mukasey is going to give you an instruction
10 on that, but I ask you, ladies and gentlemen, keep in mind
11 one important factor. 332T in evidence, the transcript,
12 doesn't have the words UN in the transcript.

13 You will learn, and, as you were told by Judge
14 Mukasey, this transcript was prepared by Arabic interpreters
15 including some from the government. And as Judge Mukasey
16 will instruct you, they didn't hear it. It will be up to
17 you ladies and gentlemen, if you wish, to have the tape
18 played back. But if you can recall, when we did this little
19 exercise back a few months ago, you heard an enhanced tape.
20 I think it is 333A. And as you were told, an enhanced tape
21 is one that has background noises filtered out. You sit
22 there and you listen to it with a headset on, with the
23 volume turned all the way up.

24 When my client had this meeting, he is there with
25 the background noises. He doesn't have a headset on, he has

1 kids and children running around, he is eating a meal.

2 So the conditions that you ladies and gentlemen
3 heard the tape are different than the conditions that my
4 client was involved in the conversation. But even granting
5 that, when the conditions were ideal, meaning enhanced tape,
6 headsets on, no distraction, Arabic interpreters did not
7 hear it. It ain't on the transcript.

8 MR. McCARTHY: Objection.

9 THE COURT: Sustained. The last part is stricken
10 and is to be disregarded.

11 MR. JACOBS: Judge Mukasey will instruct you on
12 it and I will close out that matter.

13 Let's talk about the so-called agreement that is
14 part of the conspiracy in this case on June 4. The
15 government suggests that they expected my client to make a
16 contribution. When you read the transcript and you see that
17 Mohammed wasn't agreeing to make a contribution, Emad put
18 pressure on him. He kept saying what are your capabilities,
19 in other words, how much do you have to pay. He wanted
20 Mohammed to commit to an exact amount.

21 You have learned, ladies and gentlemen, that
22 Mohammed is a man that operated two gas stations. While we
23 are not making the representation he is a wealthy man, what
24 we are trying to point out is that every day of the week,
25 obviously Mohammed had cash available to him, hundreds of

1 dollars.

2 MR. McCARTHY: Objection.

3 MR. JACOBS: I believe that was the testimony
4 from Aboubeker and Karim, the --

5 THE COURT: It is the jury's recollection of the
6 evidence and what the evidence is that controls.

7 MR. JACOBS: It would have been easy for him to
8 give Siddig Ali and Emad Salem even a small contribution.
9 Instead, he gave them nothing. He ended the conversation,
10 escorted them to the door, and he told them I'll call you
11 next week.

12 You see, ladies and gentlemen, Mohammed Saleh
13 never agreed to do anything. Cash in his pocket, never
14 reached in and took anything out. The only thing Mohammed
15 Saleh knew at the point, that these two men wanted money for
16 Bosnia and that they didn't want to give him any details.
17 He got them out of the house and ended the conversation.

18 Now you will see, ladies and gentlemen, it isn't
19 just CM 32 that is going to establish this, it is all the
20 transcripts that come afterwards as well, because none of
21 them support or corroborate the government's position.

22 Let's turn to CM 31, which part of it you have
23 heard in English and part of it I know my cocounsel have
24 referred to. I know Valerie has referred to it and some of
25 the other ones. This is our famous, I call it the

1 entrapment statements by Siddig Ali that takes place.

2 Obviously several defense counsel are focused in
3 on it because it is, as I suggest, classic entrapment.
4 Cornering people, hopping on people, inducing people. I
5 don't want to get near the law. I will let Judge Mukasey do
6 that. I've got enough on my plate here. But here it is,
7 Siddig Ali, Salem. This is how they set him up.

8 Basically Salem is telling you ladies and
9 gentlemen on the tape how they set up a person. Do you want
10 to do jihad? If he says I want to do jihad, what do you
11 have to offer?

12 Siddig says: You are unbelievable. Laughing.
13 Ready? Are you ready? That is it. It's a setup.

14 Siddig says: Good like that. You cornered them.

15 Salem: One comes from here and one hops on him.
16 What you have done is great. It is 1, 2, 3.

17 THE COURT: Mr. Jacobs, you can be heard by
18 everybody except the translators.

19 MR. JACOBS: I am sorry.

20 You know, ladies and gentlemen, it was a surprise
21 meeting. They set him up. There is the setup clear as a
22 bell that they talk about. They laugh about it. These two
23 clowns, Emad and Siddig, leave Mohammed, they are driving
24 back, and you know what they're doing? It's a joke to them
25 how they set him up. Listen to the judge's instructions on

1 entrapment.

2 We suggest it is very simple. They come to him
3 with the idea of Bosnia, they pressure him for a definite
4 amount of money, no problem, 1, 2, 3, they are laughing at
5 their fancy footwork. What they have done, ladies and
6 gentlemen, is an attempt to trick Mohammed into paying
7 money. But he didn't pay it. Corners, hopping on people.

8 What is interesting, it is clear from this, this
9 is not the first time they have done it. They did it
10 before, they did it afterwards. Siddig is constantly saying
11 how they are going to businessmen to try to seek
12 contributions. Only this time Salem forgot to turn the
13 machine off and we've got the inducement, the cornering and
14 the entrapment right here on the board for you to see.

15 The government may come back in rebuttal and say
16 well, if Salem was such an evil person, why do we have this
17 tape? Ladies and gentlemen, these tapes weren't given in
18 for days. Emad had these tapes for days, working on his
19 deal with the government. What he was interested in was
20 this: money. Thousands and thousands of dollars of money.
21 That's what he spent the weekend with Napoli negotiating
22 about before he turned in these tapes.

23 I suggest that even with that you still know on
24 32 you've got no beginning and you've got no end. But they
25 knew that there was going to be a problem with Mohammed, and

1 nobody realized that there was going to be a problem with
2 Mohammed more than Salem, because here is what he has to
3 say.

4 If you recall -- and everybody says that I am
5 putting this to close to me. If you recall, I confronted
6 him with this on cross-examination and he made up this
7 baloney story that it was really he that he was referring to
8 but we know it's Mohammed. Here is what he says.

9 Salem: He will make us lose our time. All
10 right, later. Pass me by. I will pass by you to see you.
11 I'm a busy man.

12 These are the excuses he is telling Siddig
13 Mohammed is going to give about not giving money. Do you
14 think that a busy man with such answers will ever care to
15 come to you?

16 He is talking about my client and why my client
17 will never come by and give any money. There was no
18 agreement on June 4 and this shows it right here. Emad
19 Salem never expected my client to give any money.

20 The last portion. Siddig Ali, they are talking
21 here about whether Mohammed should be invited to the safe
22 house. You see, Salem, ladies and gentlemen, has an
23 objective, and that is to get as many people to that house
24 as he can, because the more people that get to the house the
25 more money he gets.

1 But when he says it to Siddig Ali, what does
2 Siddig Ali say? No, no, why should I bring him?

3 Siddig Ali: No, no, I don't think so.

4 Siddig Ali had not told Mohammed anything about
5 what he was going to do, and he didn't want my client at the
6 safe house, and it's right there, two hours later after the
7 meeting on June 4.

8 If you really were going to be part of this plot,
9 why is Siddig playing this game? He is saying this because
10 Mohammed was never told any of the details.

11 Then Siddig and Emad discuss the type of money,
12 how much money they expected Mohammed to pay. This is again
13 important because it shows you that several hours later
14 there was no agreement. There was no plot told, and of
15 course Mohammed didn't agree to anything, and this shows you
16 why.

17 Salem says: Your expectation sheet? What do you
18 think this man will say?

19 At this point I think there are seven "I don't
20 know's" here. Where is the agreement? I don't know. I
21 really do not know what to tell you. Another time, I really
22 do not know. Your predictions, will he pay or not? At the
23 bottom of the board. Will he pay or not? I said I really
24 don't know, my friend.

25 Well, how can the government argue that my client

1 agreed to join this plot when the two -- at least one
2 coconspirator according to the government, Siddig Ali is
3 saying he doesn't know if the man is going to pay? Six,
4 seven "I don't know's."

5 Let's talk about the Hamas. It's interesting, as
6 you just heard the tape CM 31 in English, where Emad
7 announces to the FBI that Mohammed is a member of Hamas.
8 You want to see how he lied? Let's talk about what he and
9 Siddig talked about minutes after that occurred, what he
10 tells the Bureau on one hand because he needs the money, and
11 what he tells Siddig. He tells the Bureau he is a member of
12 Hamas, and look what we have here on pages 6 and 7. Of
13 course, Emad is very interested to find out if anybody has
14 affiliations with overseas organizations because that's what
15 my client is charged with in the indictment, and he asks
16 Siddig Ali right up front, is he a follower -- not even a
17 member, now we are down to followers. But Siddig Ali says,
18 I don't know, you want to count them with me? Once, I know
19 nothing. Twice, I do not know, I do not know, I do not
20 know, I do not know, to put an end to this, I do not know.
21 I do not even know. I do not know. What, nine times? Nine
22 times Siddig Ali says I don't know about Mohammed and Hamas.
23 Nine times. But our boy, he's looking for the money so he
24 tells the FBI he's a member of Hamas. It ain't there. Just
25 another lie to get money. Nine times Siddig Ali has to tell

1 the fellow. He's very persistent.

2 These goggles, these night vision goggles,
3 they're having some political discussion, Mohammed makes
4 some reference that he knew somebody in the Middle East and
5 somebody once was interested in some night radar, and all of
6 a sudden Emad Salem becomes the weapons procurer. All a
7 bunch of nonsense. Emad Salem spends the next three weeks
8 running around talking about night vision goggles.

9 What's interesting about that, ladies and
10 gentlemen, is that, and as we will point out, there are
11 three or four conversations he allegedly had with my client
12 about it where we don't have the tape. But we know, ladies
13 and gentlemen, that Mohammed never purchased any, never was
14 showed any, never showed any interest in any. It's all
15 Salem trying to create a conspiracy. Get people to the
16 saves house, get them in terrorist organizations, and if you
17 can't, you make it up, and that's what he did against my
18 client. He made up the fact that he is a member of Hamas.

19 You are not going to hear any conversations about
20 Mohammed and Salem talking about night vision goggles
21 because the man erased them or threw the tape away.

22 I suggest that Salem and Siddig have no clue to
23 my client's political persuasion. Siddig just wanted money.
24 It's all there in front of you.

25 I suggest that what it is is, my client owned

1 some gas stations and he earns money. A man who has a
2 family and, just so that we are clear, Mr. Fitzgerald, what
3 I said in my opening, he pumps gas. Saleh U in evidence.
4 That's what he does, runs and owns some gas stations.

5 Let's talk about, following in order, CM 33,
6 which I don't have a board for, I don't believe -- no board?
7 OK. This is a conversation that takes place June 8, and of
8 course Emad reports back to Siddig that he has found the
9 night vision goggles. It is a conversation between Salem
10 and Siddig. Siddig really doesn't want Emad to pursue
11 Mohammed because he hasn't given them any money. But Emad
12 tells Siddig that he has already called Mohammed and told
13 him about the goggles. Where is the tape of that?

14 We know at least from part of his testimony that
15 Salem claims, at least the first go-round, that he never
16 spoke to my client again, and, as you learned, he changed
17 that story when he came back on the stand and we called him
18 on the defense case.

19 You learned in this transcript, CM 33, which I
20 think is our Exhibit AA in evidence -- please don't open
21 your book, I don't have that much time -- he was looking for
22 assistance from some other Muslim people in the community.
23 Even says on the tape, Siddig, we talked to some other
24 people but not about anything in particular. Again Siddig,
25 going to people for money, not going into any details.

1 It is clear if you look at AA that Siddig Ali and
2 Salem were just pursuing the same type of course of conduct
3 with a lot of other people. Mohammed owned a gas station,
4 other people owned stores. Siddig and Salem, as you can
5 see, are just masters at lying to people. Siddig may have
6 the whole story about training people for Bosnia, all to get
7 money from Mohammed.

8 The missing tapes are very important, to Mohammed
9 and to many defendants in this case. He tells you, Salem,
10 the second go-round, that he spoke to my client again after
11 June 4, and you will see some of the transcripts refer to
12 actual conversations. He tells you that there is no tape of
13 the conversation. Four days after meeting with my client,
14 the government informant calls him, we have no tape.

15 You will see from these subsequent transcripts
16 that there are at least three such missing conversations,
17 telephone calls that I suggest are from Emad's apartment,
18 with the tape machines running, that we don't have. Emad is
19 a man who taped his Paragon Cable subscription. He has the
20 recording devices, they run at all times. I will show you
21 where he says he spoke to my client.

22 I ask the government again if they wish to tell
23 us where the tapes are, because if we believe the
24 government, and they stand up here in good faith and tell
25 you folks that Salem is corroborated. A missing tape can't

1 corroborate anything, and when you have missing tapes like
2 you do for Mohammed and Fares and people like that, there is
3 no corroboration.

4 Let's take a look. April 10, I think by me.

5 Did you ever speak to him after June 4?

6 I don't talk to him personally.

7 Again, to make it short.

8 Did you ever have another conversation after June
9 4 with my client? That was me, Mohammed.

10 Answer under oath: No, sir.

11 That's a very, very important question and
12 answer. He comes back months later. Look what we have.
13 This isn't a game, ladies and gentlemen. People's lives are
14 at stake here.

15 Did you ever call Mohammed Saleh after June 4,
16 correct?

17 Answer: Yes, sir.

18 Where is the tape of that? You spoke to Mohammed
19 Saleh and you said I have the address where you can go?
20 Where is the tape?

21 Answer: I don't have it, sir.

22 You know, ladies and gentlemen, this is serious
23 business. The government can't get up here and rebuttal and
24 tell you folks that they are corroborated with this kind of
25 stuff stuff before you. The man just doesn't care what he

1 says, and he doesn't care if he lies to you. And this isn't
2 lies about his war wounds. We don't give a damn if he was
3 shot three times or 10 times. But when it comes to the
4 tapes of our clients, we care, and here's the lies right in
5 front of you.

6 Let's take a look, if we can, at CM 36. CM 36
7 occurred on June 12, and we learned from this conversation
8 that Emad Salem called my client again, and again we have no
9 recording of the conversation. According to the transcript,
10 Emad tried to contact Mohammed a second time on June 10.
11 This time he claims to have also reached the service station
12 attendant at Mohammed's station and left a message. We now
13 know there are two calls, one in which he spoke to my client
14 and one in which he spoke to someone at the gas station.
15 Again I ask, where are the tapes?

16 I talked to Ali, brother Mohammed Ali, the one we
17 went to see at the gas station.

18 Salem: I told him.

19 He did? He had conversations? Do you think they
20 might be important, ladies and gentlemen? Do you think you
21 would like to hear them? Do you think they talked about
22 money? Do you think they talked about the agreement?

23 How do you go in here and decide this case when
24 you can see right here -- in orange -- that there is missing
25 tapes in this case? They are pushing to get Mohammed to

1 make a contribution. Mohammed has not contacted him, they
2 keep calling and calling and calling.

3 Let's turn to CM 37, takes place on June 13.
4 During the course of this conversation, Siddig and Emad
5 repeatedly attempt to contact Mohammed to see if they can
6 get some money from him. They have no success. In
7 addition, Emad and Siddig discuss the use of home heating
8 fuel for the first time.

9 This is an important date, June 13, and I know
10 that I am giving you a lot of dates and details but it is
11 interesting because this is the first time it is raised
12 between Salem and Siddig. Having realized that he cannot
13 afford this original, I guess FBI bomb plot, whatever you
14 want to call it, Emad details for Siddig how bombs could be
15 built with less expensive materials. Siddig can't get money
16 from anybody, Emad realizes. He wants his money, thousands
17 of dollars, so now Emad is going to dream up a new scheme,
18 how to build a bomb a lot cheaper. He tells Siddig that the
19 way to do it is with heating oil, which is used to heat
20 homes. So you know, ladies and gentlemen, in the
21 conversation they had with Mohammed on June 4, they
22 certainly couldn't be discussing that subject because the
23 first time it is discussed between Salem and Siddig is June
24 13.

25 CM 47 occurs, June 17, couple of days later. If

1 you look at the middle of this page, you will see, ladies
2 and gentlemen, that brother Emad is back to his usual
3 tricks, and that is, he turns the recorder off and on in the
4 middle of a conversation about my client. In green,
5 recorder turned off and on, and the first words that appear
6 back are Ali, Mohammed Ali Yonkers.

7 Salem: He will bring it for us.

8 Siddig Ali: Heating oil.

9 This is the first time it is discussed between
10 Salem and Siddig that they are going to think about mowing
11 to Mohammed. Obviously haven't talked to Mohammed about it,
12 and you will learn that they don't do that until June 22.
13 In any event, you have Emad turning on and off the recorder
14 in the middle of a conversation about my client.

15 Funny business with the tapes continues on, June
16 17. You may ask yourselves, every time that Siddig Ali runs
17 into a problem, Emad finds a solution for him. Money, he
18 tries to find a solution. Place, he finds the safe house.
19 Finds a cheaper way. Make it with fuel oil. Why? Money.
20 That's his incentive.

21 I suggest that this phony bomb was going to be
22 built no matter what obstacles they ran into, meaning Emad
23 and the FBI. Emad didn't need the safe house defendants to
24 make the bomb, he needed the safe house defendants to get
25 paid.

1 Let's talk about CM 48. This is this 200-page
2 transcript. It's a long one, and I think we had parts of it
3 read to you during my examination of Salem. It is a long
4 and it is a complicated transcript. A lot of people are
5 speaking and I don't want to go over it in too much detail,
6 but there is a lot of conversation about Mohammed, there is
7 a lot of conversation about the fuel oil, there is a lot of
8 conversation about what they are not going to tell Mohammed
9 and how they are going to have to pay for the fuel oil.
10 Let's go over it briefly and let me read a couple of very
11 quick portions to you and discuss it, because some of the
12 lines here are as important as anything in the case.

13 Somebody says: Do you think he has the
14 willingness?

15 Siddig Ali says: He originally, we asked him for
16 a favor, we requested financial assistance.

17 This is page 47, gentlemen.

18 Aha, no, no, sheik.

19 Siddig Ali: He apologized, he did not reply?

20 Siddig Ali: Do you see what extent he said --
21 referring to Mohammed -- I don't have it to pay, end quote.

22 Have you told him that this will be for jihad and
23 so?

24 Siddig Ali: Yes. He didn't say anything.

25 But Salem, knowing the tape recorder is going,

1 then responds: But he agreed, he told you yes.

2 Siddig Ali: Yes, but we did not get into any
3 details with him.

4 That's June 19, Siddig Ali speaking about
5 Mohammed and the conversation of June 4. Two weeks later
6 Siddig Ali is telling several people, including Salem, we
7 did not get into any details with him.

8 Reasonable doubt is right there.

9 The next major point is the paying for the fuel
10 oil, and -- you will see if you go through this transcript,
11 and I think it is kind of difficult to follow, Siddig is
12 trying to figure out with Salem how much it is going to cost
13 for the fuel oil. That is page 48. They were planning,
14 and, as you will learn, they did pay for the fuel oil. They
15 talk about taking a collection for the fuel oil. They ask
16 Emad if they will be able to come up with 4 or \$500, this in
17 the conversations that will follow we will show you that
18 Mohammed was indeed paid for the fuel oil.

19 There is a lot of conversation that gets kind of
20 complicated between home heating fuel and what were the
21 excuses that were going to be given to people like Mohammed
22 because on this date, June 19, they weren't even sure they
23 were going to go to Mohammed, so they were discussing all
24 these possibilities and they were discussing with Salem and
25 Siddig about excuses that could be given to people when they

1 go to purchase the home heating fuel.

2 And it is discussed that you will tell the person
3 you need the fuel to heat hot water in your home. They
4 discuss it, you know, it's the summer, what are you going to
5 tell a person? They say, we need hot water in the summer,
6 don't we? And you will learn, ladies and gentlemen, that
7 that is exactly what Siddig told Mohammed on June 22. We
8 will get to that tape in a few minutes.

9 They discussed it on the 19th. They went to
10 Mohammed and that's exactly what they told him. No bombs,
11 no plots. Diesel fuel to heat hot water. Not my argument,
12 not my words. Siddig Ali, the day before the arrests in
13 this case, and we will put it up in a few minutes for you.

14 All means Mohammed had no knowledge about what
15 was going on.

16 This business about the excuse, I confronted
17 Salem with it, because I wanted you ladies and gentlemen to
18 hear from his mouth whether he ever told Mohammed what the
19 fuel oil was for. Let's see what he had to say. Page
20 17,435.

21 Question: So if somebody were to ask you what
22 the fuel was for, you were going to say using it to heat hot
23 water, correct?

24 Answer: That is not correct, sir. Depends who
25 was asking, sir.

1 Question: Pardon me?

2 Answer: It depends on who was asking me. If
3 somebody want to do jihad, I will tell them to build bombs.
4 If somebody from the oil company no jihad, I will tell them
5 experimentation for the small boilers.

6 Question: Mohammed Saleh wanted to do jihad,
7 right?

8 Answer: That is correct.

9 Question -- here it is -- when did you tell him
10 about what the fuel oil was for?

11 Answer: I did not tell him, sir.

12 I did not tell him, sir.

13 There it is, there it is and there it is. He
14 never ever told my client what that fuel oil was for,
15 because he didn't get it on tape. It never happened and he
16 didn't have the guts to get caught in another lie.

17 This fuel oil is discussed for pages upon pages.
18 Then the conversation between Salem and Siddig goes on about
19 if they are going to go to Mohammed let's make sure he
20 doesn't become suspicious. They say we are going to forget
21 about other stories, we are going to tell him that we just
22 need some fuel oil to heat hot water. And if you look at
23 the transcript, you will hear repeatedly the following
24 thing. Go to Mohammed, quote, without mention of any other
25 things, because Mohammed knew nothing, he wasn't involved.

1 And that goes on.

2 You will hear people say the man does not have to
3 know anything. We don't tell him anything. We don't tell
4 him anything. It's repeated, it's repeated, and it keeps on
5 being repeated. He wasn't told the plot on the 4th, he
6 wasn't discussed the plot on the 19th, he wasn't discussed
7 the plot on the 22nd. He was never told the plot.

8 Hours of debate, making sure Mohammed is not
9 suspicious. Rehearsing the story what to tell Mohammed.
10 Nobody says on this CM 48, hey, Mohammed knows the story.
11 He is the leader of Hamas. He's financing the bomb. It's
12 not there. Salem didn't say it. He didn't say hey
13 brothers, what are you talking about, my man Mohammed he's
14 in this thing up to his eyeballs, he's financing the bomb.
15 You don't have to play games. You you go to Mohammed, he is
16 going to give you all the fuel oil in the world. We will
17 blow up a building bigger than the World Trade Center.

18 (Continued on next page)

19

20

21

22

23

24

25

1 Would he get the opposite?

2 Oh, then, you got Salem, he got up there and he
3 gave another one of those sick lies he gives. After all,
4 you know, he didn't want a lot of people to know what was
5 going on. What a bunch of nonsense.

6 He could pick a ride any day he wanted with his
7 tape recorder to the gas station. The FBI didn't run out of
8 cars. It could have taken a ride to the gas station with
9 the tape recorder going.

10 Weeks, weeks. Never went. Never went to the gas
11 station, because he knew he'd get thrown out on his rear.
12 If he went to Mohammed and said, we need money to blow up
13 buildings, we need diesel fuel to blow up buildings, if he
14 put that on the tape, he'd be thrown out on his rear end.
15 And he never went. Reasonable doubt in this case.

16 CM60 takes place on June 21. I use this
17 conversation to illustrate a few points. They are back
18 again talking to Mohammed. Again discussing the fact they
19 don't think he is going to do anything. In fact, Siddig is
20 talking about how he has contacted somebody named Hani. And
21 Hani is going to get in the middle of this and Hani is going
22 to get the fuel oil and they are going to approach Hani.
23 And of course Hani doesn't know anything. They are so sure
24 Hani was going to contribute that they were already lining
25 up somebody else who didn't know anything either.

1 Again they expressed their frustration with
2 Mohammed in the second part. In fact, Siddig says that's
3 it. This is June 21, two days before the arrest they say,
4 let's just end it with Mohammed. He's treating us like
5 children. Enough's enough. We're fed up with it.

6 One more time Siddig says concerning whether
7 there is an agreement. The government saying you had an
8 agreement? Well, Siddig says, on page 14, Mohammed has to
9 decide either, yes or no, goodbye, that is it, end of
10 subject.

11 Well, if they are still waiting for a yes or no,
12 on June 21, how can the government say the man agreed on the
13 4th? Siddig is saying here either yes or no. And now all I
14 suggest they talk about is if you give them any money, not
15 about the plot. But even that, Siddig can't get a
16 commitment from Mohammed.

17 Now, perhaps -- everything is most important --
18 one of the most important conversations that we are talking
19 about here is Siddig's conversation, the wiretap on June 22,
20 Exhibit 775T of the transcript. Why is this conversation so
21 critical? Obviously, it's because it is where Siddig tells
22 Mohammed why he wants the fuel oil. It takes place a day
23 before the arrest in this case. And look what it says. I
24 hope everybody can read it:

25 Siddig Ali: There's a group of people here -- I

1 am not sure what group that is, probably some other group,
2 you know, always making something up -- you know, the oil,
3 the one for heating, that's for the cold weather.

4 Mohammed Saleh: Yes.

5 Could you give me some of it?

6 Unintelligible.

7 Siddig Ali: No, the heating oil. When the cold
8 weather comes.

9 Mohammed Saleh: Yes.

10 For heating up the water in homes.

11 This is the only conversation in evidence in this
12 case where Mohammed discusses the diesel fuel, or the
13 heating oil. This is it. This is the government's sole
14 evidence.

15 And if any transcript in this case points that he
16 had no knowledge, this is it. Because it is clear, ladies
17 and gentlemen, that if they were talking about building a
18 bomb, they would be discussing it. Mohammed doesn't have a
19 clue what he is talking about on June 22, a day before the
20 arrest, because he was never told anything. This was the
21 excuse that they were rehearsing, Emad and Siddig, on the
22 19th, over 200 pages, and here it is, exactly what they tell
23 Mohammed.

24 Now, CM61 takes place on June 22. This
25 conversation is important because it illustrates three

1 important points. Mohammed Saleh was told again that oil
2 was to be used for a boiler. Again another unrecorded
3 conversation with my client. And three, that Siddig Ali
4 paid for the oil.

5 Now, we have broken this into two separate
6 boards. We have got some color coordination here to try to
7 give you some of the highlights and some of the subjects.
8 What you have to remember about CM61, this conversation, on
9 June 22, is it occurs between Emad and Siddig after the fuel
10 oil has been picked up for Mohammed on the first day. Of
11 course, Emad never went, never reported that. But this is
12 after the first day.

13 And what you are seeing here is an argument
14 between Emad and Siddig about what the fuel oil was going to
15 be; whether diesel fuel and home heating fuel are the same
16 that can be used for that boiler. This is the argument that
17 goes back and forth between Emad and Siddig. And remember,
18 he makes up this lie about calling Balber to check it
19 out.

20 But what it is is, they are repeating here, in
21 the yellow portion right on top, about what his conversation
22 was, Mohammed, at the gas station that day. And Mohammed
23 Saleh said to him, I challenge you, it is the same --
24 meaning heating fuel and home heating fuel -- and Siddig
25 says, I told him that is not. Siddig says, I told him that

1 is my profession -- meaning he owns a gas station, that
2 basically they are the same, he can use them in a boiler.
3 And they are talking about the different trucks that bring
4 in the diesel fuel and the home heating fuel and whether the
5 truck can have one tank or two tanks, and Mohammed is trying
6 to argue it has to have only one tank, Siddig says two
7 tanks. And he says no, no, no.

8 That is what the discussion is about that Siddig
9 is relating. Not about bombs. Not about Mohammed knowing
10 the plot.

11 Why would they be discussing the difference
12 between diesel fuel and home heating fuel for a boiler, and
13 the argument back and forth what Mohammed is told?

14 Mohammed was telling Siddig that you could use
15 diesel fuel, which is what Mohammed sells, to heat a boiler.
16 And Siddig and Salem keep arguing back and forth about this
17 point.

18 That is the yellow section that is on the board.
19 Discussing boilers, not bombs. Whether diesel trucks can
20 can go here and there and everywhere.

21 Now, we also know from the green section here,
22 ladies and gentlemen, that -- again this is June 22 -- Salem
23 has another unrecorded conversation with my client.

24 Salem: I told him about the night vision
25 goggles. He said OK.

1 I think this is the 3rd or the 4th.

2 Where is the tape? Where is the tape? Where is
3 the tape? Where is the tape?

4 How can you decide whether this man is guilty and
5 convict him when you now have established at least three
6 separate times there are conversations that you don't have
7 about the subject matters that you have to decide?

8 The government is going to tell you he is
9 corroborated. He ain't corroborated on this. He is not
10 corroborated on CM48. He is not corroborated on the FISA I
11 just showed you. Even Salem says he didn't tell him about
12 the fuel oil.

13 Night vision goggles, not there.

14 The last section in pink concerns the payment.
15 Now, the government stands up here and says, Mohammed gave
16 it for free. Well, Emad wasn't there when Siddig and
17 Mohammed had their conversation, was he? The tape wasn't
18 going, was it?

19 So all the government can come back and rely on
20 are the conversation between Salem and Siddig, because we
21 have got receipts that say how much was charged. We will
22 talk about those in a few minutes. But look at the pink
23 section. This is Salem, I suggest -- unfortunately, I guess
24 you can't hear the tone and things because it is in
25 Arabic -- but I suggest that Siddig ain't too happy with

1 Mohammed. He says, "Tell him, go get it by yourself,"
2 meaning the night vision goggles.

3 Siddig says: Until now he did not do anything.

4 Now, Salem, he don't want to hear that on the
5 tapes. He says, he contributed with the oil. But Siddig,
6 he knows what happened that day and he knows Mohammed paid
7 for it and he knows where the money came from. These the
8 Sudanese brothers donated.

9 Now, that is not to suggest that anybody knew
10 anything or anybody had any knowledge. But that is what is
11 on the tape. The Sudanese brothers donated it.

12 Now, Emad got up there on the stand, and if you
13 ladies and gentlemen remember this, it was classic Emad.
14 Ah, there was a break in the tape and we switched subjects,
15 and all this other nonsense. Boy, he tried to give you
16 folks the old flimflam, the old Emad special. Trick the
17 jury. Fool the jury. Let's see how stupid this jury can
18 be. That's what he tried to do. He contributed with the
19 oil. Sudanese brothers donated. They donated a hundred.
20 He bought from them for 50. So we have 150. Emad wasn't
21 there.

22 I suggest the evidence shows he treated him just
23 like any other customer. And we will go into that in a few
24 minutes.

25 Let's turn to CM64, and I am sort of getting near

1 the end of the CM's here. Again, in CM64, Emad Siddig, they
2 are fighting about the diesel oil. They don't believe
3 Mohammed knows what he is talking about. He has to go call
4 his friend Balber again. And the argument about the diesel
5 fuel again. Perhaps the most important point about this
6 conversation is that, again, it makes clear that Mohammed
7 was paid for the fuel.

8 Let me bring it up so you folks can see it.

9 THE COURT: Will you also refer to exhibit
10 number?

11 MR. JACOBS: I am sorry, your Honor, yes. It is
12 64, which is 367T2, transcript.

13 THE COURT: It is not for my benefit. These
14 documents were received as exhibits, not as CM's.

15 MR. JACOBS: I am sorry, my apology.

16 OK, Siddig Ali says here, 367T2, Siddig Ali. I
17 do not believe Ali had intention of paying anything.

18 Salem says, we have taken the oil from him, it is
19 over. He is doing this for the FBI tape. And Siddig says,
20 no way. And so what? How much do all of this come to,
21 what? How much is the total? Something like \$60. And then
22 he says, it is expensive over there, meaning it cost, fuel
23 oil cost a lot more in Yonkers than it does in New Jersey
24 where he lives. And he says it right there in the
25 transcript. If one is to buy a large quantity, it makes a

1 hell of a lot of difference. He is talking about the fact
2 that it was paid for.

3 Now, we know it is not \$60, ladies and gentlemen.
4 We know it is not \$60, ladies and gentlemen, because the two
5 Government Exhibits, 289B and 289A, list the price of the
6 fuel oil: \$139.62 the first day, \$151 on the second day. I
7 am not going to try to add. But it is not 60 bucks.

8 I suggest Siddig Ali might have owed a few
9 dollars, \$60, but he certainly paid for the bulk of the
10 money, \$230 or so, that day, June 22. And again what is
11 most important about that day is that Emad didn't go. And
12 it is a criminal case, it is a criminal investigation. FBI
13 handlers, which I am going to get to in a few minutes. And
14 they are running around. Why didn't Emad go that way? What
15 is the problem? You want a bag man, you want to convict
16 him, you want to put him in jail? Then go with the
17 briefcase. See what he's got to say. That is how you run a
18 criminal investigation. But Floyd and Anticev and Napoli,
19 they got lots of other things on their plate. And sending
20 Emad to get Mohammed on tape about the fuel oil wasn't
21 important enough for them.

22 On June 23, the FBI was there across the street
23 taking photos. But Emad never showed up with the tape
24 recorder. And you all know why. Because he wouldn't be
25 sitting here now if they had it on the tape.

1 Now, let's talk about the pickup of the fuel oil.
2 We know that Mohammed had two stations, he ran and operated
3 the Gulf Station, he rented the pumps at Vinny's Service
4 Station. Siddig Ali has a conversation with him on the
5 22nd, and they argue back and forth. We showed it to you
6 before. And Mohammed sends him over to Vinny's, the first
7 day, the 22nd, because, as you learned, the tank at Vinny's
8 is bigger. And you buy a large amount of diesel fuel, they
9 send you to the bigger place.

10 Now, the government calls two witnesses. My
11 pronunciation is terrible, but they were Aboubeker and Karim
12 Chenane, the two fellows that work at the gas station, back
13 on the 22nd or 23rd. For their grand appearance here, and
14 for their important testimony, the government gave them what
15 they love to give -- money. Thousands of dollars were
16 given. Thousands of dollars were given to these two people
17 to come in here and testify.

18 They got more. They were here illegally, they
19 are allowed to work, they had their rent paid for, they had
20 their meals paid for, they were allowed to travel in and out
21 of the country. Pretty good deal, to come in and testify
22 about selling some diesel fuel. Not a bad deal for the
23 witnesses. The fellows did pretty well here. To come in
24 here and get some special treatment from the FBI, get a
25 couple of thousand bucks, get up on the stand and say you

1 sold some diesel fuel. Do you think the government wants
2 this case?

3 Aboubeker. Well, he tells you on June 22 his
4 boss Mohammed calls him from the station to let him know
5 that the two men were coming to get some diesel fuel. When
6 the men arrive with the drums, he told you Mohammed called
7 him because he was concerned about there would be no diesel
8 fuel left for the other customers.

9 Mohammed doesn't say, give them everything they
10 want. He doesn't say, give it to them, it's free. He
11 doesn't say any of that to Aboubeker, the man paid thousands
12 of dollars. Mohammed says give him between \$139 and \$150.
13 Mohammed doesn't say, "I'm the boss. You do what I tell you
14 to do. And, by the way, it is free of charge."

15 What he said was, and this is so important,
16 Mohammed said, "Limit the amount and make a receipt."

17 Now, there is no evidence of what his educational
18 background is. And I can't tell it to you. But he ain't
19 that stupid. Do you think he would tell his employee in
20 broad daylight, knowing that they were going to take that
21 diesel fuel and kill people, to make a receipt? Come on.
22 No way it would ever happen the way Aboubeker said it did,
23 unless you don't know what's going on.

24 He gave him \$139 worth of diesel fuel. License
25 plates on it, dates on it, amounts on it. I think at one

1 point Aboubeker testified -- I think I asked him -- you
2 weren't present when Siddig spoke to Mohammed?

3 No.

4 You were busy doing pumps, doing things?

5 Yes.

6 So you don't know if they paid?

7 I don't know.

8 The receipts. Aboubeker tells you on June 23,
9 two men came in a red van, and they was to pump between \$130
10 and \$150 worth of diesel fuel. He said somebody complained
11 about the receipt. But Mohammed said, make it anyway. Make
12 the receipt out and put Sudanese on it.

13 Now, again, if you're building a bomb, are you
14 going to tell your worker not only to make the receipt but
15 to make sure you can have everybody know the nationality,
16 Sudanese? Come on. You don't do that unless you are an
17 innocent person and you don't know what is going on.

18 You heard me, in the cross of both of these
19 fellows, go into the business-hour things. You know, if you
20 are in the middle of this FBI bomb plot here, you are
21 running around, you own gas stations, don't you think you
22 would be pumping at night? Don't you think you would go in
23 after work and do it yourself, you would do it in broad
24 daylight? Are you going to tell your employees to do it?
25 Make sure everybody sees the van. Make sure your employee

1 writes the license number down. Makes sure he meets the
2 people so he can ID the people. Oh, it is all crazy.

3 If Mohammed was involved in this thing, and this
4 is something he understood, he'd have to be one dumb
5 person -- and I suggest the evidence shows that he is not.

6 He sells diesel fuel for a living and that's what
7 he did here: no more and no less.

8 I told you in my opening that is what he does for
9 a living. Mr. Fitzgerald said that he is some sort of
10 mysterious international terrorist. You didn't get that
11 from the witness stand. That's where the evidence comes
12 from, not the government's imagination.

13 Karim Chenane? I am sorry, he is the one who
14 actually had the initial conversation and filled the barrels
15 on the 22nd, he is the one who says he doesn't see what is
16 going on between Mohammed and Siddig when they talk. We
17 suggest that that is when the money was given. Salem wasn't
18 there to testify to what took place.

19 You know Siddig never told Mohammed anything
20 because you know what he told him on the 22nd and you know
21 what he told the brothers on the 19th.

22 Thousands of dollars are given to these fellows.
23 They helped Mohammed a lot, I suggest.

24 Also, Mohammed has them delivering -- there's
25 some air conditioners being moved around. And also I think

1 that there was some motor oil that was being given from one
2 station to the next. I mean, Mohammed would have to be one
3 crazy person, if he is in the middle of a bomb plot, asking
4 his workers to do all of these things. Has receipts made
5 out? No way.

6 Now, we called two witnesses on our case
7 concerning this issue. Valerie called a lot of others, with
8 the agents, but we called two witnesses. They were Ventura
9 Lopez and Rhett Conlan. Ms. Macedonio conducted the
10 examination of those witnesses, and you recall they were
11 called for one important point and that point was an
12 important one. People came into the station to buy diesel
13 fuel in vans, were sold diesel fuel in vans in 55-gallon
14 drums. Rhett Conlan testified about it. Conlan did it some
15 times. Lopez was out at work at the station that did it a
16 few times. I am not sure if they did it, Lopez sold it to
17 Conlan or not, and some suggested there were other people as
18 well. But the point, ladies and gentlemen, is: This kind
19 of activity took place. And if I recall Ventura Lopez's
20 testimony that Ms. Macedonio brought out to you, Lopez
21 didn't even ask Mohammed if it was OK. He just went and did
22 it. It was a routine transaction that could take place in
23 Mohammed's gas station every day of the week. You could
24 pull in with your van, you could keep your 55-gallon drum in
25 the van, you could have an attendant pump the diesel fuel

1 in, and you could take it and use it for a boiler, as Conlan
2 said he did.

3 It happened. We showed it to you. We put the
4 witnesses on the stand. And they didn't get thousands of
5 dollars to show up here; they got a subpoena. They don't
6 know Mohammed. One guy worked for him for a few months.
7 Conlan barely knows the guy. These aren't interested
8 parties. They come in here, they told you the truth, this
9 is what they did. The same thing as Siddig did. No mystery
10 about these transactions whatsoever.

11 Now, let me finish with the MCC tape, the July 5
12 tape, if we can.

13 The government played this tape for you, put the
14 transcript into evidence. It's there. My client called, I
15 think it was Karim, on the phone, and there is no question,
16 he said, can you get rid of the receipts? Absolutely. He
17 did it. But when did he do it? The issue for you, ladies
18 and gentlemen, I suggest, with due respect to the
19 government, is, not what was on Mohammed's mind July 5,
20 after he is sitting in jail for a week. The issue is what
21 was on his mind on June 22 and June 23 when the receipts
22 were made out.

23 Now, I think it is fair to assume, ladies and
24 gentlemen, that when Mohammed made this phone call, he had
25 been informed of the charges against him, and he had been

1 informed that he was involved in some plot with his diesel
2 fuel to make bombs. And I suggest it is reasonable to
3 assume that he is sitting in jail and he is saying that
4 these prosecutors are going to try to use these receipts
5 against him. And he did a dumb thing. He called up -- even
6 though he knew the conversation was being taped -- and he
7 said, "I'll get rid of the receipts." Oh, there is no
8 question that on July 5 that he wasn't happy with these
9 receipts.

10 But that is not the issue after he is arrested
11 and he is sitting in jail. The issue is what was in his
12 mind and did he know what these receipts meant linking him
13 to the so-called plot on the 22nd and 23rd. That's the
14 issue.

15 I do suggest, and I would agree with the
16 government, if they had a phone call before the arrest where
17 Mohammed called Karim Chenane and said, "Get rid of those
18 receipts." That's different. But if a guy is sitting in
19 jail, and he is scared, and anything that is going to link
20 him to this plot, he wants to get rid of. So he did a
21 stupid thing. But that doesn't mean he had guilty knowledge
22 of anything at the time on June 22 and 23. That comes from
23 witnesses and the tapes on those dates that the government
24 doesn't have.

25 That gets me through my first part.

1 Now let's talk about the Federal Bureau of
2 Investigation.

3 Does your Honor want me to continue?

4 THE COURT: Yes. Another 20 minutes.

5 MR. JACOBS: Sure. No problem.

6 OK, folks. There it is. I had to put up
7 Valerie's board, because this is what the United States
8 Department of Justice, United States Attorney's Office, has
9 got to say about the FBI conduct in this case.

10 THE COURT: Mr. Jacobs, speak into the
11 microphone, please.

12 MR. JACOBS: This is what they got to say about
13 the conduct of the agents in this case. Here it is. Right
14 up there.

15 You know, nine months ago I said to you in my
16 opening statement, I said, "You know, ladies and gentlemen,
17 there are two bad agents here that I bet they won't call."
18 And I said to you, "I'll bet you they don't call Anticev and
19 Floyd on their case." I said it in my opening. And I made
20 you a promise then. And I said, if they didn't call him, we
21 would. We tried to keep that promise to you. And you
22 learned a lot about the Federal Bureau of Investigation, the
23 joint terrorist task force, and one member of the New York
24 City Police Department. I always call him an agent, but he
25 really isn't. Louie Louie, one of New York's finest. They

1 must have known who they were sending to the joint terrorist
2 task force because they said, send us one bum, send us one
3 liar, send us one perjurer, send us one person that is ready
4 to cover up. Don't send us some honest cop, not for this
5 case.

6 What does Mr. Fitzgerald have to tell you? He
7 gave you a real dance. He said, the agents are between a
8 rock and a hard place, inexperienced.

9 Well, folks, six people died in the World Trade
10 Center, and it is one terrible tragedy. I will talk about
11 that at the end of the summation. But there is no question
12 when that occurred that terrorism had arrived here in the
13 United States. The FBI, our nation's top law enforcement
14 agency, was in charge of the investigation. Mr. Fitzgerald
15 would like you to believe that the FBI assigned the rookies,
16 the idiots, the dumb agents to work the case. He wants you
17 to believe that the Federal Bureau of Investigation sent out
18 the second team. I submit the agents knew what they were
19 doing at all times. They are not bumbling idiots but
20 perjurers and liars. They are, unfortunately, like some of
21 the people Dr. Whitehurst described.

22 Well, Mr. Fitzgerald says to you folks, don't
23 worry about the agents, we'll deal with them later. Well,
24 tell that to the defendants sitting out here. Tell that to
25 my client who doesn't have his tapes. I suggest they were

1 called, they testified, they swore oaths, they ran this
2 case, and you have the right and you have the obligation and
3 you have the duty to judge what they did and what they said,
4 because it is the heart and soul of this case. You have the
5 right to consider whether agents took the stand and
6 committed perjury. You have the right to consider whether
7 agents submitted false statements to the Federal Bureau of
8 Investigation. You have the right to consider whether Nancy
9 Floyd was telling Salem to get rid of tapes, that they'd
10 never see the light of day. You have the right to consider
11 whether Nancy Floyd was discussing getting rid of tapes.

12 I told you before, and I will tell you again, the
13 time is now. These ten defendants are not interested in
14 what happens to an agent six months from now or a year from
15 now. My client wants the answer to his missing tapes now.
16 He wants a not guilty now.

17 Let's begin with New York City's finest,
18 Detective Louie Napoli. The government called him, and I
19 suggest he was their main law enforcement witness. I say it
20 was a choice between The Three Stooges: Napoli, Anticev,
21 and Floyd. I suggest there is a simple reason why they
22 called Napoli. He hadn't submitted signed statements to the
23 Bureau. Lies and lies were submitted to the Bureau by
24 Anticev and Floyd. We are going to put them up in a few
25 minutes. They will show them to you. Napoli at least

1 looked clean. Let's see how clean he looked.

2 Louie Napoli, he is the fellow that sat in the
3 car for three years and he never talked to his partner about
4 private taping. Come on. Right.

5 He knew what he was going to be asked. Napoli
6 created a phony story. What did he have to say? March 6,
7 under cross-examination, he said the following:

8 "Q Were you aware before June 23 that he,
9 Salem, had made private tapes that he was making?

10 "A No, I was not."

11 So, in other words, in three years, Louie Louie
12 tells you under oath he had no knowledge of private taping.
13 All right? I asked him the same question five months later.
14 I wanted to see if he was going to change his answer on
15 that:

16 "Q. Did he, Salem, during the conversation or
17 any other conversation tell you that he had tapes?

18 "A He never told me that he had tapes."

19 Louie Louie, he don't hear, he don't know, he
20 don't see nothing, he don't remember nothing, he never
21 talked to anybody about anything.

22 Those two answers are lies. They are out-and-out
23 perjury. And it isn't Johnny Jacobs telling you this. It
24 isn't just an argument I am making. Let's see if we can
25 back it up by some of the evidence in the case.

1 Nosair WWT. We have gone over this a lot with
2 Napoli, some of the other people, because it's right there.
3 And you'd have to be blind not to see what it means and what
4 it says. And why this transcript, as much as anything else,
5 just tells you flat out: Louie Napoli is one lying agent --
6 or detective.

7 Napoli: Can you get in touch with Abouhalima?

8 Salem: I can go back to my tapes.

9 No, no, I don't mean by tapes.

10 Now, you know, folks, you can't get it both ways,
11 Detective Napoli. It's there. Louie is asking him, Louie
12 knows about the private taping, and he just took the stand
13 and he lied about it. Now, when I confronted Napoli with
14 this, he gave me the story about the first go-around that
15 there were personal tapes, he called them dictation tapes,
16 and I confronted him again, or somebody confronted him again
17 with this conversation, and -- I think it was Valerie
18 confronted him again with this conversation -- and he now
19 doesn't remember what he said the first quote. And he tells
20 you, folks, months later, oh, yes, that conversation? That
21 was tape from the answering machine with Abouhalima's voice
22 on it.

23 Actually, what Valerie did was, she actually read
24 him from my cross, and I will read you her cross-examination
25 on this point:

1 "Q. When you gave that answer to Mr.
2 Jacobs" -- meaning the dictation -- "didn't Mr. Jacobs
3 approach you with a transcript and show you a transcript
4 of the conversation?

5 "A Probably did.

6 "Q And isn't it a fact, sir, that four months
7 ago you told this jury that what was meant by that
8 conversation was that you were referring to some tape
9 recordings that Mr. Salem made of notes of conversations?

10 "A Correct.

11 "Q. Today you tell the jury that, having
12 reviewed this transcript, it was a reference to an answering
13 machine tape, correct?

14 "Correct."

15 Now, you know, folks, that's a big switch. That
16 is the big switch. And it is one big lie and one big
17 gigantic coverup going on.

18 Can you trust the joint terrorist task force in
19 this case when you get stuff like that? You want to know
20 where Mohammed Saleh's tapes are, that Napoli knew all
21 about? They are gone forever.

22 Box of 120's. Lots of them look like this
23 (indicating), they are all over this courtroom. 120's.
24 Let's see what I had to say about it when I questioned
25 Detective Napoli.

1 "Q. The box of tapes referred to a box of
2 cassette tapes yes or no.

3 "A Yes.

4 "Q Those cassette tapes were being supplied
5 by the Federal Bureau of Investigation? Yes or no.

6 "A Yes.

7 "Q They were being given to Emad Salem to
8 make recordings? Yes or no.

9 "A Yes.

10 "Q With his voice on it? Yes or no.

11 "A Yes.

12 "Q Have you seen any of those tapes?

13 "A No, I have not."

14 "No, I have not." He gives boxes, and there it
15 is right here, the bottom, I am going to get you a box of
16 those tapes. You want 120's, right. I thought that's what
17 I got you. Napoli and Salem. I confronted him with it. He
18 says, yes, I gave him boxes of 120's, it had Salem's voice,
19 but I don't know the tapes.

20 Have you seen any of those tapes?

21 No, I have not.

22 Are my client's conversations on those? Are
23 those the ones we are missing? Did Detective Napoli tell
24 you the truth, folks?

25 Let me give you a third example of Napoli's

1 lying. Nancy Floyd's sworn statement. In a statement she
2 said that she told Napoli his voice was on the tape. After
3 giving Salem a box of tapes and hearing that your voice was
4 recorded on one, Detective Napoli knew there was private
5 taping. He is in the middle of it. But Louie Napoli is out
6 to save his rear end and he is going to go down with the
7 ship, and he is just going to get up here and lie to you
8 folks.

9 Now, why? Why? Isn't that a fair question to
10 ask the joint terrorist task force? Why? Why did Napoli
11 lie to you?

12 Well, in this case you got an answer, and the
13 answer was from Dr. Whitehurst. There is pressure that
14 exists within the FBI, and I suggest that Napoli lied
15 because there was a systematic coverup going on right in
16 front of you.

17 If the defense had not called Floyd and Anticev
18 and Whitehurst and the other agents, you would have never
19 known about the coverup.

20 Detective Napoli. He told you a lot about taping
21 procedures that were employed in this case. I mean, after
22 all, it is a tape case, so says Mr. Khuzami, so says
23 Mr. Khuzami, that you are corroborated by the tapes in this
24 case. He says, you convict these ten defendants because
25 they are corroborated.

1 Question by me of Detective Napoli.

2 "The FBI has no accountability for the number of
3 tapes given to Salem, is that correct?

4 "A Correct.

5 How do you get corroboration with the running
6 tapes you gave the guy? You got no system of numbering, you
7 got no system of accountability, you don't know what you
8 gave him, you don't know what you got back. You screw up
9 the envelopes, you screw up the reels, you screw up the
10 tapes, you give him boxes of 120's, but you are
11 corroborated.

12 Well, you tell that to my client, who is missing
13 his tapes, that he is corroborating.

14 "Q Is there any recorded document that you
15 can point to for this jury for the number of tapes that you
16 gave him?

17 "A No, there is not. The only thing we
18 recorded is when the tapes came back."

19 Yes, they recorded when the tapes came back.
20 They put the good ones in the A&P Ziploc bags (showing).
21 That is how the FBI keeps their tapes. They go to the
22 supermarket for their evidence envelopes.

23 You want some more? I will give you some more
24 with Napoli.

25 "As you sit here, are you aware" -- this is my

1 questioning of him -- "that there were hundreds of
2 conversations that were recorded not at the direction of the
3 FBI?

4 "A Right.

5 "Q As you sit here today, do you have any
6 knowledge as to how many conversations were recorded and not
7 turned over to the FBI?

8 "A. No, I don't."

9 No accountability, no idea how many tapes Salem
10 made. They gave him the green light. I ain't making it up.
11 I played it for you. Nancy Floyd said, do whatever you want
12 to do, tape whatever you want to tape, they're private, they
13 ain't going to be entered into evidence. Can you trust the
14 Federal Bureau of Investigation in this case?

15 We prepared a little tape chart for you in the
16 defense case; I am sorry, I think we offered it when the
17 Detective Napoli was on the stand -- the reels, the
18 envelopes, the missing tapes. That is, they claim, their
19 clean stuff, the CM's. Those CM's aren't clean. They are
20 on-off's. There's no preambles on half of them. Clean?
21 Squished Nagras.

22 What did detective Nagra tell you further? Let's
23 read from the record, 4267.

24 "Q. Do you know if Salem recorded my client,
25 for example, or any other defendants in this case and didn't

1 turn it over to you? Do you know that, sir?

2 "A No, I don't.

3 "Q Do you know if he made a recording and
4 gave it to a foreign government? Would you know that, sir?

5 "A No, I don't.

6 "Q Would you know if he made a recording of
7 my client and threw it in the toilet bowl? Would you know
8 that, sir?

9 "A No, I don't."

10 You see, ladies and gentlemen, they are out of
11 control. Out of control.

12 I mean, it isn't that difficult to think of a way
13 to control, at least try to control Salem. You give him
14 specific tapes, you mark them very specifically, you have
15 agents with him when he is doing telephone calls, you put a
16 tap on his phone. Hey, for a million dollars, would you
17 folks let your phone be tapped? What was the problem? You
18 want to control Emad, control him? Well, he's tried it.

19 THE COURT: Mr. Jacobs, when you come to a
20 convenient break point.

21 MR. JACOBS: This will be fine, your Honor.

22 THE COURT: Ladies and gentlemen, we are going to
23 take a break now. Please leaves your notes and other
24 materials behind. Please don't discuss the case. We will
25 resume in a few minutes. (Recess)

1 (In open court; jury present)

2 THE COURT: Go ahead, Mr. Jacobs.

3 MR. JACOBS: Did Emad Salem turn over all the
4 tapes in this case to the Federal Bureau of Investigation?
5 The answer is obviously no. When you accept this point,
6 that you don't have all the tapes, and you see how he spoke
7 to Mohammed in CM 31, the hop and the corner, the
8 inducement, the entrapment, how can you be certain that he
9 didn't speak that way to Mohammed on other occasions that we
10 don't have the tapes and to the other safe house defendants?
11 We were fortunate to have at least that portion of CM 31.

12 Many of the lawyers confronted Salem with the
13 taping issues, and Salem admitted privately taping the
14 agents, targets, and anybody he could. He had no choice,
15 because we found some of the tapes.

16 After Napoli testified about the dictation tape
17 story back in March, Salem was then called by the
18 government. In order to get the money, Salem had to back up
19 Napoli. So he told you ladies and gentlemen on the first
20 go-round the dictation tape story. He told you in fact that
21 he had made a few dictation tapes. He told you that story
22 even though nobody has ever seen or heard, nor do we have
23 any dictation tapes in this case.

24 What happened is simple. A million dollars buys
25 Emad Salem's testimony. He was going to back up Napoli's

1 lies.

2 After making up the dictation tape story, Salem
3 told you folks that he had hid some of these private tapes
4 in his chair in his bedroom. The question is why? Why was
5 he hiding tapes? Working for the FBI, official
6 investigation, begins in the springtime, first they call it
7 official CM 1, May 7, been working for several months, World
8 Trade Center has gone down, six people are dead -- why is
9 the man keeping tapes? What's his private agenda? What's
10 his reason?

11 Anticev told you why. Salem told Anticev the
12 reason, and he said I want my tapes to blackmail the FBI,
13 the private tapes. They wanted to be his insurance policy.
14 And that's what he said.

15 What did you do with the tapes after you made
16 them, these private tapes?

17 Answer: I put them in my bedroom.

18 Where did you keep them? I put them in the same
19 box, I wrapped them, put them in the chair in my bedroom.

20 What was your intention, that is, what did you
21 intend to do with those tapes?

22 I said to the agents one day you were going to
23 say that I did not tell you, I was not cooperative with you,
24 I will give it to the media. It is like an insurance policy
25 for me.

1 That's what we call blackmail.

2 And he told Anticev that, Anticev knew it, during
3 the investigation. He told Anticev that, he told Napoli
4 that. The agents knew that they had a problem with these
5 private tapes.

6 Right up here, on the board here in front of you
7 this is the famous CNN conversation that Salem has with
8 Anticev. Salem says I can go through my tapes, in orange,
9 the tapes I packed them and all and I threw them away.

10 That is Emad Salem telling you that some of the
11 tapes were packed, some are thrown away. They are going to
12 be sold to CNN.

13 The FBI knew this. The FBI was scared. The FBI
14 had to lie, and the FBI had to cover up.

15 One would think that if you were an agent of the
16 Federal Bureau of Investigation and your informant came to
17 you and talked this way, you wouldn't have him working for
18 you ever, because you could never trust him. But that's not
19 what happened here in this case. He got rewarded for this
20 kind of nonsense.

21 I ask you, who ran this case? Salem or the FBI?
22 But that's not the only time he blackmailed the FBI. He
23 told Louie Napoli he would release tapes to the press in
24 which they would learn that the FBI had built the bomb that
25 exploded in the World Trade Center. He told Napoli there

1 would be surprises. What surprises did he have in store for
2 Louie Napoli? What did he have to say about this
3 conversation? Salem told you folks.

4 Question, 6321: Were you threatening him, Louie
5 Napoli, weren't you?

6 I was trying to defend myself, sir.

7 Question: Does that mean yes you were
8 threatening him?

9 Answer: Probably yes.

10 What were you going to do with it? Is that where
11 you were going to go public?

12 Yes, sir.

13 And you were going to expose?

14 I will expose them, yes, sir.

15 Emad Salem's blackmail explains the motivation of
16 the agents. Once the agents realized Salem had been taping
17 them, panic had set in to the Joint Terrorist Task Force and
18 they did everything they could to keep Salem happy. I
19 suggest that Anticev and Napoli knew all about the taping of
20 the targets, they knew all about the taping of the agents
21 but they also knew that Salem could blow the case out of the
22 water by releasing the tapes to the media. How do you know
23 what is on these tapes? Listen to what Emad told you, how
24 he works.

25 Question: Did you try to get the agents to say

1 certain things to protect yourself?

2 Answer: Yes, sir.

3 Question: You tried to get the defendants to say
4 certain things.

5 Answer: I am sorry.

6 Question: You tried to get some of the
7 defendants in this case to say certain things, correct?

8 Answer: That what this were doing, yes, sir.

9 Question: You tried to steer conversation with
10 the agents in certain areas, correct, sir?

11 Answer: Yes, sir.

12 Steering conversations, cornering people, that's
13 what you get, that's what you don't get.

14 He always was trying to get people to say things.
15 Mohammed is a member of Hamas. I don't know, I don't know,
16 I don't know, I don't know. Mohammed has agreed. No, he
17 hasn't, no, he hasn't. Mohammed knows the details, no, he
18 doesn't, no, he doesn't, no, he doesn't. Emad is constantly
19 trying to get people to say things, for example, against my
20 client, and fortunately for him they are on the tapes, they
21 all come back no.

22 The problem is that Salem wasn't playing games
23 here. He was looking for money and he was looking to hurt
24 people. I don't mean physically hurt people; looking to set
25 people up for crimes. He was looking to set my client up

1 for a crime. That's what he was there to do, bring bodies.
2 Siddig Ali, he tells, bring Mohammed to the safe house.
3 Siddig Ali says no.

4 It is classic entrapment. You will hear about
5 it. Back to the tapes again. Who decided when to tape?
6 Who decided who to tape? Who decided when to turn it on?
7 Who decided when to turn it off? All Salem. No
8 supervision, out of control, no accountability. He told you
9 the way he operated, under oath. 7330.

10 Question: So you, on your own, made tapes with
11 the targets, erased some of them, and didn't tell the FBI
12 that you were doing it?

13 Answer: Yes, sir.

14 Tapes of the targets that he erased. Which
15 targets? Do you want to pick out a defendant? Sheik?
16 Rashid? Who do you want to pick out? You know he did it
17 with my client. Made tapes with the targets, erased, and
18 didn't tell the FBI.

19 Corroboration? How can you have corroboration
20 with an answer like that in this case? How can you rely on
21 the tapes in this case when you have an answer like that
22 under oath? It's not my theory, it's not me making up some
23 argument. The government was candid enough, and I respect
24 them enough, and honest enough to tell you in their opening
25 you can't believe Salem alone. I give them credit for that

1 argument. It makes sense. They had met the man before. So
2 they tell you, you will see corroboration. Made tapes of
3 the targets, erased some of them and didn't tell the FBI.
4 You can't have it both ways. Not here, not now.

5 There may come a day after we are all out of this
6 place, whatever the verdict is, some day you folks will be
7 in a book store, and you'll go into the book store, Barnes &
8 Noble, Brentano's, and you'll see a book: My Life with the
9 FBI, by Emad Salem. You'll open the book up, you'll see the
10 famous photographs that were missing in this case that I
11 will talk about, you will hear all about the missing tapes,
12 you will hear about the insurance policy he tells you about
13 he is could go doing, keeping the tapes for himself. You
14 will see them some day. He said he had an insurance policy?
15 More money, more money for the book.

16 June 24, 1993, after the arrests is a very
17 important day in this case, because the Joint Terrorist Task
18 Force in their wisdom, knowing that this bum has made all
19 these tapes and has all these private tapes and he knows the
20 agents are on tape, you know what these brilliant fellows
21 do? They send Emad back to his apartment to let him rummage
22 around on June 24. These agents know his visions of
23 blackmail, misconduct, sex, money, but they send him back to
24 his own apartment. We unfortunately know from
25 Dr. Whitehurst that there are some agents, unfortunately,

1 that don't give a damn about how they convict people. They
2 don't care about how they gather evidence. They don't care
3 if they trick juries.

4 So the FBI says, or somebody says in the FBI,
5 let's send Emad back to pick up his belongings, on the 24th.
6 Could you imagine Emad's reaction, I'm getting to go back to
7 my apartment, and guess what I'm going to do. I'm going to
8 pack my chair with the tapes I want to give the Bureau, and
9 I am going to move around in the apartment some other tapes,
10 and maybe I will take a few with me for insurance.

11 We heard from the agent who was with him, they
12 weren't searching him, they weren't supervising him in the
13 apartment -- I think that was Ronayne who testified. He
14 says he brings him there the 24th, he is packing stuff,
15 moving around the apartment, nobody is searching him,
16 packing up that chair with the ones he wants to give, moving
17 around some other tapes, getting ready to call Nancy to pick
18 up the good ones, things like that, making sure everything
19 is set. Nobody searched him.

20 Then problems start appearing, because, you know,
21 when you try to do a coverup, folks, sometimes it doesn't
22 work, because some people aren't part of the coverup and
23 some people don't know what's going on. And when you try to
24 cover up things, sometimes it doesn't break the way you just
25 like, and it didn't break the way Emad and Nancy and some

1 other people wanted it to do when somebody by the name of
2 Roth got in the middle of thing on June 29.

3 Here is the consent, I think it is Khallafalla D.
4 This one doesn't have the defense sticker but it is
5 Khallafalla D. Salem signs this consent form on June 29,
6 and obviously the critical point is, he and Nancy have their
7 little side deal cooking, and that's why obviously he wants
8 only Nancy to go to the apartment to retrieve the tape
9 recordings.

10 I am not suggesting that the coverup is 200
11 agents in the FBI. You only need a few people. Obviously
12 Nancy is one of them. They have their little coverup going
13 on in the tapes but you can't get everybody involved and
14 there are obviously some supervisors who haven't a clue
15 what's going on and they are lied to, and we will discuss
16 them in a few minutes, Crouthamel and Dunbar. Emad is
17 saying only Nancy can go to the place to pick up and
18 retrieve tapes.

19 But you know what happens, Emad, he's clever,
20 he's greedy, but he gets tripped up sometimes in his own
21 thinking. He forgets what he said one month to the next.
22 You know, when you're making up so many stories, he gets a
23 little twisted. Listen to what he says on
24 cross-examination, I think by me, concerning the events of
25 the 29th.

1 Question: What was in your house that you
2 authorized in that document?

3 This is the consent.

4 I authorized them to go to my house to take the
5 tapes.

6 Question: Were there other places there were
7 tapes?

8 Answer: Yes.

9 Question: Did you tell them about that on June
10 29?

11 Answer: No, I did not.

12 So what he is saying is, he is withholding from
13 the Bureau his insurance policy. He didn't give them all
14 the tapes on the 29th. He knew he wasn't giving them all
15 the tapes on the 29th. He and his friend Miss Floyd had
16 cooked up this little scenario, and they had put away in the
17 little chair the tapes that they wanted to give, and Emad
18 tells you, I didn't tell the Bureau about all the tapes.
19 Were there other places? Nancy, yes. Did you tell them
20 that on the 29th? No, I did not.

21 You know what's in this bag, Khallafalla C. He
22 didn't give that on the 29th. He held this over Nancy's
23 head as long as he could. He knew that this buried her
24 career in the Bureau. He knew she was finished when this
25 got played in the public courtroom. He held it over her.

1 He used her. He extorted her. And then when he was
2 finished and he got his million, he buried her with it.
3 That's what this case is all about.

4 Why hold back the tapes? Money, power,
5 insurance, blackmail. He knew he had this sitting here, her
6 telling him to do illegal taping, and he held it and he held
7 it and he held it.

8 Then he gives you folks the old dance. Kept
9 finding tapes during the year as he moved from place to
10 place. I got another Gabrowny tape I find next month, I got
11 another Gabrowny tape I find the next month I got another
12 Gabrowny tape I find the next month. This poor guy is
13 sitting in jail, he keeps finding Gabrowny tapes. Think
14 he's got some more? I don't know. Think he has Mohammed
15 tapes of the 10th, the 12th, the 13th, sitting some other
16 place? Are we going to read about it in the book? July 15,
17 October 15, November 1, keeps finding tapes. Are they in
18 Egypt? Safety deposit box? Does Nancy have a few?
19 Anticev's car? Napoli's locker? The city dump? His book
20 editor?

21 Let's talk about Miss Floyd. We called her. She
22 and reasonable doubt go hand in hand in this case.
23 Everything that we argued concerning government misconduct
24 can be seen in her actions. When questioned about
25 Khallafalla C, she lied. When questioned about the search

1 on June 29, 1993, she lied. When questioned about her
2 relationship with Emad Salem, she lied.

3 Was she evasive? Was she misleading? She spent
4 a lot of time with Emad and he taught her well.

5 I am not proud to say it, but Special Agent Nancy
6 Floyd is a disgrace to the Federal Bureau of Investigation.
7 My discussion of her can be broken up into three parts: her
8 sworn statements, Khallafalla C, and her relationship with
9 Emad Salem.

10 I am going to put up on the easel the two
11 exhibits that are in evidence, 35148B and 35148D. These are
12 portions of her signed sworn statements she gave the Bureau.
13 One is December 1, '94, the other is January 6, '95. They
14 are in your books, folks, so I assume when you deliberate
15 you will have them available to see.

16 What these are, ladies and gentlemen, are
17 basically lies, with a little interesting truth stuck in.
18 Let's go over the lies first. Let's go over the lies first.

19 Told Emad to stop taping in '91. Lie. Napoli
20 told him to discontinue taping. Lie. Emad had told her
21 previously that he had not previously advised her to
22 continue to tape. Lie. I told Emad to stop taping
23 conversations. Lie. I thought Emad was not serious about
24 taping. Lie. At no time did I ever hear taped
25 conversations. Lie. Or see tapes. Lie. Did not know the

1 tapes of the World Trade Center people, the subjects, the
2 targets. Lie.

3 All lies, when the FBI conducted an internal
4 investigation and she was sworn under oath by FBI agents who
5 were investigating her conduct.

6 First of all, how do you know she is lying about
7 the whole taping situation? You look at Khallafalla C. She
8 says it. She is the one encouraging all the taping. It's
9 all these purple statements are a bunch of baloney she is
10 telling the Bureau. She obviously has to cover up her
11 actions.

12 She told you in Khallafalla C why she needed
13 these private tapes. The FBI wanted to identify voices.
14 The FBI wanted to do wiretaps, submitted to a federal judge
15 using illegal tapes.

16 All these conversations about don't tape, don't
17 tape, don't tape, there is no conversation like that on any
18 of the bootlegs.

19 How could she become aware in January '93 for the
20 first time that he is back taping and not previously advised
21 me that he was continuing to tape when Khallafalla C was
22 made in the summer of '92, she says in '93 when she talked
23 about the Napoli tape. She is full of baloney here. Just
24 lying to the Bureau.

25 Then what happens is, first statements about

1 this, look at her January 6 thing. Her January 6 statement
2 concerns what she told Dunbar on the 29th of June. I told
3 Dunbar I had no knowledge the source was taping
4 conversations. In fact I had instructed him repeatedly not
5 to tape conversations. Yeah? You told Dunbar that, huh?
6 Dunbar says you're lying, lady. Dunbar flat out called his
7 own agent a liar -- I mean, he didn't say, Mr. Jacobs, this
8 lady is lying. What he said was, I never had such a
9 conversation with her. She never said that to me before on
10 June 29. No way it ever happened.

11 And then when you confront Nancy with these
12 boards and the exact words -- and I tried to do that with
13 her. I tried to say to her, let me tell you, did you say
14 these words? And she kept saying answers like -- when I
15 asked her about the Dunbar thing, she said those were not my
16 words, no. What that answer is is not answering the
17 question. She is not going to admit on the stand she lied
18 to the FBI and she doesn't want to answer the question
19 truthfully. She says those are not my words. In other
20 words, there is some agent, Craig and Delgrasso, they had a
21 gun to her head and they forced her to sign it.

22 Come on, folks. She didn't know what she was
23 signing? Is that what the government's argument is? That
24 their own agents don't read what they sign? They don't look
25 at it? They sign statements they know are false?

1 If that's what the United States Attorney's
2 Office wants to argue to you, fine. Their own agents don't
3 read and don't know what they are signing?

4 One would assume that Nancy knew that this was a
5 serious investigation of her conduct.

6 I think it was Judge Mukasey who actually asked
7 Dunbar the question concerning the January 6 statement,
8 whether Nancy had ever said these things to him. He was
9 rephrasing a question that Miss Amsterdam had been asking
10 and the judge said, by Judge Mukasey:

11 Miss Amsterdam wants to know whether before the
12 search Nancy Floyd ever said to you in words or substance,
13 quote, I didn't know anything about Salem having private
14 tapes.

15 Answer by Dunbar under oath: I don't recall
16 that.

17 That's polite for saying the lady's a liar.

18 You see what then happens is, when she is called
19 to the witness stand you get the lies and you get the
20 coverup.

21 How about this answer from an FBI agent
22 concerning these responses in here: They were only
23 partially accurate now but they were completely accurate
24 when I made them.

25 That was an answer about one of the lines in

1 here. Listen to this again. They were only partially
2 accurate now but they were completely accurate when I made
3 them.

4 You know what that means? I don't have a clue.
5 That's called gibberish. That's called confusing the jury.
6 She is just dancing up and down the aisles on that one. Her
7 attitude was, I'm going down with the ship and I ain't
8 admitting nothing about private taping. She did it, Napoli
9 did it, and Anticev would have done it except that he is on
10 tape, as we know, all about his little story. And then even
11 Anticev got into the act and made another false statement
12 about it as well, as we will get into.

13 But there is one interesting point, about how
14 coverups get messed up and how you are not operating on the
15 same table, and that's this. Nancy says in her first
16 statement, December 1, that in January '93 Emad tells her
17 that he taped a call with Louie. She says, I tell Louie of
18 my conversation with Emad and Louie seemed unconcerned. Not
19 only did she tell Detective Napoli about private taping,
20 that he was on tape, but that Napoli had a reaction, she
21 remembered the reaction and told it to the Bureau.

22 You see, folks, she makes this statement months
23 before Napoli shows up on the witness stand. Now we got a
24 problem. Nancy realizes that she has made this statement
25 about Louie and his knowing, and she knows that Louie has

1 told you folks that he knows nothing about it. So what does
2 good old Special Agent Nancy Floyd of the FBI do? She
3 changes her story. She says to you folks, I made a mistake.
4 I never told Louie Napoli, I told Anticev. Because she
5 knows Napoli has lied to you folks and now she is going to
6 cover up for Detective Napoli. And that's exactly what took
7 place.

8 You look at the dates, December 1, January 6.
9 You look at the date Detective Napoli testified, March of
10 '95, you look when she came on in the summer of '95, and now
11 she is backing up Louie, that she never told Louie. I
12 suggest she told Louie and she knew if she took the stand
13 and said Louie Napoli knew all about it, I told him about
14 the tape, he was unconcerned, that Louie Napoli would be
15 caught in perjury before you folks. So she, continuing the
16 FBI coverup in this case, got on the stand and lied for
17 Louie.

18 The coverup gets deeper and it gets deeper and it
19 gets deeper.

20 She said -- and let me read it to you. When I
21 asked her about if it was both Napoli and Anticev, she
22 said -- both of them told you to discontinue taping?

23 Oh, no, the statement should read Anticev told
24 him that he should not be part of any taped conversations.

25 So the statement is not correct?

1 Answer: Part of it is.

2 What does that mean, part of this statement under
3 oath is correct? She was protecting Louie Napoli when she
4 testified. She was in error, that Napoli seemed
5 unconcerned, that Napoli said to discontinue taping because
6 he knew all about it? Napoli knew all about it. She lied
7 on the stand, he lied on the stand, and they both are in a
8 coverup. It's not just Johnny Jacobs saying it.
9 Khallafalla C and it's Dunbar saying it. When she found out
10 that Napoli needed help, she gave it to him. She was
11 protecting Louie Napoli, protecting the misconduct of the
12 Joint Terrorist Task Force.

13 And it was all done, folks, for your benefit.
14 All for your benefit, a systematic coverup by Anticev, Floyd
15 and Napoli, to convict my client and the other defendants.
16 All done for your benefit. Can you trust the FBI? Can you
17 trust this investigation?

18 Khallafalla C is a smoking gun. It is reasonable
19 doubt. It is a gun pointed pointblank at the Joint
20 Terrorist Task Force. It tells you that this case has no
21 corroboration. Play it again. I played the famous portion
22 before when I started this summation, I may play it to you
23 again at the end. They wanted, the FBI wanted illegal
24 taping done to identify voices, and they got it, and they
25 gave him permission to destroy tapes.

1 Now, Floyd, she got on the stand, folks, and --
2 because Khallafalla C refers to Crouthamel, and she says to
3 you ladies and gentlemen Crouthamel wanted me to do it.
4 Crouthamel, my supervisor, wanted to know if there were
5 tapes. It's all Crouthamel. Crouthamel told me to speak to
6 Salem. Crouthamel, my new supervisor, wanted the tapes.
7 Crouthamel, Crouthamel, Crouthamel. Except one thing.
8 Guess who called Special Supervisory Agent John Crouthamel?
9 Mrs. Amsterdam and me. And guess what he has to say?
10 Lady's a liar, the lady is a liar.

11 Want to hear it? Let's hear what Crouthamel had
12 to say.

13 Did you ever have a conversation with Floyd
14 before June 23 where she indicated that Salem had in his
15 possession the tapes?

16 Answer: No.

17 Did you ever have such a conversation with Floyd
18 where she told you or did you ask for the tapes?

19 Answer: No.

20 You never have? I am sorry.

21 Answer: No.

22 He is saying she is a liar.

23 Did you ever ask Floyd whether Salem has private
24 tapes or any tapes?

25 Answer: No.

1 Did you ever direct Floyd that Salem had
2 permission to make private tapes? Did you ever do that
3 that?

4 No.

5 Then I went on in my cross-examination of
6 Crouthamel to ask him every question under the sun about
7 private tapes, and he doesn't have a clue about private
8 tapes or any conversation with this lady about it.

9 Did you ever tell Floyd to get the private tapes
10 for a wiretap?

11 No.

12 Did she ever tell you that she was throwing away
13 tapes?

14 No.

15 It's all there, couple pages of examination.

16 Did you ask for the tapes before June 23?

17 Answer: No.

18 Nancy Floyd is a liar, and it ain't me telling
19 you that. It's her own supervisor.

20 By the way, I am not here to ever suggest that
21 the United States Attorney's Office participated in this
22 coverup, but I do say Mr. Fitzgerald stood by his agents.
23 And he said to you in his summation that Floyd was just
24 trying to get the private tapes. I don't think that is
25 correct. I don't think Khallafalla C says it, I don't think

1 it is supported by anything in this case. But I don't blame
2 Mr. Fitzgerald. He stuck with Khallafalla C and he is doing
3 his best to dance around it, even though it says what it
4 says, clear as can be. He is a prosecutor, he is trying to
5 do his job, make the best of what he's got, and he got dealt
6 a bad hand with Khallafalla C, folks. It's a smoking gun.

7 But he backed her up, and there comes a time when
8 you got to call a lie a lie. And there comes a time when
9 you got to stand before you folks and say our agents are not
10 truthful. Our agents are liars. Haven't seen it yet in
11 this case. No obligation on the government to do that.

12 Let me mention Agent Voss. I don't know if he is
13 here or not today -- whatever. Back there.

14 Agent Voss is the agent who goes to the A & P to
15 get his ziplock bag for Khallafalla C. He gets it on April
16 26, 1994, at 6:35 p.m. Got a custody sheet here -- it's in
17 evidence, 35160E. Says he got it 4/26/94, 6:35 p.m.
18 Released custody May 4, '94.

19 If you folks recall Agent Voss's testimony, he is
20 the fellow that told you that he came back from wherever
21 Salem was and for a period of about four or five days he put
22 this tape between April 30 and May 4 in the FBI safe. But
23 he didn't put it on the piece of paper. See, he went home
24 at night. He still had custody of the tape even though it
25 was in the safe. And of course, who has access to the tape?

1 Floyd, Anticev, Napoli, all the other agents. But see,
2 Agent Voss, he tells you he had custody of it at all times.
3 Now, I don't know where Agent Voss lives but when he went
4 home at night during those five nights, even though the
5 sheet doesn't say that, for all we know it was in his house,
6 and we know it's got 22 erasures on it. But we can rely on
7 the FBI because it says here he released custody on May 4.
8 He said he put it in the safe on the 30th. Doesn't say it
9 here. Trust the FBI, folks, no problem. Trust them.

10 June 29 at Emad's apartment, all hell breaks
11 loose. We know from the search that it was supposed to be
12 to retrieve some tapes. Why was Nancy Floyd the only person
13 allowed to go in and get these tapes? Only Floyd can go,
14 according to Emad and Floyd. She is the only one who can be
15 trusted with the tapes. There is 50 people in the Bureau.
16 Everybody in the Bureau ain't listening to Floyd and Anticev
17 and Napoli. They say we are going to get legal advice to go
18 along, and they ain't part of the coverup and they ain't
19 part of the lying.

20 Nancy Floyd's testimony about the events of June
21 29 are all lies. Not from me. Roth, Harris, all the other
22 people that authorized the search, everybody is calling her
23 a liar. And of course, we get if Dunbar again, definitely
24 calling her a liar on this one.

25 Let's hear what she had to say about Dunbar.

1 I was told by Mr. Dunbar to only do what
2 Mr. Salem had instructed me to do, and that was for me to
3 retrieve the tapes that were in the chair in his bedroom.
4 The problem in my mind was that Mr. Salem had told me that I
5 could only obtain those tapes in that certain location and I
6 was told by Mr. Dunbar to assure Mr. Salem that that is only
7 what could be taken from the apartment, in that particular
8 location, that nothing else could be taken, and nothing
9 else.

10 Dunbar Roth and Harris all contradict that. They
11 say the search is not limited to the chair. But, so you
12 don't think I am making it up, here is Dunbar under oath,
13 calling her a liar.

14 Question: Did you tell her that she was
15 specifically restricted from to taking tapes that were in
16 the chair in Mr. Salem's bedroom?

17 Answer: No.

18 Carson Dunbar took the stand and said this lady
19 is a liar again. I don't mean Dunbar got up and said it
20 like that, but that's what no means and that's what I am
21 arguing.

22 Did you tell the Agent Floyd to agree to do
23 anything to make Salem happy?

24 No.

25 Did you instruct her not to to take photographs?

1 No.

2 Did you instruct her not to take bomb components?

3 No.

4 Did you instruct her not to take faxes?

5 No.

6 She says Dunbar told me only the tapes. Dunbar
7 says, I never said that.

8 Crouthamel, the error, they both said no
9 restrictions on the search. But Nancy had her agenda.
10 Whether she was getting blackmailed or not, she was going to
11 do what she had to do, protect her case, protect her career.
12 We don't know what tapes were taken from the chair because
13 Roth, Harris, everybody was taking the tapes, put them
14 together on a table, mix them all up.

15 And when Roth started to expand the search, all
16 hell must have broken loose that day. Nancy must have been
17 in a state of panic as Roth went through that house pulling
18 out tapes. She had spent three years scheming with Emad and
19 she didn't want you know what to show up.

20 Roth told you about it, how he was authorized to
21 take the tapes, the faxes, this nonexplosive stuff. He told
22 you Nancy was out of his sight, she wasn't searched. He
23 says he saw three answering machines on the floor, retrieved
24 the tapes. Do you know if he had those tapes, those
25 answering machine tapes? No way of knowing. Show you that

1 in a minute.

2 What the Bureau did that day was great. They go
3 back to Emad's place and they let him go into a private room
4 with some interpreter -- I don't know why they need an
5 interpreter -- and they give him the tapes to listen to. He
6 must have been laughing at that point. He's got all the
7 tapes in a room and he is listening to them. Sure, that's
8 when we got half of them back with some agent conversations.
9 He put half them back, put them somewhere, who knows what.

10 And we know from Roth that Nancy is right in the
11 middle of this problem, because her actions seem so
12 inappropriate for an agent of the FBI. Salem is threatening
13 to quit, Salem is threatening to sue the Bureau, and what
14 does Nancy do? She stands by her man Emad. She is
15 screaming, she is threatening Roth. She is complaining she
16 has lost Emad's friendship. Friendship? I thought we had a
17 professional relationship here. It must have been something
18 that day in Emad's apartment. And he wasn't protecting a
19 few photographs, that's for sure.

20 (Continued on next page)

21

22

23

24

25

1 Nancy Floyd knew, when the tapes were being
2 grabbed, and Emad knew that there were big problems. Roth
3 spoiled the plan. Emad did the best he could do to fool
4 around with the tapes that day, and then here's what happens
5 that is most interesting. You know, Roth must have felt
6 that there was something going on, and he didn't like it,
7 because he says, no way in hell am I giving this guy back
8 these tapes. We will go make copies. I am not giving him
9 back these tapes. And he got overruled. And they were
10 given back to him. 17 or 18 tapes.

11 He didn't like it. It wasn't his idea. Emad
12 insisted no way you duplicate those tapes. I guess he was
13 afraid that if a little light music was duplicated, you
14 would have lost that feeling of meditation. Come on, folks.
15 He didn't want it duplicated because he didn't want these
16 tapes to ever see the light of day.

17 Now, there is a single tape returned by Veyera on
18 July 7. It doesn't have Roth's initials. And 17 tapes are
19 returned by Anticev on July 15. Three of those don't have
20 Roth's initials.

21 Folks, I suggest very simply that Emad switched
22 some of the tapes.

23 Roth knew not to let him have it, Roth knew that
24 they should have been duplicated, and he is the head legal
25 man. Somebody wanted Emad to have those tapes, and he got

1 his way. He stamped his foot. Somebody wanted this case to
2 continue.

3 So we get 652 and 653 and 663, I think they are
4 in evidence, and you heard the light music tape and it
5 doesn't have Roth's initials. And Emad had to get in the
6 last zinger, so he tells Roth and Harris, you think you're
7 so smart? You don't get everything. This is their own
8 informant telling the legal people that they don't get
9 everything.

10 Who is running this case? Who is part of the
11 coverup? You pay the guy a million bucks and he tells you
12 he is not giving you everything? You could trust the FBI,
13 you could trust Salem, he is corroborated. You got light
14 music given back to the Bureau.

15 Well, I suggest that the Bureau knew that there
16 was a big problem between Nancy and Emad. And, to the
17 credit of the FBI -- I may not have given them much credit
18 credit today -- they took some steps to end the
19 relationship. Dunbar told you under oath: You're through,
20 Nancy, with this guy. No more contact. You are not to
21 speak to this guy, you are not to talk to him, you are to
22 report in every time it happens. We don't trust you, lady,
23 and your history with this guy.

24 But you heard Dunbar. It didn't stop Nancy. She
25 kept having contacts September, October, November, December,

1 and January. Contact with Emad in violation of direct
2 orders of the FBI. Somebody smelled something was rotten
3 and they wanted to end it, and she wouldn't end it. She
4 violated their orders, she continued to have contact, and
5 she didn't report it.

6 Coverup? Get the truth in this case? Reasonable
7 doubt?

8 Then Nancy goes on the attack. She makes
9 allegations against the Bureau: harassment. Crouthamel
10 calls her a bitch, she claims. She's got a pending
11 investigation against her. Now we have everybody pointing
12 the fingers against each other.

13 A great case, fellows, great case.

14 Nancy and Emad, professional relationship. They
15 exchanged gifts, they visit each other's homes, they wine
16 and dine together. They buy bathing suits. They speak to
17 each other when they are told not to. Great. Professional.
18 Sex. Money. Love. Blackmail. I can't really give you the
19 answer as to what exactly Nancy Floyd was up to. But, boy,
20 it stinks. It's rotten to the core. Something is going on
21 between the two of them, and it is so rotten it's hard to
22 describe.

23 FBI supervisors, in writing, had to call this
24 lady and direct her to have no contact with an informant.
25 You could imagine what the Bureau must have been going

1 through to do something like that. And this lady was either
2 so brazen or desperate or whatever that she didn't give a
3 damn what the FBI told her to do.

4 You can trust the FBI.

5 You know, Emad told you, and she said it too,
6 Emad was going to do this the Middle Eastern way. He didn't
7 care about the American Constitution, and I suggest she
8 didn't either.

9 Now let's talk about John Anticev. Well, we know
10 Anticev, to start off with, from Nosair WWT, which we will
11 put up in a minute. He is part of this Abouhalima
12 conversation, and discussing the targets, and Napoli's
13 involvement in the conversation, but he doesn't know
14 anything. Anticev told you he never talked to Louie Napoli
15 about private taping. Lies, coverups. They sit in a car
16 for three years together. It must have been some strange
17 conversations in the car for three years. But we get it.

18 You get my famous -- the gadget conversation.
19 Not official me talking. Same as Nancy. Turn on the
20 gadgets. It won't be entered into evidence.

21 You got Floyd saying you will make tapes not into
22 evidence. You got Anticev saying you got tapes not into
23 evidence. And you got Louie Napoli, he don't know anything
24 about tapes, but he is on the tapes saying he does.

25 Anticev got caught in this conversation. He

1 claims he was talking about safety. If he is so concerned,
2 why didn't he get official approval?

3 That is one step up from Napoli. He doesn't even
4 know anything about it.

5 Anticev? By the way, Anticev, his record is not
6 so spotless either. You see, he has had another FBI inquiry
7 before this where he was admonished and disciplined for
8 submitting a false statement about witnessing money being
9 given to an informant. Not the first time he has had some
10 problems with the Bureau. He's got some problems with the
11 Bureau now, and you will see in a few seconds he makes a
12 false statement to the Bureau. Breaking the rules is not
13 much for John Anticev.

14 And, of course, you have my examination of him.
15 I think it is the last question on redirect. We called him
16 as a witness. And this sort of sums up Anticev.

17 "Did you intentionally conceal the tapes up to
18 June 28? Yes or no. Did you conceal the existence of the
19 tapes?

20 "A Yes."

21 Here is an FBI agent who is telling you he is
22 concealing evidence. Can you trust the FBI?

23 We made allegations in our opening statement
24 about concealing evidence. We try to back it up. There is
25 the smoking gun, ladies and gentlemen. It is right up there

1 in front of you.

2 Now, Mr. Fitzgerald in his statement tries to
3 downplay this. He says maybe he is not too experienced, and
4 so what.

5 You know what, folks? You see, El-Gabrownny was
6 in jail from March, March '93 -- March, April, May, June.
7 Do you know what Anticev is doing? He was concealing the
8 tapes. A man is sitting in jail and the FBI is concealing
9 tapes. Great.

10 Well, I talked to you about the initials and Roth
11 and the switch.

12 I have mentioned the word "coverup" a lot, and
13 what I mean by "coverup" is that when law enforcement
14 agents, after the charges are brought, take actions, like
15 make false statements to conceal their conduct, that is a
16 coverup. Now, here is your coverup, under oath by Anticev.
17 35143B in evidence, Anticev's statement under oath.
18 November 23, '94. "I was not aware that he recorded a
19 conversation with Louie Napoli since I wasn't aware that
20 source had taped any conversations." I wasn't aware that
21 source had taped any conversations.

22 Well, look what he says here. Under oath he
23 admits that he was concealing the existence of them. Look
24 at the July 6 statement under oath. Look what he told the
25 Bureau back in November. He lied to the Bureau, under oath.

1 This isn't some minor point, folks. This isn't
2 some collateral issue. This is the heart and soul of the
3 government case, the tapes in this case. This is not some
4 surveillance that is collateral. This is not some training
5 years ago. This is the meat and the potatoes of this case,
6 the tapes in this case. And you got him telling you he is
7 concealing it and then you got him telling you he lies to
8 the Bureau.

9 Oh, Anticev tried to wangle out of this. He gave
10 you the Nancy Floyd dance. Someone else had prepared the
11 statement, he just signed it.

12 You know what, folks? They tried to trick you,
13 they tried to insult your intelligence. Anticev's statement
14 to the Bureau was a lie then and it is a lie now.

15 But he gave you another one of the FBI tricks
16 that Whitehurst told you about. That was: Confuse the
17 jury. Here is what he says: "The statement does not
18 reflect what my intention was when I signed it." That
19 sounded like Floyd's answer. "The statement does not
20 reflect what my intention was when I signed it." That is
21 another gibberish answer. That is what the agents must be
22 taught down in Washington. Fool the juries, confuse the
23 juries, trick the juries.

24 Well, it may go to support the dumb agent theory.

25 Valerie has gone over the cleansing the evidence

1 with you. You heard him say it on the tape: Cleanse the
2 evidence. That is the mentality of the Bureau. Anticev,
3 Floyd, and Napoli. You are missing Mohammed's tapes. You
4 are missing, what is it, CM17. Switch Nagras.

5 I got to talk -- I got a few minutes -- I got to
6 talk about Zaba and Vernazza, the New Jersey crew. Now, it
7 really isn't that important, but I got to just zing them a
8 bit. Zaba and Vernazza are the two agents looking, in this
9 room looking at the property and the Nagra goes off and they
10 are recorded when they aren't aware of it. That is the
11 recording with a lot of curses, and somebody says, "Whose
12 shit is this?" And they are arguing back and forth. These
13 are two fellows that never met each other. And do you know
14 what they are talking about? Emad stealing a hundred
15 thousand dollars.

16 Now, I am not suggesting that they had the
17 hundred thousand dollars in front of them. But, boy, that
18 is a strange conversation to be having about your informant
19 and you don't know the other agent. Or did somebody clue
20 these two guys in what they were dealing with?

21 And Zaba and Vernazza, the right hand doesn't
22 know what the left hand is doing, and to that extent, Mr.
23 Fitzgerald, I agree with you, with these two guys they
24 didn't know what they were. Zaba didn't understand what
25 Vernazza was saying, Vernazza didn't understand what Zaba

1 was saying, they couldn't translate each other's
2 conversations.

3 But they did have something interesting to say.
4 They give you the FBI mentality, which is: I am not going
5 to look at the address book, I am not going to look at the
6 wallet, and I am sure not going to take the film out of the
7 camera. Because, God forbid, if it is something that can
8 help the defendant, I just don't want to see it. We will
9 just give it back to Salem. You know, folks, you will see
10 the pictures. About a year from now, go into Barnes &
11 Nobles, you buy Salem's book, and you will see the pictures.
12 There will be lots of safe house pictures, I promise,
13 everybody in this case. You will buy the book, you will see
14 them.

15 Whitehurst. I told you he sort of gives you what
16 this case is all about, the pressure, the biased reports,
17 the data, the deceiving the juries. He worked on this case.
18 The World Trade Center is part of this case, the last time I
19 saw the overt act, and we will talk about that in a few
20 minutes.

21 But, you know about Whitehurst? He said, you are
22 going to have to fire me because I am not going to lie in a
23 courtroom.

24 Well, you know what, folks? That didn't happen
25 with Floyd and Anticev and Napoli. You just have to fire

1 me. I am not going to lie in a court of law. Not too many
2 Fred Whitehursts around in this case.

3 Ms. Amsterdam told you all about him.

4 I'll talk about Paul Ginsberg for a few minutes.
5 You heard his background. He lectured around the country,
6 DEA, FBI. 1993, 42 cases. He worked for the Department of
7 Justice. We called him. I think the government called him,
8 actually, first. Our witness. The government went after
9 him. You know why? CM32, because he told you CM32, no
10 beginnings, no ends, no preambles, could have been rewound,
11 could have been fooled around with. Wasn't sure. Told you
12 all about Khallafalla C. Later on we called him. Told you
13 about CM17 and Nagra being squished. Screws coming out.
14 The government wasn't too happy with Mr. Ginsberg. Went
15 after him. It was their prerogative; I don't criticize
16 them. They are allowed to cross-examine witnesses. No
17 problem.

18 Where was the FBI expert? Got no problem. You
19 want to go after Paul? Go after him. But put your money
20 where your mouth is. Call your own expert if you got a
21 problem with his conclusions. You don't like what he says
22 about 32? Then put your own man up on the stand. You don't
23 like what he says about CM17? Put your own man up on the
24 stand.

25 The government has no obligation, or have to.

1 But they got the burden of proof in this case.

2 Ask him about Woody Allen? Put your own expert
3 to challenge him on the stand.

4 Ginsberg told you, in all these years he never
5 saw anything like it, how these envelopes and these reels,
6 never saw it not matched before, in any case. And he
7 testified for the government in the Branch Davidian case in
8 Waco, Texas. This is not some bum witness. This is a man
9 who works most of the time for the Department of Justice.
10 And he says he's never seen it before. The case in Waco is
11 not a little baby case. It is a serious case down there,
12 folks, and he was called by the government in that case.

13 Ginsberg told you that 22 erasures were all
14 identical. He doesn't know who erased them. I don't know
15 who erased them. Salem? The Bureau? Who knows?

16 Did somebody get ahold of that tape and erase
17 those two portions of Khallafalla C and then erase the other
18 20 portions to disguise them? I'll bet you that occurred.
19 And I suggest that is what the evidence indicates. They are
20 not accidental erasures. I am not saying that Salem did it
21 and I am not saying that Anticev or Napoli did it. But
22 there are 22 intentional erasures on that tape. And that
23 hasn't changed.

24 Talk about the World Trade Center for a few
25 minutes. Roger covered it a bit. Let me just finish it up.

1 Fingerprint charts? Purchased chemicals,
2 carrying out the plot? Ain't none of the defendants in this
3 case got anything to do with the World Trade Center case.
4 That is really what it comes down to, plain and simple.
5 It's an awful tragedy. People were tried and people were
6 convicted in this building of it. And you heard that he was
7 arrested during this case, that is, Yousef. He is the
8 mastermind (showing photograph). But the defendants in this
9 case have nothing to do with Ramzi Yousef. There is no
10 evidence that anybody does.

11 And I am not suggesting, by the way, when I read
12 this to you, that this guy Haggag is a truthful person, but
13 he had something really interesting to say about Ramzi
14 Yousef. Listen to what he had to say. He was talking about
15 a conversation that he had with Mohammad Abouhalima, and
16 telling you about what Mohammad Salameh had said about the
17 World Trade Center bombing. And who carried it out. Here
18 is what he had to say.

19 "Mohammad Abouhalima told me that Mohammad
20 Salameh had contacts with Iraqi intelligence.

21 "Q Also you told the prosecutors that Mahmoud
22 had a complaint to you that Ramzi Yousef was really
23 responsible for organizing the whole thing, correct?

24 "A Yes.

25 "Q. Indeed, he left everybody behind to take

1 the fall, correct?

2 "A Yes.

3 "Q And that they were pawns, correct? He was
4 the master they were pawns, correct?

5 "A Something like that."

6 This is the Fifth Battalion in the Liberation
7 Army letter. And it is in evidence. I think Ayyad's
8 fingerprints or somebody's fingerprints out of somebody's
9 computer -- and I am not here to suggest to you that there
10 isn't some Liberation Army out there. It may be real. The
11 World Trade Center explosion was real. And it was carried
12 out by Ramzi Yousef and a crew he recruited. But, as you
13 sit there now, folks, and you look at the record in this
14 case, there isn't a single, solitary piece of evidence
15 connecting these ten defendants with the bombing. And I am
16 not talking about these phony phone records that the
17 government showed you about that somebody knew somebody or
18 somebody visited Nosair. I am talking about proof that
19 somebody in this case actually had something to do with it.
20 I am talking fingerprints in the World Trade Center,
21 purchasing the chemicals, a co-conspirator saying that they
22 carried out the plan, somebody in this case. It is here,
23 folks, to blind you. It is here to sway your emotions. And
24 it is here to make you mad at people.

25 Multiple or single conspiracies? Look at the

1 World Trade Center bombing. I suggest it is a separate
2 conspiracy from this case. If you find that, listen to the
3 judge's charge on multiple conspiracies.

4 Now, you know, somebody is missing here in this
5 case. That's right, somebody is missing. Somebody who
6 spoke of Mohammed Saleh on May 23, June 3, June 4, June 22,
7 June 23. It is somebody who knows about Bosnia, it is
8 somebody who knows about training for jihad. He was here
9 during jury selection. He was here when the case began. He
10 was here for the opening statements. I kept a little
11 souvenir in his honor. Siddig Ibrahim Siddig Ali. He is no
12 longer here. But we have his voice on tape. We have his
13 voice and we have his answers -- answers that Siddig Ali
14 gave you ladies and gentlemen in this case. And they are
15 answers that show that Mohammed Saleh is not guilty.

16 Let me read from Siddig Ali's answers in the CM's
17 in evidence that you heard.

18 "Q Mr. Siddig Ali, what type of meeting did
19 you tell Emad Salem that you were going to have with
20 Mohammed Saleh on June 4?

21 "A A surprise meeting with him.

22 "Q Mr. Siddig Ali, did you and Emad discuss
23 telling the plot to Mohammed Saleh on June 3?

24 "A We are not going to open the subject
25 matter with him now.

1 "Q Mr. Siddig Ali, did you discuss getting
2 money from Mohammed Saleh with Emad Salem on June 3?

3 "A When it comes to money, we will ask him to
4 give us the money, that is it.

5 "Q Mr. Siddig, did you give Mohammed Saleh
6 the details of the plot?

7 "A It is better for one to contribute without
8 knowing any details.

9 "Q What did you tell Mohammed Saleh about
10 Bosnia on June 4?

11 "A When the Bosnian problem took place we
12 want manpower to train them. We send them -- to train
13 people over there.

14 "Q What did you tell Mohammed his
15 contribution would be used for?

16 "A It is for protection only. It will not be
17 used.

18 "Q What did you tell Mohammed you needed the
19 fuel oil for?

20 "A To heat hot water. Siddig Ali, FISA June
21 2.

22 "Q. Mr. Siddig Ali, did Mohammed Saleh ever
23 give you the fuel oil for free?

24 "A There our Sudanese brothers donated."

25 Well, folks, that is what Siddig Ali has to tell

1 you about my client. And it is all there before you. And
2 it all points to innocence and reasonable doubt.

3 You know, the government may come back up here
4 and they may say to you: Why all the big attack on the
5 Bureau agents? The government may tell you, I think quite
6 properly so, that it is the words and the actions of the
7 defendants that are on trial here. The agents are not
8 charged with any criminal conduct in this case. But it is
9 really not that simple. And in deciding whether somebody is
10 guilty or not guilty, you look at everything that is before
11 you. You look to see if there is corroboration of these
12 allegations. You look to see how the agents acted and
13 didn't act. You look to see if there isn't, as I suggest,
14 no difference between the CM's and the bootlegs. They are
15 the same.

16 Can you folks have an answer to Mohammed's
17 missing tapes of June 8, June 12, June 22? Can you answer
18 the question I posed, why wasn't Emad with Siddig on June
19 22? Why wasn't he with the Bureau on June 23 in the gas
20 station? Missing tape after missing tape? Lie on top of
21 lie?

22 You know, reasonable doubt, folks, has many
23 different faces. It is the face of Roth and Harris calling
24 Nancy Floyd a liar. Reasonable doubt is Crouthamel and
25 Dunbar calling him a liar. Why the physical fight over the

1 music tape? Anticev and the other agents. A reasonable
2 doubt in this case.

3 How many nights did Emad sit at home and just cut
4 tape and cut tape and just cut tape (demonstrating)?

5 People spend three years in a car and never talk
6 about taping. Coverups. They wanted to make the case and
7 they got a case. They got a case where tapes are missing,
8 tapes are destroyed, tapes are erased. Nobody wants to
9 supervise anybody. No accountability. I don't know how
10 many tapes were made, I don't know how many tapes were lost.
11 They let a monster loose on you folks, but it wasn't by
12 incompetence and it wasn't by inexperience but it was by the
13 corruption and the blind ambition that Whitehurst talked
14 about.

15 Some people, unfortunately, want convictions at
16 all costs. We promised you in our opening to let the truth
17 hang out. We tried to keep that promise to you. I told you
18 this case was going to be about missing tapes in the
19 opening, phony bombs. You got it.

20 I represent only one defendant here; the charges
21 against everybody are somewhat different. But let me tell
22 you folks about Mohammed Saleh. He has never been to any of
23 the mosques, according to the testimony. And, by the way, I
24 am only referring to the testimony. Mohammed Saleh,
25 according to the testimony, has never been to any of the

1 mosques testified, never was to a safe house. No evidence
2 he had any training. No evidence he knows any of the World
3 Trade Center defendants. No evidence he ever owned or
4 possessed any weapons.

5 And do you know what is interesting? There isn't
6 any evidence he knows any of the other nine defendants.
7 There is no phone calls between them. There is no meetings
8 between them. I am not talking about June 22 and June 23
9 when some people went to pick up the fuel oil. There is no
10 knowledge he knows these people.

11 How much reasonable doubt is enough in this case?
12 That is for you folks to decide. Missing parts to 32?
13 Bosnia, training, no money, no knowledge of the fuel oil,
14 written receipts, codefendant saying he doesn't know, Siddig
15 Ali saying he doesn't know, no tapes of the 22nd, missing
16 tapes, everybody's empty boxes of 120's?

17 There is only one verdict for Mohammed Saleh in
18 this case and that is not guilty.

19 I fought as hard as I could for him. Let the
20 government get up here and defend Emad. Let the government
21 defend the FBI. Let the government defend the missing
22 tapes.

23 I promised you folks in my opening, I said to
24 you, this case ain't over until the fat lady sings.

25 (Playing tape)

1 MR. JACOBS: She just sang for you folks in this
2 case.

3 There is only one verdict for Mohammed Saleh:
4 not guilty.

5 Thank you.

6 THE COURT: Ladies and gentlemen, we are going to
7 break for lunch. Please leave your notes and other
8 materials behind. Please don't discuss the case. We will
9 resume after lunch.

10 (Luncheon recess)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION

2:20 p.m.

(In open court; jury present)

THE COURT: Ms. Amsterdam, is it safe to assume that you are batting for Mr. Jacobs?

MS. AMSTERDAM: Yes, I will, your Honor.

THE COURT: Thank you. Is that satisfactory, Mr. Saleh?

DEFENDANT MOHAMMED SALEH: Yes.

THE COURT: Thank you.

The record should reflect that Mr. Jacobs is here.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon, your Honor.

THE COURT: We will now hear a summation on behalf of Mr. Alvarez from Mr. Serra.

MR. SERRA: Thank you, your Honor.

Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

MR. SERRA: Ladies and gentlemen, about a couple of weeks ago I was sitting here with you listening to Mr. Fitzgerald explain to us for two and a half days how simple a case this was, and after a day, day and a half, I was getting a little insulted. Mr. Fitzgerald had at that point

1 quoted from every defense counsel's opening except mine. I
2 submit to you, ladies and gentlemen, I gave a pretty good
3 opening. Everything that I said was going to happen, as we
4 will see, happened. Everything that I said was not going to
5 happen didn't happen.

6 Then finally about a day and a half into his
7 summation, Mr. Fitzgerald did get around to quoting from my
8 opening. Those of you who remember watching me at the time
9 perhaps saw my mouth fall open. He said, and let me quote
10 so I get it exactly, Mr. Serra told you, quote, in my
11 opening, so Victor Alvarez is told on tape in English, and
12 you will hear it, that this is about jihad in the
13 Philippines. Unquote.

14 How could I have said that?

15 Well, it's page 102 of Government's Exhibit 352.
16 Let's play the tape.

17 Ladies and gentlemen, these are Nagras. As you
18 know, they are three-hour plus tapes which when they are put
19 onto cassettes sometimes the cassettes don't divide exactly
20 right. So this starts with Siddig speaking, he has a family
21 right, yeah, bring the family, bring the family. The tape
22 picks up right there because of the way the cut was made on
23 the cassette.

24 THE COURT: Excuse me, Mr. Serra. One of the
25 jurors is signaling that the volume is too low. Would you

1 rewind the tape.

2 (Tape played)

3 MR. SERRA: The mellifluous tones of Siddig Ali
4 doing the Philippine shuffle on the head of Victor Alvarez.
5 I'm a frustrated disk jockey.

6 I guess, listen to me, Mohammed, we are going to
7 jihad in a place, the Philippines, I guess that's how I
8 could have said that Victor was told that they were going to
9 jihad in a place, the Philippines.

10 One other thing about this passage, ladies and
11 gentlemen. You remember perhaps that when Mr. Alvarez
12 testified, he told you that he was never clear on exactly
13 what the stolen cars were going to be for but thought that
14 it had something to do, based on what Siddig told him,
15 something to do with the Philippines, which, you remember he
16 told you, he thought was somewhere in Central America. I
17 think this probably is the island Mindanao. So think about
18 it. The reason I am asking this is of course now you go to
19 this guy, right, you buy from him the cars.

20 I am not saying, ladies and gentlemen, and we
21 will get to discuss this in some detail later on, that you
22 would have understood Siddig Ali to be saying that stolen
23 cars had anything to do with the Philippines. You are not
24 Victor. It is clear how he thought so.

25 Mr. Fitzgerald went on to quote another passage

1 from my opening where I got fairly indignant, which may well
2 happen again, where there came a time when Victor and Emad
3 Salem were alone, just the two of them, in Emad Salem's car,
4 and Victor asked Emad what's going on, in essence, and Emad
5 basically deferred to Siddig, knowing perfectly well that
6 Siddig was going to tell Victor nonsense. And Mr.
7 Fitzgerald said, well, but Victor was told exactly what was
8 going on. Well, let's listen again.

9 (Tape played)

10 MR. SERRA: Ladies and gentlemen, I can't
11 understand how I could have said that to you in my opening.
12 What we just played, for the record, was the tape
13 corresponding to page 144 of Government's Exhibit 352. This
14 is Victor in Emad's car -- we will put these in more context
15 later on -- Victor and Emad alone in Emad's car, Victor
16 saying what's going on here and Emad knowing perfectly well
17 that Siddig is going to tell Victor a load of nonsense,
18 which he eventually does, oh, I can't tell you, you have to
19 ask Siddig.

20 By the way, ladies and gentlemen, as again we
21 will put it in context later on, this conversation where
22 Victor says what's going on here, what is the plan, occurs
23 after the government's favorite conversation between Victor
24 and Emad, the machine gun conversation in the basement of
25 the Abu Bakr Mosque. Happens afterwards.

1 In fact, ladies and gentlemen, what happened in
2 these and the other conversations which we will go through
3 this afternoon were exactly what I told you would happen in
4 my opening. Victor Alvarez was kept in the dark. He was
5 never told what was going on. That was because he was not
6 trusted. He was needed but he was not trusted.

7 Why do I say they needed him? Government's
8 Exhibit 364T2, page 9: When it comes to the cars, he's more
9 suitable than us because he's Hispanic.

10 It is not completely clear to me what the speaker
11 of that passage meant, whether the speaker of that passage
12 meant all Puerto Ricans tend to steal cars or whether the
13 speaker of that passage simply meant that he looks American
14 and he can go where we can't go because we don't look
15 American. But one way or another, as we will see, and I
16 will do everything in my power to finish this afternoon, one
17 way or another Victor was used.

18 But as we go through the facts of this case and
19 we go through these conversations, you have to look at the
20 conversations and what was said as though you are Victor.
21 You have to look through Victor's eyes. You cannot say,
22 well, if I were there I would have whatever, because that's
23 not the standard.

24 I will talk very little about the law during the
25 next couple of hours. Thank God, that's not my job, that is

1 Judge Mukasey's job. But the judge will tell you during the
2 course of his charge on the law that someone must knowingly
3 join a conspiracy with the intent to further at least one of
4 its objectives. In other words, to find that the government
5 has proven Victor Alvarez beyond a reasonable doubt of, for
6 example, seditious conspiracy, he must have intended to
7 further one of its objectives, waging war on the United
8 States -- his Honor will explain it to you. And he must
9 have knowingly joined the conspiracy. The government must
10 prove that beyond a reasonable doubt.

11 What does knowingly mean? Again, his honor will
12 tell you, but there is one concept that you will hear about
13 from the court called willful ignorance, conscious
14 avoidance. I am not sure what label his Honor will give it
15 but it basically says you cannot deliberately turn your head
16 to facts that you should see. You can't say I don't want to
17 see that and intentionally, deliberately turn your head.
18 It's common sense.

19 But his Honor will also tell you that if you do
20 not see those things, out of mistake or out of stupidity,
21 that is not deliberately turning your head.

22 Count 15 is not a conspiracy count. It is
23 interstate shipment of firearms in aid of a crime of
24 violence. It has similar language. Again you will hear it
25 from the court. After the court charges, you shouldn't

1 remember a word I say about the law, you should only
2 remember what the judge says. But the judge will tell you
3 that the government must prove knowledge of facts which
4 would cause a reasonable person of the defendant's intellect
5 and experience to know that he was furthering the bombing
6 conspiracy. Why of the defendant's intellect and
7 experience, the defendant you are considering at that
8 moment, which in that case, in that count Mr. Alvarez is the
9 only person charged? Because you don't use the standards of
10 your own intellect and your own experience. You use the
11 standards of his intellect, Victor's intellect and Victor's
12 experience.

13 Mr. Alvarez was born in New York. He grew up in
14 rural Puerto Rico. He discovered, as both he and Dr. Aranda
15 told you, discovered when he was a teenager that the people
16 he thought were his parents from the earliest days he can
17 remember were not really his parents. He discovered that by
18 finding a birth certificate in a box in a closet, sort of a
19 harsh way to find out who your parents really are.

20 He had an older cousin, a much older cousin who
21 for his entire life, until he found out they were not his
22 real family, who he thought was his brother, Pablito, who
23 beat him every day, sometimes to the point of being
24 senseless. That was told to you by Dr. Aranda, it was told
25 to you by Victor, and it was told to you by Epifania, a

1 person who was referred to as Lydia, another older sister.
2 I asked her twice why no one stopped those terrible beatings
3 which occurred every day. I asked her twice because she was
4 basically not capable of answering the question. She told
5 you that she tried by throwing herself on top of young
6 Victor and covering him with her own body, and that Pablito
7 would then beat her.

8 It is more than just a betrayal by parents who
9 abandon you in a hospital. It is a betrayal by a family who
10 raised you who didn't put a stop to incredibly cruel
11 treatment by a relative.

12 Dr. Aranda described the results of that
13 treatment on Victor. I am sure you recall Dr. Aranda.
14 Basically the least of Dr. Aranda's qualifications were his
15 doctorate in psychology. He is a consultant to law
16 enforcement agencies, including the New York City Police
17 Department. He teaches both undergraduate and graduate
18 psychology at Hofstra. He has lectured abroad. Most
19 recently a month before he testified he lectured in St.
20 Petersburg, in what was the former Soviet Union. He gave a
21 much longer list of his qualifications.

22 Unlike many academics, Dr. Aranda also treats
23 real people, including people with drug abuse, cocaine abuse
24 problems.

25 The government basically ridiculed Dr. Aranda.

1 You remember what Mr. Fitzgerald said. He said he came to
2 his conclusions by dots and tree drawings. First of all, of
3 course, that is simply wrong. The government wanted you to
4 get the impression of somebody who walks down the street
5 saying excuse me, sir, would you draw me a picture of a
6 tree, and then describes his life story to him. I submit,
7 ladies and gentlemen, that if you serve on a jury every two
8 years for the rest of your lives, you will never see an
9 expert who is any better prepared than Dr. Aranda was on
10 this case.

11 I won't go through everything that he said that
12 he did because it would take half an hour. He went to
13 Puerto Rico, spoke to family and friends of Mr. Alvarez in
14 Puerto Rico, spoke to family and friends in this country.
15 He found something that I submit should amaze you. He found
16 and convinced to talk the santera, whom we will discuss in a
17 few minutes, to whom Victor gave half his money for several
18 years during his involvement in Santeria.

19 It is not as though he simply said draw me a
20 tree.

21 You remember Mr. Khuzami cross-examined Dr.
22 Aranda, and the only thing that he could come up with that
23 Dr. Aranda didn't do was interview Victor's former
24 employers. Both Dr. Aranda and Victor told you,
25 particularly over the last several years Victor has mainly

1 been self-employed. He fixes cars, he does light
2 construction work, that sort of thing. He has, from time to
3 time, and briefly, worked for various other people, usually
4 in delis, he told you. So Mr. Khuzami apparently would have
5 had Dr. Aranda search out the owner of Moishe's deli where
6 Victor worked for two months six years ago. Moishe, what do
7 you know about Victor? He made a nice sandwich. Would that
8 have been helpful to you, ladies and gentlemen? That's the
9 only thing the government could come up with.

10 The dots and trees that the government ridiculed,
11 there is a phrase for them. They are called scientific
12 tests, they are called psychological tests, which as Dr.
13 Aranda told you and no one disputed, are recognized in the
14 community as doing the things that they did, giving somebody
15 the insights into somebody's mind that he told you they gave
16 you.

17 Do you remember, it was either Agent Burmeister
18 or Agent Whitehurst -- I think on my cross-examination of
19 Agent Burmeister -- somebody described to you a test on mass
20 spectrometer. That is how they did the bomb test. You have
21 a substance, you don't know what it is. You vaporize a
22 sample, you put it in a machine, out of the machine comes a
23 printout, out comes a graph with lines of different lengths
24 which are what chemists call the absorbance spectra of the
25 various components of the test material.

1 Mr. Fitzgerald ridiculing Dr. Aranda's dots and
2 trees are like me cross-examining, which I didn't, Agent
3 Burmeister, you mean you can tell us that this is bomb
4 chemicals because of a piece of paper with lines on it?
5 Well, yes, you can. It's called a scientific test.

6 By the way, I assume the government realizes it.
7 New York City is the psychological, psychiatric capital of
8 the solar system. If Martians need their equivalents of
9 heads shrunk they beam to Park Avenue.

10 Here in the psychiatric, psychological capital of
11 the solar system, who from the government's side of the
12 aisle told you that they disagreed with Dr. Aranda, a man of
13 considerable qualifications? Was it another psychologist,
14 someone who has devoted his or her career to the testing and
15 diagnosis of mental problems? No. Was it a psychiatrist
16 who may not have a psychologist's background in testing but
17 who surely is a mental health professional and is a medical
18 doctor besides? No. Was it a social worker, who may not
19 have either a psychiatrist or a psychologist's background in
20 education but has probably treated hundreds of thousands of
21 people suffering from mental problems? No. Well, who was
22 it? It was Dr. Fitzgerald who told you, and when I sit down
23 Dr. McCarthy may tell you.

24 Messrs. McCarthy and Fitzgerald are honorable men
25 but they are not experts. They are not even witnesses.

1 They are government lawyers. His Honor told you and will
2 probably tell you again that what lawyers say is not
3 evidence. There is no evidence in this case rebutting one
4 word that Dr. Aranda said. Perhaps that is because every
5 qualified person to whom the government spoke agreed with
6 Dr. Aranda.

7 Victor is desperately searching for a family, as
8 Dr. Aranda told you, searching for someplace to belong.
9 When he comes to New York, he looks for his father by asking
10 random people on the street who look to him as though they
11 are Hispanic.

12 He gets involved in Santeria. Dr. Aranda and to
13 a lesser degree Victor described for you what Santeria is.
14 Basically years of his life were taken up by rituals, by
15 bathing in goat's blood, by being taken in by card tricks,
16 by giving half of his money to people who almost drove him
17 to commit suicide. I asked him when he was on the stand,
18 why did you do that? And his answer was, they made me feel
19 good. He almost killed himself as a result of that.

20 How important it is to him to belong. He
21 described to you the incident, and Dr. Aranda described to
22 you the incident where Victor got a gun, put it to his head,
23 was going to blow his brains out, and he got what he
24 describes as a message from God. Convinced him not to do
25 it.

1 The next day he is watching television. He is
2 watching the Discovery channel, sees on the Discovery
3 channel a program about Islam, is convinced that that's
4 where he belongs, by seeing it on television. What does he
5 do? He goes to Atlantic Avenue in Brooklyn and he asks --
6 same thing he did when he was looking for his father. He
7 asks two people, strangers who just appeared to be Muslim by
8 their dress, walks up to two strangers and says tell me
9 about Islam.

10 Ladies and gentlemen, you have to credit Islam --
11 when I say Islam, I surely do not mean Siddig and Salem.
12 You have to credit Islam for taking someone like Victor and
13 for accepting him merely because he wished to be a member of
14 the religion. Merely because he said "I believe," he was
15 accepted. That is deserving of a good deal of credit.

16 But nothing can take the place of your family. I
17 will ask you, can anything take the place of your family?
18 Islam can't for Victor, couldn't. As a result, when the
19 woman who raised him, Berta, his aunt who he thought was his
20 mother, when she died Victor turned to alcohol, he turned to
21 cocaine. I am hardly defending that. It shows his terrible
22 judgment.

23 Finally, Dr. Aranda described for you Victor's
24 intelligence. He is borderline retarded. I am going to
25 apologize once to Victor for talking about him like this in

1 public, but someone has to. He is borderline retarded. On
2 a different day Dr. Aranda told you he might have actually
3 tested retarded, because there is the 5-point variation from
4 day to day margin of error, statisticians call it. But Dr.
5 Aranda also told you that although on a given day he might
6 have tested retarded because he was on the bottom line of
7 borderline, he could never have made it to the low end of
8 the normal range. That was outside the margin of error.

9 I just put up on the easel Alvarez Exhibit FF.
10 This was drawn in front of you, so for that reason I like it
11 and for that reason I submit that it has special meaning.
12 For that reason also, it is not the neatest thing in the
13 world.

14 Basically this does two things, as Dr. Aranda
15 explained to you. The large curve shows the distribution in
16 the population of everyone from retarded to genius. There
17 are very few people who are actually retarded, there are
18 very few people who are actually geniuses. Most people fall
19 in this center range. Dr. Aranda testified 68 percent of
20 the population falls in the center range which is normal.

21 Mr. Alvarez tests all the way down here, the
22 bottom 3 percent of the population. If on the way home from
23 the courthouse you pass a hundred people, 97 of them will be
24 smarter than Victor.

25 This exhibit did something else as well. As Dr.

1 Aranda told you, all of us have our strengths and
2 weaknesses, and that is what Dr. Aranda described to you.
3 There is a whole range of tests that someone takes when they
4 go through psychological testing and that range of tests is
5 designed, among other things, to discover one's strengths
6 and weaknesses.

7 Victor's strongest point -- there is a second
8 curve on Alvarez FF. That, as Dr. Aranda described when he
9 drew it, shows you Victor's range of abilities, from his
10 strongest to his weakest. His strongest point was 16
11 percent of the population, and that was something called
12 word knowledge. Not verbal IQ. Verbal IQ, how well you
13 understand language and other people, was once again down in
14 the borderline retarded knowledge. Word knowledge simply
15 means do you know what a word means, can you give a general
16 idea what a word means. That's his strongest point and
17 that, as Dr. Aranda said, will likely fall outside the worst
18 than your weakest point.

19 In other words, ladies and gentlemen, 84 percent
20 of the population, everything north of 16 percent, 84
21 percent of the population will use words which Victor does
22 not understand. And in terms of conversation, because your
23 understanding language is not just word knowledge, it is
24 your verbal IQ, 97 percent of the population will understand
25 conversations that Victor does not understand. And that's

1 in Spanish, because that's the language that Dr. Aranda
2 tested him, being Victor's native language. In English it's
3 much worse.

4 Ladies and gentlemen, when we go through, which
5 we are going to do, many of the conversations in this case,
6 I am going to leave Alvarez Exhibit FF on that easel, and
7 the reason is to remind me and you that you have to look at
8 these conversations through Victor's eyes.

9 June 18, 1993. Victor is at the Salaam mosque in
10 Jersey City waiting for a friend who never shows up. He is
11 approached by someone that he has met once or twice before,
12 knows who he is, only talked to him once or twice, by the
13 name of Siddig Ibrahim Siddig Ali. Victor knows Siddig
14 because he has spoken to him, he has heard him speak at
15 mosques, he interpreted for the sheik, and he had personal
16 dealings with him, I think he told you, twice. Once had to
17 do with a car. Siddig was looking to either buy or sell a
18 car, I don't remember. And the other time Victor had run
19 across a book which he would liked to have seen translated
20 into Spanish, on Islam, and he mentioned that to Siddig.

21 So, night of June 18 at Salaam Mosque, Siddig
22 sees Victor, and in Siddig's unbalanced -- and I choose that
23 word because it was used by a government witness by the name
24 of Haggag -- in Siddig's unbalanced mind Siddig looks at
25 Victor and sees cannon fodder, sees something useful to him.

1 Victor, of course, doesn't know this. Victor believes that
2 Siddig is a scholar. Victor believes that Siddig is an
3 important person in Islam. Victor is flattered when Siddig
4 wants to speak to him.

5 Siddig takes him outside. Victor described the
6 conversation. Siddig plays on the Bosnia program which had
7 just happened in Salaam Mosque. Siddig tells Victor that he
8 is doing something that will help the poor Muslims in Bosnia
9 and in the Philippines. He shows Victor pictures of war
10 victims, what he says are war victims from Bosnia and the
11 Philippines. And he invites Victor to his house the next
12 day.

13 I want to remind you -- I mentioned Haggag, a
14 government witness. I want to remind you word for word of
15 about four or five questions and answers from Abdel Rahman
16 Haggag on the subject of Siddig Ali. It is from page 10439.
17 I believe it is Ms. London's cross-examination of Haggag.

18 "Q Siddig was a good speaker, correct?

19 "A. Yes.

20 "Q He was able to impress people as being a
21 pious person, correct?

22 "A. Yes.

23 "Q With very strong religious beliefs. When
24 he spoke he impressed people that he, Siddig Ali, was
25 devoutly Muslim, isn't that correct?

1 "A. Yes.

2 "Q And by his speaking abilities, Siddig was
3 able to get people to trust him, isn't that correct?

4 "A. Yes.

5 "Q And he used Islam to build this trust in
6 his fellow brothers, correct?

7 "A. Yes."

8 That's precisely what he did to Victor. Haggag
9 wasn't there, but he might as well have been.

10 The government says, Mr. Fitzgerald said in his
11 summation, you heard, Mr. Serra tells you Dr. Aranda tells
12 you what a bad memory Victor has. How could he remember
13 that? How could he remember a conversation outside Siddig's
14 car that night?

15 Ladies and gentlemen, I don't care how bad a
16 memory you have. I don't care how far down on the bell
17 curve of intelligence you are. If you are trapped by people
18 you trusted into being charged with waging a war on your own
19 country, do you think you would remember how it started?
20 That's how it started.

21 The next day, June 19, 1993, four whole days
22 before the arrests in this case, four days before he was
23 arrested, Victor goes to Siddig's house in Jersey City.
24 They are talking about him before he gets there. We will go
25 through that. But I ask you to remember the earliest

1 conversations in this case, Government's Exhibit 641-1,
2 which was one of Salem's private tapes, Salem asks Siddig:
3 Who his people?

4 Siddig says: They are all Arabs, people I've
5 known for a long time. Salem says that puts my mind at
6 ease. Why does it put his mind at ease? Because they don't
7 trust Puerto Ricans.

8 CM 1, first legally recorded conversation in the
9 case, first conversation recorded with FBI's knowledge.
10 Siddig says his people are -- and that's his words, his
11 people, unquote, one Egyptian and the rest Sudanese. Victor
12 came out of nowhere.

13 Ladies and gentlemen, you have, I hope, your
14 binders which have the CM transcripts. I would ask you to
15 take out the binder that is 348 to 370, and let us go
16 through that conversation in Siddig's house on June 19.
17 First I am asking you for binders rather than tapes for two
18 reasons. First of all, the tapes are time consuming, but
19 secondly the tapes are in Arabic, so the tapes won't do much
20 good. Government's Exhibit 352 is what I am talking about.

21 As I said, before Victor gets there that day,
22 people talk about him. If you turn to page 5, Government's
23 Exhibit 352, page 5. Towards the middle of the page Siddig
24 Ali mentions for the first time a Spanish brother. Emad
25 doesn't know who he is talking about because Emad and Victor

1 had never met. Then down at the bottom of the line Siddig
2 says: No, I'm telling you if you want to bring him no
3 objection, because 100 percent, now we are in need.

4 We need the cannon fodder.

5 They next refer to Victor page 24, same
6 conversation, 352. See in the middle of the page Siddig
7 again says I want Mohammed to work with us, he is a
8 mechanic, the Spanish guy. You remember that Victor's
9 Muslim name is Mohammed. They called him Mohammed. Bottom
10 of page 24, Siddig says what we already know to be the case:
11 I don't want him to know because I don't know him for too
12 long. We got to be careful what we tell this guy, folks.

13 Emad Salem says: That is it. Don't get him
14 involved at all.

15 Two pages further, they discuss him and other
16 things for a page or two. Page 26, top third of the page,
17 the third time Salem speaks they are still talking about
18 Victor. Let us see him first, all of us, before we tell him
19 everything we have to agree whether to tell him or not.

20 They never agreed. You can read through every conversation.

21 Emad Salem says we have to unanimously agree to tell him.

22 There was no such agreement and they never told him

23 anything, and we will go through those conversations. Page

24 34. They go off on other subjects, go back to discussing

25 Victor on page 34.

1 Top of page 35, Siddig says: We are still
2 checking him out. Yesterday we were in the car and,
3 unintelligible, a recorder --

4 Amir Abdelgani: A recorder.

5 Siddig: He thought we were recording the talks.

6 If you remember my cross-examination of Emad,
7 Victor thought the Italians in his neighborhood were
8 breaking into his apartment to read his books, thought they
9 tapped his phone -- not the FBI. You may remember me asking
10 Emad about all the people he thought the Federal Bureau of
11 Investigation, and him going from house to house saying you
12 want me to check the phone, the FBI is after us. Victor
13 thought the Italians were after him.

14 They did meet the day before. Victor himself
15 told you -- he didn't want to be in the car the day he saw
16 Siddig. That is what Siddig is saying. We were in the car,
17 thought we were recording him. That's the meeting he told
18 you about.

19 Page 56. Very top of the page: How can Mohammed
20 go to a place like this? Mohammed should go straight.
21 Which Mohammed? The Spanish. He will be OK because he is
22 white. He can go where we can't go. We need him, we can
23 use him.

24 Page 59. This one I have enlarged. Top of the
25 page -- it's in your books, too. I have enlarged this

1 because I was going to read a little more. Is Mohammed
2 coming now? Yeah, he is coming, he called on the phone. He
3 will come by train. He will take the train, then he will
4 stand by the door here.

5 Salem: For one hour.

6 Siddig Ali: Twenty-four hours and you will find
7 him.

8 Siddig knew Victor. It's a pattern which you
9 will see repeated. Siddig is making fun of Victor. He's so
10 stupid that he is going to stand by the door for 24 hours
11 until somebody comes and opens the door.

12 Victor gets there a short while later. He
13 described the conversation -- Emad's briefcase was recording
14 it, and the transcript of the conversation shows you just
15 what Victor described. People introduced themselves, what
16 do you do, what do you do, As-Salamu Alaikum.

17 There comes to a point which Mr. Fitzgerald must
18 have thought was important because he mentioned it three
19 times in his summation. Comes to a point where Siddig Ali
20 says to Victor after preliminary discussion, which we will
21 go through somewhat, he comes to a point where he says what
22 can a Muslim do to strike back in America? At that point,
23 they talk, and according to Mr. Fitzgerald, when about five
24 pages later Emad Salem says so if there is a physical attack
25 here will you participate and Victor says yes, according to

1 the government that passage, which we will go through every
2 word of, proved that Victor was down for bombing the United
3 States.

4 The government thought so much of that that they
5 even said that the other defendants in this case who were
6 there but didn't participate in that conversation couldn't
7 say that they didn't know what this was all about because
8 Siddig and Emad were so explicit with Victor.

9 Ladies and gentlemen, we are going to play that
10 tape. We are going to go through every word of it from the
11 point where Siddig asked Victor what can a Muslim do to
12 strike back to the point where Emad asked him will you
13 participate. Victor told you that what he understood he was
14 being asked to participate in is if we are attacked, if
15 people attack us will you help us defend ourselves. That's
16 what he said he understood.

17 If after we play this tape and go through the
18 transcript you believe that the government has proven beyond
19 a reasonable doubt that Victor Alvarez agreed to bomb
20 America instead of defend ourselves, convict him. I can't
21 put it simpler than that.

22 Page 84 of Government's Exhibit 352. You have it
23 in your books. I have also blown these pages up -- enlarged
24 these pages. A lifetime of habit dies hard, even in this
25 case.

1 Top of the page Siddig is saying -- you can read
2 it for yourselves -- we have to talk, we'll talk, we'll talk
3 what it's about, and then you decide if you want to join us
4 or not. Fair enough? Sure. Victor says if it's for the
5 sake of Allah, explain to me, give me the details, give me
6 the information. Siddig says why? Why should we explain it
7 to you? Sort of strange question.

8 Before we get further in the conversation, you
9 heard Victor testify. I am not going to tell you that I or
10 Victor for that matter can make sense out of everything he
11 says in this conversation. The overall sense, I submit to
12 you, is perfectly clear, but individual words such as what
13 we are coming up to may or may not make a lot of sense.

14 You know I won't do anything without
15 consulting -- that's not a misprint -- like right now we
16 study it and explain the situation and then we do it.

17 Siddig: We already studied it.

18 Victor: You already studied it?

19 Siddig: Sure.

20 Victor: But I don't know. In other words, I
21 don't know what's going on here.

22 Siddig: Calm down, calm down, calm down, little
23 boy. First I have to know if you are willing. I'm here.

24 Siddig's wife knocks on the door, and then we
25 come to the point where the tape starts. I am sorry, ladies

1 and gentlemen. This is where Mr. Fitzgerald said the key
2 part starts, in your mind what do you think a -- next
3 page -- Muslim can do to strike back in America?

4 (Tape played)

5 MR. SERRA: Victor will say a number of times
6 that he does not understand through the course of all these
7 conversations.

8 Ladies and gentlemen, I am sorry, I should have
9 told you. I intend to stop this and start it, stop it and
10 start it and comment. So I am going to do this, if I could
11 ask you to bear with me and keep these handy.

12 Victor says openly that he doesn't understand.
13 There are other times we will get to where he clearly does
14 not understand what is going on but doesn't say it. This
15 time he says I don't understand.

16 (Tape continued)

17 MR. SERRA: Aha, says the prosecutor. Here we
18 have someone who is tired of talking. Bombs are coming,
19 guns are coming. Are they? The answer is no. You probably
20 realized that or I wouldn't be saying this. Let's continue.

21 (Tape continued)

22 (Continued on next page)

23

24

25

1 MR. SERRA: Wait a second. What happened to the
2 bombs and guns? Fight them through papers? Fight them
3 through TV? Is that the revolution? Is that the war that
4 the Government of the United States is afraid of? TV and
5 newspapers?

6 Ladies and gentlemen, this is the first of five
7 times that Victor Alvarez will say what amounts to: We
8 don't use force.

9 By the way, I don't know what it is, but there is
10 something wrong with the equipment. I am not sure why the
11 tape keeps cutting out. There is probably a loose
12 connection somewhere. With your indulgence, let's keep
13 going. We have the big transcript.

14 (Tape playing continued)

15 MR. SERRA: Number 2. Siddig says, wait a
16 second, write back? That is not what we are about. That is
17 not what he is about. If they write back about us, we write
18 back about them. If they kill us, we go back and kill them.
19 No one is ever going to accuse Victor Alvarez of talking
20 like Doctor King, but we see over and over and over, he
21 says, we use force in self-defense.

22 (Tape playing continued)

23 They act with us here, then we act, you know,
24 they fight us here, we fight them back here.

25 Sorry about this. This was working this morning.

1 Now, ladies and gentlemen, as I said, I can't
2 tell you what Victor meant with everything that he said.
3 It's quite possible Victor can't tell you with everything he
4 said. But the sense is clear.

5 (Tape playing continued)

6 If you do anything here, you get caught, you hurt
7 everybody.

8 And then, probably the clearest of all: We do
9 whatever they do to us here in the same way that they do it
10 to us here, we do it to them back. No one is going to
11 accuse Victor of being articulate, but in his way -- and,
12 for that matter, ladies and gentlemen, in the way of anyone
13 in this courtroom -- that can only be understood one way.

14 Ladies and gentlemen, I am not going to burden
15 you with any further tape playing. We have the transcripts
16 blown up. Let's go through the transcript. The tape is in
17 evidence. I would keep playing it but for the technical
18 problems that we are having. It is in evidence. I submit
19 to you that this tape bears listening to, on a system that
20 is not messing up, this tape bears listening to ten times,
21 twenty times, a hundred times, until you are satisfied that
22 not only hasn't the government proven that this is Victor
23 agreeing to blow things up, Victor is saying the opposite.

24 Let's keep going without the tape.

25 And then, ladies and gentlemen, remember the

1 double underline in conversations where Victor is present
2 means its Arabic. It is important because Victor doesn't
3 speak Arabic and you need to understand what he understands
4 and what he doesn't. Right after Victor says -- whatever
5 they do to us here, we do to them back; they write about us,
6 we write about them; they kill us, we kill them -- right
7 after he says this, Siddig, for once in his unbalanced,
8 balmy, lying life, gets it right.

9 "Do you understand what he is saying? He is
10 saying, for example, he can't go and strike them, for
11 instance, or anything, unless they come and attack him."

12 Right, Siddig, that's what he said.

13 Then who steps in? Emad. Somebody says no.

14 Siddig: Huh?

15 Emad: No, that's not what he meant.

16 Yes, it is.

17 Victor, hearing Siddig speaking Arabic, says:
18 Speak English.

19 Siddig: I am trying to explain to him because he
20 doesn't understand English very well.

21 Salem: He is explaining what he said.

22 He understood -- meaning Siddig -- he understood
23 that you are saying you cannot attack physically unless you
24 are being attacked physically.

25 Right. Salem accurately quoted Siddig. Salem

1 asks Victor, is that what you are saying?

2 Victor says, sure, of course that is what I am
3 saying. It is un-Islamic. The Koran does not permit us to
4 go around killing people.

5 Then Emad poses the government's question. And,
6 man, did he phrase it carefully.

7 "That means brother Siddig is saying if there is
8 a physical attack here, you will participate or not."

9 Ladies and gentlemen, in the context of that
10 conversation, there is only one way that Victor Alvarez
11 could have understood Emad Salem's question. Where he is
12 talking, talking about for pages and pages, and said over
13 and over, we can only use force if we are attacked, and Emad
14 Salem says: If there is a physical attack here, the only
15 way he can understand that is if we are being attacked.
16 Because that is what the conversation is about. And you
17 know that Victor gives -- these are two opposite questions,
18 folks. The way the government would have you believe
19 Victor's understanding was: These are opposite. First,
20 according to the government, Emad is saying, confirming,
21 yes, that you say you can't attack except in self-defense?
22 Victor says sure. And then Emad says, oh, if we want to go
23 around blowing things up, will you participate?

24 Oh, of course.

25 It is ridiculous.

1 I submit to you I don't have the burden to prove
2 anything. Everything that has to be proven in this
3 courtroom has to be proven by them and beyond a reasonable
4 doubt. But it is perfectly clear that the government's
5 favorite passage, which is so clear that anyone hearing it
6 must have understood that they are going to blow things up,
7 is in fact Victor agreeing to participate in self-defense.
8 Listen to it ten times, twenty times, a hundred times. It
9 only gets clearer.

10 Mr. Fitzgerald, in his summation, characterized
11 what we just partially heard and completely read as being
12 the question as to whether Victor would join a bombing
13 conspiracy. He characterized it as the question was: Teed
14 up for Victor. The question wasn't teed up. The question
15 was buried in barrels of nonsense. Victor was what was teed
16 up. And Emad took the big swing and hit him into the
17 centerfield bleaches behind the monuments.

18 Don't misunderstand me, ladies and gentlemen.
19 Victor says many times in these conversations: I want to be
20 with you. I want to be one of you. Anything I can do. He
21 says that over and over. He needs a place to belong. But
22 what he believes he is belonging to is something very
23 different from what Emad Salem came here and told you.

24 And whenever he tries to find out, all he gets
25 back is double-talk.

1 This is page 93 of the same conversation, a few
2 pages later. As I say, Victor says: Any time, brother, any
3 time, any time.

4 Siddig: Want to go tonight? Tonight?
5 Inshallah? Do you have to go any place?

6 Emad says to Victor: We'll discuss what we are
7 really doing there.

8 What Emad probably is talking about is the safe
9 house, though Victor doesn't have a clue what the safe house
10 is at that point.

11 We don't discuss things here. We have a special
12 place for our meetings. It is a place out of New York.

13 Well, you remember, the last I checked, Queens
14 was not a place out of New York. But you remember that
15 Victor said that he understood that the heating oil was
16 because they had a place out of New York where they would
17 need to heat it during training during the winter. Again, I
18 am not saying you would understand this as that same meaning
19 that Victor understood it. You are not Victor. That is why
20 that is sitting there -- pointing, for the record, to FF.

21 Victor does his version of the Abbott and
22 Costello "Who is on first?" routine.

23 OK, OK, so who is the person in charge of this?

24 The Emir.

25 I mean who is the person who is going to lead

1 this?

2 That is going to do what?

3 Who is leading this thing?

4 Of this operation?

5 Yes, the Emir. He is leading it.

6 Now it is Salem talking. He is talking about
7 Siddig. He is leading it and he is distributing everybody's
8 work. Let's look at the rest of this paragraph and see how
9 people talk to Victor. And this is Emad Salem who is
10 working for the FBI at the time.

11 His Green Beret speech. We'll come eventually
12 within two to three days to start to some kind of practical
13 action. The practical action is a practical technical
14 action.

15 Now you know. Right? We are bombing things.
16 Doesn't everybody know that a practical technical action is
17 bombing the United Nations and the tunnels? That is how
18 people talk to Victor, and they do it throughout this case.

19 If you will look at page -- I didn't blow it up,
20 but whatever I was just reading from is page 93. If you
21 will look at page 95, two pages further, you will see that
22 that is where the heating oil conversation is with Victor.
23 You will see that Siddig says, you know -- I don't have it
24 in front of me and you do -- but it is words to the effect
25 that, you know, like, for boilers in the winter. Should

1 have been able to figure it out, right?

2 And then they leave, there comes a time when they
3 leave Siddig's house on the 19th. And according to the
4 government, Victor is down and ready to do jihad by blowing
5 up bridges, tunnels, and the UN. First, of course, he has
6 to go shopping when the going gets tough. This is probably,
7 if you need some comic relief, you might look at the page,
8 it is about 110 on, it is what in the transcript is referred
9 to as the pages from CM49. They pass half a dozen stores
10 where Victor, for one reason or another, refuses to shop.
11 They have various ridiculous conversations, like the gold
12 pages in your book, the added-in pages, where Victor coming
13 out of the store, tells Emad that he ought not to be eating
14 whatever junk food he is eating because all cheddar cheese
15 contains pork.

16 We get to about page 125, where they are about to
17 go through the Holland Tunnel, going from Jersey City to
18 Manhattan. And there is a conversation about toll booths,
19 in which Victor takes about a page to get Amir Abdelgani and
20 Emad, who were in the car with him, to understand what he is
21 talking about with toll booths. That ends at the top of
22 page 126, where Victor insists that if you go up to the
23 Bronx, you can actually cross the Hudson for free. The last
24 I remember the George Washington Bridge was, like, three
25 bucks.

1 And we get here. This is the end of that
2 conversation about toll booths from the page before. Emad
3 at this point is getting a little bit tired of conversation
4 which does not mean a whole lot. So Emad says, let me shake
5 things up a little bit and see if I can get something useful
6 on tape.

7 "Salem: How do you like Sheik Omar?

8 "Victor: What do you mean Sheik Omar? He's a
9 very nice guy."

10 Now, ladies and gentlemen, you heard that Dr.
11 Abdel Rahman speaks perhaps ten words of Arabic -- ten words
12 of English, I am sorry. Mr. Alvarez and I speak perhaps ten
13 words of Arabic. Dr. Abdel Rahman may in fact be a very
14 nice guy. I simply don't know him. But I submit to you
15 that the standard response, when someone asks someone who
16 knows Dr. Abdel Rahman, what do you think of him, is not "He
17 is a very nice guy." A very typical response might well be
18 what Emad said: "He is great."

19 Victor repeats: "Oh, yes, he's a very nice guy,
20 very good scholar. Thank God we have him."

21 And then Victor goes on about his idea of
22 leadership. We have leadership in many places but it's not
23 real leadership. And that is our problem today. We don't
24 have many people, you know, have a leadership, but they have
25 one that send them to the wrong places and get them killed.

1 I can see where that would be a problem. I don't
2 know what he is talking about, but I can see where that
3 would be a problem.

4 Then he continues about Dr. Abdel Rahman: Even,
5 I don't understand whatever he gives whenever he talks. I
6 get my pleasure, you know, I get what he is saying.

7 I don't speak Arabic, I don't understand him, but
8 I like what he says.

9 Now, this conversation ain't going all that well
10 for Emad. You know? Because here is a guy that he is going
11 to want to say later is a crazed, fanatic, suicidal
12 terrorist who is talking about pork cheese and Dr. Abdel
13 Rahman being a regular Joe. What is Emad to do? Well, he
14 quietly goes into his jacket, pulls out of his pocket the
15 informant's handbook, known in the trade as "Rats Are Us."
16 What do you do when you are questioning somebody who is a
17 crazed, fanatic, suicidal terrorist but who not only refuses
18 to say anything remotely incriminating but in fact is in the
19 process of rapidly convincing anyone listening that he is a
20 blithering idiot? Answer: Turn off the tape. You know
21 what Emad does? He says, what an idea! And he turns off
22 the tape.

23 Victor says, right after he says that although he
24 can't understand Dr. Abdel Rahman he loves what he says,
25 Victor says: You know how to get to Brooklyn, once we hit

1 Manhattan, right?

2 In other words, they are still on the Jersey City
3 side of the Holland Tunnel. Now, June 19 is a Saturday.
4 Victor's diary from 1993 is in evidence. I think you can
5 check it. But June 19 is a Saturday. This is 6 o'clock in
6 the evening on a summer Saturday. If any of you have driven
7 through the Holland Tunnel, across Canal Street and across
8 the Manhattan Bridge at 6 o'clock on a Saturday summer
9 evening, you know that it is like trying to leave the
10 Meadowlands after a Giants game.

11 So here they are still in Jersey City, not yet
12 through the Holland Tunnel. A little more conversation.

13 Then, whoops, what's this? Third Avenue over
14 there and this is Seventh Avenue, you go four to five
15 blocks, you'll be in Bay Ridge?

16 What is that, two minutes on the transcript?
17 From the Jersey City side of the Holland Tunnel, across the
18 tunnel, across Canal Street, over Manhattan bridge, and down
19 to Bay Ridge, in Brooklyn, in two minutes.

20 No.

21 He turns off the tape. And you want to hear it?
22 Because it is clear.

23 Hopefully, the system will cooperate long enough
24 for you to hear this.

25 (Tape played)

1 Thank you. Thank you, machine.

2 How long does it take to get, on a Saturday at 6
3 o'clock, from the Jersey City side of the Holland Tunnel to
4 Bay Ridge, Brooklyn? An hour? Hour and a half? There is
5 no real way to say without being there and seeing what the
6 traffic conditions are. There can be a standstill on Canal
7 Street, as all of you know who have been there. Whatever
8 happened during that hour or hour and a half is lost
9 forever, because Emad turned off the tape.

10 Now, I think the point has been made by other
11 counsel: You can do wonders with a switch. You can do just
12 as well erasing and re-recording if you got the switch.
13 What happened during this hour and a half? Emad tells
14 Victor that they were going to do training, like Victor
15 understood? We won't know from tape, but you know that
16 Victor, Amir Abdelgani and Emad Salem were in his car for at
17 least an hour, quite possibly an hour and a half, with no
18 recorder going. That is how you know. And Emad gets a free
19 shot in that situation.

20 Your Honor, would this be a good time?

21 THE COURT: Yes. Ladies and gentlemen, we are
22 going to take a short break. Please leave your notes and
23 other materials behind. Please don't discuss the case. We
24 will resume in a few minutes.

25 (Recess)

1 THE COURT: Mr. Serra, I gather you have more
2 than an hour.

3 MR. SERRA: Your Honor, I would say it would be
4 very difficult for me to finish in exactly an hour.

5 THE COURT: Can we try that again?

6 MR. SERRA: Pardon me, sir.

7 THE COURT: The question is, do you have more
8 than an hour? Is the answer yes?

9 MR. SERRA: Yes. Judge, I got before the break
10 maybe an hour and 10 minutes.

11 THE COURT: Given that, one thing is fairly
12 clear, and that is, I am likely not charging on Friday. So
13 I don't know what planning you have to do. Whatever
14 planning you have to do, plan on charging on Saturday.

15 MR. SERRA: Your Honor, is the court saying that
16 if I did finish today it would make a difference?

17 THE COURT: I am not saying anything. I am
18 saying it is likely that I will not charge on Friday. It is
19 likely that I will charge on Saturday.

20 Now let's get the jury out and continue. I
21 intend to tell them that, too. It's called pulling a
22 Stavis.

23 (Jury present)

24 THE COURT: Go ahead, Mr. Serra.

25 MR. SERRA: Thank you, your Honor.

1 Ladies and gentlemen, on June 19 there came a
2 time, after leaving Siddig Ali's house and driving with Emad
3 Salem to Brooklyn, that Victor and Emad wound up in the Abu
4 Bakr Mosque, and Victor tells you that he went to the
5 bathroom. As I am sure you know by now, Muslims before they
6 pray cleanse themselves. He went to the bathroom and used
7 cocaine. It's not exactly cleansing oneself.

8 Dr. Aranda described to you the effect of cocaine
9 on someone of Victor's intelligence and judgment. Mr.
10 Fitzgerald basically said in his summation, isn't it
11 convenient that when things happen that Victor does not
12 remember, that he happened to use cocaine? I don't think
13 convenient is the word, I think drug habit is the word.

14 I direct you to Alvarez Exhibit BB. I am not
15 asking you to pick it up now, but in the small binders with
16 the Alvarez defense exhibits, Exhibit BB is a stipulation,
17 signed by me and Mr. Khuzami -- I assume that Mr. Fitzgerald
18 and Mr. Khuzami speak every now and then -- in which the
19 government agreed that the day Mr. Alvarez was arrested he
20 tested positive for cocaine. Sounds like that is not
21 convenient, sounds like it's a fact.

22 In Abu Bakr, as Victor himself told you during
23 his testimony, he asked Emad Salem if Emad wanted him to get
24 a machine gun. I think his words were perhaps I could get a
25 machine gun. Then Emad says yes, I want a pistol. They go

1 back and forth for a couple of seconds, and Emad says some
2 terrible things. Emad talks about moving a bomb, Emad talks
3 about the day of the operation. Victor told you that he
4 simply does not remember that conversation. He did not say
5 Emad played with the tape. He admitted that he heard it on
6 the tape. He simply says I do not remember Emad Salem
7 saying that.

8 First of all, I would point out something to you
9 that Emad didn't. That tape was known before they gave it
10 an exhibit number as CM 51. I played the beginning of that
11 tape for Emad Salem when he was on the witness stand. That
12 was a briefcase tape. It is only the evidence envelope for
13 that tape. It says briefcase. The first briefcase for that
14 day, the first Nagra tape Emad used in Siddig Ali's house.
15 You know that he had a briefcase tape then too because he
16 didn't arrive in his recorder car up there. He changed the
17 tape. No problem. You can change the type tape by going
18 into a bathroom.

19 But the starts and stops -- Mr. Jacobs made much
20 more argument but the starts and stops have of all people
21 Louie Napoli, and Emad agreed, when I played the starts and
22 stops, agreed that that was Louie Napoli's voice. How the
23 starts and stops happen, when you change the tape, you start
24 and stop a few times to make sure the tape is being taken up
25 on the reel. Somehow Louie Napoli was with Emad when the

1 tape was changed and his voice was recorded in the stops and
2 starts. It is in evidence and you can listen to it.

3 The problem is that there was no opportunity that
4 day for Louie Napoli to be with Emad because that is the day
5 we have been talking about since I started going into the
6 tapes with you. Emad was constantly that day with the
7 people that he first met at Siddig Ali's house, including
8 Victor, including Amir Abdelgani, including Fares
9 Khallafalla. He had no opportunity to meet Louie Napoli.
10 Changing tapes is not a problem, you duck into the bathroom.
11 Meeting Louie Napoli, he had no opportunity to do it. How
12 did Louie Napoli's voice get on that tape?

13 Victor testified, as I said before, that he
14 simply doesn't remember Emad saying that. Dr. Aranda
15 described for you Victor's memory. Victor can be in the
16 middle of a conversation, Dr. Aranda said, I believe in
17 these words, and in seconds forget what has been just said.
18 He described his memory -- he described the subtest of
19 memory. The digit span, he called it. Victor is worse than
20 a 6-year-old, the average 6-year-old.

21 Let me ask you something, ladies and gentlemen.
22 If you hear something that you don't understand and somebody
23 asks you to describe it later on, what is your reaction
24 going to be? I submit your reaction is going to be, I don't
25 remember. If you go to a lecture on a subject that you

1 don't understand and someone says well, I understand that
2 you are not versed in nuclear physics, but tell me what the
3 guy said. You say you've got to be kidding, I didn't
4 understand it, I can't repeat it, I don't remember what he
5 said.

6 Any of you who speak more than one language, as
7 does Victor, and you hear a conversation in your second
8 language which you don't completely understand, you can get
9 completely the wrong impression of it. You can remember it
10 the opposite of what was actually said because you missed a
11 key word or you missed 10 words or you missed half the
12 conversation. You can even think you understood it. But I
13 submit it is more likely that if you hear a conversation
14 that you are not good at, your reaction will be, I don't
15 remember what was said.

16 There is another example and perhaps you recall.
17 Computers are a favorite hobby of mine. Any of you who have
18 to enter passwords for computers, there is always a dilemma
19 choosing a password. What you want to choose is your kid's
20 name or your Social Security number or your date of birth,
21 because those are easy to remember. On the other hand,
22 other people might know that stuff about you, too, so you
23 don't want that password. On the one hand, say your
24 daughter's name is Mary. Easy to remember but somebody else
25 could find that out about you. On the other end of the

1 spectrum is something like -- I won't bother to read that
2 into the record. Basically it is a random series of numbers
3 and symbols. That's a great password but you will never
4 remember it.

5 I submit to you, if you don't understand
6 something -- and what I just wrote for the great password
7 doesn't make sense -- if you hear something that you don't
8 understand, your reaction will be, I don't remember, which
9 was Victor's reaction to this conversation.

10 There is another way that you can determine
11 whether or not someone understood a conversation. You
12 remember the government cross-examined Dr. Aranda in some
13 detail. Well, isn't it true that the best evidence of what
14 was in Victor's mind is what is on the tapes? Dr. Aranda
15 kept trying to get the point across, no, that is not true,
16 because in order to do that I have to step into the tape,
17 stop the conversation, and say Victor describe to me,
18 explain to me what Emad just said. Then I will know if he
19 understood it. But just listening to the tape you can't
20 tell if someone understood it necessarily. And you want to
21 know something? Conversation about the machine gun, you
22 have evidence on the tape of something that Victor didn't
23 understand. Here it is.

24 This is the government blow-up, so there are some
25 yellow underlines. I take it that is what the government

1 considers important. Here is Victor saying God willing,
2 find the machine. Here is Emad saying terrible things. The
3 next attribution to Victor, you know when you do, when you
4 plan things it's tough. I'm just, unintelligible,
5 everything, every place, everybody. I mean, everything,
6 every, unintelligible.

7 Does it seem to you like Victor understood what
8 Emad said? If he did, he sure doesn't show it by his
9 answer. The government didn't read that part. The
10 government didn't examine Victor about that part.

11 Another indication of whether or not somebody
12 heard and understood something. If somebody describes to
13 you here is what we are going to do do tomorrow, we are
14 going to go to a picnic wherever, and five minutes later
15 somebody comes up to you and says what are we going to do
16 tomorrow, pretty good indication that somebody didn't
17 understand you, right? After the conversation in which
18 Victor says I could get you a machine gun, whatever his
19 exact words were, Victor asks at least twice more what is
20 going on.

21 The government tells you that first of all in
22 Siddig's house in the conversation we sort of played, second
23 right there, everybody is telling Victor what is going on,
24 why is Victor still asking if he understands it? One of
25 those times I played for you at the very beginning of my

1 summation, in Emad Salem's car, Victor says now whatever we
2 got to do tonight we got to do it, then what is the plan,
3 and Emad says you can't ask me, you have to ask Siddig,
4 knowing what Siddig is going to do.

5 Emad, by the way, if you recall his testimony,
6 and it is available to be read back, Emad agreed that Victor
7 twice after that conversation in the Abu Bakr Mosque about
8 the machine gun asked what's going on here. Emad agreed to
9 that. So in the car Victor says what's going on here, oh,
10 you have to ask Siddig. You remember that secret place I
11 told you about where we will tell you what's going on?

12 Page 186 -- I am not going to read it to you or
13 play it to you. It is an Arabic conversation -- Victor is
14 not yet at the garage in Queens and Emad tells Siddig that
15 Victor had asked in the car what's going on. It is 168. I
16 am not sure if I said that. Why does Emad say that? So
17 Siddig will be prepared to snow him. You know what happens?
18 Siddig snows him.

19 Brothers Tarig and Mohammed -- Victor -- were
20 asking what's going on. I said I don't know what's going
21 on. I had a certain mission on this corner and I am sitting
22 doing it.

23 This is page 196 of Government's Exhibit 352.

24 Siddig Ali: What do you mean what's going on?

25 Gee, Siddig, great question.

1 Victor: Unintelligible, talk to me, I don't know
2 nothing but I want to know what's going on, I mean I want to
3 know, know, know, more, unintelligible.

4 Siddig Ali: Mohammed, are you in or are you out?
5 Whose side are you on, Victor? I'm here. That's
6 not the question.

7 I read all this because this goes on for pages.
8 You have it, it's in your books. It's in English. Nobody
9 here asked no questions, too many questions because I have
10 something, all of us have the same thing, the same
11 direction, none of us going to go this way and some of us
12 going to go that way, maybe I have something top secret in
13 my mind. I say that for a reason. Listen to how Siddig
14 says it. I don't want to tell nobody now, I can't talk, OK.

15 Victor tries to get a word in edgewise and keeps
16 getting cut off by Siddig.

17 We told you everything is according to the book,
18 the Koran and Sunna -- I think that is teachings of the
19 prophet -- anyway, Siddig says everything we do is according
20 to Islam. That's enough, it should be enough, Victor tries
21 to get something, Siddig rides him down. I gave him a job
22 to do, he don't do it. He don't talk to me too much,
23 everybody has a job to do and that's it. It goes on.

24 I am not reading now word for word. You have
25 this, page 196, 197. Everything we do is according to the

1 Koran, it's according to Allah, ya di ya da.

2 Victor continues trying to get a word in
3 edgewise, keeps getting cut off. Everyone doing the same
4 plan, the soldier, so forth and so forth. Finally, after
5 being humiliated and cut off 10 times, Victor says OK, I am
6 not going to ask nothing no more, that's it, that's the end
7 of it. Very good, that's the way, nice kid, that's the way
8 to do it, don't ask, trust me, we're doing everything the
9 right way.

10 How did Emad know that was going to be said?
11 Page 132, back in Emad's car. Victor is talking about
12 stealing cars -- getting stolen cars. You know,
13 unintelligible, people, unintelligible, they will not
14 approve of somebody who do not speak Spanish, you know what
15 I'm saying.

16 Salem: Yeah.

17 Victor: He feel more confident to do it.

18 Salem: Right.

19 Victor: Anyway I feel the same way, you know
20 when they don't feel the same way when the person might come
21 up doing something you know, wrong --

22 Emad: Absolutely. Sure he does.

23 I am not going to tell him anything -- in Arabic.

24 It was a foregone conclusion that Victor was
25 going to get snowed, but if he knew what was going on

1 because he was in Siddig's house -- there, I submit to you,
2 as I said before, it is clear he not only didn't know what
3 they were planning on, he was opposing using bombing stuff.
4 Why does he twice more ask what's going on and why don't
5 they tell him? If he supposedly was told what was going on,
6 why does he get the snow job from Siddig Ali the night of
7 June 19 in the safe house? They don't trust him. He is not
8 one of them. Siddig and Emad are not going to tell him
9 anything. That's what Emad said.

10 Ladies and gentlemen, I am going to ask you to
11 pull out the transcript books again for a couple of minutes,
12 and we will see that this day, as every day that Victor is
13 there, there is conversation going on before he gets there,
14 and even occasionally while he is there, in Arabic, which is
15 never, ever said in English with him present. There is
16 conversation about tunnels, there is conversation about
17 cars, there is conversation about lanes, there is
18 conversation about parking lots under the UN building, over
19 and over. It is never repeated when he is there.

20 Before I get into this, there is something that I
21 want to say. The other people in those conversations, the
22 people I am talking about are Emad and Siddig. There are
23 other defendants in this court. For example, I sat here
24 with you yesterday listening to Ms. London, and I only pick
25 Ms. London at random. It could just as easily be Ms.

1 Amsterdam, Mr. Bernstein. I would say Mr. Lavine except
2 Victor and Fadil Abdelgani are never together for a
3 meaningful conversation. It could be any -- I sat here with
4 you listening to Ms. London make what I submit to you was a
5 convincing argument that her client Tarig Elhassan thought
6 this was all about training. Don't misunderstand what I am
7 doing. I am not characterizing what anybody else was doing
8 other than Siddig and Salem.

9 Let's start with 352, and I am going to
10 abbreviate this, ladies and gentlemen. I ask you when you
11 are deliberating on Victor's case, go through these
12 conversations. You will see this happen over and over and
13 over, every conversation. If I did this, we would be here
14 through next week. 352, let's start at about page 11.
15 Siddig Ali, the second time he speaks on page 11. The
16 hadduta will go in front. We need three minutes exactly.
17 Somebody else will come behind him. They are talking about
18 how far apart the cars have to be to bomb the tunnels. Then
19 down at the bottom of the page they will stall out the car.
20 You see Emad says the distributor cap. What they are saying
21 is we will take the distributor cap off the car so no one
22 can move the car out of the the car with the bomb out of the
23 tunnel before it blows up.

24 Next page. Siddig Ali, the fourth attribution to
25 him: We'll lock the doors. He has only three minutes. A

1 car will come up behind him.

2 They are again talking explicitly, Siddig and
3 Emad, about how they will bomb the tunnels.

4 Turn to page 15. Siddig says: I am thinking of
5 something else but it's expensive. Instead of two cars we
6 will get a truck. We will put the bomb in the truck.

7 Then down at the bottom of the page Emad says:
8 No, there won't be fire engines because when the bomb
9 explodes in the tunnel the water will flood the tunnel.

10 Ladies and gentlemen, I am not going to because
11 it will take too long. You can go through these
12 conversations page by page. Find that kind of conversation
13 which completely stops when Victor arrives.

14 THE COURT: Excuse me, Mr. Serra. Can I see you
15 very briefly at the side along with the government.

16 (At the side bar)

17 THE COURT: This is the second time in five
18 minutes that you said you were abbreviating something. I
19 don't want any suggestion that I am saying that if you don't
20 finish today --

21 MR. SERRA: Judge, I think you know me better.

22 THE COURT: I also don't want you cutting it
23 short and then saying --

24 MR. SERRA: You didn't mean in my summation; to
25 you.

1 THE COURT: Correct.

2 MR. SERRA: Judge, I will do what I think I have
3 to do to represent my client.

4 THE COURT: Please. I know you don't need me to
5 tell you but there are tactical considerations, too, and I
6 want you to know what they are. It is likely that we will
7 have to charge on Saturday.

8 MR. SERRA: Thank you. For a change I appreciate
9 having my summation interrupted to call me up.

10 (In open court)

11 MR. SERRA: Turn to page 18, again Government's
12 Exhibits 352, middle of the page, the attribution to Emad
13 Salem. You can't imagine the damage which will occur. The
14 whole river will pour into the streets.

15 The next page, page 19, Siddig is gloating
16 basically about how if we cut off the tunnels we will cause
17 billions of dollars of damage. One tunnel every day is
18 \$400,000.

19 The next page, page 20. It will be compared to
20 the World Trade Center -- this will make the World Trade
21 Center look like a dwarf. Siddig Ali.

22 As long as we are on the subject of the World
23 Trade Center, Emad has a favorite story, right up there with
24 his story about how he was 18 years as an Egyptian Green
25 Beret, and that's how the people who bombed the World Trade

1 Center blew it. They put the bomb on the arm of the World
2 Trade Center. You remember that. He says it 50 million
3 times, never to Victor, never.

4 Page 21, bottom of the page. Emad is talking
5 about the two tunnels, one in the middle, the middle will
6 collapse.

7 Page 22, Siddig Ali: How could we do them both
8 at the same time? How do we get the bombs to go off at the
9 same time.

10 Explicit conversation which stops when Victor
11 gets there, and in every conversation, every time he goes
12 anywhere, this is what happens.

13 Page 54 -- I just skipped 30 pages. Page 54,
14 bottom of the page. Salem, regarding the big house, the UN:
15 How are you going to do it? Tell me.

16 Siddig: I'm going to get the plates, I'm going
17 to put it in a parking lot underneath.

18 They go over to the next page where Siddig is
19 talking about where the ambassador's offices are. Explicit,
20 explicit conversation. Victor gets there maybe 15 pages
21 later, page 72, and it stops.

22 That evening, as we have already explored, Victor
23 does go to the safe house, the garage out in Queens. If you
24 would turn in the same transcript to page 187. There is
25 Emad's World Trade Center arm of the building story. Victor

1 of course isn't there. Emad talks about how they put it in
2 the right place. One building falls into the other building
3 and they are both demolished.

4 Page 191, talking about again you put it in the
5 right place in the tunnels -- Emad talking -- you put it in
6 the right place in the tunnels, it will demolish them.

7 Emad: The officer will not have 10 minutes to
8 come tow the car.

9 Explicit, explicit plans. Victor gets to the
10 safe house that night, the talk stops.

11 The evening of June 21, 1993 -- before I leave
12 that subject, ladies and gentlemen, I invite you for every
13 conversation that Victor Alvarez is in to do that same
14 thing.

15 June 21, Victor gets to the garage. Earlier that
16 day there was conversation, earlier on June 21 there was
17 conversation in Salem's car on the way to the safe house, to
18 the garage. That conversation is Government Exhibit 363T.
19 It actually comes chronologically before 362. I think the
20 numbering got a little messed up. But again, if you look at
21 that conversation, which is, I believe, in your same book at
22 page 12, you will see conversation about how to blow up the
23 bridge, specific conversation about how best to blow up a
24 bridge. Siddig is talking about the Philippines. Then page
25 20 to 21 of that conversation, Government's Exhibit 363T.

1 They are talking about Victor. He is not there. This is an
2 Arabic conversation which occurs in Salem's car on the way
3 to the safe house. They are again talking about Victor.

4 Bottom of page 20: Mohammed was nervous.

5 Siddig: Yesterday? Yes. He was so nervous.
6 From what? He was so nervous yesterday. Yes.

7 Page 21: Do you remember him brother? He was
8 hitting the floor and almost broke the, unintelligible. He
9 is tired, tired. He is not used to these men. This is why
10 it is very wrong to have him with you, because he is in need
11 of more teaching before he came here.

12 Siddig goes: It's difficult, he kept telling I
13 want to do jihad, I want to do jihad, I want to do jihad.

14 You know that Siddig Ali had one of those -- you
15 have heard the word FISA used in summation. A legal
16 wiretap. Siddig had a variety of legal wiretaps on his
17 phone for sometime before the arrests in this case. You
18 didn't hear one call from Victor Alvarez, but he kept saying
19 I want to do jihad, I want to do jihad, I want to do jihad.
20 Siddig making it up. But do jihad over there according to
21 his ability. This gentleman is for someone who can accept
22 any pressure.

23 They don't want Victor. They don't want Victor
24 because he is not one of them, they don't want Victor
25 because they don't trust him. How do you deal with someone

1 you don't trust? You tell them everything?

2 Alvarez Exhibit DD. Again, it is in the little
3 book, don't pull it out. It's a stipulation. That same
4 night -- again, that conversation we just referred to is in
5 Emad's car on the way out to Queens. Then before Victor
6 gets there, the stipulation reads as follows: On June 21,
7 1993, about 11:55 p.m., at the garage safe house, Emad
8 Salem, Siddig Ali, Amir Abdelgani and Tarig Elhassan have a
9 discussion which is largely unintelligible. In an
10 intelligible portion they discuss who "we" are. Neither
11 Victor Alvarez nor Fadil Abdelgani is mentioned.

12 That was June 21. Victor at that point had
13 already been to the safe house. He was there on the night
14 of June 19. The government tells you that he was told
15 explicitly what was going on, although I submit to you, as
16 we have been going through for the last hour and a half or
17 or two, that's nonsense. In any event, the same night right
18 after, in Emad Salem's car people express the sentiment to
19 get rid of Victor. They do not include him when they are
20 counting up who we are. He is not trusted, he is not
21 wanted. You don't tell someone what is going on that you
22 don't trust and you don't want. He was strictly there to be
23 used.

24 Same pattern occurs that I was referring to on
25 the night of the 19th, a pattern of conversation that night.

1 I would ask you to pull out your transcripts for
2 Government's Exhibit 362. Start at page 7. Siddig talking
3 about the United Nations -- I am sorry. That was page 8.
4 Page 7, the talk is about the tunnels. Page 8 Siddig is
5 talking about the United Nations.

6 Page 9, the United Nations and how the problem is
7 that the parking lot, as Siddig says, is not directly
8 underneath it, so we have to adjust for that. Siddig
9 talking in the long attribution in the middle of page 9
10 about exactly what is going to be done, Lincoln town car
11 plates -- there was testimony about plates from the Sudanese
12 Mission -- how it would go under the United Nations, how it
13 would be placed.

14 Next page, page 10, Siddig also is talking about,
15 middle of the page, the attribution to Siddig talking about
16 he is Sudanese also, talking about the United Nations,
17 underneath is the garage, Siddig saying he will wear his
18 best suit, park the car.

19 Page 11, talking about if you blow up the tunnels
20 will there be water in the streets.

21 Page 12, Siddig Ali's "like a straw" comment
22 about blowing up the tunnels. The middle is strong, maybe
23 there is extra concrete. That is page 12.

24 Page 15, Siddig talking about how there are
25 cameras in the tunnels. And on. Victor gets there, it

1 stops. Victor gets there at page 22, and as soon as he
2 walks in there is the Arabic comment, Emad, he is a
3 blockhead. Why is Emad being reminded that Victor is a
4 blockhead? Do you trust blockheads? Every bombing
5 conspiracy needs a blockhead.

6 The conversation turns to beepers. Again for
7 comic relief, perhaps you want to listen to some of these
8 beeper conversations. They are usually in English because
9 Victor is there. Victor has a beeper but it is clear he
10 doesn't know what to do from the other end. He knows how to
11 receive a call but he doesn't know how to make the beeper
12 call. Siddig explains it in this conversation. It happens
13 again the next night where Victor explains that he doesn't
14 know allow to use a beeper, even though he has one.

15 Why, Mr. Fitzgerald asks, do people think there
16 is conversation going on about beepers and code names, which
17 there is? Why, there is the system which Victor never did
18 get, before you come into the safe house you beep Emad's
19 beeper, you put in this code depending on who you are and
20 whether you are coming or going.

21 There is no question, ladies and gentlemen, and
22 Victor admitted it when he testified, that he knew Siddig
23 wanted him to get stolen cars. That is illegal. Siddig
24 explained to him, as you will see in a passage we didn't
25 read -- believe it or not there are passages in these

1 conversations which we didn't read, and in a passage we
2 didn't read you will see Siddig said to him I am telling you
3 for this purpose -- he never says what the purpose is -- the
4 Koran says Islamically it is OK to steal cars. That is in
5 352. But Victor knows it is illegal, and whether it is OK
6 Islamically or not, it is not OK according to the law. So
7 it is not unnatural that someone would take precautions if
8 he knows that people are doing something illegal. I told
9 you earlier on, and you probably recall it from his
10 testimony, Victor thought that it was going to somehow be
11 used to benefit the poor starving Muslims in the
12 Philippines. That is in the first tape I played for you,
13 what Victor said, or what he implied.

14 Something happened on page 38. I thought I had
15 blown this up but I don't see it, so I would ask you to turn
16 to page 38. Siddig Ali, with Victor there, uses the word
17 bomb. If you listen to this conversation, you will hear
18 that Siddig is speaking in a low voice. But he uses the
19 word bomb. It is a third of the way down the page.

20 An unknown male, unidentified male, whispers in
21 Arabic: Don't use those words.

22 Siddig says: Huh?

23 You know, after all, I have been talking -- I,
24 Siddig Ali -- have been talking for the last two hours about
25 where to put the bomb in the tunnels, how far the cars

1 should be apart, ya di ya di ya di, why should I not use the
2 word bomb?

3 The unidentified male says: Don't use the word
4 because --

5 Siddig says: No problem, no problem.

6 The because, ladies and gentlemen, is clear:
7 because Victor is here. Don't use those words because the
8 guy that doesn't know what's going on is here and who we
9 don't want to know what is going on is here.

10 From that point on in that conversation Siddig
11 Ali -- I think Ms. London referred to it in her
12 conversation -- starts basically going off. If they catch
13 you they'll start spraying gas in your face. Big guy with
14 muscles, they will torture you in prison, bring your family,
15 on and on and on. If things get a little hot and you want
16 to relax for awhile, it is interesting to hear this because
17 Siddig seems almost to enjoy the idea of being tortured in
18 prison.

19 There are some blue pages in your books. Those
20 blue pages, as it says in the beginning, are a late edition
21 where the parties stipulate -- you know stipulate, parties
22 agree, parties being the government and us -- that these
23 pages are a more accurate transcript of the tapes. On the
24 second of those blue pages you will see the beginning where
25 Siddig starts to go off, about being tortured in prison, so

1 forth and so forth. You will see at the bottom the
2 reference to Siddig, gas in the face, big guy with muscles.

3 Next page, the last of the three blue pages,
4 which is only a few lines, Victor says unintelligible, aki,
5 brother, I don't know what you are talking about.

6 Then continues in the main transcript on the next
7 regular page, the next normal page, to the first attribution
8 to Siddig: What I am trying to say to you, I just want you
9 to pay attention.

10 Victor: It's 2 o'clock.

11 If you thought that would stop Siddig, you don't
12 know Siddig. He goes on. But it is 2:00 in the morning at
13 this point. When you tell somebody it's 2:00, what you mean
14 is, give me a break, let me go home. Siddig doesn't.
15 Siddig goes on about torture in jail. You remember -- I
16 hope you remember -- I asked Victor when he testified what
17 he understood Siddig to be testifying about. His answer was
18 I understood Siddig to be telling us what would happen if we
19 were caught in the Philippines. Why would someone believe
20 that? Siddig doesn't say caught in the Philippines. He
21 doesn't say caught anywhere. Victor is an American. Are
22 people tortured in America? Do people who wind up in jail
23 have their families brought in front of them and tortured
24 until they talk? It would be perfectly natural for an
25 American to believe that Siddig was describing someone who

1 was caught if he intended to go, out of America.

2 Then, page 46, we get to something that the
3 government enlarged. This is a government enlargement that
4 Mr. Fitzgerald used in his summation. Mr. Elhassan says
5 something about America changing. I don't know what he
6 meant. More importantly, Victor didn't know what he meant.
7 How do you know that? The government didn't blow up the
8 next page. This is page 46. The very next page, page 47.
9 Perhaps it is not quite as nice as the way the government
10 did it.

11 Victor's comment, they American people they are
12 getting the idea, they know that the Jewish people is the
13 one that keep influencing -- actually what Victor says is
14 influing, influing them -- and throwing things more and ah,
15 ah, talk so they become more religious every day and become
16 more influence Arabic people or Muslim people.

17 Ladies and gentlemen, I am not sure what he meant
18 by that. I don't think you can read it and know what he
19 meant by that. But I remind you of the conversation in
20 Siddig's house two days before where Victor was talking
21 about, we have to show the American people, we have to write
22 back, we have to go in papers and go on television about the
23 people who are saying bad things about us. If what Victor
24 is saying is that Jewish people influence the media, that is
25 not a viewpoint that I particularly want to urge on you, but

1 on the other hand it is clearly not saying that we are going
2 to wage a war of urban terrorism to show Americans anything.

3 Victor's understanding of what Mr. Elhassan says
4 is that it has something to do with countering Jewish
5 influence on Americans that Muslims are bad people. I can't
6 get more specific than that because I can't answer it. I am
7 not sure what he meant. But it is clear that he meant
8 nothing about sedition, it is clear that he meant nothing
9 about urban terrorism. The government didn't blow that one
10 up.

11 On the way, there is conversation about wanting
12 Victor out, and after there is conversation in the safe
13 house not including Victor in who we are, there is someone
14 who is invited to take a vacation. There has been a
15 suggestion that this was not Victor. There were three
16 people there that night who testified: Emad Salem, Victor
17 and Tarig Elhassan. Mr. Elhassan was not asked. Victor and
18 Emad both testified that the "take a vacation" comments were
19 directed to Victor.

20 The words sort of choke in my mouth to credit
21 Emad Salem with telling the truth about anything. I submit
22 that if Emad were to tell you that the sun rose in the East
23 the first place you ought to look is the west. But when you
24 see a dark sky and you see a glow in the east, maybe you
25 conclude that nobody can lie all the time.

1 Emad said -- a lot of the conversation was in
2 Arabic. Here it is. For anyone of you who wanted to pull
3 out, it's time for you to pull out now. You're still our
4 brother, we trust you.

5 And then there are some words spoken in Arabic by
6 Mr. Khallafalla: I'll call you tomorrow, I'll give you my
7 opinion tomorrow.

8 To whom is it being addressed, if anyone wants to
9 leave do it now? It's in English, that's clue number one,
10 because the only person around that doesn't speak Arabic is
11 Victor.

12 Clue number two, Emad Salem testified that when
13 Mr. Khallafalla said I'll give you my opinion tomorrow he
14 was making fun of Victor. Emad Salem testified the comments
15 were addressed to Victor, that the "I'll give you my opinion
16 tomorrow" was people laughing at Victor. There is a way to
17 find out whether that is an accurate interpretation. Victor
18 can't tell you because he doesn't speak Arabic. Victor
19 doesn't know what was being said in Arabic. But there is a
20 way to tell whether something is a joke, whether someone is
21 being made fun of.

22 First of all, Siddig Ali says no, this is not a
23 joke. But second, if you listen to the tape, the laughter
24 is unmistakable. Let's listen.

25 (Pause)

1 MR. SERRA: Obviously that is not going to work.

2 THE COURT: Mr. Serra, do you want to come to a
3 break point.

4 MR. SERRA: Thank you, Judge.

5 Ladies and gentlemen, if you remember the
6 arguments, we will try to cue that up tomorrow and have the
7 equipment working better. If I am going to argue that
8 something sounds like laughter, it is hard to do that just
9 from a transcript. We will see if we can play the tape.

10 Ladies and gentlemen, that conversation reprises,
11 shows again that Victor is someone who is not trusted, not
12 wanted, and not informed. Tomorrow -- I obviously did not
13 finish today as I hoped to do. I do not have far to go. We
14 have one more night to cover and I have a few more
15 concluding remarks. Thank you.

16 THE COURT: May I see Mr. Serra and the
17 government briefly at the side.

18 (At the side bar)

19 THE COURT: I have had both of your best
20 judgments and now have to exercise my judgment. Does it pay
21 to continue heroic efforts, namely, trying to start at 9
22 instead of at 9:30?

23 MR. SERRA: Your Honor, I can tell you that I
24 will be less than another half hour. I am almost done. I
25 don't know if that helps.

1 MR. McCARTHY: Your Honor, I think that I have
2 about five hours but I am not exactly sure.

3 MR. FITZGERALD: I guess I have a Giglio
4 obligation. I think he might be a little bit longer but not
5 that much longer.

6 THE COURT: Then we will bring them in at 9 and
7 see how we go. I don't want anyone saying that talking
8 double speed or they will leave things out because of
9 scheduling, you or him.

10 MR. McCARTHY: Judge, it is obvious to everyone
11 who has been here that you let everybody go as long as they
12 wanted to go, including the government.

13 THE COURT: Good.

14 MR. PATEL: Your Honor, Ibrahim thinks he has
15 figured out what the difficulty is.

16 MR. SERRA: I will pick it up tomorrow. Thank
17 you.

18 (In open court)

19 THE COURT: The good news is somebody thinks they
20 might have figured out what the problem is with the machine,
21 and we are going to resume tomorrow at 9:00. In the
22 meantime, please don't discuss the case, please don't see,
23 hear or read anything about this case or any related matter.
24 We will see you tomorrow at 9:00.

25 (Jury excused)

1 (In the robing room)

2 MR. WASSERMAN: Your Honor, there is a point that
3 I had raised with Mr. Fitzgerald earlier concerning the
4 government's rebuttal summation, and I thought it would be
5 appropriate to do it now rather than take time tomorrow.

6 THE COURT: Sure.

7 MR. WASSERMAN: It was mentioned in the
8 government's summation that the tie into what they call the
9 40 thieves, a group of people robbing banks --

10 THE COURT: The people in Pennsylvania?

11 MR. WASSERMAN: Right. The theory of the
12 government's relevance in arguing it is that that
13 substantiates in June of '92 when my client is having a
14 conversation with Emad that in fact there is reality to his
15 talking about ready-made bombs, because he is referring to
16 this group, and that a year later when he refers to Emad and
17 refers back to a year before and they had everything, this
18 substantiates the June '92 conversation.

19 THE COURT: You talked about that.

20 MR. WASSERMAN: The point I have is, at bottom --
21 there are two problems I have. One is, there is no evidence
22 on the record concerning this group other than the fact that
23 Marcus Robertson was arrested in Pennsylvania in July of '91
24 and charged with handgun possession and some other matters,
25 but, as Mr. Fitzgerald said in his summation, C-4 and

1 nothing else. My point to the court and the government is
2 simply this: that at its best the 40 thieves were taken
3 down in Pennsylvania in July of '91, and then as Mr.
4 Fitzgerald knows, in the fall some other members were
5 arrested during a bank robbery in Brooklyn.

6 Therefore, any relevance to the theory that my
7 client had access to things that the 40 thieves had in June
8 of '92 when he first meets Emad is not factually correct
9 because the group had been arrested a year before in terms
10 of Marcus Robertson, the alleged leader of the 40 thieves,
11 and then in the fall of '91 other members who had C-4 -- it
12 was never brought into evidence.

13 I am saying, for the government to take the
14 position that in June of '92 when he first meets Emad he
15 really had access to C-4 is factually incorrect because he
16 had already been arrested with Marcus Robertson in July '91
17 and other members had been in the fall of '91, and therefore
18 I think it should not be further addressed by the
19 government.

20 THE COURT: You did talk about it.

21 MR. WASSERMAN: I merely pointed out to the jury
22 that the evidence showed that Marcus Robertson was arrested
23 in July of '91 and that therefore the dating could not work
24 under the government's theory. It was simply that.

25 My underlying point is that frankly I should have

1 objected earlier about this because in fact there is no
2 basis to the theory that in June of '92 he has access
3 because this group has been taken down quite a bit earlier,
4 and therefore it is wrong to bring back before the jury in
5 rebuttal.

6 MR. FITZGERALD: I think the bottom line is that
7 it is far too late in the day, both in the figurative and
8 the literal sense. Had we faced this before we might have
9 put in a lot more proof which would show that certainly
10 Marcus Robertson was arrested in early '91, some other
11 people were arrested later in '91, and in '92 a federal case
12 was brought in Brooklyn where charges were filed. There is
13 still a fugitive out there.

14 In the case it is clear that defendant Hampton-El
15 said that there were people in jail. The difficulty he has
16 is getting access to people in jail, and his testimony on
17 the stand was that this was something he made up, his
18 father-in-law, who became a cooperating witness.

19 MR. WASSERMAN: He said these were rumors
20 floating around the community and that is what he was
21 drawing his information from.

22 THE COURT: It seems to me this is all argument.
23 As far as the factual impossibility point, I don't see that
24 it is factually impossible even if all of the members of the
25 group had been taken down to find out who they got their C-4

1 from, unless they were C-4 manufacturers, which I sincerely
2 doubt. The rest of it is argument, and you made yours and
3 they can make theirs.

4 MR. WASSERMAN: The last point is that the
5 paucity of evidence on this point, the government puts in
6 really one fact, that Marcus Robertson -- two facts -- is
7 the son-in-law of Suliman El-Hadi who my client says he
8 knows and that Marcus Robertson was arrested in July '91 on
9 a handgun charge and there is no C-4 or any of the other
10 things that my client had been talking about. That's it.
11 It is a very slim reed.

12 THE COURT: I think the government's point was
13 simply that your client's testimony could be read as saying
14 I pulled this out of the air and lo and behold the
15 government's evidence and the government's argument is,
16 guess what, folks, he pulled reality out of the air, which
17 means he didn't pull it out of the air at all. They argued
18 it one way, you argued it another, they can rebut on that
19 subject, and I seriously doubt that they are going to build
20 a major part of their rebuttal argument on this issue. In
21 fact, I think we have probably spent longer discussing it in
22 here than they will spend. But I have been surprised in
23 this case before, pleasantly and unpleasantly.

24 MR. WASSERMAN: There has been no evidence of the
25 reality. That, I think, is my most basic point. There has

1 been no evidence that this group existed --

2 THE COURT: Sure, there has.

3 MR. WASSERMAN: No, there hasn't. There was no
4 evidence that there were 40 thieves.

5 THE COURT: You are now arguing it is imaginary.

6 MR. WASSERMAN: No. I am simply saying that the
7 government hasn't built a foundation upon which to make any
8 argument whatsoever. They have simply produced evidence
9 that there was a guy arrested in Pennsylvania on a handgun
10 charge and he happens to be the son-in-law of this guy my
11 client says he knows. They haven't substantiated that there
12 was any group that had C-4 or when they were arrested. No
13 foundation in evidence. That is why the argument is built
14 around nothing that makes it so dangerous. It is almost
15 impossible to deal with and that is why it should be stopped
16 at this point rather than allowed to go further.

17 THE COURT: No, I am sorry.

18 MR. FITZGERALD: The only thing I will note for
19 the record, Marcus Robertson and Mikhail, Richard Smith,
20 were both made available for Mr. Wasserman to call in a
21 surrebuttal case, and the 3500 material was turned over.

22 THE COURT: You had them brought in, I recall, at
23 great expense and inconvenience, and then said you weren't
24 going to call them.

25 MR. WASSERMAN: As I told the government, I would

1 notify them at the earliest possible time.

2 THE COURT: You waited to see whether they would
3 be made available and then you decided not to call them.

4 MR. WASSERMAN: Mr. Fitzgerald was forthright
5 with me. He said they were being produced days before they
6 were produced.

7 THE COURT: Then Mr. Fitzgerald rather overstated
8 the ability of the Marshals Service because they had to bend
9 themselves completely out of shape to do that.

10 MR. WASSERMAN: As I told Mr. Fitzgerald, I
11 wanted to have that control over Agent Dressler's testimony.
12 It is not my burden to put evidence about C-4 or 40 thieves
13 into the case.

14 THE COURT: Mr. Wasserman, the fact is that the
15 case ended when it ended, they made their argument, you made
16 yours, and they get to rebut. It is the jury's recollection
17 of the evidence that controls, and I am sorry to be citing
18 banal and rather broad principles but it seems to me this is
19 governed by banal and broad principles, and those are they.

20 Have a nice night.

21 MR. WASSERMAN: You too, sir. Good night.

22 (Adjourned until 9:00 a.m., Thursday, September
23 21, 1995)

24

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

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

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

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

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

S5 93 Cr. 181 (MBM)

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

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

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

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

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

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

Defendants.

-----x

September 21, 1995
8:50 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

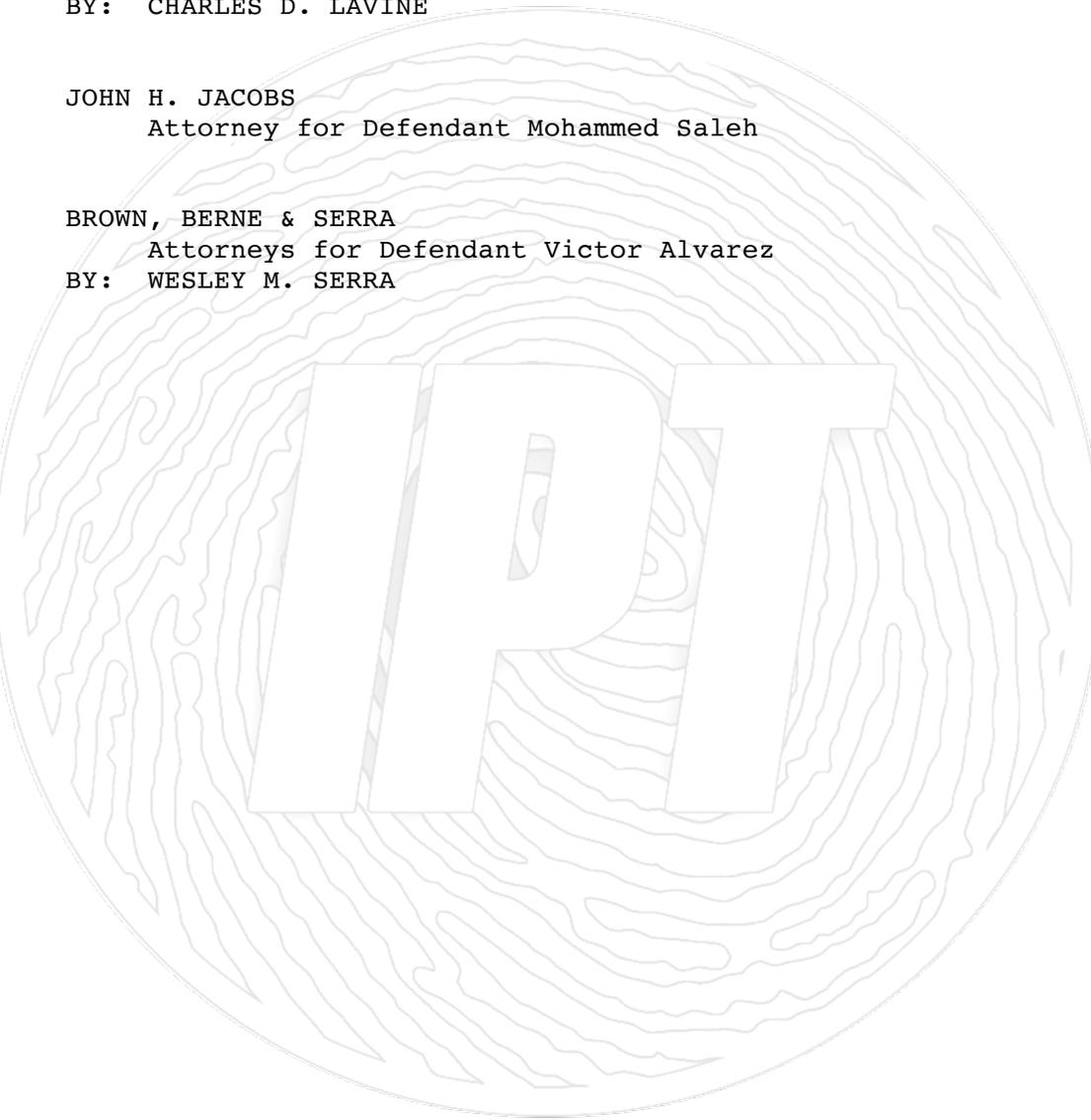
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Trial resumed)

2 (In the robing room)

3 MS. AMSTERDAM: Can I begin?

4 THE COURT: Please.

5 MS. AMSTERDAM: I asked for this conference this
6 morning to request a two-minute rebuttal after Mr. Serra
7 finishes, for the following reasons.

8 Mr. Serra yesterday began discussing CM 58, which
9 is the heart and soul of the Khallafalla defense. It is the
10 transcript that starts with I will give you my opinion
11 tomorrow, goes on to say take a vacation and finishes up
12 with them saying Fares is not a Fares.

13 Mr. Serra and I many many months ago in
14 preparation of transcripts discussed who it was that they
15 were referring to, but Mr. Serra took no affirmative step to
16 advance the position that it was referring to Mr. Alvarez.
17 I am not saying he had to, I am just saying he didn't.

18 MR. SERRA: Pardon me, your Honor. Are we really
19 getting into off-the-record conversations? Is that really
20 what we are doing?

21 MS. AMSTERDAM: I am saying at trial, Mr. Serra.
22 I am saying at trial he did not do an opening, he did not do
23 a cross-examination of Mr. Salem, and was based on all the
24 facts and circumstances that were available to me I drew the
25 conclusion that Mr. Serra was not going to advance the

1 argument that this referred to Victor Alvarez. Therefore I
2 made a decision not to engage in what I regard as
3 unnecessary defendant bashing. I did not get up in my
4 summation, for example, and say I just want to point out
5 here that in case there is any mistake about the evidence,
6 the transcript does not read Victor Alvarez is not a Fares,
7 it reads Fares is not a Fares. I did that because it was my
8 assumption that while the government might come back at me
9 on this issue, that Mr. Serra was not taking that position
10 because he hadn't advanced it at any other time during
11 trial.

12 Mr. Serra has no obligation to advise me, tell me
13 or do anything, but he does go after me in order of the
14 indictment. He has gotten a tactical advantage by virtue of
15 going after me in the indictment. I did not engage in what
16 I regarded as useless defendant bashing at the time, but I
17 do think, because it is the absolute heart and soul of the
18 Khallafalla defense, that it is unfair for him to have the
19 last tactical advantage simply by dint of the way the
20 indictment numbers.

21 THE COURT: I understand your point. The witness
22 Salem, I believe, testified that the statement, I will give
23 you my answer tomorrow, was in fact not Khallafalla talking
24 about himself but rather Khallafalla mocking Victor Alvarez.

25 MR. SERRA: In detail. I have the pages.

1 THE COURT: I don't need the pages. I recall the
2 testimony. I thought that was what was going on at the
3 time, I still think so. What the jury thinks is their
4 business.

5 A summation, I guess, is always a high wire act
6 without a net. I suppose there are times it is a high wire
7 act without a wire. You made your decision about what to
8 argue, he made his decision about what to argue, and I am
9 not going to change the order of the summations. You had an
10 opportunity to deal with it, you dealt with it extensively.
11 You made your tactical choice, he made his. I don't see any
12 reason for a rebuttal. The application is denied.

13 (Pause)

14 MS. AMSTERDAM: I just need to place one
15 additional factor on the record, so the record is complete.

16 THE COURT: Go ahead.

17 MS. AMSTERDAM: The additional factor I would
18 place on the record is that Mr. Alvarez testified. Based on
19 the fact that there was no assertion at that point regarding
20 this transcript, I elected, and I think tactically wisely
21 so, not to cross-examine Mr. Alvarez.

22 I believe that, and I will say this candidly on
23 the record, I believe that Mr. Serra's decision to fight any
24 change of the order in the indictment and his absolute
25 unwillingness to yield his position to anyone other than

1 Miss Stewart was a knowing decision on his part that he was
2 going to raise this argument for the first time in
3 summation, and I feel that because of the order of the
4 indictment my client has irreparably been harmed in a way
5 that I could not have foreseen, this argument, nor would I
6 have been in a position to address it fully because I did
7 not know that Mr. Serra would be raising this argument on
8 Mr. Alvarez's behalf. I want the record to be fully clear.

9 MR. SERRA: Your Honor, that is not so, but I
10 don't need to lay it out on the record if the court doesn't
11 want to hear it.

12 THE COURT: I see no need to hear it. I think
13 that that suggestion is really extraordinarily farfetched.

14 MS. AMSTERDAM: I think your Honor is aware of
15 the fights that there were about the order of change of
16 indictment.

17 THE COURT: Yes, I am.

18 MS. AMSTERDAM: Mr. Serra would not let Mr.
19 Jacobs go after him and I submit to the court that there was
20 some possible motivation that if Mr. Jacobs had gone after
21 Mr. Serra, Mr. Serra would not have been able to run so
22 carte blanche with this argument. I think he knew it was
23 coming, I really do, and I think it was unfair that I was
24 not put in a position of getting a heads up so that I could
25 have put it in my summation.

1 THE COURT: Honi soit qui mal y pense.

2 (In open court; jury present)

3 THE COURT: Good morning, ladies and gentlemen.

4 JURORS: Good morning, your Honor.

5 THE COURT: Mr. Serra.

6 MR. SERRA: Thank you, your Honor. Good morning,
7 ladies and gentlemen.

8 JURORS: Good morning.

9 MR. SERRA: Ladies and gentlemen, as I told you
10 at the close of business yesterday, I am nearly finished. I
11 would estimate another half hour. Thank you for your
12 attention. It is part of my job not to put anyone to sleep.
13 I have noticed you taking notes and I thank you for
14 listening.

15 When I thought I was going to finish yesterday
16 afternoon I did not immediately have a page reference for
17 something I told you. I dug it out last night. You
18 remember during the course of the conversation in Siddig
19 Ali's car he explained to Victor how in Siddig Ali's learned
20 opinion stealing cars was legitimate under Islam, as he put
21 it, for this purpose. He never told Victor what this
22 purpose was. The page reference is page 99 in Government's
23 Exhibit 352, which is the long June 19 transcript.

24 Don't misunderstand. I am not saying that
25 because Siddig Ali thinks something is legitimate that all

1 of a sudden that is a defense to a charge. If Victor were
2 charged with conspiracy to possess stolen cars, it is
3 obviously no defense that Siddig said it was OK, but as
4 Victor is charged with conspiracy to wage a war of urban
5 terrorism and if Victor is charged, as he is, with
6 conspiracy to bomb, the fact that he did not know that
7 Siddig and Salem were intending to wage a war or to bomb is
8 definitely a defense.

9 Ladies and gentlemen, where we left off yesterday
10 was the end of the day on June 21, actually the early
11 morning hours of June 22. If you recall, we went through
12 the various stages in the night of June 21 before Victor
13 gets there when other people are in Emad's car on the way
14 out. They talk about wanting Victor out. Earlier in the
15 safe house before Victor gets there, there is more talk
16 along the same lines. He is not included in who "we" are.

17 Then there is a point in the conversation where
18 Victor is at the safe house, where it is suggested that
19 someone take a vacation. As I said yesterday, there has
20 been suggestion to you that that was someone other than
21 Victor. We went through yesterday how Victor and Emad Salem
22 both testified that those remarks were directed to Victor.

23 We were right here. Mr. Ahmed, whom you have not
24 seen throughout the summation because he sits behind the
25 board, figured out the problem with the audio system. It

1 was me playing with the handheld microphone. So I will put
2 this down before we play any more tapes. We were right
3 here. This is Government's Exhibit 362, at page 48, where
4 it is suggested that you are still our brother, you want to
5 pull out, now is the time for you to pull out. You are
6 still our brother. And Mr. Khallafalla says I'll call you
7 tomorrow, I will give you my opinion tomorrow. Emad Salem
8 testified that that was making fun of Victor.

9 As you see, it is in English up until that
10 comment by Mr. Khallafalla. Siddig Ali says after, this is
11 not a joke, and we were about to play the tape when we had a
12 breakdown in the equipment. After Mr. Khallafalla says
13 that, there is laughter once, and there is laughter twice.

14 If everyone could put on their headphones,
15 please. It is easier, I know, to use the boom box, but
16 these tapes, the CM's, are not good enough quality. I don't
17 think you could understand from the boom box.

18 (Tape played)

19 MR. SERRA: Ladies and gentlemen, the laughter is
20 unmistakable. If there is any doubt in any of your minds,
21 rather than me play it several more times -- I know these
22 tapes can be hard to hear -- it is in evidence. You can ask
23 for anything in evidence to be played for you, if you wish.
24 But the points where it occurs are indicated in the
25 transcript.

1 It is Victor who is being told, consistent with
2 the events of that day before he got to the safe house, to
3 take a vacation, to leave. He is being told that because he
4 is not trusted. If he is not trusted, he is not being told
5 what's going on. You don't tell someone you don't trust
6 that Emad and Siddig are planning on blowing up New York.

7 But he doesn't leave. There are two more days in
8 this case after this night. This is the night of the 21st
9 to the 22nd. The arrests are made the 23rd and the 24th,
10 the early morning hours of the 24th. Victor does not come
11 back the next day, he comes back the next night, and is in
12 fact arrested at the safe house.

13 Dr. Aranda described to you ways that Victor is
14 like a 6-year-old. This is another way. When he is told to
15 leave, he doesn't, first of all, because he doesn't
16 understand that he is being told to leave. You can tell
17 from that from the transcript also. Second, being told to
18 leave by your family is something Victor has been through
19 before. It is a very painful thing. It's another
20 rejection. He doesn't want to understand that even if he
21 could, so he comes back.

22 One final word on that day. This is a government
23 blow-up which you have seen before. It is the same
24 transcript, 362T, page 46. The reason I refer to it is
25 because Mr. Fitzgerald in his summation -- I don't know if

1 you can see the yellow highlights put there by apparently
2 what the government thinks the most important stuff for
3 them. In his ranting, Siddig Ali ranting about the wonders
4 and glories of being tortured in prison, he at one point
5 says free Mahmoud, Nidal and all of them.

6 Ladies and gentlemen, you know that Mahmoud and
7 Nidal are the names of two people arrested in the World
8 Trade Center case. I asked Victor on the stand if he knew
9 the names of the World Trade Center defendants at this time,
10 and his answer was no. Why should you take his word for it?
11 In other words, he would not understand what that reference
12 was to. Why should you take his word for it? Because he
13 showed you in an earlier passage which we played
14 yesterday -- and which this is not it -- here it is. He
15 showed you his opinion of people who commit acts of
16 terrorism in the United States. This is Government's
17 Exhibit 352, page 87. We played this actual transcript and
18 I went through the transcript with you. These are my notes
19 in front of you. This is when we were having technical
20 difficulties. What does he say? He is trying to explain to
21 Siddig what can be done and what can't be done by Muslims in
22 America. What I am saying is, we can't, we could make, we
23 could meet -- I am sorry. Wrong place.

24 Remember, this is not Arabic country or Islamic
25 country. Second, were these fools of America is totally

1 different.

2 Uh-huh, sedition case, somebody talking about
3 fools of America, doesn't sound so good. So you keep
4 reading.

5 If you make any action and you get caught, you
6 hurt everybody, you don't hurt yourself, you hurt everybody.

7 I underlined that yesterday. What Victor is
8 saying is not Americans are fools but people, Muslims in
9 particular who do acts of terrorism in America are fools
10 because they hurt everybody. Not only because they kill
11 people, which he discusses in other places here, you can't
12 use force unless force is being used against us, but they
13 hurt everybody.

14 So if in rebuttal Mr. McCarthy argues that Victor
15 understood any of this to be related to the World Trade
16 Center case, remember his opinion of the World Trade Center
17 defendants.

18 The next day -- actually the last day, June 23,
19 1993, Victor gives Emad and Siddig a wooden case containing
20 Government's Exhibit 645, the Uzi. Actually, the day before
21 that, if you recall, Emad and Siddig had gone out to
22 Victor's house in Jersey City, looking for Victor to pick it
23 up. That was the day they looked high and low, beeped him a
24 hundred times, Siddig said, couldn't find him. That was a
25 day when -- it is in a transcript in evidence -- Emad said

1 that Victor was, quote, stupid, stupid, stupid, unquote, and
2 in another place said, a very picturesque Arabic expression,
3 destroy the house of his stupidity. I cross-examined Emad
4 on that.

5 The next day they do pick up the Uzi from
6 Victor's house. Victor said I can get you a machine gun.
7 It's not a machine gun. The government stipulated to it.
8 In that conversation which is in evidence, it is recorded in
9 Emad's car and you can hear Emad talking and Siddig and
10 Victor talking. Siddig is says does it have the little
11 things. Emad, knowing it is being recorded says no codes on
12 my tape, bullets. And Victor says yes, it is full. We now
13 know that later when they opened it up, it was completely
14 empty, not a bullet in it.

15 Finally in that situation when Victor gave them
16 the Uzi, which Victor told you he never opened, Victor says
17 do you want to go someplace where I can show you how to use
18 it. Victor didn't even know whether there were bullets and
19 Emad and Siddig had the great good sense to decline that
20 offer. Probably if there were any bullets in it Victor
21 would have shot himself in the foot. Not a machine gun.
22 Said it was a machine gun, it wasn't; said it was loaded, it
23 wasn't; offered to show them how to use it, obviously he
24 couldn't.

25 Miss Stewart's gave you some Emad vignettes.

1 When you are deliberating, here is one for you. You
2 remember six months ago I asked on cross-examination Emad
3 Salem if he thought Victor was smart, how smart he thought
4 Victor was? Emad's answer was, oh, he's smart. You know
5 better but Emad knew better, too, because you recall the
6 next thing I did was to play tapes where Emad says how
7 stupid Victor is. Unless Emad doesn't know the meaning of
8 stupid, stupid, stupid, he was lying when he said to you
9 that he thought Victor was smart.

10 Why did Emad lie about that? Maybe he didn't
11 want you to think that he had tricked a dummy. If you
12 conclude that, I submit, that Emad lied to you about
13 thinking Victor is smart to disguise what he had done to
14 Victor, that is another reason, ladies and gentlemen, why
15 you should scrutinize with extraordinary care everything
16 that Emad Salem says about every man in this room, from
17 Dr. Abdel Rahman to Victor.

18 Let's get to the last day. If I could ask you
19 again to pull out your binders, this is another binder than
20 the one you were looking at yesterday, I think. This is the
21 binder that contains the last of the 300 series. Turn to
22 Government's Exhibit 383T2, which is the transcript of the
23 videos, the last videos from that last night. I think it is
24 the binder marked 371 to end. It should be the last exhibit
25 in the book. It is the last transcript in the case. 383T2.

1 When you get that, I would ask you first to turn to page 3.
2 What we are going to do, ladies and gentlemen, is what we
3 did yesterday, briefly go through the parts where Victor is
4 not present to show you how the conversation changes when he
5 arrives. 383T2. It should be the last transcript in that
6 book. It is the last transcript in the case before the
7 arrest.

8 Page 3. If you look at the bottom of the page,
9 you see that Emad Salem is playing the tunnel video. The
10 tunnel video is the one that he and Siddig made -- actually,
11 when they went to pick up the Uzi from Victor in Jersey
12 City, they went through one tunnel and came back through the
13 other tunnel, with Siddig providing the running commentary
14 where the best place to put the bombs -- etc., etc., I don't
15 mean to make light of it, it is disgusting stuff. Victor
16 hasn't arrived, won't arrive for a long time. Emad is
17 playing the tunnel video.

18 Page 4, Emad talks about how clever Siddig was
19 when he told me, quote, I am carrying disasters for them,
20 here is the police, look. Apparently Emad is pointing out
21 on the video where the guard station is in the tunnels.

22 You can keep going and going, the same way, they
23 talk about disguises, how they are going to do various
24 projects.

25 I would ask you to turn to page 12 where

1 something very interesting happens. This is right before
2 Wahid Saleh arrives. You remember Wahid Saleh. Bottom of
3 page 12, Salem says, about three attributions to Salem from
4 the bottom of page 12 Salem says: Did you bring the guy
5 Mohammed?

6 Siddig says: They are bringing him on their way
7 here.

8 Mohammed, of course, is Victor, and he arrives
9 later that night with Fadil Abdelgani and Tarig Elhassan.

10 Two pages later, page 14, at the bottom of the
11 page, Siddig says: Because the brother you told me about is
12 a little late.

13 Gamal Abdel-Hafiz, the government's apparently
14 chief interpreter -- I don't know whether he was in rank but
15 he testified more often than anybody else -- testified that
16 the brother you told me about is Victor. Page 12567 of the
17 record, referring to two pages before, Mohammed is late, the
18 brother you told me about is a little late.

19 Salem says bottom of page 14: Yes, yes, I got
20 you.

21 Siddig says: Before he arrives. Salem says,
22 interrupting: Got you, got you, got you.

23 Siddig claps his hand: We explained to him.

24 Wahid Saleh had just arrived. Salem and Siddig
25 are saying we will explain what we need to explain to Wahid

1 before Victor arrives. Why do they say before Victor
2 arrives? Because they don't want Victor to know. It's a
3 continuation of what has been going on for four days.

4 Page 38, talking about whether for putting bombs
5 in the cars strings are better detonators than switches

6 I skipped a number of pages. Victor finally gets
7 there. The first topic of conversation when Victor gets
8 there, page 47, is not strings, which is tunnels, UN, it's
9 once again the beepers, because Siddig, page 47, once again
10 has to explain to Victor how to make a beeper call even
11 though Victor has a beeper.

12 From then on, as other lawyers have referred to,
13 the conversation is simply Emad telling people what to do.
14 You stir this, you pour this in this, you stir this. You
15 can see that clearly on the video when Victor was on the
16 stand I played that for him and for you. Emad walks right
17 over to him twice and shows him how to stir.

18 Mr. Fitzgerald in his summation basically summed
19 up that conversation saying, ladies and gentlemen, there is
20 conversation about tunnels, bombs, UN, and in English the
21 word tunnels, Mr. Fitzgerald said in his summation. Why
22 does that matter? Why did the government see fit to point
23 out to you that the word tunnels it is in English? It is
24 obvious, Victor speaks English, doesn't speak Arabic. The
25 rest of that is in Arabic, as we just went through.

1 Page 52, Government's Exhibit 383T2. Mr. Lavine
2 yesterday played this part of the tape. Again, it is in
3 evidence. I won't play it again. Perhaps you couldn't hear
4 the word tunnels but it is clear what I wanted to point out
5 to you from the transcript. Here is tunnels in English,
6 folks, surrounded by paragraphs of Arabic. Perhaps you
7 remember what the video looked like when Mr. Lavine played
8 it. Basically Victor is in the forefront stirring a bucket.
9 Fadil Abdelgani is alongside of him and Siddig and Salem are
10 off to one side, facing each other having a conversation.
11 That's what is going on here.

12 You can hear Salem say the word tunnels clearly.
13 The rest is in Arabic. What about the ones for it, is in
14 Arabic. How long is it for the ones for it -- is in Arabic.
15 It, are set for four minutes -- is in Arabic.

16 If Victor was listening from 20 feet away when he
17 was stirring, was something like blah blah blah blah
18 tunnels, blah blah blah tunnels, and from that he should
19 figure out that they are planning on blowing up tunnels,
20 just like he should have figured out four days before when
21 Emad described what they were doing as a practical technical
22 action, he should have figured out that that meant blowing
23 up bridges and tunnels in the UN. That Victor should have
24 figured that out.

25 The government may argue about the last night,

1 and actually this is the last word I will say about the last
2 night, but look what they are doing. Victor is sitting
3 there mixing fuel oil and fertilizer, no question about it.
4 Well, Victor was humiliated several times, as we went
5 through yesterday, when he tried to ask what was going on.
6 How many times does the government think he ought to be
7 humiliated after he says I won't ask any more questions, I
8 trust you guys, you tell me it's for the sake of Allah I'll
9 do it.

10 More than that, though, I believe Ms. Amsterdam
11 pointed out, Siddig Ali, when he was first introduced by
12 Emad Salem about two weeks before this, to the fact that you
13 can make a main charge for a bomb from fuel oil and
14 fertilizer, said, unbelievable, Siddig Ali the leader of
15 this didn't know that. Victor should know it?

16 As we went through these conversations, ladies
17 and gentlemen, over and over, the same things appear. What
18 is clearest is how Victor was kept in the dark. He is not
19 one of us, we don't trust him, Salem, I am not going to tell
20 him anything.

21 There is another theme also, however. It simply
22 is not clear, as Dr. Aranda told you, you cannot tell from
23 these conversations when Victor understands things and when
24 he doesn't. Sometimes you can tell. Frequently he will
25 outright say, as I pointed out yesterday, I don't

1 understand. But other times it will appear as though he
2 does understand until something comes along which makes it
3 clear that he didn't.

4 Page 133 of Government's Exhibit 352. Salem and
5 Amir Abdelgani are speaking in Arabic. Salem then starts
6 speaking in English obviously to Victor. They are talking
7 about the stolen cars. This is in Brooklyn where Victor has
8 tried to hook up with somebody he may or may not know to get
9 stolen cars from. You understand in four days, Victor could
10 not come up with a single stolen car.

11 We will drive carefully. We shouldn't speed so
12 that we won't cause problems. We are going to drive
13 carefully, don't rush it, so we don't get the cars to stop
14 us. Remember, they are stolen cars. That is not a
15 suspicious statement. Straight ahead, I have the key, open
16 and close.

17 Victor: No, no, there is not going to be no
18 keys.

19 And Emad says: No, I'm talking about the safe
20 house.

21 In other words, when Emad said that, what Victor
22 thought he was talking about was somehow magically we will
23 have the keys to the cars that Victor was going to get from
24 the guy on the street stolen.

25 We went through several other conversations where

1 Victor simply doesn't understand what is going on. The what
2 I call who's on first conversation, where Salem says four
3 times Siddig is the leader, and Victor says yes, but who is
4 leading us. The conversation from two nights before, the
5 21st, whatever Mr. Elhassan was saying, Victor thought he
6 was talking about Jews in the media. The conversation where
7 Emad Salem asks Victor about Dr. Abdel Rahman. Victor says
8 I don't understand what he says, but I like it.

9 Finally -- I really should mark these. Finally,
10 this you haven't seen before. This is 150 from Government's
11 Exhibit 352, the 200 some page transcript from June 19.
12 Victor is here telling the assembled multitude about how to
13 hot wire a car.

14 We will find one. You know how you braid the
15 wires, unintelligible, to start together. You have to braid
16 the cylinders? Unintelligible. You have to be two wires
17 red and one black, sometimes one white and one red, one
18 white and one red, sometimes two whites. So you are
19 braiding the cylinders, wires either a red wire or else a
20 red and a white wire or else two white wires. You take out
21 the cylinder -- that actually makes sense, the cylinder from
22 the lock in the ignition. One each cable unintelligible to
23 the tank? You make contact and the car starts.

24 There is a cable going from the ignition to the
25 gas tank, folks, and you make contact, and you don't need to

1 start the car, the car blows up.

2 That is Victor on how to hot wire a car. I would
3 be more worried about that conversation since it is obvious
4 what Victor will wind up doing is blowing the car up if this
5 were a conversation about bombs and not how to steal cars,
6 but it isn't. It is about how to steal cars and that is
7 Victor's idea how to hot wire a car. Notice he doesn't say
8 I don't have a clue how to hot wire a car. He makes it up
9 as he goes along. He pretends he understands something he
10 doesn't.

11 I am not saying, ladies and gentlemen, that
12 everything here doesn't need examining. In a case like
13 this, everything needs examining. But what you are seeing,
14 what you have seen on the videos, what you have heard on the
15 audios, what you have read in the transcripts are not Victor
16 being a terrorist. It's Victor being Victor. Maybe some of
17 you have noticed I have a cold. I'll get better. If I had
18 a broken bone, I'll get better. If I have cancer, by the
19 grace of God perhaps I will get better. Victor will not get
20 better. It is the way he is.

21 Ladies and gentlemen, you are watching someone
22 who was abandoned by his own family and abandoned in a
23 particularly cruel way by his adopted family in allowing
24 daily beatings to go on. He tried to find the grounding,
25 the roots that Dr. Aranda described to you. He tried to

1 find it through Santeria. He was fooled by card tricks that
2 were much simpler than things that Emad and Siddig could
3 pull. Bathed in goat's blood. Did rituals. Paid half the
4 money that he made for years and thought it helped him, to
5 the point where he was on the verge of committing suicide.
6 Found a new family in the Muslims at that point. But he ran
7 into two very bad uncles in Emad and Siddig. But once he
8 was accepted by them into something that he was told was
9 very important to his religion, he did, because they were
10 his family and he trusted them, he did what they told him to
11 do, tried to find out what was going on, and when they told
12 him that it was his duty as a Muslim to do what he said,
13 they said not ask questions, he did it.

14 Victor testified. Put yourself in his position
15 before he testified. He has to know that in intellect he is
16 no match for federal prosecutors. Must have been terrified.
17 In fact they cross-examined him for five minutes on one
18 subject. Were they afraid of Victor or were they afraid
19 that the more you saw of him the more convinced you would be
20 that he doesn't understand?

21 He wanted you to see him to know, to understand
22 that he was no terrorist. For four days, ladies and
23 gentlemen, Victor was in between Emad Salem and Siddig Ali.
24 You heard about Emad from virtually every other lawyer who
25 spoke to you and I won't go into any detail, but I think it

1 is fair to sum up what you have heard as saying that he was
2 so good at the con that when he passed through the FBI he
3 left professional experienced agents just twirling in his
4 wake. You saw that on the witness stand in this case. And
5 he did it all for money.

6 Nosair OO sums up Emad as well as anything that
7 is in evidence. On the other side of Victor was Siddig Ali.
8 You have heard a lot of people including me discuss Siddig
9 Ali. You heard a government witness Abdel Rahman Haggag
10 discuss him in some detail. I quoted from his testimony but
11 one thing I didn't quote was the part where he said that
12 after he got to know who Siddig really was had to keep an
13 eye on Siddig who prevent him from hurting people who
14 trusted him and doing it in the name of Islam. Too bad
15 Haggag wasn't around when Siddig did it to Victor.

16 But you don't even need to take a government
17 witness's word for it, for what type of person Siddig is,
18 because in evidence is an interview which Siddig Ali did
19 with television station New York One. We are going to play
20 a minute or two of that interview right now and I would ask
21 you to watch how Siddig can look right at you, look like he
22 is speaking from the heart, and lie through his teeth.

23 I think it is on the headphones.

24 (Continued on next page)

25

1 (Videotape played)

2 He leaves in a peaceful way, an invitational way.
3 I invite you into the UN before I blow it up. I invite you
4 into the tunnels before it floods and you will be drowned.
5 But he says it well.

6 Ladies and gentlemen, between Emad Salem and
7 Siddig Ali, for four days, June 19 to June 23, 1993 --
8 that's Alvarez Exhibit EE2A. Dr. Aranda told you about it.
9 Basically it is a six-piece jigsaw puzzle. All it requires
10 is putting together six pieces in the shape of a human body.
11 And your arms -- you got your own body as a model -- your
12 arms are not the same. They are mirror images but they are
13 not the same. Even if you don't realize that, all you got
14 to do is put the round peg in the round hole, and the square
15 peg in the square hole. Victor couldn't do it.

16 For those four days in late June, 1993, Victor
17 was between Emad and Siddig, two people who he saw as
18 trusted family members. He was beaten again. Between those
19 two, he never had a prayer.

20 Thank you for your time.

21 THE COURT: Thank you. We will now hear rebuttal
22 summation from the government. Mr. McCarthy?

23 MR. McCARTHY: Thank you, your Honor.

24 THE COURT: Do you need time to set set up?

25 MR. McCARTHY: Just about one minute.

1 (Pause)

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

3 THE COURT: Please.

4 MR. McCARTHY: Thank you.

5 Good morning, ladies and gentlemen.

6 For the past two weeks you have been treated to a
7 horror story -- a horror story with a cast of evil
8 characters: corrupt agents, prosecutors who are corrupt, at
9 least by Ms. Amsterdam's account, and who twist the facts
10 around by everyone's account; tapes plucked from watermelons
11 that razor blades are spliced and diced; and, of course,
12 downtrodden victims, sheeps led to the slaughterhouses by
13 Judas goat; a misunderstood group of God-fearing men who
14 merely wanted to kill Serbs, Russians --

15 THE COURT: Excuse me, Mr. McCarthy, you can't be
16 heard by the translators. Please use the microphone.

17 MR. McCARTHY: I am sorry.

18 -- to kill Serbs, Russians, Christians, and Jews,
19 but certainly not Americans. Like all bad horror stories,
20 this one has one main all-purpose villain: Emad Salem, the
21 super sleuth, double-agent, master spy, who can frame people
22 even as he sleeps.

23 Well, I am going to put that aside for a moment,
24 because the truth is I am here to talk to you about horror,
25 but the horror I am here to talk to you about is only too

1 real. It is about terror. It is about terror that is here
2 and committed and aimed right at the heart of this country,
3 long before there was a tape or a timer. Long before there
4 was a bag of fertilizer or a gallon of fuel oil, it was
5 here. Long before even there was an Emad Salem, it was
6 here. There was terror.

7 "We are terrorists and we wear the name proudly.
8 We are commanded to strike terror into the hearts of the
9 enemies of Islam, to shake the earth under their feet. Our
10 main enemies, the United States of America and it's allies.
11 The United States of America, the master puppeteer pulling
12 the strings of our oppressors -- the Serbs, Hosni Mubarak,
13 State of Israel."

14 My words? No. Emad Salem's words? No. Trumped
15 up, framed up, or made up? No. Those are the words of
16 Sheik Omar Abdel Rahman. It is his terror, the terror that
17 he lived and breathed, the terror that he bragged about.

18 It is the terror that made him say he was proud
19 to issue fatwas approving the deaths of those he saw as
20 enemies.

21 It is the terror that El Sayyid Nosair carried
22 into the Marriott Hotel and onto the streets of Manhattan
23 the night he brutally murdered Meir Kahane and then tried to
24 escape by shooting a 77-year-old man who blocked his way at
25 the door and shooting a postal police officer at the head

1 and at the chest, just because he was in the wrong place at
2 the wrong time.

3 It is the terror that was the real fuel of the
4 bombings that were schemed by Nosair, El-Gabrownny,
5 Abouhalima, Salameh, Ayyad, and Ramzi Yousef.

6 It is the terror that the members of the
7 conspiracy charged in this indictment brought into the
8 garage at the World Trade Center when they detonated a bomb
9 that killed six innocent Americans and injured countless
10 others.

11 It is the terror that the men in this room sought
12 to rain down on this country and on this city in what they
13 planned as the largest single act of war ever carried out
14 against the United States -- an act of war, they told you on
15 tape, was aimed not only at punishing the United States for
16 its policies but for the jailing of the World Trade Center
17 bombers. That is what the evidence shows.

18 The defendants in this room are counting on you.
19 Despite the wealth of evidence that you have seen and heard,
20 despite the instructions on the law that you will hear from
21 Judge Mukasey when I am done, the men in this room are
22 hoping against hope for the one thing that only you can give
23 them: they are hoping, as you walk into the room where you
24 will decide this case, that you check your intelligence and
25 your common sense at the door. They are hoping that your

1 judgment will be clouded by our understandable human desire
2 not to believe that people are capable of the kind of
3 brutality you have heard about in this room for the last
4 nine months.

5 They know that intelligence and common sense say
6 that if you want to figure out what a person is up to, and
7 you have tapes that show what that person said, his own
8 words, and you have a lot of other evidence showing you that
9 person's own actions, that what you are going to focus your
10 attention on are those words and those actions.

11 As you can imagine, that is the very last thing
12 that they want you to do. They are hoping that if their
13 lawyers were able to raise enough diversions, enough
14 smokescreens, enough sideshows away from the words and the
15 deeds of the men in this room, you will trip over the little
16 white envelopes and the serial numbers and never get to the
17 tapes of their words that convict them. You will linger
18 over the battlefields of Afghanistan and forget about the
19 .357 Magnum and the bullets that Sayyid Nosair used to turn
20 Manhattan into his field of jihad. You will lose yourself
21 in Tarig Elhassan's videotape of the horrors of Bosnia, and
22 forget that if Tarig Elhassan had had his way, an act of
23 massive brutality just as senseless would have left the same
24 kind of mangled bodies in the Lincoln and the Holland
25 tunnels.

1 It won't help. Try as they might -- and these
2 lawyers have tried mightily -- you cannot get above or
3 around or out from under the evidence. And in the face of
4 that evidence you have gotten a wave of desperate defenses.
5 That is really the way the defense went, flailing away at an
6 ever more imposing body of proof day by day. The theories
7 never took apart the evidence. Instead, the evidence
8 disproved the theories so fast that sometimes you couldn't
9 even calculate how inconsistent the positions changed,
10 sometimes from question to question.

11 Sheik Omar Abdel Rahman cannot explain his
12 constant calls for violent jihad made by people who he had
13 every reason to know would act on his words. He cannot get
14 around the obvious way that he designed the conspiracy to
15 protect himself from prosecution and to protect it from
16 infiltration. So the ultimate insider now casts himself as
17 out of the loop. And anyone who is crazy enough not to see
18 a direct request for a violent attack on America as a direct
19 request for a violent attack on America is simply a victim
20 of the culture gap.

21 El Sayyid Nosair cannot explain the devastating
22 ballistics evidence that alone would be enough to convict
23 him of several of the charges in the indictment. He prefers
24 instead to discuss Afghanistan for two days and to spend as
25 little time as possible addressing his contacts with the bad

1 apples, the World Trade Center bombers.

2 Amir Abdelgani cannot remove himself from the web
3 of those same apples or the events of March 4 that revealed
4 him to be a trusted conspirator who functioned as the eyes
5 and ears of Sayyid Nosair. He, like others, figures if he
6 says Emad Salem enough times, perhaps you will never focus
7 on him.

8 Clement Hampton-El lives in a fantasy world where
9 he hopes no one listened to the tapes of him agreeing to
10 find detonators, and the tape of him then going out and
11 trying to find detonators. Maybe, more importantly, he
12 hopes against hope that you will forget about his absurd
13 testimony.

14 Amir Abdelgani's lawyer walked to this very
15 podium nine months ago and opened in this case by telling
16 you that by the time Amir Abdelgani finally figured out what
17 was going on, it was simply too late. By the time he
18 finally knew that what was going on was a bombing attack on
19 the United States, it was simply too late. Last week, in
20 summation, he told you that Amir Abdelgani never figured out
21 what was going on. He thought it was simulated training for
22 Bosnia, the kind to do with stolen cars.

23 Victor Alvarez's lawyer told you when he opened
24 that Salem never really teed it up for Alvarez so that
25 Alvarez could know that they were planning an attack on the

1 United States. Then in came many conversations and evidence
2 where it was clear that Victor Alvarez was told what was
3 going on by Salem, by Siddig Ali, and by conversations that
4 he had with others like Tarig Elhassan. Alvarez had to come
5 up with a new angle: the cocaine defense. The man Dr.
6 Aranda tells you has trouble with his memory now distinctly
7 remembers that every time a particularly incriminating event
8 happened two years ago he was taking cocaine.

9 Fares Khallafalla's defense goes something like
10 this: There was no crime because I was framed. That
11 doesn't really work? How about: There may have been a
12 crime but I didn't know. No? Well, maybe I knew something
13 was wrong when I went to buy stolen cars the second time and
14 buy the fertilizer, but I was entrapped. Well, maybe I
15 wasn't exactly entrapped, but Salem is such a bad guy and he
16 made all those tapes and I really thought it was for Bosnia.

17 Mohammed Saleh has joined himself at the hip with
18 Khallafalla. His lawyer told you in the opening that Saleh
19 is just your average everyday guy who is on trial because he
20 sold gas. You learned he was your average everyday Hamas
21 guy, who discussed terrorist attacks as easily as some of us
22 say pass the salt, who provided fuel for a bombing plot on
23 America, who lied to the FBI about it afterwards, and who
24 tried to destroy the evidence. Not surprisingly, he decides
25 to put the government on trial, which is a whole lot easier

1 for him than trying to explain Mohammed Saleh's recorded
2 words on tape.

3 Tarig Elhassan tells you, sure I knew we were
4 dealing with bombs and sure I knew all the targets and sure
5 I knew it was America, but it was all simulation, which is
6 why he was being so careful about his fingerprints. And, of
7 course, the only thing he ever had on his mind, Bosnia, was
8 never even mentioned on any of the tapes where he was
9 reported planning and mixing bombs. And Fadil Abdelgani, he
10 remains Mr. Magoo, who finds himself stirring a bomb out of
11 unknowing water.

12 Along the way, the defendants misstated what the
13 charges are and what was required to prove them. They often
14 misstated what we argued and set up what the lawyers like to
15 call straw men, some often obscure piece of evidence that we
16 either barely mentioned or didn't mention at all, but which
17 they tell you, they assure you, is the heart of the
18 government's case. A straw man is something that you set up
19 yourself just so you can knock it down and look good
20 knocking it down. And you saw a lot of that.

21 They set up a lot of those red herrings that
22 Mr. Lavine told you so much about the other day -- red
23 herrings designed to divert your attention from the proof
24 against them, usually in the form of phantom missing tapes
25 that the lawyers assure you must be out there, tapes which,

1 like kryptonite, would really explain away their own
2 words -- the words that are on the hours and hours of tape,
3 tape of their actual words that you heard in this courtroom,
4 the words that convict them.

5 You will probably be glad to hear I am not even
6 going to try to discuss each and every one of the claims the
7 lawyers made. They were up here for two weeks. I am going
8 to be with you probably the rest of today and a little bit
9 of tomorrow. And I am certainly not going to allot my time
10 according to the way that they allotted theirs. The judge
11 told you a long time ago that the amount of time the lawyers
12 choose to spend on a subject is very often not a measure of
13 its true importance.

14 At the beginning, I am going to be talking to you
15 about some of the themes that have cut across the defense
16 summations: the search for the truth that we heard so much
17 about from Mr. Jacobs and Ms. Amsterdam; Emad Salem, Siddig
18 Ali, and entrapment; the FBI frameup conspiracy; tapes and
19 taping. I will discuss a couple of legal issues with you:
20 the crime of attempt, and the defense of multiple
21 conspiracies, both of which Judge Mukasey will be giving you
22 the final word on when he instructs you. And I will also be
23 discussing with you paramilitary training, an issue that
24 came up with many of the defenses. I am going to try to
25 address those things in the context of the defenses

1 presented to you by the lawyers for the defendants who most
2 recently summed up, Fares Khallafalla and Mohammed Saleh,
3 who presented their defenses together, and the other
4 defendants whose main participation in the case arises out
5 of the events of May and June 1993: Amir Abdelgani, Tarig
6 Elhassan, Fadil Abdelgani, and Victor Alvarez. I will be
7 discussing some of those defendants individually as well,
8 but hopefully doing it this way will avoid repetition. I
9 know you have been listening to lawyers for an awfully long
10 time.

11 After that, I expect to speak to you briefly
12 about Clement Hampton-El and Ibrahim El-Gabrownny, and I will
13 finish by discussing El Sayyid Nosair and Sheik Abdel
14 Rahman, whose lawyer summed up, I guess it is, about two
15 weeks ago.

16 Abdel Rahman's case has a fair number of unique
17 elements, and as Abouhalima said in a tape-recorded
18 conversation you heard about in 1990, everything in the
19 beginning and in the end goes back to Sheik Omar.

20 One last point. A number of the lawyers have
21 told you that, because of the way the rules work, the
22 government gets the last word. We get to speak to you in
23 rebuttal. You should understand some things if they weren't
24 already clear enough to you.

25 First, we are accorded the right and the

1 privilege to speak last to you because, as Judge Mukasey has
2 told you from the beginning of the trial, the only place in
3 this courtroom where there is a burden is right there at
4 that table: the government's burden to prove to you the
5 guilt of the defendants beyond a reasonable doubt.

6 As you have seen in the last two weeks, when you
7 don't have a burden at all -- and the defendants have
8 none -- you figure you can engage in all kinds of
9 speculation, make up all kinds of stuff for which there is
10 no evidence, and then tell the jury you have actually proved
11 something -- phantom tapes, character assassinations, and
12 all the fantasy answers to the questions you never asked
13 while the witnesses were sitting over there. That isn't
14 what burden of proof means. The defendants don't have to
15 prove anything, but that is not a license to say that you
16 did prove something when all you have given the jury is
17 speculation and no evidence. As you are going to see, if
18 they told you they proved something, check with the
19 evidence.

20 No matter what the defendants do, we have the
21 burden to present to you evidence that actually proves
22 things. It is a burden that is more than met by the
23 evidence that we have presented to you in this trial. As to
24 all the stuff about us getting the last word, after I am
25 done speaking tomorrow and the judge has explained the law

1 to you that applies to this case, this case belongs to you.
2 It really doesn't matter a whit what I think or what anybody
3 else in this room thinks; it is up to you and you alone, the
4 members of the jury, who will decide whether the charges in
5 this case have been proved. Around here, that is the last
6 word.

7 You probably notice over nine months I drink too
8 much of this stuff.

9 I want to begin by discussing for a few minutes
10 some of the issues that were raised by Mr. Jacobs and
11 Ms. Amsterdam. As Ms. Amsterdam said: The truth shall set
12 you free; the legacy of Fred Whitehurst is, you don't twist
13 the facts, you give them the truth right between the eyes
14 and you let the chips fall where they may; and you don't
15 ever, ever, treat twelve people on a jury, or fourteen here,
16 like they are just too dumb to understand what you are up
17 to. That is what Ms. Amsterdam told you and that is what
18 Mr. Jacobs told you for two days last week and two days this
19 week.

20 Well, did they make sure the truth got in front
21 of you? Did they make sure the facts didn't get twisted?
22 Did they make sure not to manipulate the evidence? Did they
23 treat you like they wanted to make sure you knew exactly
24 what they were up to?

25 They told you about a massive government

1 conspiracy carried out by a scoundrel of an informant and
2 corrupt FBI agents. And even though Mr. Jacobs was very
3 nice about complimenting the prosecutors before he told you
4 that we twisted and turned all the phrases around, Ms.
5 Amsterdam came right out and told you the prosecutors,
6 Mr. Khuzami, Mr. Fitzgerald, and I, knowingly presented you
7 with tampered evidence and knowingly gave you a distorted
8 view of the facts.

9 If you are going to make those kind of
10 allegations, if you are going to talk about us covering up
11 the truth, you ought to make sure you have your own house in
12 order.

13 Mr. Jacobs stood here in his opening statement
14 and told you that, as an officer of the Court, it was his
15 obligation to present this case to you as openly and as
16 honestly as possible. And that was the way he said he was
17 going to do it. No tricks and no games. Those were his
18 words. On Tuesday he began his summation, after we heard a
19 little night music, by telling you that a trial is a solemn
20 search for the truth. Well, let's see how the truth made
21 out.

22 Let me bring you back a moment to the defense
23 case, the time when Ms. Amsterdam and Mr. Jacobs told you
24 that you were finally going to learn the truth about this
25 case. I want to focus you on August 23, 1995, which is the

1 day they jointly brought Emad Salem back to testify. This
2 was a highly unusual day in the defense case of Mohammed
3 Saleh and Fares Khallafalla because it is a day when we may
4 actually hear some evidence that pertains to Mohammed Saleh
5 and Fares Khallafalla. And to mark the occasion Mr. Jacobs
6 hands out and passes to each one of you a transcript book,
7 transcripts of the CM conversations that Mr. Jacobs is going
8 to examine Salem about. Mr. Jacobs gives you those books so
9 that each and every one of you can follow what is going on.
10 No tricks and no games. Only there is a problem:
11 Government's Exhibit 352.

12 Mohammed Saleh likes Government Exhibit 352. He
13 is not on it but he likes it. Why? 352 concludes the
14 conversation that occurred on June 19, 1993, that Fares
15 Khallafalla had with Siddig Ali and Emad Salem. You see,
16 Khallafalla had not been with Salem and Siddig Ali back on
17 June 4, a couple of weeks earlier. That was the day that
18 Salem and Siddig Ali went to Mohammed Saleh's house, the day
19 that Mohammed Saleh showed them all that hospitality that
20 Mr. Jacobs told you about yesterday, the day when they just
21 sat around having the normal kind of conversation that you
22 might have in your own house, where Saleh discussed how it
23 was a must to murder the Secretary General of the United
24 Nations, what he called the very respectable terror
25 operation in which 42 Israelis had been murdered in an

1 attack on a loaded bus -- a conversation that Mr. Jacobs now
2 says was all about Bosnia training; a conversation where
3 Saleh was told that there were specific pinpointed targets
4 here, and that there would be a strike against them; where
5 Siddig Ali and Salem discussed those targets as the United
6 Nations and the two tunnels between the states; a
7 conversation where Mohammed Saleh said that he would squeeze
8 his capabilities to assist the plan.

9 Because Khallafalla was not there he doesn't know
10 everything that Siddig Ali and Salem have told Saleh about
11 what they are up to, and Khallafalla has reason to worry.

12 Now, you may be asking yourself, when you think
13 about that: If this is all training for Bosnia, why would
14 FaresFares have anything to be worried about or care about
15 who they were about to train? Is this really the Fares who
16 believes he was out stealing cars in New York for
17 paramilitary training for Bosnia? Could this be the same
18 Fares who Ms. Amsterdam told you was just like a 7-year-old
19 child getting a cookie after being told it was OK by Mom?
20 Hold on to those questions; we will get to them in a little
21 while. For now, we are talking about making sure the jury
22 gets the truth, right between the eyes, no tricks and no
23 games.

24 Salem said on the witness stand -- and the two
25 lawyers were a few feet away from you, Mr. Jacobs over here

1 at the podium, and Ms. Amsterdam seated, I guess, where Mr.
2 Patel is. As you can see from what I have said, Exhibit 352
3 looks like a good conversation for Saleh, because he wants
4 to look like an outsider that people on the inside of the
5 conspiracy are trying to keep out of the loop. The problem
6 is that the someone on the inside who is trying to keep them
7 out of the loop is Fares Khallafalla. So Government's
8 Exhibit 352 becomes a real bad conversation for him. How
9 did Mr. Jacobs and Ms. Amsterdam solve this knotty problem?
10 How did they make sure you got the straight scoop? How did
11 they avoid being like those prosecutors who figure you are
12 just too dumb to figure it all out? Well, watch.

13 You have been reading all morning from the Saleh
14 exhibit book. Mr. Jacobs has taken you through seven
15 conversations. Those are all conversations in which the
16 only two speakers are Salem and Siddig Ali. Now, you know
17 that Salem was a government informant. Siddig Ali does not
18 belong to the government; he belongs to them. No matter
19 what the lawyers want to say about him now, you know from
20 the evidence you heard that the defendants couldn't get
21 enough of him when he was out planning murder and mayhem.
22 This is a big problem for people who want to pretend that
23 they were entrapped, because for entrapment they have to
24 show some evidence that it was a government agent who
25 induced them into committing the crime. And every defendant

1 in this case claiming entrapment was recruited into this
2 case by Siddig Ali, except for Clement Hampton-El, who was
3 in it before Siddig Ali was, and Fadil Abdelgani, who was
4 recruited by his cousin Amir.

5 But Siddig Ali is no longer here on trial before
6 you and defendants have tried to take full advantage of that
7 and his absence by trying to paint him and Salem as one and
8 the same person. That way, when you see recruitment by
9 Siddig Ali, you might get confused into thinking entrapment
10 by Emad Salem.

11 So when Mr. Jacobs presented you with the first
12 seven conversations, all involving Salem and Siddig Ali, you
13 had your books that he passed out to you, you had them
14 opened, and you were encouraged to read along so that you
15 could understand exactly what was going on. But something
16 funny happened when we got to Government's Exhibit 352. At
17 page 17427 of the record:

18 "Mr. Jacobs: Your Honor, at this time we are
19 going to read some portions of 352, and I would ask that the
20 jurors close their books and we will do it without the
21 books."

22 Now, what's going on here? You had been asked to
23 read along with Mr. Jacobs and with Salem, who was on the
24 witness stand, seven conversations. Why close the books
25 now? Why cover up the transcripts so that they are not

1 read? In fact, it wasn't the only request that Mr. Jacobs
2 made. At one point a couple of the jurors opened their
3 book, and he again asked that the jurors close their books
4 during the reading of 352.

5 Is there something wrong with the jurors
6 following along with a transcript that is in evidence at
7 this trial? If you remember how this all went, when the
8 Salem and Siddig Ali conversations were being read to you,
9 they were being read to you by Mr. Jacobs' assistant,
10 Mrs. Macedonio, and Ms. Amsterdam's assistant, Mr. O'Brien.
11 They sat right there at the government's table, and they
12 stayed in role all morning. What I mean when I say "they
13 stayed in role" is, one of them was Siddig, one of them was
14 Salem. So that because you had the transcript books open
15 and because they were presenting it to you the same way, you
16 always knew who was speaking. But when we get to
17 Government's Exhibit 352, right after he tells you to close
18 your books, Mr. Jacobs announces that he is going to read
19 the parts of all the other speakers, the parts that you know
20 are the defendants Fares Khallafalla, Amir Abdelgani, and
21 Victor Alvarez. The words of the defendants, not Siddig Ali
22 and not Salem, but the words of the defendants are all
23 blurred together without telling you what is going on and
24 without telling you who is saying what.

25 When you think about that, think about the way

1 Ms. Amsterdam sort of plucked at your heartstrings last
2 week. You remember she told you the story, that story about
3 her friend who wanted to be the marathon runner, the guy who
4 waited until the last mile of the marathon and then he
5 pinned that number on his chest and he ran the last mile of
6 the marathon and he sort of blended in with all the other
7 marathon runners. Then she paused for a moment after
8 telling you that story, looked you in the eye with that
9 somber expression, and told you in her very best, earnest
10 voice about how, during his summation, Pat Fitzgerald kept
11 lumping Fares in with the other defendants, the guys who
12 knew everything but wouldn't tell Fares, the pacifist
13 moralist, anything. There is a difference, she said, and I
14 ask you: Let's stay focused on what Fares said and what
15 Fares did, and not try to blur all the defendants into one
16 composite safe house defendant. My fear from the beginning
17 of this trial was that the government would pin a number on
18 Fares Khallafalla and try to blend him into the group, and
19 that you could be tricked -- tricked -- into seeing him as
20 just another one of the runners.

21 Well, let's see how everyone was worried about
22 treating Fares Khallafalla as an individual during the
23 defense case. Let's see who was trying to trick you about
24 Fares Khallafalla.

25 Referring to page 17439 to '41 of the record,

1 this is Mr. Jacobs' examination of Emad Salem on August 23,
2 1995. Mr. Salem asks, referring to Government's Exhibit 352
3 of Salem:

4 "Q This portion that we just read is about
5 Mohammed Saleh, correct?

6 "A Yes, sir.

7 "Q And the getting the oil from him is being
8 discussed, is that correct?

9 "A Yes, sir.

10 "Q And you and Siddig Ali and other people
11 are trying to figure out the best way to get it. Fair to
12 say, how we can get it?

13 "A Yes, sir.

14 "Q Then there is some suggestions about
15 whether they should go to Mohammed and pay him, correct?

16 "A Yes, sir.

17 "Q And someone in the group says it looks as
18 if Mohammed was going to pay but later changed his mind. Is
19 that a fair statement of what somebody says?

20 "A Yes, somebody says that.

21 "Q And you said I know Mohammed is going to
22 give us the money. Don't you say that at one point?"

23 Mr. Jacobs continues: "At that point as of the
24 19th he hadn't given you any money, correct?"

25 "A No, sir.

1 "Q And somebody suggested they go back to
2 Mohammed with a new story, correct?

3 "A Correct.

4 "Q The old story should be forgotten,
5 correct? Isn't that what somebody says? Doesn't somebody
6 say the old story should be forgotten?

7 "A Correct, sir."

8

9 (continued on next page)

10

11

12

13

14

15

16

17

18

19

20

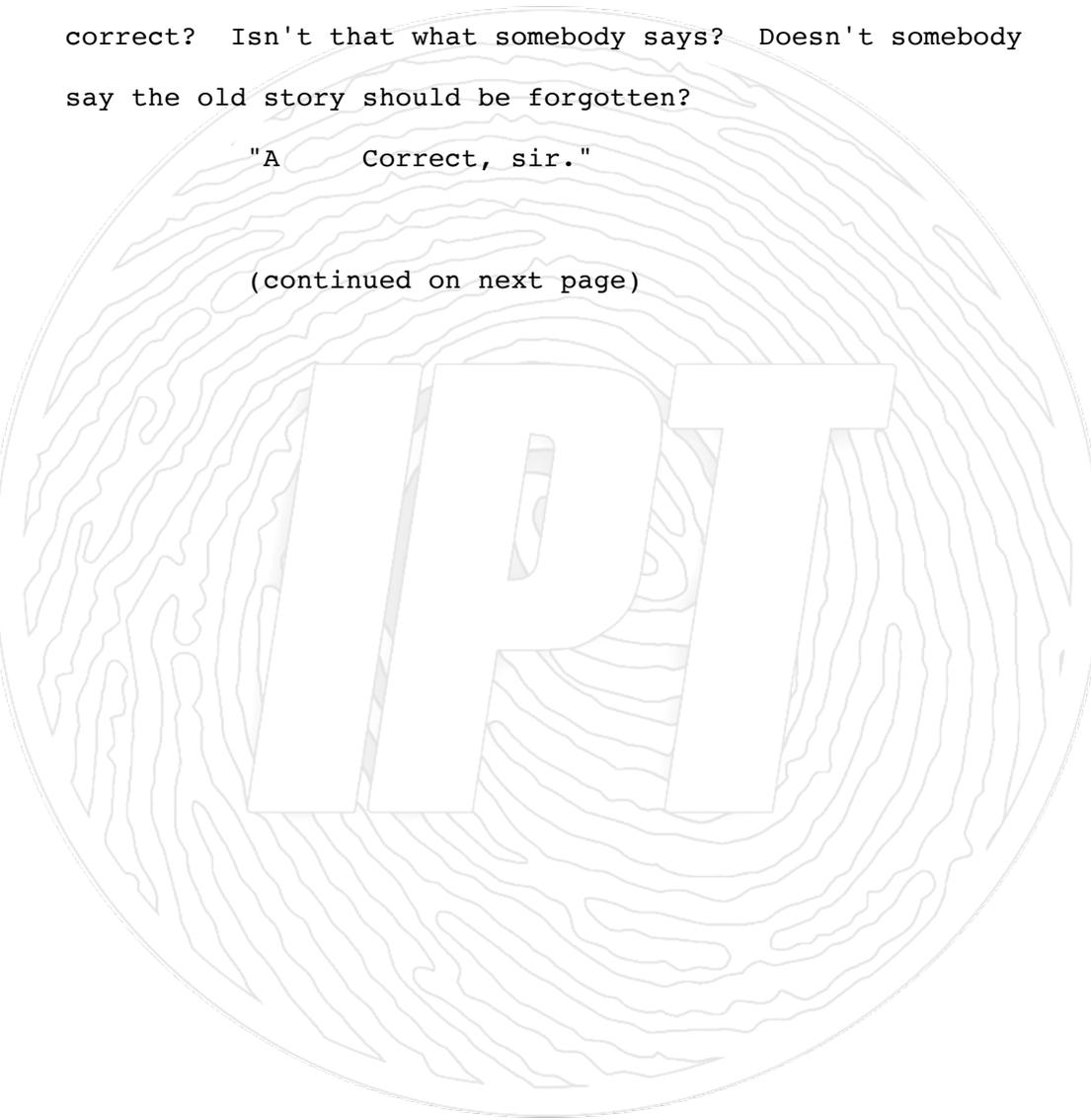
21

22

23

24

25



1 MR. McCARTHY: (Continuing) Who is somebody? Is
2 there any reason why you don't get to know who the somebody
3 was? And do you think they had any intention of letting you
4 in on who the somebody was? Let's see.

5 We continue at pages 17453 to 54 of the record.
6 We are still on page 115 of Government's Exhibit 352, and
7 the questioning continues down here by Mr. Jacobs:

8 "Q In any event, let's continue on, if we
9 can. Is it fair to say at this point that there is a
10 conversation about getting the barrels and the oil without
11 mention of any other things? Is that fair to say, that that
12 is stated?

13 "A. It's already mentioned, sir.

14 "Q OK. Well, does somebody say we need the
15 oil without mention of any other things? Does somebody say
16 that?"

17 There is an objection to somebody.

18 Judge Mukasey asked: "Could you identify who
19 says it?"

20 Mr. Jacobs' answer: "One of the participants in
21 the conversation" -- bet you wouldn't have known that.

22 Another objection and Mr. Jacobs says: "I will
23 withdraw the question at this time."

24 That is his response rather than identifying who
25 somebody is.

1 "Q Is there a conversation further on where
2 the subject of how much money should be raised, four, five
3 hundred dollars comes up?

4 "A. Yeah, it came a time there was a
5 conversation like that.

6 "Q Sure. And am I correct, it's in front of
7 you, we should be able to make them come come up with four
8 to five hundred dollars?

9 "A. Yes."

10 That transcript was in evidence at this trial.
11 As you know from being here for nine months, you are
12 encouraged to look at what the evidence is in the trial. In
13 fact, it's what you are here for. In fact, it's what you
14 are told you have to decide this case on.

15 I want to show you the transcript that Emad Salem
16 and Mr. Jacobs and Ms. Amsterdam and all the other lawyers
17 got invited to look at but you got asked to close your books
18 for. Meet Fares Khallafalla, also known as somebody. This
19 is at Siddig Ali's house on June 19.

20 Khallafalla says: I will go home, then we will
21 go.

22 Siddig Ali continues: No objection.

23 That conversation continues, as we move along.

24 Siddig Ali says: All right, God willing, anyhow,
25 let us leave God willing.

1 Fares Khallafalla says: God willing.

2 Then Salem says: Let's move, let's go.

3 What you know from the other evidence that you
4 heard in the trial, although you wouldn't have known it from
5 listening to Miss Amsterdam's summation last week, they do
6 in fact go after this conversation.

7 You heard the testimony of Detective LaSalle, who
8 I think was one of the last witnesses during the
9 government's rebuttal. They leave this meeting. Fares
10 Khallafalla and Siddig Ali drive eventually from Siddig
11 Ali's house to Khallafalla's house. Khallafalla goes in and
12 out and then the two of them, with no Emad Salem, proceed
13 from New Jersey into Manhattan, where they buy fertilizer,
14 the fertilizer that you saw some of the defendants in the
15 movies mixing in with the fuel oil. Let's continue to look
16 at the conversation.

17 After they talk about leaving, Khallafalla raises
18 the subject of Mohammed Saleh. He says to Siddig Ali: Did
19 you call Mohammed?

20 Siddig says: Which Mohammed?

21 Khallafalla says: Mohammed, unintelligible.

22 You can conclude from the way the rest of the
23 conversation goes that he is talking about Mohammed Saleh.

24 After the unintelligible, Siddig Ali says: The
25 oil, Mohammed Ali.

1 As you know from the evidence, Mohammed Ali is
2 Mohammed Ali Saleh.

3 The conversation continues at page 114 of the
4 record, and you will see from reviewing this conversation
5 that Fares Khallafalla not only felt confident enough to
6 bring up the issue of Mohammed Saleh to Siddig Ali, he is
7 actually the one who is pushing to get the matter of the
8 fuel oil resolved.

9 Khallafalla says: Right now we are supposed,
10 instead of calling him today and the matter takes much
11 longer, unintelligible, give him a phone call and he doesn't
12 answer and prepare the oil, bring us the oil, and of course
13 we will not be able to bring it because we don't have
14 containers to put it in.

15 Khallafalla knows, and he has been informed about
16 the fact that they need oil and he is up to date on the fact
17 that they don't yet have containers to put the oil in.

18 Khallafalla continues: Do you happen to have a
19 container, we take it, we pay you or we will bring you the
20 money.

21 Continuing down the page Khallafalla says: All
22 right, I said I want to finish this matter, because I think
23 he looked as if he was going to pay, but later he changed
24 his mind.

25 Now, a couple of very important things going on

1 there and a couple of things for you to think about when you
2 think about the arguments you heard last week about Fares
3 Khallafalla, who was awestruck by Siddig Ali and Salem,
4 virtually dumbfounded most of the time and not informed
5 about what was going on in this case. He is the one who is
6 pushing. He is the one who is saying that he wants to get
7 the matter of the oil resolved. And he also says, it looked
8 as if he was going to pay, but later he changed his mind.

9 What does that tell you? That tells you that
10 Fares Khallafalla by June 19 has already been informed by
11 Siddig Ali that they in fact met Saleh before, that he has
12 made a prior commitment to give them money, and that he
13 hasn't yet come across, and that is something that
14 Khallafalla has reason to be concerned about. Siddig Ali
15 and Salem, he doesn't know exactly what they told him during
16 the meeting but he does know they told him something. They
17 know that they have exposed themselves to him. They know
18 that he is involved or he knows that he is involved with the
19 thing that they have exposed to Saleh. That causes them
20 some need to be concerned because Saleh hasn't yet come up
21 with what he said he was going to come up with.

22 The conversation continues: Khallafalla says:
23 We should go over to him and forget the old story, we should
24 forget it.

25 Forget the old story is another reference to the

1 fact that he already knows about the old story, he has been
2 informed about the old story.

3 Then something pretty interesting happens.

4 Continuing to talk about the old story, Khallafalla says:
5 That of the -- we should forget it.

6 Then Salem, who you heard that Khallafalla was so
7 dumbfounded and intimidated around, says: We just tell him
8 we don't want any money from you, we need four barrels.

9 And Khallafalla disagrees. He says: We do not
10 need to say that. We need not say it, but we will tell him
11 that something new has happened and he does not know it. We
12 are coming to you asking for another favor. Hopefully you
13 will be able to help us, God willing. The oil, we need the
14 oil, without the --

15 And Khallafalla continues: Without mention of
16 any other things.

17 You remember the questions that Mr. Jacobs asked,
18 phrasing it as didn't somebody say, without mention of any
19 other things? That's Fares Khallafalla.

20 Continuing on, Khallafalla also brings up the
21 subject of the other things that they need to get ahold of
22 to make this thing work. Khallafalla says: Have you not
23 spoken to someone about the barrels?

24 He is bringing up the subject of the barrels to
25 Siddig Ali. You see a couple of attributions earlier he

1 says, but the barrels, and then continues, have you not yet
2 spoken to someone about the barrels.

3 After he gets Siddig Ali who tells him that it's
4 easy to get them, we can go to three or four stores,
5 Khallafalla says we can talk to the guys over there, we
6 should talk to all of them so they can contribute. He is
7 going to go out and drum up funds to make this thing work.

8 Khallafalla continues: We should be able to make
9 them come up with 4 to \$500.

10 You remember the question that Mr. Jacobs asked
11 Salem at the end, doesn't somebody mention coming up with
12 400 or \$500.

13 If you thought the legacy of Fred Whitehurst was
14 having a brutal day on August 23, 1993, or 1995, in this
15 courtroom, you were right. No tricks, no games. I tell you
16 what. For all the talk about how worried they are that the
17 government is hiding the true picture of you, for all the
18 talk about coverup and concealment, they have been doing
19 this kind of stuff from the first day that they stood before
20 you and argued this case to you, from the first day that
21 they stood here and they told you a bunch of nonsense about
22 the backgrounds of Mohammed Saleh and Fares Khallafalla that
23 never got backed up by one syllable of evidence.

24 MR. JACOBS: Objection.

25 MR. McCARTHY: And they are still doing it.

1 MR. JACOBS: Objection.

2 THE COURT: Overruled.

3 MR. McCARTHY: What's going on here? Khallafalla
4 and Saleh have no real defense to the charges in this case.
5 Khallafalla knew from the very first day when Siddig Ali
6 brought him in and brought him to the safe house with Emad
7 Salem that what was going on here was violent jihad against
8 America. Complicated case? A 7-year-old getting caught
9 with his hand in the cookie jar after mommie told him it was
10 OK? This was a grown man sitting in Siddig Ali's house or
11 in a dank, dark garage, with other grown men, talking about
12 building bombs and talking about blowing up American
13 targets.

14 Forget about the fact that Amir Abdelgani, who
15 was at the very same meeting, the same first meeting that
16 Fares Khallafalla was at, was so clued in on what was
17 happening in this case that he is now reduced to telling you
18 it was about simulation, after he opened telling you that he
19 knew what was going on.

20 Forget about the fact that Victor Alvarez, who
21 you know is far less trusted than Khallafalla, is told from
22 the very start of his involvement that what is being talked
23 about is jihad in America, to the point that he is reduced
24 now to telling you that he was either too slow to figure it
25 out or he was in a cocaine stupor every time something bad

1 happened.

2 Forget about the fact that Tarig Elhassan, who
3 doesn't get in until more than three weeks after
4 Khallafalla, knows about the tunnels by the time he is in
5 the safe house for the very first time.

6 Forget about the common sense fact that there can
7 be no possibility, none, that a person could believe that
8 stealing cars in New York could have anything to do with a
9 legitimate training exercise for Bosnia.

10 Forget about how crazy it would be for Siddig Ali
11 to tell Amir Abdelgani, Tarig Elhassan and Victor Alvarez
12 what he is up to, not tell Fares Khallafalla, and then let
13 all three of them meet together and talk.

14 You can forget about all those things, because
15 this exchange alone in Government Exhibit 352, the one they
16 didn't want to focus you on, the one Miss Amsterdam didn't
17 care to discuss when she was standing here talking about the
18 case with you last week, shows you that Fares Khallafalla
19 was a complete insider in this conspiracy.

20 And think about this. A number of the
21 defendants, including Khallafalla and Saleh, want you to
22 believe that there was a rational, reasonable possibility
23 that the men in this room believed in good faith that they
24 were involved in a legitimate training exercise building
25 bombs in Queens so that they could be more efficient at

1 killing Serbs in Bosnia.

2 Bosnia, by the way, which is a place that there
3 is not one shred of evidence that Khallafalla, Amir
4 Abdelgani, Tarig Elhassan, Victor Alvarez, any of them ever
5 tried to step foot in.

6 If it is not preposterous enough on its face, ask
7 yourselves why, if this is a legitimate training for Bosnia,
8 why is Fares Khallafalla worrying about whether Mohammed
9 Saleh finds out and how much Mohammed Saleh knows. If you
10 are doing a legitimate training exercise, even if you
11 haven't yet worked out just how you are going to get your
12 stolen cars across the Atlantic Ocean over to Bosnia, why in
13 the world do you have the slightest concern about how much
14 Mohammed Saleh knows?

15 It is ridiculous, it is beyond ridiculous. He is
16 worried, Fares Khallafalla is worried because he is up to
17 his eyeballs in a bombing attack on America, aimed at
18 targets that he and Amir Abdelgani learned about at the very
19 beginning as Siddig Ali brought them in and sketched them on
20 a cardboard.

21 Last Friday Ms. Amsterdam told you that in our
22 arrogance of intelligence, geniuses like Mr. Khuzami, Mr.
23 Fitzgerald and I had imposed our standards of education and
24 knowledge on Fares Khallafalla. Do you figure after looking
25 at Exhibit 352 that you needed to be or that anybody needed

1 to be a genius to know that Khallafalla was an insider in
2 this operation? Miss Amsterdam said, it's like Fares stood
3 at the door and looked through the peephole and saw that
4 sliver of the the apartment. Fares Khallafalla was not
5 stuck at the door looking through the peephole. Fares
6 Khallafalla was inside the door guarding the people and
7 trying to control how much other people, other conspirators
8 got to see.

9 One other thing before we leave Exhibit 352,
10 which is a very long transcript, you may remember, of
11 several events over the course of June 19. Ms. Amsterdam
12 told you last week that if you looked at the transcript,
13 Fares Khallafalla didn't show up until page 79 when he walks
14 into Siddig Ali's apartment and asks about whether they have
15 prayed yet. She told you that there is no attribution to
16 him for about 30 pages after that, and from that she told
17 you it was reasonable to conclude that he was probably
18 praying while the others were talking about bombing.

19 What Ms. Amsterdam didn't tell you when she told
20 you about that was that in those 30 pages, although there is
21 no specific attribution to Khallafalla, there are numerous
22 attributions to unidentified males, that is, people who
23 obviously made statements but who the interpreter could not
24 identify the voice of. Your common sense will tell you when
25 you review that conversation -- and it is in evidence and

1 you can review the whole thing -- that when those
2 unidentified males pop up in the transcript, the only ones
3 they could reasonably be are either Fares Khallafalla or
4 Amir Abdelgani. You will know that as you review the
5 conversation, because most of those statements occur during
6 the Arabic portions of the conversation, and you know Victor
7 Alvarez doesn't speak Arabic, and you also know that the
8 voices of Salem and Siddig Ali, which are by now too
9 familiar to all of you, are not those voices. You will be
10 able to compare it yourself if you like.

11 What happened in this courtroom with Government's
12 Exhibit 352 is just one example of the real bait and switch
13 that went on during the defense presentation. As you are
14 going to see when we talk a little bit more about Saleh and
15 Khallafalla, things started detting distorted from the first
16 day, from the openings, and that never stopped.

17 I would like to talk to you about Emad Salem. In
18 a case where there is overwhelming tape recorded evidence to
19 deal with, the defendants did about what you would expect
20 them to do. They tried to put other people on trial, hoping
21 that you might overlook what you were here to do, which is
22 to evaluate what they did. The people they would like for
23 you to think about as defendants are not the men who are
24 sitting in this courtroom on trial before you. The people
25 they would like you to think of as defendants are Salem,

1 Siddig Ali, and the agents. When you have nobody to blame
2 but yourself, what do you do? In this case you blame Emad
3 Salem.

4 Miss Stewart told you that the prosecution was
5 sullied simply because he was a part of it. Mr. Stavis
6 called Salem the evil genius, the root of all evil, even
7 though his client's bloody rampage through Manhattan
8 happened before he or anybody else in the case ever met Emad
9 Salem.

10 As Mr. Fitzgerald told you a couple of weeks ago,
11 we would all prefer it if crimes, especially terrorism,
12 could be investigated by pillars of the community, people
13 you could look at and instantly trust. But those people
14 don't get invited to kitchen conversations about mass murder
15 and they don't build bombs in dark garages. We have to use
16 people who will be accepted and trusted by the criminal
17 group. It is not easy to find somebody like that with a
18 jihad organization like you heard about here.

19 Not only do you need somebody who is acceptable
20 to the group, a Muslim, but also someone who can gain the
21 respect of the leaders of the group. Miss Stewart told you
22 time and time again about how the sheik led a worldwide
23 group of Muslims. He is brilliant, she told you. He is a
24 scholar on the Koran and he was a leader in an international
25 network of people. Some of the defendants who testified

1 told you that they thought Siddig Ali was a charismatic
2 leader of the Muslim community, well known at all the area
3 mosques. You know that Salem kept telling the agents, and
4 the defense lawyers reminded you this a good deal, that they
5 had to start learning how to think Middle East.

6 You can conclude from everything that you have
7 heard that the FBI and the New York City Police Department
8 are not filled with Muslims from the Middle East who are
9 educated in the tradition and the culture of the Middle
10 East. Emad Salem, with all his faults -- and he's got
11 many -- fit that bill. He could infiltrate the group. He
12 could speak knowledgeably about Middle Eastern issues,
13 and -- we agree with the defense lawyers on this one -- he
14 was available and he was willing to work with the FBI, and
15 eventually willing to tape record conversations under their
16 supervision, and testify in court. You learned that that
17 meant going into the Witness Protection Program with his
18 wife and children, changing their identities, having his
19 sister get attacked in Egypt, and getting moved more than 10
20 times.

21 Yes, the government has agreed to pay him a
22 million dollars. You might ask yourselves how many of you
23 would be willing to do what he did for a million dollars,
24 for \$10 million. And think about what he did, over the
25 course of three years going undercover and exposing himself.

1 You heard the government was willing to pay a \$2 million
2 reward just for information leading to Ramzi Yousef's
3 capture. No requirement to work, no requirement to make
4 tapes, to relocate, to expose the family to danger or to
5 testify in court. A million dollars is a lot of money,
6 although you might ask how much it was if you were to think
7 of yourself as in your mid-forties with a new identification
8 and try looking for a job with a new identification, no
9 traceable background to find the job with, and the rest of
10 your life to look forward to looking behind your back.

11 But let's place it in context. The bombing of
12 the World Trade Center cost billions of dollars of damage,
13 aside from the deaths and the countless injuries. The
14 letter Ayyad wrote to the New York Times warned America that
15 these guys weren't through.

16 In the end, you have a choice. You either use
17 informants as unsavory as they may be, or you don't. Or you
18 live and you die and let others die with the consequences.
19 If you throw up your hands and say I'm not going to do it,
20 you get the World Trade Center, you get Meir Kahane. You
21 get a world where you are always chasing behind the last
22 brutal crime instead of racing to prevent the next one.

23 All the lawyers, like Miss Amsterdam and
24 Mr. Stavis, who told you about how Salem fought the
25 introduction of an undercover agent, have a very selective

1 reading of the evidence that they took that from,
2 Khallafalla Exhibit C. In that tape you heard Agent Floyd
3 say to Salem that the FBI supervisor had agreed that
4 introducing an undercover agent after seven months of Salem
5 working his way in was not practical. And your common sense
6 tells you why. Salem has finally gotten to the point where
7 he is getting into concrete operations after nine months of
8 people wondering who he was and accusing him of being an
9 informant. Suddenly now, the way they would have it, he is
10 going to show up with a brand new face nobody has ever seen
11 before. Not going to work.

12 Remember this, the lawyers here had the
13 supervisors from the FBI. They brought in Carson Dunbar,
14 who was the assistant special agent in charge, and a
15 supervisor named John Crouthamel in here to testify. Did
16 anyone ask them whether they had a suitable undercover
17 ready, willing and able to get in and infiltrate the group,
18 to take the months and the days and the hours that it takes
19 to do what Salem did, that it takes to get into a group like
20 that, even assuming that you would have someone who can do
21 it, who has the language and the background? They never
22 asked any of those things.

23 When you think about the "Salem made me do it"
24 defense, remember these things: Salem never took the first
25 step in any crime in this case. In 1993, Siddig Ali

1 proposed bombings to him. That is on tape, Government's
2 Exhibit 641. Every defendant who was involved in the spring
3 1993 bombing plot was brought in by Siddig Ali, not Emad
4 Salem. Salem knew none of those men until Siddig Ali
5 introduced them, and Fadil Abdelgani, as I said before, was
6 brought in by his cousin Amir. Remember how easily Siddig
7 Ali, Tarig Elhassan, Amir Abdelgani, Khallafalla and Victor
8 Alvarez moved right along with the plans while Emad Salem
9 slept, in Government's Exhibit 362.

10 On May 29, Siddig Ali and Amir Abdelgani scouted
11 the targets alone. On June 19, Siddig Ali and Khallafalla
12 went to get fertilizer alone. Around June 12, Khallafalla
13 made his first trip to Canal Street to look for a timer,
14 alone. On June 18, Amir Abdelgani and Siddig Ali met with
15 Victor Alvarez, not with Salem. Victor Alvarez and Fares
16 Khallafalla went outlooking for stolen cars, no Salem.
17 Tarig Elhassan on June 20, and this is Government's Exhibit
18 770T, called Siddig Ali to tell him about consulting with a
19 physics guy, and you later learned from what Tarig ended up
20 telling Siddig Ali and Emad Salem in the safe house that
21 what he had done was undertake to speak alone to an engineer
22 who was going to give him some information about how to blow
23 up bridges and tunnels, or at least the structure of bridges
24 and tunnels, to make them a little easier to understand how
25 to blow up.

1 Remember that Emad Salem never met Mohammed Saleh
2 until he was introduced to him by Siddig Ali, and Saleh was
3 hooked up with Siddig Ali certainly not by Salem but by
4 Siddig Ali's contacts with the Sudanese Mission, and we will
5 get into that a little bit more later.

6 Siddig Ali and Haggag, a month before Salem
7 started to work closely with Siddig Ali, Siddig Ali and
8 Haggag turned to Hampton-El for weapons for the Mubarak
9 plot. They didn't tell Hampton-El who the target was at the
10 time, but they turned to him alone for weapons. And even
11 though Salem knew Hampton-El from 1992, Siddig Ali didn't
12 know that when he first told Salem that Hampton-El could get
13 them explosives in 1993. And when they went, it was after
14 Siddig Ali set up the meeting.

15 Your Honor, I am going to move on to another
16 subject.

17 THE COURT: Why don't we take a short break,
18 ladies and gentlemen. Please leave your notes and other
19 materials behind. Please don't discuss the case. We will
20 resume in a few minutes.

21 (Jury excused)

22 THE COURT: May I see Mr. Jacobs, Ms. Amsterdam
23 and the government at the side.

24 MR. RICCO: Your Honor, I wanted to raise an
25 issue at the side bar as well.

1 THE COURT: Come up.

2 (At the side bar)

3 THE COURT: The principal reason for doing this
4 at the side rather than in open court was that I wanted to
5 ask Ms. Amsterdam please not to toss her head, shake her
6 head, or roll her eyes during the government's rebuttal.

7 I assume your objection, which you made during
8 the summation, was a combined
9 burden-shifting/failure-to-take-the-stand objection.

10 MR. JACOBS: Thank you, sir.

11 THE COURT: The reason I overruled it is that I
12 think it is fair comment when somebody opens on a particular
13 background and then doesn't prove it, and that is in essence
14 all he said, particularly when one calls witnesses and takes
15 on a certain burden. It was phrased just that generally and
16 nothing specific about Saleh. That is the reason I
17 overruled the objection.

18 MR. JACOBS: With a slight little twist, your
19 Honor --

20 THE COURT: Sorry for omitting the twist.

21 MR. JACOBS: -- the problem I have is that I only
22 basically talked about his background in the gas station and
23 in fact we did call some witnesses on it. But I think your
24 Honor has the essence of the objection.

25 THE COURT: You have your record.

1 Yes, sir.

2 MR. RICCO: Your Honor, I didn't object because I
3 didn't want to interrupt Mr. McCarthy and I think at the
4 moment it really isn't an issue directly related to me. But
5 Mr. McCarthy mentioned that no one asked any of the agents
6 about the introduction of another confidential informant
7 into the operation.

8 I would just note that I would have objected to
9 it if it was something that directly related to Mr.
10 El-Gabrownny, because pursuant to the CFR, your Honor
11 specifically limited the questions that we were allowed to
12 ask the agents. In fact your Honor sustained objections to
13 every question that didn't relate to taping. In fact your
14 Honor took issue with me directly on that very point at a
15 side bar here and questioned what my questions had to do
16 with taping.

17 I am not asking the court for any type of
18 instruction because I think it is water under the bridge.
19 But if Mr. McCarthy does that type of argument with respect
20 to agents as they relate to Mr. El-Gabrownny in lieu of the
21 CFR limitations, I would make an objection to the future.

22 THE COURT: Let's get straight what the CFR
23 limitations are. The CFR limitations relate to in essence
24 your telling the government -- not you personally. You
25 didn't call any of these people.

1 MR. RICCO: It wasn't my issue.

2 THE COURT: -- relates to defense counsel telling
3 the government in essence the subjects on which they want
4 to, and the agents and the government either producing them
5 for that or not producing them for it and taking the
6 consequences. If nobody asked about calling them for that
7 reason, then that in essence is the same as not questioning
8 them. I don't know whether they could have been questioned
9 or not within the scope of the subject matters that were
10 agreed to with the government under the CFR, but the point
11 is, nobody stopped anybody from raising it as an issue.

12 MR. McCARTHY: If I could just add to that, your
13 Honor, repeatedly they were allowed to far exceed the scope
14 of what had initially been talked about.

15 THE COURT: That, the record will either reflect
16 or not. There were times when I let it go somewhat beyond.
17 The point is that you can will set the boundaries from the
18 start and then explore it, and if nobody wanted to set those
19 boundaries, nobody wanted to set those boundaries.

20 Anyway, short break. Thanks.

21 (Recess)

22 (In open court; jury present)

23 THE COURT: Mr. McCarthy, go ahead.

24 MR. McCARTHY: Thank you.

25 Ladies and gentlemen, before I continue, I want

1 to thank you for your patience. I know that this is a
2 little difficult because I am going to run from topic to
3 topic. I know it is a little tough. Thank you for hanging
4 in there.

5 I want to talk to you for a couple of minutes --

6 THE COURT: Mr. McCarthy, you have to stay with
7 the microphone.

8 MR. McCARTHY: I hope I continue to work, unlike
9 the tape deck did yesterday.

10 I want to talk to you a couple of minutes about
11 Emad Salem and the World Trade Center. Miss Amsterdam
12 continued what we called a cheap shot, and it is a cheap
13 shot, of accusing Salem of blowing up the World Trade Center
14 without coming right out and saying it. She sort of tiptoes
15 right up to the line, takes about 10 minutes doing it, and
16 then floats out the suggestion, but says, of course, I am
17 not saying he did it.

18 In carrying out the cheap shot, the evidence, as
19 often happens, gets misrepresented in the process, and I
20 want to remind you of a theme along those lines. Where they
21 have things that appear to be embarrassing for the
22 government -- and boy, there is one or two of them in this
23 case -- keep in mind that if they have to exaggerate
24 something to make it worse, it's got to kind of make you
25 wonder exactly how important or how devastating this all is.

1 In this case, Miss Amsterdam repeatedly said when
2 she was up here arguing before you that the World Trade
3 Center gets exploded on February 26, 1993, and Salem's
4 eardrum gets blown out. There is no evidence of that. The
5 evidence is that Salem had an inner ear problem that was
6 affecting his balance. They called his exwife in this case.
7 You know that they could certainly have called treating
8 physicians if there was any evidence to support their claim.
9 Instead, it just gets floated out there with no evidence, in
10 the hope that you will connect up the sinister impact that
11 they can't put in front of you with proof.

12 I want to talk about the safe house for a moment.
13 It is a very selective reading of Khallafalla Exhibit C that
14 Mr. Jacobs calls the smoking gun tape, which the lawyers use
15 to continue to suggest that the safe house was solely and
16 exclusively Emad Salem's creation. They get that by taking
17 out the use of the word scenarios in that tape and the
18 transcript.

19 Khallafalla Exhibit C is in evidence. The whole
20 tape is in evidence of that conversation, and the whole
21 transcript is in evidence. You can look at it, you can
22 review the whole thing, and I would encourage you to do
23 that. You should do that, especially when you are
24 considering the allegation of the FBI frame-up, coverup
25 conspiracy that you heard so much about. There is nothing

1 on that tape that indicates that scenario meant a bombing
2 safe house and certainly nothing indicating that a bombing
3 safe house was Emad Salem's own idea.

4 The testimony that you heard in the trial was
5 that the term safe house, or the bombing safe house, was
6 originally something that came out of the 1992 bombing plans
7 involving Nosair, El-Gabrownny and Ali Shinawy, and that was
8 in a version of events that you heard from the testimony of
9 some of the agents and was actually written in stone by
10 1992, many months before the World Trade Center was bombed.

11 Also, the evidence that you heard in this case
12 indicates to you that this is how a bombing conspiracy
13 works. The World Trade Center bombers, you saw, had
14 locations for storing and mixing bombs, including the
15 storage shed that you heard about during that testimony.

16 Also, remember along these lines the testimony
17 that you heard from Agent Ronald Mahaffey -- or I guess he
18 is former Agent Mahaffey now -- who was actually called by
19 Miss Amsterdam during the defense case. He explained to you
20 that if the FBI is going to do this kind of investigation,
21 and given the amount of death that can occur, and there is
22 good reason to think they should be doing this kind of
23 investigation, maybe as opposed or certainly of paramount
24 importance to some of the other things they do, they have to
25 weigh competing interests. They have to weigh the need to

1 collect evidence so that a crime can be prosecuted against
2 public safety concerns, which are very real. Public safety
3 is severely threatened if tight controls are not in place
4 and if they are not maintained.

5 That can happen pretty easily. You may remember
6 a tape that you heard pretty early on. Government Exhibit
7 307T is in evidence. That's a conversation in which you
8 heard that Siddig Ali actually wanted to go into a federal
9 prison and speak to Mahmoud Abouhalima, to try to obtain
10 from him the bomb formulas that the World Trade Center
11 bombers had used. Emad Salem is the one, as you review the
12 tape, who discouraged him from doing that, and you recall
13 from the testimony that Salem had been explicitly instructed
14 by the agents to steer away from conversations where he
15 could possibly learn defense strategy. So Siddig Ali ended
16 up not going.

17 But the point here is this: This time the
18 government had an informant there. This time Salem was
19 there. If you don't have an informant, you don't know.
20 Maybe next time Siddig Ali gets his advice from Ramzi Yousef
21 or Ahmed Ajaj.

22 I want to speak to you for a few moments about
23 entrapment. Without being able convincingly to lay
24 everything on Salem, the defense lawyers in this case, and
25 you have some terrific lawyers here, did something that is

1 actually very clever. They tried to create in your mind an
2 image of Salem and Siddig Ali as sort of one and the same
3 person. Indeed, there are so many conversations between the
4 two of them that you might sometimes have thought as you
5 were hearing them that they were actually two parts of the
6 same whole. They are different, and they are very different
7 in very important ways.

8 Siddig Ali was not a government agent. Siddig
9 Ali was a terrorist. He was a criminal. He was a
10 defendant, and as some of the defense lawyers reminded you
11 during the summations, he was seated right here at this
12 table at the start of the trial. He was Sheik Omar Abdel
13 Rahman's interpreter and confidant.

14 The reason the lawyers took so much pains to make
15 Siddig Ali and Salem appear like mirror images will become
16 obvious to you when you hear Judge Mukasey's instructions to
17 you on the law of entrapment. Entrapment has two elements.
18 First, there can be no entrapment unless the first step is
19 taken by a government agent. That is called inducement. If
20 you are recruited for a crime by another criminal, there
21 cannot be any entrapment. In fact, there could have been no
22 entrapment here because Siddig Ali not only recruited the
23 defendants but he actually proposed the crime himself to
24 Salem. As I said before, that is Government's Exhibit 641.
25 He proposed the crime, bombing operation, he chose the

1 targets, and he picked the people.

2 It is actually almost incredible, if you think
3 about it, that we are discussing this point. If he was
4 still a defendant, if Siddig Ali was still a defendant in
5 the trial, do you think that anybody here would be telling
6 you Siddig Ali made me do it? If you join an agreement
7 recruited by a defendant, that's a conspiracy, it's not
8 entrapment.

9 Salem was a major participant, but that is what
10 he was supposed to be. He was the bomb builder and the
11 technician, and he acted in his undercover role effectively.
12 It was his job to get people talking and try to find out
13 what was going on. It is not entrapment for a government
14 informant to be heavily involved. You will see that when
15 you get instructions from the judge.

16 Even if any defendant could establish inducement,
17 there is still no entrapment if the defendant was
18 predisposed to act, that is, if he was ready, willing and
19 able to commit the crime and the government simply provided
20 him with the opportunity. You know these defendants were
21 ready and willing to act. Each one of them agreed almost
22 instantly.

23 Amir Abdelgani, whose lawyer barely mentioned
24 entrapment if he mentioned it at all, told Haggag that he
25 was ready for any mission. He scouted tunnels on his own

1 and he recruited his cousin and helped recruit Victor
2 Alvarez.

3 By the time Siddig Ali first talked to Tariq
4 Elhassan about the operation in Government's Exhibit 352,
5 Siddig Ali had already told Elhassan about the tunnels.
6 Elhassan sought out others, like an engineer, to help figure
7 out how best to destroy bridges and tunnels. And Elhassan
8 also wanted to send the engineers information to Hamas and
9 other Muslim extremist groups. That is on the tape.

10 By Government's Exhibit 352, Elhassan was
11 assuming a leading role, getting Alvarez to commit to either
12 being in or being out.

13 Khallafalla instantly agreed to the plan on May
14 27. As you saw earlier when we looked at the transcript of
15 Government's Exhibit 352, he was a player, at one point even
16 rebuking Salem on how they should deal with Mohammed Saleh.
17 You heard, and we are going to play the tape later on, how
18 he poked fun at Alvarez in Government's Exhibit 362 when
19 Elhassan mentioned allowing people to pull out. And even
20 after the night of June 21 into June 22, the night that Miss
21 Amsterdam tells you he walked out and never came back, you
22 heard evidence that he was still trying to raise money for
23 the operation.

24 Alvarez was recruited by Siddig Ali and Amir
25 Abdelgani on June 18 and agreed the next day at Siddig Ali's

1 house when it was explained by Siddig Ali and clarified by
2 Salem that the plan was to attack America. It is not
3 entrapment to ask a clarifying question.

4 Later in Government's Exhibit 352, Alvarez told
5 Salem, I'm there, I'm there, whatever has to be done, any
6 time, any day. That's virtually a textbook definition of
7 predisposition. He offered to find another safe house if
8 they needed one. He offered to use connections that he
9 obviously already had to try to find stolen cars, and he
10 volunteered the Uzi. You heard that not only on the tape,
11 you heard about it when he actually lied about it on the
12 witness stand.

13 Regarding the Uzi, I should say briefly,
14 remember, I think it was probably a week ago that Mr.
15 Wasserman was here speaking to you on behalf of
16 Mr. Hampton-El, and he was waving the Uzi around in the air
17 and asking why is it if Hampton-El is the big gun connection
18 that they don't get the Uzi from Hampton-El, they get it
19 from Alvarez. Well, if you listen to the tape, they got it
20 from Alvarez because Alvarez volunteered it. They didn't
21 need to turn to him for it, he offered it up himself.

22 Maybe the most ludicrous entrapment arguments are
23 raised to you by Mohammed Saleh and Clement Hampton-El.
24 Saleh tells you he was entrapped by pointing to Government's
25 Exhibit 332, which is CM 31, a conversation between Salem

1 and Siddig Ali which Mr. Jacobs calls classic entrapment.
2 It's not entrapment at all. Salem met with Saleh only
3 because he was introduced by Siddig Ali, and the
4 conversation between Salem and Siddig Ali, which is sort of
5 a post-mortem, a conversation that occurs after the meeting
6 with Saleh, is simply another effort to get you to focus on
7 what Salem thought, what Siddig Ali thought, what
8 Khallafalla or somebody thought, what anybody else in the
9 world thought about, except what Mohammed Saleh thought and
10 what Mohammed Saleh said.

11 What Mohammed Saleh thought and said is expressed
12 to you as only he could express it, in Government's Exhibit
13 333, and that should be enough evidence to convince you
14 beyond any doubt that Mohammed Saleh is not your ordinary
15 gas station owner, with his phony ID's and driver's licenses
16 that you saw were taken off him the night he was arrested,
17 and on the tape you hear about his Hamas connections, his
18 request for night vision goggles so the Hamas could carry
19 out operations, his contacts with the Sudanese government,
20 his talk of the murder of the Secretary General of United
21 Nations being a must -- that's his word -- and his
22 discussions of the, quote, very respectable operation in
23 which fighters who became martyrs slaughtered 42 Israelis on
24 a bus. He even discusses on that tape how easy it is to get
25 guns and how easy it is to hire people to carry out

1 assassinations. Things were teed up for him by Siddig Ali.
2 He was not induced by Salem, who would never even have met
3 him, as I said, had it not been for Siddig Ali. When the
4 bombing plan was described for him his reaction was to
5 squeeze his capabilities. He was clearly predisposed to
6 violence against what he saw as enemies of Islam, and the
7 conversation makes clear that he saw the United States as
8 one of those enemies, no matter what they want to tell you
9 now about how the conversation is about Bosnia training.
10 You look at that conversation. It is utterly unreasonable
11 to say that that conversation is about a Bosnia training
12 operation.

13 Hampton-El's claim of entrapment into the bombing
14 conspiracy is absurd. He is actually in the thick of things
15 long before Siddig Ali is, as was shown by the 1989
16 paramilitary training and the incident at the airport that
17 he acknowledged lying about in his testimony on the stand.
18 That is, he acknowledged lying about the incident back in
19 1989. Haggag told you that Hampton-El was one of those who
20 was going to put Abouhalima on trial for Abouhalima's
21 screw-up the night of the Kahane suicide, not being where he
22 was supposed to be to pick up Nosair as he fled. You know
23 he was in on the planning of that murder also, because he
24 said it on tape, even though he is now sorry he did. He was
25 supposed to have been there with Sayyid Nosair, he says in

1 Government's Exhibit 325, and Dr. Abdel Rahman had to talk
2 him out of going to jail where Nosair was being held, to
3 visit him.

4 You know he is someone that they turned to for
5 counsel on guns and explosives and operations. He was
6 already Ali Shinawy's source for weapons, or one of his
7 sources, by the summer of 1992, and in June of 1992, you
8 know based on all the evidence that through his old friend
9 Asim Mohammed, he supplied the handgun in evidence to
10 Shinawy that Shinawy ultimately gave to Salem.

11 You heard testimony from Garrett Wilson that on
12 December 20, 1992, he sought clean guns and detonators. I
13 submit to you that nobody needs clean guns for training.

14 Hampton-El agreed to help Siddig Ali and Haggag
15 with the weapons that they needed for an attempt on
16 Mubarak's life. He wasn't told the target but he wasn't
17 real interested in what the target was either. As you
18 heard, his main interest was whether it was, in his view,
19 Islamically correct. That's his predisposition. Whether it
20 is Afghanistan or the Project Bosnia events that he told you
21 about or robbing banks or attacks on what he called, in
22 Government's Exhibit 325, the powers of kufar, or the
23 infidels, right here in America, the use of violence is just
24 fine with Clement Hampton-El, as long as it is jihad. He
25 would like you to believe now, preposterously, that he never

1 in his life had a conversation about detonators and
2 explosives until Emad Salem and Siddig Ali walked into his
3 dojo on May 30, 1993. You know that is not so from the rest
4 of the evidence that you heard. There is no entrapment in
5 this case.

6 A number of the defendants also float out a
7 defense to you that really is not a defense at all, and it
8 is what I will call the sort of "Siddig Ali is a nut"
9 defense.

10 That was the suggestion that everything in this
11 case is just a little bit too unreal and Siddig Ali is a
12 Frankenstein created by Emad Salem. Let's think about who
13 Siddig Ali in April 1993. When you first heard about him,
14 he shows up at the Nosair trial. Like Abouhalima,
15 El-Gabrownny, Salameh, Ayyad and some of the others you heard
16 about, he rallied to the support of Nosair at the state
17 trial during 1991, and as you saw in the videotape that is
18 in evidence, at the Abu Bakr Mosque victory party, he was
19 one of the few people who actually stood up at the podium at
20 the microphone and addressed the entire group.

21 Siddig Ali visited Nosair at Rikers Island on
22 December 26, 1991. You heard in July 1992, after bombings
23 had been proposed to Salem, there was supposed to be another
24 trip up to Attica. That trip was ultimately canceled but
25 you learned from the evidence you heard that the guest list

1 included Salem, Siddig Ali, and Mustafa Assad, the same
2 Mustafa Assad that Clement Hampton-El turns to when he is
3 trying to get detonators. By that time Siddig Ali, who had
4 contacts in the Sudanese Mission, was a confidant and
5 translator for Sheik Omar Abdel Rahman. He was also
6 involved in the paramilitary training in Pennsylvania, at
7 the Kalifa Mosque and in Lincoln Park.

8 In late 1992 or early 1993, Siddig Ali was
9 consulted by Mahmoud Abouhalima regarding explosives prior
10 to the bombing of the World Trade Center. That happened in
11 the car conversation that Haggag ultimately reported to the
12 Egyptian government, making it appear to Abouhalima that
13 Siddig Ali was actually an informant. Remember that
14 immediately after that bombing, Siddig Ali helped Abouhalima
15 flee the United States. That's after the bombing of the
16 World Trade Center.

17 Far from betraying Abouhalima, Siddig Ali
18 actually turned to plot the murder of the President of
19 Egypt, Hosni Mubarak, who had turned Abouhalima over to the
20 United States. He also, you heard, considered an operation
21 to murder United Nations Secretary General Boutros-Ghali.
22 Many of the lawyers pointed out that Haggag, Siddig Ali's
23 friend, feared that with Siddig Ali's charisma, his charm
24 and his violent streak, he was dangerous and quite capable
25 of leading others into violent action.

1 In short, by April 1993 when he met up with Emad
2 Salem, Siddig Ali was an accident, actually a disaster
3 waiting to happen.

4 Ms. Amsterdam and Mr. Jacobs talked throughout
5 the trial about the things that might have been done to
6 prevent the World Trade Center. Remember the agents were
7 asked about their activities around 1992. What do you think
8 would have been said about the FBI if it had failed to
9 investigate Siddig Ali, a person whose track record by April
10 1993 was far worse than Nosair's was before Kahane was
11 killed and far worse than Abouhalima's or Ayyad's was before
12 the bombing of the World Trade Center?

13 Ms. Amsterdam made much of Siddig Ali's lack of
14 honesty, and a few things ought to be said about that. The
15 best instance of Siddig Ali's lying that you saw in this
16 trial is the exhibit that you actually saw before I got up
17 to speak to you, the one that Mr. Serra told you about, or
18 played for you on the television this morning, the interview
19 that Siddig Ali gave to CNN, where he looked the camera in
20 the eye with that broad smile and lied about all of his
21 activities in connection with this case. That is the reason
22 they showed it to you, to show you what a liar he is.

23 Think about this. That tape is in evidence and
24 you can review it. If you look at it carefully, the thing
25 that he is lying about, the thing that he is lying about is

1 actually the defense of a number of defendants in this case.
2 The thing that he is saying in that tape is that they
3 thought this was all for Bosnia. That's the tape that they
4 brought for you and played to you because they thought it
5 was a lie.

6 Also think about this when you review that tape.
7 Did that tape remind you of anything? Did the tape of Sheik
8 Omar Abdel Rahman's interpreter remind you of anything else
9 that you saw in this case? I suggest to you that it was
10 quite reminiscent of the earlier interviews that you saw in
11 the trial of Sheik Omar Abdel Rahman making public
12 statements after the bombing of the World Trade Center.

13 Another question. Just exactly how well adjusted
14 do you figure most terrorists are? Do you figure that men
15 who are ready to mass murder people out of some warped idea
16 of principle are going to have their feet very firmly
17 planted on the ground? Imagine it is February 25, 1993.
18 Someone comes up to you and tells you that a bunch of guys
19 from Jersey City are going to take a bomb in a van and blow
20 the World Trade Center to kingdom come, and then they tell
21 you one of the guys who did it rented that van in his own
22 name, and he is going to go back and get his deposit. What
23 would you have thought before the bombing of the World Trade
24 Center? If somebody came up and told you that, you would
25 have said that's crazy, it's too bizarre to be real. Well,

1 it happened, and the frightening thing about this case is,
2 it could happen again.

3 MS. AMSTERDAM: Objection, your Honor.

4 THE COURT: Overruled.

5 MR. McCARTHY: Finally, one other thing about
6 reality and unreality. No matter what you think when you
7 hear the defense about how what went on here was just a
8 little bit too bizarre to be real, remember that the crimes
9 in this case were real enough that four of the defendants
10 believed that they needed to get up on that stand and lie to
11 you about it. This wasn't simulation, it wasn't a game.
12 The people in this room were planning mass murder.

13 Let me talk about Emad Salem and the agents. Mr.
14 Jacobs and Miss Amsterdam have accused the government of a
15 conspiracy to falsify or destroy evidence in order to frame
16 the defendants. The reason for the frame? The FBI was
17 trying to regain its sullied reputation after the bombing of
18 the World Trade Center. The whole premise of this argument
19 is an absurdity, and when you try to follow what passes for
20 the logic of it, the defense is revealed for exactly what it
21 is, which is a smear. Let's get a couple of things straight
22 from the start.

23 The frame-up coverup defense is built wholly and
24 entirely on evidence that you learned the defense obtained
25 from the government. As you learned, in late June 1993,

1 after the arrests had occurred, Salem was being interviewed
2 about the case. In those interviews he told the government
3 that he had been making tape recordings and that those
4 recordings contained conversations with targets,
5 conversations with agents, conversations with family
6 members, and conversations with others. The very same
7 government that Mr. Stavis and Miss Amsterdam told you
8 twists and conceals the facts just to obtain the results,
9 and certainly doesn't ever give the defense anything they
10 can use, decided to get Salem's tapes even though they were
11 agent conversations. The government turned those tapes over
12 to the defense lawyers. The government made every one of
13 those tapes available not only to the defense lawyers but to
14 the defense expert Paul Ginsberg so that he could do the
15 same exhaustive analysis on those tapes that he did on the
16 CM tapes that were made under the supervision of the FBI.

17 The other premise of the defense, that the FBI
18 needed this case to restore its reputation after the World
19 Trade Center bombing, well, you have heard an awful lot of
20 uncomplimentary things about the FBI in this case, but where
21 did you ever hear that its reputation was tarnished after
22 the bombing of the World Trade Center? To the rest of the
23 world out there, not to the folks that have been sitting in
24 this room for nine months, but to the rest of the world out
25 there, the explosion in all its tragedy was actually a high

1 watermark for the FBI.

2 MR. JACOBS: Objection.

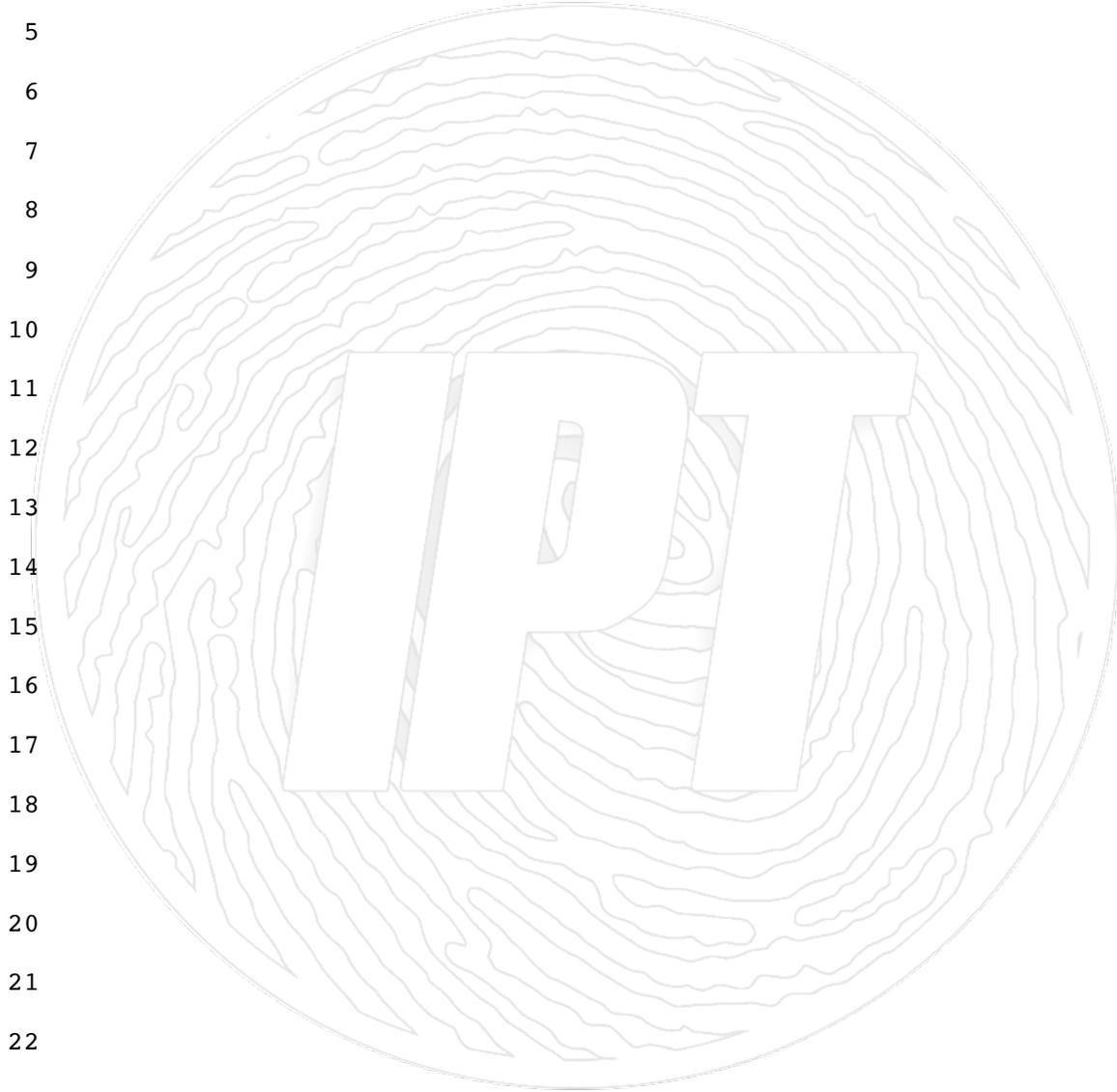
3 THE COURT: Overruled.

4 MR. MCCARTHY: You heard evidence in this case
5 that before Salem ever came back into this investigation the
6 FBI had solved the bombing. By March 4, less than a week
7 after the explosion, Salameh was arrested, after a VIN
8 number from the Ryder van was extracted from the tons of
9 rubble at the Trade Center. Other arrests, including
10 Mahmoud Abouhalima's, followed. The defendants, as you
11 heard many times from the defense lawyers during the case,
12 Salameh, Abouhalima and Ayyad, among others, were convicted
13 at trial.

14 The FBI's reputation, you can conclude, was doing
15 just fine, and if what you are worried about is the FBI's
16 reputation, if you are willing to accept the premise that
17 cases don't get investigated, they get manufactured just to
18 preserve an institution's reputation, then this case, the
19 case that you have seen for nine months, is the case you
20 never do. This case is the uncovering, it is not the
21 coverup. This is the case where you cannot place before a
22 jury what actually happened without letting the jury know
23 that the government, long before the World Trade Center was
24 bombed, had some pretty good hooks into some pretty bad
25 people, the same people who are shown by the evidence with a

1 little help from their friends to have turned around months
2 later and committed a mass terrorist attack that killed six
3 people.

4 (Continued on next page)



5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 This is this case that you can't do without
2 putting that in front of the jury, without putting your
3 mistakes in front of the jury, and without letting the jury
4 see firsthand what it can be like to deal with high-strung
5 people in a high-pressure situation, where your witness's
6 life is on the line on a daily basis; where, if you decide
7 to end the investigation too early, you are going to have
8 defense lawyers come into court and say, you haven't proved
9 anything, you haven't got enough evidence. But if you end
10 the investigation too late, and people get killed as a
11 result, you got blood on your hands. This is the case with
12 the warts.

13 And remember this: In order to follow the logic
14 that the FBI's reputation was tarnished, you have to accept
15 the premise that what Emad Salem told them in 1991 and 1992
16 was true. If it wasn't true, there is nothing to be
17 embarrassed about. There is embarrassment only if you
18 accept the premise that the FBI had a very good idea that
19 members of the jihad organization were active in the United
20 States and looking in 1992 to conduct high-explosive
21 bombings.

22 Was it a lucky guess? Was it just a coincidence
23 that Salem was reporting to agents in 1992 that Nosair and
24 El-Gabrownny are talking about high-explosive bombings, and
25 then the World Trade Center blows up a few months later and

1 those two guys are in it up to their necks with contacts all
2 over the place and the people that you know did it?

3 No, no one is going to think that's a lucky
4 guess. And that is where the embarrassment comes in: the
5 knowledge that you knew it might happen and maybe you didn't
6 do everything you should have done to prevent it.

7 When the FBI brought Salem back after the World
8 Trade Center was bombed, after it was clear that the country
9 was under siege -- and you know from the evidence that you
10 heard those guys not only did it, they were threatening to
11 do it again -- it was the only right thing to do. Under
12 those circumstances, bringing Emad Salem back with all his
13 problems was the only right thing to do.

14 But remember this: it was a decision that was
15 not made in the self-interest of the FBI. If anything, it
16 was a decision that was made against the self-interest of
17 the FBI. At the time, at the time when they brought him
18 back, in March of 1993, for all the public knew, they were
19 the heroes of the moment. If Salem had not been persuaded
20 to become a cooperating witness, the full story of what was
21 known by law enforcement in 1992, months before those people
22 were killed, might never have been made public. Making him
23 a witness meant making it certain that that truth would come
24 out.

25 The defense theory of government conspiracy and

1 coverup, made by men who were on tape explicitly discussing
2 mass murder, is as dangerous as it is sickening to the
3 people who were accused by Ms. Amsterdam of being a part.

4 They would have you buy it and they would have
5 you send this message to law enforcement: Pull the plug on
6 all cases unless you have an informant who has no baggage
7 and no credibility problem; unless you, the FBI, have
8 correctly marked every envelope and picked up every tape at
9 the appointed time and hour. And, by the way, make sure
10 your informant has done everything by the book and never
11 mind that using a Kel transmitter or body recorder might
12 risk blowing the whole investigation. That is the standard
13 you are going to impose; otherwise juries like you are going
14 to throw out cases despite what the evidence shows and
15 despite what the applicable law is. And you can conclude
16 there is going to be a lot fewer cases and a lot more
17 terrorism.

18 MS. AMSTERDAM: Objection, your Honor.

19 THE COURT: May I see counsel at the side,
20 please.

21 (At the sidebar)

22 MS. AMSTERDAM: I have an objection. This is the
23 second time that Mr. McCarthy has referred to terrorism. I
24 think it is an appeal to fear.

25 THE COURT: The second time he has referred to

1 terrorism? Oh, my goodness, is that the objection?

2 MS. AMSTERDAM: No, the objection is --

3 THE COURT: I think I know what the objection is.

4 I don't think you are over the line yet, but I think you are
5 awfully near it. I will not permit argument to this jury
6 that says that if you acquit in this case you send a message
7 that terrorism is OK. I will not permit that argument.

8 MR. McCARTHY: I will not make that argument.

9 THE COURT: Good. Let's have this as the finis.

10 (In open court)

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

12 THE COURT: Please.

13 MR. McCARTHY: There were a lot of mistakes here,
14 and if things about Emad Salem give you pause, they should.
15 That is why you were told about that in the government's
16 opening and that is why you heard about it when we put him
17 on the stand in direct examination. That is why you were
18 told to pause and measure what he says and take a look at
19 all the evidence in the case and see how what he says, to
20 the extent that it is hanging on its own, stacks up against
21 the rest of what you heard.

22 As much as the defendants would like you to see
23 the world and see each piece of evidence through Emad
24 Salem's eyes, you don't need Emad Salem to figure out for
25 yourself what they are doing and what they are saying on

1 those tapes.

2 This isn't theater. It is not Shakespeare or
3 David Letterman or the other forms of entertainment that you
4 have heard about during the last two weeks. This is reality
5 in New York and in the world.

6 I will just say one final thing about it. When
7 you think about the accusations that have been leveled about
8 government misconduct and government coverup, remember that
9 we are the ones that brought out most of the warts. And to
10 the extent that there were warts we didn't bring out, the
11 people charging a coverup were able to do it only because we
12 gave them the evidence, the tapes, that they played for you.
13 It is not a very nice thing to accuse people of tampering
14 with the evidence and manipulating the truth. It has been
15 done pretty cavalierly in this room for the last two weeks.
16 It will be up to you, after nine months of observing what
17 went on in this courtroom, to decide where in this room the
18 frauds are coming from and where they are not.

19 It is something of a measure of how weak the
20 defense position is that they have to misrepresent the
21 conduct of the agents in order to try to convince you that
22 mistakes in judgment, and there were enough of them, were
23 really criminal misconduct.

24 The best example is probably Mr. Jacobs and Ms.
25 Amsterdam's harping on a conversation in which Anticev used

1 the word or term "cleansing the evidence." That was in a
2 conversation with Salem. Anticev, who testified here before
3 you, has been kicked around pretty good by these lawyers.
4 But that conversation, which he discussed at length in his
5 testimony, may actually have been his finest hour, and
6 indeed may actually have been one of the finest hours in the
7 investigation.

8 You learned that the government is not supposed
9 to act to learn the trial strategy of defendants who have
10 been indicted, as the World Trade Center defendants had been
11 at the time of the conversation we are discussing. You also
12 learned about what is called the Brady rule. That is the
13 rule that says: If the government develops information that
14 shows that someone who has been charged with a crime is not
15 guilty, that information has to be turned over to that
16 defendant so he can use it.

17 In the conversation that they say shows the depth
18 of Anticev's corruption, he explained to Salem, who had not
19 yet agreed to be a witness, that he had to stay away from
20 the lawyers, and that if he developed information that a
21 defendant was not guilty, that information would have to be
22 given over to the defense. Cleansing the evidence was not a
23 sinister term, although they tried to make it as sinister as
24 they could. What it meant was that if Salem got information
25 that included trial strategy, that information would have to

1 be treated in a way that made certain that the agents and
2 the prosecutors who were working on the World Trade Center
3 case did not learn the defense strategy. If Salem came up
4 with information that showed that someone was not guilty,
5 the application of the Brady rule, that information would
6 have to be given to the defendant. But the agents would try
7 to make sure that that was done in a way that it didn't
8 reveal Salem as the source of the information, that is, that
9 the defendant would get the information but they would try
10 to not make it appear that it came from Salem, which would
11 have put him at rest.

12 I am not going to give you page cites here all
13 day but Anticev's testimony on that point is located at page
14 13648 to 13651 of the record.

15 Consider this in evaluating that testimony. You
16 know from the way that he was examined about that
17 conversation that the conversation itself was on tape. That
18 is how they knew to ask him the questions. Well, what was
19 it? An agent secretly recorded, seeking to protect the
20 rights of defendants, as Anticev said, or an agent and an
21 informant conspiring to destroy and tamper with evidence.
22 Is there anyone in this room who thinks that if they had a
23 tape of those two men conspiring to tamper with and destroy
24 evidence, or if Anticev had given a false description of
25 what he was talking about on the tape in his testimony, is

1 there any chance that the defense lawyers in this case would
2 not have put that tape into evidence? Of course not. They
3 would have put it in and they would have played it three
4 times more often than a little night music.

5 Keep in mind -- when you think about Mr. Jacobs
6 looking you in the eye yesterday and telling you, you know
7 that Anticev said cleanse the evidence because you heard it,
8 it's on the tape -- remember, you didn't hear it, it is not
9 in evidence, the tape was never put in evidence, it was
10 never played.

11 MS. AMSTERDAM: Objection, your Honor. May I
12 have a sidebar?

13 THE COURT: No. Objection is overruled.

14 MR. MCCARTHY: That was no accident. It is a lot
15 easier to float out the word "cleanse" and make whatever
16 argument you want to make about it than deal with the things
17 as they are.

18 They have also trumpeted a conversation for you
19 in which Anticev told Salem that it was all right to tape
20 record a conversation even though Anticev had not followed
21 the proper procedure and obtained authorization from FBI
22 headquarters. Anticev told Salem that the tape could be
23 kept on the side, at a time when Salem had not yet agreed to
24 be a witness and had previously walked away from the
25 investigation, exactly because the FBI had tried to force

1 him into what he saw as the position of being a witness by
2 having a tape.

3 With respect to that, think about two things.
4 Number one, Anticev is a human being. He has a family.
5 Right after the World Trade Center was blown up, he had
6 reason to believe that terrorists who had identified him as
7 one of the main investigators on the case were passing
8 information about where he lived with his family. These are
9 the same people that he has been investigating since 1991,
10 1992. Should he have told Salem to go ahead and tape the
11 conversation? No. It was wrong.

12 You also learned that there is a Justice
13 Department inquiry into that. But while the procedures are
14 there to be followed, ask yourself whether it is reasonable
15 to conclude that because the guy did something stupid, that
16 hurt nobody but himself, out of a desire to protect his
17 family, it's reasonable to conclude that he is guilty not
18 only of breaking the rules but of being involved in a
19 massive conspiracy to tamper with and destroy evidence.

20 Also think about this: If things were the way
21 that Mr. Jacobs and Ms. Amsterdam want you to believe, Salem
22 wildly taping every conversation, the agents knowing all
23 about it, and then deciding what to keep and what to get rid
24 of, why did Salem and Anticev have to have this conversation
25 at all? Why did Anticev have to tell Salem that on this one

1 occasion it was OK to tape and that the tape would be kept
2 on the side? Obviously, they had to have the conversation
3 only because Anticev had not authorized Salem to tape record
4 conversations previously. If he had, it wouldn't have been
5 necessary to tell Salem anything. The fact that they had
6 the conversation at all shows you that there was no
7 systematic creation and destruction of tapes.

8 And remember, this conversation occurred in March
9 1993. They want you to believe that unauthorized taping
10 under the secret control of Anticev and Floyd and the rest
11 was going on since 1991. But you know in March 1993 Anticev
12 is giving Salem permission to tape record one single
13 conversation.

14 Yes, Mr. Jacobs did get Anticev to say that he
15 concealed the existence of Salem's private tapes. But you
16 learned from the rest of Anticev's testimony, and you can
17 conclude from the other evidence that you have heard in the
18 trial, that what Anticev meant by concealed was that he had
19 enough information to know that Salem had made some tapes
20 and probably had made others. Anticev didn't direct Salem
21 to make tapes, something it was legal for Salem to do on his
22 own as long as he was a participant in the conversation.
23 What Anticev is guilty of is a lapse of judgment. He put
24 his head in the sand when the only correct thing to do was
25 to go out and get the tapes, something that as an

1 investigator he should have been interested in doing anyway,
2 even if it risked Salem refusing to be a witness.

3 But also remember that Anticev had good reason to
4 doubt that there actually were any tapes at all. During the
5 course of Salem's examination, in page 7337 of the record,
6 Mr. Jacobs questioned Salem about taping and brought out
7 that Salem had told Anticev that he had given his tapes to
8 CNN. What that had to mean to Anticev by that time in 1993
9 was either one of two things: either Salem no longer had
10 the tapes because he had given them away, or, more likely,
11 he was bluffing, since CNN had not come out with any
12 bombshell stories about agents who had knowledge prior to
13 the bombing of the World Trade Center.

14 With respect to both Anticev and Napoli, the
15 defense pointed to Exhibit 643-1 to show that Salem had
16 hundreds of tapes and the agents knew it. If you remember
17 the context of that call, and the call was in evidence,
18 several weeks before the World Trade Center was bombed,
19 Salem had gotten a call on his answering machine from
20 Mahmoud Abouhalima who had left a number. Salem, even
21 though he was not working with the FBI at the time, had
22 reported the conversation to Anticev. After the explosion,
23 the FBI is looking for Abouhalima. And Anticev and Napoli
24 get in touch with Salem and ask him if he's got Abouhalima's
25 number. Salem says he's got to check his tapes. Given that

1 they knew ahead of time that the call had come in on
2 answering machine tapes, it is not surprising that the
3 agents were not alarmed when he mentioned his tapes. It was
4 not unreasonable to believe that what was being discussed
5 was answering machine tapes, not recordings of actual
6 conversations.

7 Also, when the agents asked him, can you get us
8 the number now, Salem turned around and said -- let me just
9 get it exactly -- well, he said that I have hundreds of
10 tapes, I have to go through them. It is not unreasonable to
11 assume under the circumstances, under all the circumstances
12 of that call, that "hundreds" wasn't any different than when
13 you tell someone you have hundreds of things to do, that it
14 was an exaggeration. But let's face it, it was done.

15 These guys were investigators. And even if they
16 thought they were talking about answering machine tapes, an
17 answering machine tape with Mahmoud Abouhalima looking to
18 contact someone he only knew as someone who knew how to make
19 bombs would have been a pretty good thing to have during the
20 World Trade Center investigation. But also remember this
21 was March 1993. Salem was not yet back on board. And the
22 agents knew when he left the investigation seven months
23 earlier it was because the FBI had tried to get him to make
24 a tape.

25 As the conversation which you can review makes

1 clear, the agents' main interest at the time was getting a
2 phone number from Mahmoud Abouhalima, not getting into a
3 brawl with Salem about tapes.

4 Now, there is little doubt that Napoli had his
5 head at least as deeply in the sand as Anticev did when it
6 came to Salem's taping. It was his idea, you heard from
7 him, and I think from Salem, to dictate tapes into a
8 machine, or to dictate into a machine tape recordings. But
9 there were enough indicators around that Salem might use his
10 tapes to record his calls, that Napoli should have known
11 that giving Salem tapes, blank cassettes, was sort of
12 turning a kid loose in a candy store.

13 Remember two things with Napoli. He did tell
14 Salem not to record because recording conversations could
15 turn him into a witness. It would be entirely reasonable
16 for you to find that he should have done more. He should
17 have. The very fact that Napoli had to tell Salem not to
18 make tapes should have made Napoli, who has been a cop for
19 27 or 28 years, aware and alert that he might be using the
20 tapes to tape conversations. He didn't want to deal with
21 it, and he didn't.

22 But also keep in mind why Salem left the
23 investigation in July 1992. The FBI wanted him to record a
24 conversation with Nosair. Salem was told by Agent Dunbar
25 that if he continued his cooperation in the case, the FBI

1 could not give him a hundred percent assurance that his
2 cooperation would not become known. Napoli was blunter. He
3 told Salem about the idea of recording a conversation with
4 Nosair up at Attica. If you tape, I take -- meaning if
5 Salem was to tape record a conversation up in Attica, it
6 would have to be treated as evidence and it would have to be
7 kept by the government. That caused Salem to leave the
8 investigation, a development that was a disaster.

9 If the agents were in an evidence-tampering
10 conspiracy with Salem, that kind of ultimatum would never
11 have happened. If you know the guy is taping and you know
12 you are going to destroy the tapes that you don't like, the
13 tapes that don't come out the way that you want them to,
14 there is no reason to force a confrontation and risk losing
15 a valuable source of information.

16 Khallafalla Exhibit C is a favorite of a number
17 of the defense lawyers. It is a recording, of course, of
18 the conversation between Agent Floyd and Mr. Salem. And you
19 heard that there were two erasures on that tape. I would
20 like to point out a couple of things to think about.

21 First of all, again, please look at the entire
22 conversation. If you look at the entire conversation and
23 you read through it, it actually supports the fact that
24 there was no evidence-tampering conspiracy.

25 Salem and Floyd no doubt are playing a mind game

1 against each other. Floyd is trying to find out whether he
2 has tapes and to get him to admit it if he does and turn
3 them over. To do that, she's got to undo everything she's
4 been telling the guy for the last seven months. You
5 remember she testified that she had been telling him along
6 the line that making tapes was illegal, even though she knew
7 it wasn't illegal for him to tape. She thought that was
8 easier than explaining to him when you could and when you
9 couldn't. She also told Salem that if he made tapes it
10 would turn him into a witness. That is what she is in the
11 position of trying to undo.

12 Even though it is June 1992 and Salem has been
13 working on the investigation for about seven months, during
14 the course of the conversation Floyd says that she doesn't
15 know if Salem actually has any tapes, if he's gotten rid of
16 any he may have had, and that the only tapes she knows of
17 were tapes he had made in connection with a different
18 investigation, which you heard was the Hegazi investigation.

19 Salem's position. The same person who has been
20 telling him for seven months one thing now comes back with a
21 completely different position. He knows also what Floyd
22 doesn't know. He knows there are tapes. He knows that he
23 has been making them even though the agents told him not to.
24 And he knows that the agents are actually on them. He's
25 guarded. When she mentions tapes, he says, you mean my

1 memos? And remember that when you hear the arguments about
2 how all this stuff about him dictating tapes to make memos
3 is nonsense. It is right there on the tape. He immediately
4 says: You mean my memos?

5 As it turned out, Floyd's strategy was somewhat
6 successful. At one point in the discussion Salem actually
7 gets exasperated and says, so you want the tapes. That was
8 as close as Salem ever came to acknowledging that there
9 actually were tapes. And, as you heard, he never produced
10 any.

11 The defense would have you believe that this
12 conversation was a coded message to Salem, or maybe even an
13 explicit message to Salem, that he could freely tape
14 whatever he wanted to tape. And that, if you look at that
15 conversation, is ridiculous. The conversation happened in
16 late June. It is after Salem's trip up to Attica, where the
17 bombs were discussed. Salem was out of the investigation,
18 you learned, by the first week of July. You don't turn
19 someone loose to do unauthorized taping and then end the
20 investigation so that you can't take advantage of what you
21 schemed for. And if there had been agent-approved,
22 unauthorized taping at that point, there would be no reason
23 for Floyd to have to play cat and mouse with Salem, as you
24 heard that she did on the tape. She had to do that because,
25 just as the agents told you, they had told Salem not to make

1 tapes, no matter what they should have known or did know
2 about whether he did.

3 Mr. Jacobs would also have you conclude that
4 Floyd was lying, since she said the supervisor, John
5 Crouthamel, had told her to find out whether there were
6 tapes. And he testified, that is Crouthamel testified, that
7 he never had such a conversation. Crouthamel, you learn,
8 was supervising about 200 investigations at the time. And
9 he also told you that in June 1992 the agents were having
10 conversations about marshaling all the information they had
11 to get wiretaps, and Floyd was a part of those
12 conversations, just like Floyd indicated to Salem right on
13 the tape, Khallafalla Exhibit C. And Carson Dunbar,
14 Crouthamel's boss, also vaguely recalled in his testimony
15 the last time he was called that he might have had a
16 conversation with Floyd about Salem possibly having tapes.
17 That makes sense. Floyd had no reason whatsoever, suddenly
18 after seven months of telling Salem that he would not have
19 to be a witness, to confront Salem on the issue of tapes.

20 She recalls that the person who told her to do
21 that was Crouthamel. His recollection is different. There
22 is good reason to think, based on all of the evidence, that
23 it is Crouthamel, not Floyd, who is wrong about this one.

24 When you are considering Khallafalla Exhibit C,
25 remember also an argument that Mr. Stavis made to you. He

1 told you that one of the main points of Floyd's testimony
2 was that the tapes she was talking about in Khallafalla
3 Exhibit C were from a different investigation. That is the
4 argument that he made to you when he summed up. That is as
5 if Mr. Stavis either wasn't here for Floyd's testimony or
6 never heard the tape. Floyd acknowledged and the tape makes
7 clear that she wasn't trying to find out if he had tapes
8 from another investigation. It is clear that she was trying
9 to find out whether the tapes were from this investigation.
10 If this tape, Khallafalla Exhibit C, is a great smoking gun
11 that you have heard about, you have to wonder why they have
12 to try to make it better.

13 The other thing the defense likes about
14 Khallafalla Exhibit C is the two gaps that Mr. Ginsberg
15 testified were erasures. You probably remember how sinister
16 it sounded the first time that you heard that conversation,
17 even though if you consider the conversation and you look at
18 the whole of it, the erasures don't seem to make too much
19 sense. And you had to be asking yourself, if Salem was
20 going to erase this conversation intentionally, why not
21 erase the whole thing? That would have been a good
22 question, because you learned later on that at the time
23 Mr. Jacobs and Ms. Amsterdam presented that isolated
24 conversation to you, Mr. Ginsberg had already examined the
25 entire tape and already knew that there were at least 18

1 other gaps or erasures, erasures that also had no rhyme and
2 no reason. In fact, in one conversation that you heard, the
3 one with the travel agent, there were five different
4 instances of erasures, none of them making any logical
5 sense.

6 You didn't find that out during the defense
7 presentation. The rest of the erasures came out during the
8 government's rebuttal case. Mr. Jacobs, of course, had no
9 problem getting Mr. Ginsberg to come back, say, yes, I just
10 checked the tapes and all those were erasures too.

11 But keep in mind, when you evaluate that
12 testimony, that Mr. Ginsberg had actually examined that tape
13 once before, and once before he was first asked questions
14 about Khallafalla Exhibit C in this courtroom.

15 Also keep in mind that if those gaps are
16 erasures, and they may well be, they were obvious and they
17 were found. Try as they might, the defense didn't find any
18 of that on the CM tapes that were made under the supervision
19 of the FBI.

20 The defense is in search of a theory. On the one
21 hand, Salem is Superman who can get anyone to say anything
22 he wants whenever he wants and then can doctor up a tape so
23 that even Ginsberg can't find it. And then they point you
24 to a tape which is so obvious that a 6-year-old would have
25 known that there was something wrong.

1 Finally, on Khallafalla Exhibit C, remember how
2 it got here in the first place. Salem found it when his
3 household goods caught up with him several moves after he
4 entered the Witness Protection Program. When he found it,
5 he turned it over to the government. The government then
6 turned it over to the defense and made it available to their
7 tape expert. If Salem was someone who destroyed tapes, if
8 there was a tape destruction conspiracy here, no one would
9 have been any the wiser if he had either erased the whole
10 thing or just not bothered to turn it over. That's not what
11 happened. And if the government was engaging in a coverup,
12 then why did it produce the tape of Floyd and Salem to the
13 defense? Because the government gave it to you, warts and
14 all.

15 Serial numbers. A large part of the
16 tape-destruction conspiracy is built on the false premise
17 that the manufacturer's serial numbers on the Nagra reels
18 have significance. No matter how much time Mr. Jacobs and
19 Ms. Amsterdam chose to spend on that subject, it's totally
20 irrelevant for a variety of reasons.

21 First, the serial numbers may be important to the
22 manufacturer for purposes of his inventory, but the FBI does
23 not pay any attention at all to the serial numbers in
24 maintaining the evidence.

25 You don't just have Anticev and Napoli on that

1 point. It is a long time ago, but you may remember Special
2 Agent Bill Atkinson of the Newark office of the FBI.
3 Atkinson is the fellow who testified that he was the
4 undercover agent who, when Mohammed Salameh came back from
5 his deposit to the Ryder Company, Agent Atkinson posed as
6 somebody who worked at that location and negotiated with
7 Salameh about the deposit.

8 That conversation that he had with Mohammed
9 Salameh is in evidence at this trial. Actually you heard
10 it. It is on a Nagra tape. Agent Atkinson made the
11 recording on a Nagra. That Nagra tape was also presented to
12 you in evidence. It came back on a catch reel, not a reel
13 with the manufacturer's serial number on it. Something
14 Mr. Ginsberg tells you never happens. But then again he has
15 never seen a juror's headset fall out in 150 tape cases.

16 The Nagra that Agent Atkinson did in connection
17 with Salameh was placed in the FBI's regular yellow evidence
18 envelope. You can examine a number of those envelopes that
19 came into evidence. There is no place on those envelopes,
20 that you heard is the FBI's regular inventory keeping, there
21 is no place in those envelopes to fill in the manufacturer's
22 serial number. It simply has no significance.

23 You may remember, if you think back, that
24 Mr. Jacobs actually tried to shake Agent Atkinson on that
25 point and got nowhere. In eleven years in the FBI, Agent

1 Atkinson testified that he had never preserved a little
2 white envelope and never recorded the serial number. He
3 said the process that was followed was that you simply
4 initial and date the physical tape, that is, the tape that
5 is on the reel, no matter what reel it ends up on, and then
6 you place it in a regular FBI evidence envelope.

7 The only person who said that the serial numbers
8 in envelopes had real significance was the ever dependable
9 Mr. Ginsberg, who told you that these numbers were a great
10 innovation that his friend Tom Daniels had come up with
11 several years ago to preserve the integrity of evidence. Of
12 course, it turns out that Mr. Ginsberg never mentioned that
13 important innovation in the agent taping manual that he had
14 written. Maybe it will be in the defense manual if he gets
15 around to publishing that.

16 Your common sense will tell you why experienced
17 agents don't care much about Tom Daniels inventory control.
18 As you learned, the tape does not come forever attached to
19 the reel. It can be moved from reel to reel to reel.
20 Whether it is on a reel or whether it is wrapped around a
21 pencil, the evidence is the tape. It is useful for the
22 manufacturer to have a number for his inventory in case
23 there are defects to check, but it is not something the FBI
24 pays much mind to.

25 One other point on the serial numbers.

1 Mr. Jacobs and Ms. Amsterdam argue that there must be
2 missing tapes because there are unaccounted for serial
3 numbers. That argument is silly. Not only was there no
4 particular attention paid to the serial numbers, to the
5 point that tapes sometimes came back on catch reels,
6 sometimes came back on other reels. If you think about it,
7 think about May and June 1993. Do you think it is possible
8 that the FBI may have had one or two other investigations
9 going at that period of time? There is nothing in the
10 evidence to suggest that the agents who needed Nagra tapes
11 actually took them by paying any attention to the serial
12 numbers.

13 Mr. Jacobs had a lot to say about the government
14 and Mr. Ginsberg, and I want to talk about that for a couple
15 of minutes. He mentioned to you again yesterday that
16 Mr. Ginsberg usually works for the government. He even
17 testified in the Waco case. Of course, if you remember the
18 testimony that you heard, Mr. Ginsberg did testify at the
19 Waco case but he didn't testify as a tape expert. He
20 testified about some transcripts that he had made.

21 If you are going to attack Ginsberg, Mr. Jacobs
22 said, where is your own expert? Where is your own expert on
23 Khallafalla Exhibit C? Where is your own expert on the CM?
24 Well, we don't need to call our own expert. We called
25 theirs. How's that for a coverup? Give them every single

1 tape, let their expert look at it as exhaustively as he
2 wants to look at it, and then we call him.

3 He said no matter how much time he spent with
4 him, that is, Mr. Ginsberg said, no matter how many tests
5 that he subjected them to, he found no evidence of tampering
6 on the CM tapes that were made under the supervision of the
7 FBI. No nicks, no cuts. The best he could do is tell you
8 of on-off switches and there were tapes with no preambles on
9 them -- all things that you didn't need him for. You could
10 have listened to the tape and figured that one out for
11 yourself.

12 As far as erasures are concerned, he told you
13 that he couldn't tell you any more than if the tape had been
14 made right here in front of you and he came back to look at
15 it. He is simply able to come up with no evidence that
16 there were erasures, nicks or cuts.

17 Also consider this: They are desperate enough to
18 find something in connection with the tampering, as the
19 theories were floated out to you, especially about CM32,
20 Government's Exhibit 333, the tape that is very damaging for
21 Saleh, the theory on that particular tape hasn't been kept
22 straight. Mr. Jacobs argued to you yesterday that
23 Government's Exhibit 333, which is CM32, was the tape that
24 Salem held onto for the longest. He held onto it for four
25 days and it was a tape that he had the most opportunity,

1 therefore, to tamper with. Mr. Ginsberg said that the only
2 tampering possible would have been overrecording, recording
3 over the conversation that had already occurred. Is there
4 any evidence during those four days, after June 4, that
5 Salem asked for a do-over, that he took Siddig Ali and went
6 back to Mohammed Saleh so that he could do the conversation
7 over again and see if it came out better? There is no
8 evidence.

9 They don't want you to get to Government Exhibit
10 333. They will take any position, no matter how ridiculous,
11 to cast doubt on it. And keep that in mind when you review
12 the words that Mohammed Saleh does not want you to hear.

13 Because he can't effectively challenge the CM
14 tapes, the Saleh defense goes the confusion route.
15 Mr. Jacobs went to the trial record and plucked out part of
16 a sentence of a question that he asked, and he told you that
17 that was proof of a tampering conspiracy. Specifically, he
18 pointed to page 7330 of the record, and he told you that
19 Salem even testified that he had made tapes of targets of
20 the investigation and erased them. If you look at the trial
21 record, you will see that the line of questions that
22 Mr. Jacobs was asking about had to do with private taping by
23 Salem in 1992. Ask yourselves how many of you knew that
24 when I was making the argument to you.

25 1992, the time that he was asking about, was a

1 year before Salem began making tapes under the supervision
2 of the FBI and a year before Salem ever met Mohammed Saleh.

3 Now, why is the defense doing that? They have
4 been trying from the start to confuse two very different
5 things. Salem made private tapes. They were his. They
6 were not the government's, despite what they have tried to
7 sell you. If you look at Khallafalla Exhibit C, if you read
8 the whole conversation and you apply your common sense to
9 everything that you have heard, no one ever directed Salem
10 to make recordings. They were not treated like government
11 property because they were not government property. Salem
12 never claimed that they weren't recorded over, he never
13 claimed that they weren't erased, and he never claimed that
14 records were ever made of them. They were his property.

15 When they talk to you about erased tapes and
16 overrecordings that Salem even had to admit to, remember
17 that what they are talking about is his own tapes, not
18 the CM's. Remember that that is not some great
19 revelation that they uncovered. There was never any
20 issue about it. Salem never said otherwise.

21 Mr. Jacobs also talked repeatedly about Salem's
22 illegal taping. It doesn't matter how many times he says
23 illegal, it is not true. Listen to Judge Mukasey's
24 instructions about consensual monitoring.

25 MR. JACOBS: Objection.

1 THE COURT: Overruled.

2 MR. McCARTHY: There is nothing illegal when a
3 person makes a tape recording of a conversation that he is a
4 part of. Now, I am not talking about whether you like that
5 or whether that is something good or whether that is
6 something that is a nice thing to do. We are talking about
7 the argument that it is illegal. The fact is it is not.
8 Salem was legally allowed to make tape recordings of
9 conversations that he was a party to.

10 MR. McCARTHY: Do you want me to proceed, your
11 Honor?

12 THE COURT: I was going to ask you to come to a
13 break point.

14 MR. McCARTHY: I am here.

15 THE COURT: Ladies and gentlemen, please leave
16 your notes and other materials behind. Please don't discuss
17 the case and we will resume this afternoon. I ask everyone
18 to remain seated until the jurors have left. Thank you.

19 (The jury left the courtroom.)

20 THE COURT: I will see Mr. Jacobs, Ms. Amsterdam
21 and the government inside.

22

23

24

25

1 (In the robing room)

2 THE COURT: Ms. Amsterdam asked for a sidebar at
3 that point in the government's summation where Mr. McCarthy
4 was arguing that something that Mr. Jacobs had argued the
5 jurors had heard they had not in fact heard and that there
6 was obviously a tape and that it hadn't been put in. I
7 assume that your objection and the reason for the request
8 for the sidebar was, in essence, there was burden shifting,
9 that the defense has no obligation to introduce exhibits.
10 Was that the argument?

11 MS. AMSTERDAM: Two arguments. That is one
12 argument. The other argument is, and I could be incorrect,
13 I believe that we offered the tape and it was objected to
14 and not received.

15 MR. McCARTHY: No.

16 MS. AMSTERDAM: In fact, I think we offered all
17 of them at one time and it was opposed.

18 THE COURT: The only steam shovel operation that
19 I recall was the envelopes, and that I kept out. I do not
20 recall any offer en masse of the bootlegs, although I could
21 be wrong. The record will disclose it.

22 MR. JACOBS: The other point, your Honor, is on
23 the question of illegal. Obviously, the government is quite
24 correct what the law is --

25 THE COURT: That was your last objection.

1 MR. JACOBS: The last objection. The government
2 is obviously quite correct what the law is. However, the
3 argument that I made and the testimony in the record and the
4 sworn statement from Floyd is that she told him it was
5 illegal. That was the arguments being made. And that is
6 evidence, that exhibit, and it is referred by her repeatedly
7 that it is illegal. That was the argument that I made. I
8 never suggested to the jury that Emad's private taping was
9 illegal, because in fact it is not. And that was never the
10 thrust of anything that I argued at all.

11 The fact that the Bureau continued repeatedly to
12 tell him that, that is what he understood. It is something
13 for the jury to consider. It is not what the law is or
14 isn't. It is what is on the mind of Salem and what was on
15 the mind of the Bureau that is an issue before the jury. It
16 is not, quote, what the law is or isn't in real life, if I
17 can use those kind of terms.

18 So I think Mr. McCarthy is correct in stating
19 what the law is, but it is in issue because this is what the
20 Bureau and Salem were discussing.

21 What I don't want to happen is that somehow the
22 jury is instructed that the question of illegal or not
23 illegal is not for you to be concerned about, because this
24 is part of the conversations in evidence at the trial. The
25 fact, overall, what is or isn't the law, there is no

1 question. Does that make any sense, your Honor?

2 THE COURT: It makes some to me.

3 MR. JACOBS: OK.

4 MR. FITZGERALD: Your Honor, if I could make two
5 comments?

6 THE COURT: Sure.

7 MR. FITZGERALD: One is that I left the courtroom
8 clearly with the impression, as did Mr. McCarthy, he
9 referred several times to illegal taping. And they also
10 recalled --

11 THE COURT: What he is saying now is that what he
12 intended by that is that, as far as Salem was concerned, it
13 was illegal, but not illegal illegal.

14 MR. FITZGERALD: Two responses to that. One, he
15 didn't make that plain, it was lost on me for sure, and I
16 think lost on the jury. Secondly, I tried to bring out that
17 this was in fact legal to make clear the point -- I mean,
18 the tapes, Khallafalla C, she is saying there is nothing
19 wrong with you making tapes. When I tried to bring out it
20 was legal, I got an objection from Mr. Jacobs and he left
21 the impression with the jury that this was illegal taping

22 MR. McCARTHY: I also said at least twice, I
23 think, that Floyd had been telling Salem that it was
24 illegal.

25 THE COURT: You did. You argued that when you

1 were talking about her conversation with Salem.

2 MR. McCARTHY: So it is not that the jury is
3 being misled. That is in the record and it is in there for
4 them to consider.

5 THE COURT: I think Mr. Jacobs was concerned that
6 they were misled about the thrust of his argument, not that
7 they were misled about what is legal and what isn't.

8 MR. JACOBS: There is some testimony on the
9 record about it. I think the jury is entitled to consider
10 the testimony as well as your Honor's instructions,
11 obviously, your Honor. And it isn't our theory that what he
12 is doing is a violation of the law. The word "illegal"
13 happens to be used by the FBI and happens to have been used
14 by Salem.

15 THE COURT: All it illustrates is that when you
16 are making arguments you have to be fairly careful in your
17 choice of words. If you are going to call something illegal
18 taping, then the argument has to be focused: for all he
19 knows it was illegal and he went ahead and did it anyway.

20 MR. JACOBS: To the extent I wasn't as clear as I
21 could have been, I wouldn't want the jury to misconstrue the
22 government's argument in the same vein or your Honor's
23 instructions.

24 THE COURT: I don't think they are going to
25 misconstrue my instructions because my instructions concern

1 naked legality or lack of it, and they concern basically
2 whether something can be received in evidence or not.

3 MR. JACOBS: OK. As I said, I put it in the
4 record. I don't know whether the government is going to
5 continue on this, but I wanted to make clear what our
6 position is.

7 THE COURT: Is there anything you would like me
8 to do?

9 MR. JACOBS: I will look at your instructions
10 again on the taping issue. Let me take another look at it.

11 THE COURT: I will tell you that logistics put a
12 little bit of a high hurdle. Look at it. If there is
13 something drastic that needs to be done, fine. I don't
14 think I will change that instruction. I amended a number of
15 others to deal with things we talked about and some not.
16 You had an objection to that one, as I remember it, because
17 I hadn't mentioned the phenomenon of something appearing in
18 the transcript.

19 MR. JACOBS: That is different. I don't think it
20 is on the question of legality or illegality.

21 THE COURT: It is not on legality and illegality,
22 but maybe on tapes. I can't recall exactly.

23 MR. JACOBS: Certainly I asked your Honor to
24 instruct the jury on 332, exactly what you told them before.

25 THE COURT: I put that in.

1 MR. JACOBS: Fine. That is another issue.

2 THE COURT: And I put in that instruction from
3 the body of the --

4 MR. JACOBS: I understand, from the trial record.

5 THE COURT: From the trial record.

6 Let me get out the instruction we are talking
7 about. I will give it to you.

8 MR. JACOBS: I think I have it.

9 THE COURT: I don't think you do.

10 MR. JACOBS: I don't want to interfere with
11 Mr. McCarthy if he wants to go back and go over his notes.

12 MR. MCCARTHY: Thank you.

13 (Pause)

14 THE COURT: 188 to 190 of the charge (handing to
15 Mr. Jacobs).

16 MR. JACOBS: Well, your Honor is certainly a
17 hundred percent correct, 188, the first full paragraph. I
18 will prefer to leave it alone, assuming the government isn't
19 going to pursue this any further. If they do, I will
20 reserve obviously the right to perhaps ask your Honor to say
21 that the word "illegal" is mentioned in the trial record.
22 That is the only thing I am concerned about, that the jurors
23 see that.

24 THE COURT: Let's see where it goes. I think,
25 frankly, we have heard the last of that, although I don't

1 know what else is to come.

2 (Luncheon recess)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

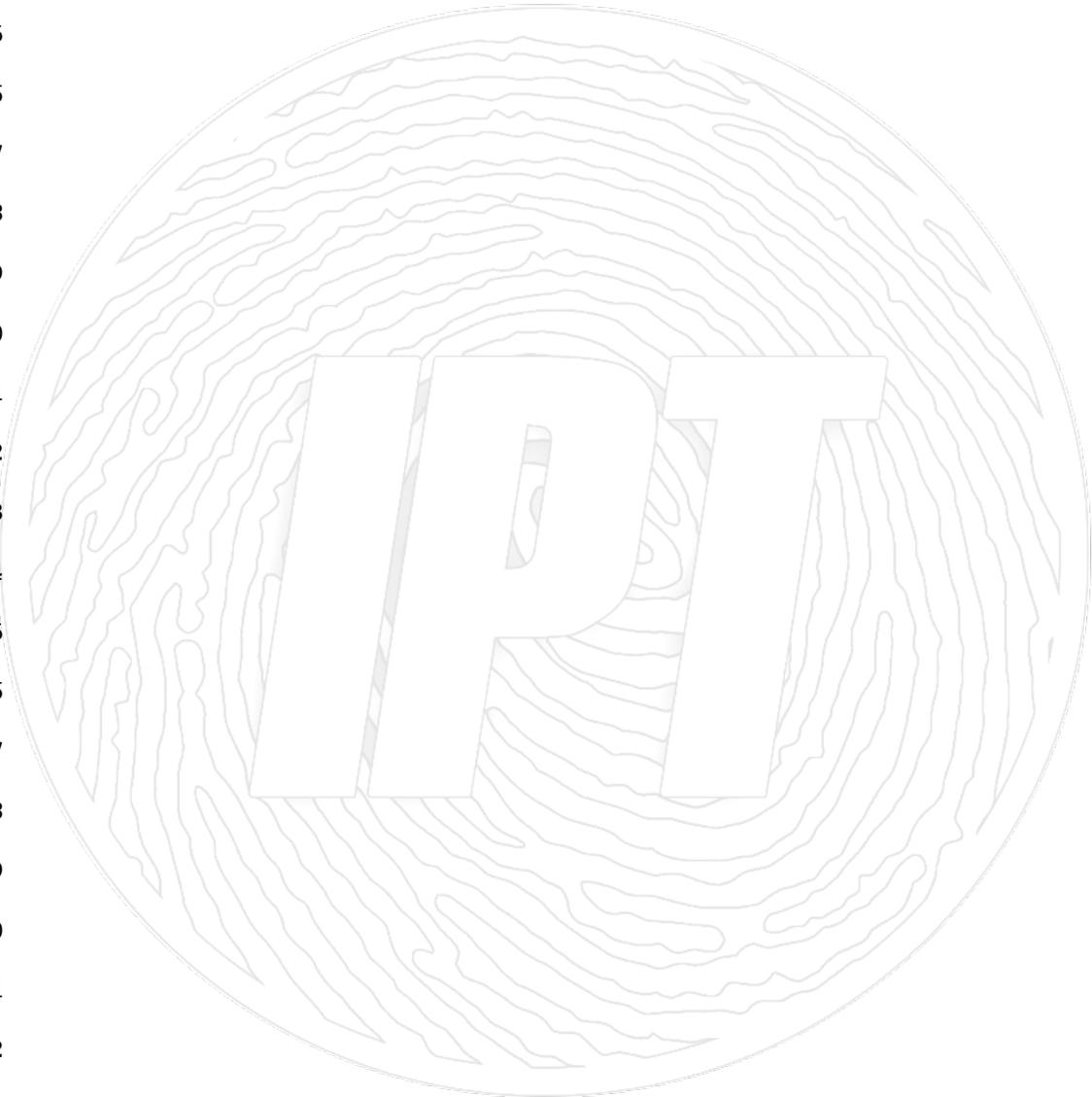
21

22

23

24

25



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION

2:10 p.m.

(In open court; jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

THE COURT: Mr. McCarthy.

MR. McCARTHY: Thank you, your Honor. Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

MR. McCARTHY: I want to go back for a couple of minutes to the tampering claims, which I have probably already given more time than they deserve. Just a couple other things to keep in mind.

Remember about Salem's tapes, there were about 1,200 that were itemized, and that was itemized in a chart received in evidence. I think it is Government's Exhibit 550 or 551. I don't offhand remember the exact number. But remember that out of those 1,200 conversations or 1,200 recordings, only 19 came into evidence, and that is a pretty good measure of how important they were in the end.

MR. RICCO: Objection.

THE COURT: May I see counsel at the side.

(At the side bar)

MR. RICCO: I objected, your Honor, because your Honor decided for evidentiary purposes that some of those

1 tapes were not admissible. They didn't have anything to do
2 with the importance of --

3 THE COURT: That's his point.

4 MR. RICCO: -- of what that number represents.

5 THE COURT: That is rhetoric.

6 MS. AMSTERDAM: I have a separate objection on
7 burden-shifting grounds.

8 THE COURT: That is overruled as well. The point
9 is, if you are going to make a big deal out of introducing
10 exhibits, then the other side has a right to make a small
11 deal out of the exhibits you introduced.

12 (In open court)

13 MR. MCCARTHY: Keep in mind also that the
14 conversations that you heard about that Salem recorded are
15 by and large telephone conversations, and you have a lot of
16 evidence in the record about the people who are on trial and
17 the people they work with being very surveillance conscious.
18 You can conclude and your common sense will tell you that
19 the people who plan the kind of crimes that you have heard
20 about here don't chat about them on the telephone -- at
21 least not explicitly.

22 Mr. Jacobs argues that Salem switched four of the
23 tapes, the personal tapes. What you know is that 18 tapes
24 were returned to Salem on June 29, 1993, and 18 tapes is
25 what the government got back by July 15. You heard that on

1 one occasion Agent Veyera on July 7 got one tape and Agent
2 Anticev got the other 14 on July 15.

3 This whole tape issue actually is based on the
4 Saleh defense's insistence that Agent Roth, who was one of
5 the seizing agents at the search at Salem's house, had to
6 have initialed all of the tapes, because if you recall,
7 there were four tapes that do not bear Agent Roth's
8 initials. You have to remember that Agent Roth himself
9 testified that he did not know how many of the tapes he
10 initialed and he couldn't say that he initialed all of them.

11 You also know that Salem didn't have an
12 opportunity to pull a switch even if you thought that he had
13 reason to do that, because he was not back in his apartment
14 from June 24, which was before the seizure of the tapes at
15 his apartment, until well after July 15 when the 18 tapes
16 were returned by Salem to the government. He didn't have
17 the opportunity to get back to his apartment to get tapes to
18 switch.

19 You should also ask yourselves, when you consider
20 an argument that he picked out four tapes out of all the
21 tapes and withheld them, what could possibly have been on
22 those tapes that would cause him to hold them back? You
23 heard that Salem turned over tape recordings containing
24 conversations with his exwife, with his wife and his
25 children, with the agents, with Egyptian military

1 intelligence, with a psychic that he was cross-examined on
2 by Mr. Jacobs in his testimony, and he turned over tapes
3 where the defendants, including Mr. El-Gabrownny, were not
4 discussing crimes.

5 You also know that on the CM conversations --
6 those are the ones that were made under the supervision of
7 the FBI -- there were actually conversations that clear
8 people of crimes, and you should evaluate that when you are
9 evaluating the claim that there is a government conspiracy
10 either to cleanse the evidence or to tamper with it. There
11 are conversations in the evidence that show that Amir
12 Abdelgani, Tarig Elhassan and Fares Khallafalla had nothing
13 to do with the Mubarak murder conspiracy in the spring of
14 1993. There are other conversations in evidence that
15 specifically clear Mohammed Abouhalima and Abdo Mohammed
16 Haggag of participation in the bombing conspiracy here.
17 There are conversations which Salem recorded and turned over
18 to the FBI, which show that those men were not involved in
19 those crimes.

20 There is no reason other than the lawyers'
21 speculation to believe that there was an effort made to
22 purge the tapes of information that indicated that people
23 were not guilty of crimes, and there was certainly no
24 conspiracy with Anticev, who retrieved the tapes. You
25 recall that he learned for the first time on the witness

1 stand that some of the tapes that he picked up actually had
2 his voice on them.

3 Please remember this most of all. Four
4 defendants in this case took the stand. Not one of them
5 ever even came close to suggesting that any conversation
6 that he was recorded on was not an accurate representation
7 of the conversation that he had. Not one of them ever made
8 that claim.

9 Common sense tells you that Salem was not going
10 to manipulate the tapes and then risk being exposed by
11 having conversations with the same people in the safe house
12 where he couldn't control the taping.

13 Let me talk for a few minutes about the taping
14 that Salem could control. The defense claims that tapes
15 were tampered with because Salem was able to control the
16 recording equipment. He had the on/off switch. He was able
17 to determine when to turn it on and when to turn it off.
18 Couple things about that.

19 Remember that you heard that Nagra tapes are two
20 to three hours long. You know from the evidence that you
21 heard that Salem was frequently out with Siddig Ali and some
22 of the other defendants in the case for periods of time that
23 exceeded three hours, very often out for entire days. If
24 you are going to use the technique of Nagra recording -- and
25 remember that Mr. Ginsberg wrote in his book that Nagra

1 recording was among the most reliable methods for taping
2 face-to-face conversations -- there is a necessary tradeoff,
3 there has to be. Either you let the informant control the
4 on/off switch and let him determine when is the best time to
5 turn the tape machine on, or you take that option away from
6 him and you run the risk of running out of tape before
7 something important happens. That is a matter of no small
8 importance when somebody is out with people for a time that
9 well exceeds the period of time on a Nagra tape.

10 I ask you this: Can you imagine, can you just
11 imagine what the lawyers would have said to you if we had
12 had Salem come in here and testify about something that he
13 thought was crucially important that had happened but he
14 hadn't got on tape? If Salem had said it really happened
15 but I didn't get it because I was out of tape but you can
16 take my word for it that it happened, what do you think you
17 would have heard?

18 One other thing about tape recorded telephone
19 calls. A lot of claims were made about telephone
20 conversations for which there are missing tapes. Mr. Jacobs
21 mentioned it quite a bit, so did a number of the other
22 defendants. Remember the evidence that you both watched and
23 heard, and I guess saw on the transcripts. During May and
24 June of 1993, the period of time that you saw the most
25 activity of Salem and the other folks that he was dealing

1 with, remember that Salem had a cellular phone. That was a
2 device that he used frequently, that came up frequently on
3 the tapes. He let Siddig Ali use it, other people used it.
4 You know that there is no evidence that there was a wiretap
5 on that phone and you know that it would have been
6 completely impractical to strap up that thing to a recorder
7 when some of the other defendants were using it and Salem
8 was carrying it from place to place to place.

9 You should bear that in mind when you consider
10 the arguments that have been made to you that there are a
11 ton of missing telephone tapes during May and June of 1993.
12 You have heard evidence that during that period of time
13 Salem was frequently out with the defendants and he was
14 frequently using the cellular phone.

15 Let me talk to you for a few minutes about CM 17.
16 That is the tape that Miss Amsterdam and Mr. Bernstein
17 argued, in part in reliance on the serial numbers, is
18 tampered with. If you recall, that is the tape of the car
19 trip that Salem took with Amir Abdelgani and Fares
20 Khallafalla the first time that he met them, the tape that
21 is supposed to have captured or should have captured the car
22 ride on the way to the safe house. A couple of things about
23 that.

24 What caused the malfunction of that tape is not
25 clear. We know that we have a blank tape. Salem speculated

1 that the tape was squished under Khallafalla in the back
2 seat. Mr. Ginsberg said that that was unlikely and you
3 should probably assume that Mr. Ginsberg is correct about
4 that.

5 We do know that the tape is a virgin tape. It
6 has not been erased and it was not overrecorded. For
7 whatever reason the tape didn't function, but the tape has
8 not been tampered with. The defense lawyers offered you a
9 lot of speculation about what might have been on that tape,
10 what might have been recorded on it, but none of it was
11 supported by any evidence.

12 A couple of things. It makes no sense, no sense
13 if you are going to trick somebody into a situation and then
14 walk them into a place like the safe house where you do not
15 control the recording, and risk having the trick exposed.
16 Miss Amsterdam has now placed the prosecutors, at least in
17 part, and in part in reliance on this particular
18 conversation in what was referred to, I guess, as a
19 corruption problem involving the tapes. But no one has ever
20 accused the agents who were monitoring the safe house of
21 being involved in this giant conspiracy. You will recall
22 that those agents had nothing to do with this investigation
23 except that they had to combat the wildlife that had
24 infested the monitoring room that Agent Cantamessa talked to
25 you about during his testimony.

1 Miss Amsterdam also made an argument about Salem
2 running his bug detector around to see where the mikes were
3 so that he could choreograph the movements as topics changed
4 in the safe house. Think about that for a second. Salem
5 would basically have to have ESP, figure out what was going
6 to be discussed ahead of time and then maneuver people to
7 the right microphone. It doesn't make sense. More than
8 that, though, forget about whether in theory it works or
9 not. You saw the tapes. You saw the way people moved about
10 freely, and you can see for yourself that Salem wasn't
11 choreographing with the tapes. When people wanted to move,
12 they moved.

13 Also, in Government's Exhibit 362, which is
14 probably the most important recording that you have heard in
15 the case and which we will hear a little bit later, Salem
16 actually fell asleep while people were discussing the plot.
17 Difficult to choreograph in your sleep.

18 A couple of things about CM 17. The lawyers tell
19 you that Salem, notwithstanding the fact that Mr. Ginsberg
20 didn't find any slices or splices in the tape, was actually
21 splicing tapes. Miss Amsterdam argued it to you and Miss
22 Stewart did as well. There is no evidence that he had any
23 Nagra equipment in his home. But if he really listened to,
24 spliced, and overrecorded tapes, as they speculate he did on
25 the CM's, ask yourselves this: Why did you get back a blank

1 CM 17? Why didn't Salem or the agents either destroy it or
2 record something else over? You didn't get that. Instead
3 what you got is what you should get when there is a
4 malfunction: You got a blank virgin tape. The point of
5 this contention, by the way, is that there must have been a
6 conversation about Bosnia on that tape and that Salem must
7 have destroyed it because it would have shown that
8 Khallafalla and Amir Abdelgani had been tricked by him and
9 by Siddig Ali, who was with him and who had been friends
10 with Amir and Fares before Emad Salem had ever met them.
11 That argument, I submit to you, is completely destroyed by
12 the tapes of the safe house meeting, which is Government's
13 Exhibits 320 and 370T in evidence. If you review those
14 tapes, it is clear that whatever was said in the car ride
15 that we don't have did not trick anyone into believing that
16 what was going on in that safe house was Bosnia training.
17 Those tapes contain explicit discussions of attacks on
18 America.

19 Also remember this. Remember Miss Amsterdam
20 suggested to you that if we had only had that tape it would
21 have shown that what was on that tape would have been like
22 what was on the tape that Mr. Jacobs has to deal with, which
23 is Government's Exhibit 333, the meeting with Mr. Saleh. I
24 would like you to think a little bit about that argument.
25 Government's Exhibit 333 is here, we have it. I submit to

1 you, and I will argue to you again, that if you listen to
2 that tape it is completely unreasonable that anybody could
3 think the focal point of that conversation was training for
4 Bosnia. But that is not the point I am making now. The
5 point I am making is what sense it would make that Salem
6 would keep the Saleh conversation about Bosnia and destroy
7 the Amir Abdelgani and Fares Khallafalla conversation. It
8 doesn't make sense.

9 You also heard argument about a June 12, 1993
10 recording. This was an argument that was made to you mainly
11 by Miss London on behalf of Mr. Elhassan, although some of
12 the other lawyers may have mentioned it as well. That is a
13 meeting that took place in a mosque that Salem testified
14 that he had recorded but he didn't know what happened to the
15 recording. If you go back and you check the record --
16 because it has now been suggested to you that the tape of
17 that must have been destroyed -- what actually happened was,
18 there never actually was a tape. Salem testified that he
19 recorded that conversation on June 12, 1993, in the mosque
20 on the pants device that you heard about, the computer chip.
21 If you check the record, when Miss London asked Salem what
22 happened to the tape, he said there never was a tape, the
23 conversation had been recorded on this new technology, the
24 computer chip.

25 You may recall Salem's testimony, and this came

1 up at a couple of points, that he couldn't walk around
2 freely in the mosque as opposed to in many of the other
3 places that he was in, with his briefcase. This is a
4 conversation, you will recall, that took place in the
5 mosque. It was not a conversation that was picked up on the
6 Nagra.

7 There never was a tape of that conversation.
8 When Salem said that he recorded it, he obviously meant that
9 he had activated the mechanism that should have recorded it
10 but whose technology there is no evidence that he understood
11 or knew how to operate. Napoli gave you the same testimony.
12 He doesn't know anything other than that it is computer
13 technology.

14 You can also conclude that the technology was not
15 very successful. Salem testified that he used the device
16 several times. Only one conversation from the device,
17 Government Exhibit 344, ever came into evidence, and that is
18 a conversation that Salem had with Mr. Hampton-El in the
19 mosque.

20 Let me say a few things about Dr. Fred
21 Whitehurst. The bottom line about Dr. Fred Whitehurst as it
22 applies to this case is that Dr. Whitehurst fully supports
23 the conclusions of his protege Steven Burmeister, the
24 gentleman who testified to you about a number of scientific
25 findings, including the findings in connection with the

1 bombing of the World Trade Center. In terms of relevant
2 testimony, in terms of evidence that applies directly to the
3 case, Dr. Whitehurst simply echoes what Mr. Burmeister told
4 you. Dr. Whitehurst was brought here for atmospheric.

5 The most important thing in this case, the most
6 important thing in any case is the information that gets in
7 front of you. As far as that is concerned, Dr. Whitehurst
8 told you that he was never pressured by any prosecutor,
9 either in this case or in the World Trade Center case. What
10 the defense basically says to that is that that's just
11 because of pressure from Whitehurst and Burmeister, that it
12 is just because Whitehurst and Burmeister threatened to
13 expose the fraud in court and for that reason people's hands
14 were tied and the truth had to come out.

15 It's a little hard to defend yourself when
16 somebody says you would have done something unethical if you
17 could have gotten away with it.

18 MR. JACOBS: Objection.

19 THE COURT: Overruled.

20 MR. McCARTHY: First of all, ask yourselves what
21 basis they have to say or make an argument like that.

22 MR. JACOBS: Objection.

23 THE COURT: Overruled.

24 MR. McCARTHY: Also remember this: In this case,
25 we can actually show that we played by the rules. The

1 government found out about Salem's tapes and turned them
2 over to the defense. There is no evidence that there was an
3 effort by the government to keep exculpatory information
4 showing that the defendants were not guilty of any kind away
5 from the defense. If the operating rule, as they say, is
6 don't give the defense anything they can use against you,
7 that certainly was not the rule that operated in this case.
8 It also was not the rule that operated in the World Trade
9 Center case. You heard that in that case when the
10 prosecutors found out about some of the allegations that
11 were made by Dr. Whitehurst, that information was made
12 available to the defense lawyers, as was Dr. Whitehurst.

13 I want to move for a couple of minutes to some of
14 the legal issues that have come up in the trial and are in
15 front of you for your consideration. The first one is the
16 crime of attempt. The defendants in the case who are
17 charged with attempted bombing have argued that the
18 government has failed to prove this crime, and essentially
19 they say that there is not enough evidence to show that
20 Siddig Ali took the required substantial step toward the
21 commission of the bombing, so they cannot be deemed to have
22 aided and abetted them.

23 As you are going to hear when Judge Mukasey
24 instructs you and as some of the lawyers advised you, in the
25 crime of attempt you have to find that the person who made

1 the attempt took a substantial step toward the commission of
2 a crime. On this count you have to focus very carefully on
3 the judge's instructions. The defendants have tried to
4 focus you on all of the things that remained to be done
5 before the bombing could be successfully carried out. That
6 is really the wrong issue to focus on. The crime of attempt
7 has more to do with the intent of the person than it does to
8 do with how close he is to success.

9 The real question is, do the acts taken clearly
10 indicate an intent to willfully commit the crime? On that
11 score, you don't just have acts, you have the clear
12 statements of Siddig Ali and other defendants showing
13 without any doubt a complete commitment to carry out the
14 bombings.

15 Siddig Ali recruited a bomb builder and numerous
16 assistants to carry out the plan. He surveilled the targets
17 several times, even to the point of making a videotape of
18 the tunnels. He obtained materials like fertilizer and fuel
19 oil and barrels, and actually had people who you saw on tape
20 begin stirring the bomb. He assigned people like Alvarez,
21 Amir Abdelgani and Fares Khallafalla to take concrete steps
22 to obtain a delivery system for the bombs, which you knew
23 was the stolen cars. And Siddig Ali himself tried to obtain
24 stolen cars from Wahid Saleh.

25 Siddig Ali made elaborate efforts to try to

1 obtain detonators from Hampton-El, who was still trying to
2 obtain them, since he saw it as his duty, he said, the night
3 the arrests occurred. And perhaps most importantly, Siddig
4 Ali obtained approval for the bombings from Sheik Omar Abdel
5 Rahman, approval that he needed before he could go forward
6 with a bombing campaign.

7 The defense has tried to make much of the fact
8 that the bombers were mixing the components in the wrong
9 proportions at the time they were arrested. A couple of
10 things to think about about that. First, you are going to
11 hear the judge tell you that factual impossibility is not a
12 defense to a bombing, or attempted bombing. What that means
13 basically is that if someone, for example, intended to shoot
14 someone and took steps to obtain a weapon and ammunition, he
15 could be guilty of attempted shooting even if it turned out
16 that the ammunition was blanks.

17 MS. STEWART: Objection, Judge.

18 THE COURT: That is sustained.

19 MR. McCARTHY: Assuming that you find that on all
20 the facts he has taken a substantial step, the fact that by
21 shooting the weapon and shooting blanks that a successful
22 attempted shooting could not take place would not mean that
23 you did not have a crime of attempt.

24 The other thing to remember is, even though very
25 substantial steps had already been taken to carry out this

1 plan well beyond mere preparation, where you haven't
2 committed yourself -- let me just say it this way: The mere
3 fact that they had the proportions wrong doesn't mean that
4 when the FBI put a stop to what they were doing -- this is
5 coming out like Chinese, with my apologies. Excuse me.
6 What I was trying to say -- and I have lost my track of
7 thought, excuse me -- was, the fact that they didn't have
8 the proportions right at the time that -- what's wrong with
9 me?

10 The fact that they didn't have the proportions
11 right at the time that the FBI raided and made the arrests
12 doesn't mean that they wouldn't have had the proportions
13 right at the time they carried out the operation. You heard
14 some evidence in the trial that the night of June 23 into
15 June 24 when the arrests were actually made was not the last
16 night of the investigation. There is conversation indeed
17 back in Government Exhibit 362, there is conversation where
18 they are talking about the fact that they need another two
19 weeks to carry out everything that they needed to carry out.
20 The fact that the FBI came in and stopped everything on June
21 23 does not mean that they were anywhere near finished. So
22 just because they didn't have the proportions right for
23 bombs on that night doesn't mean they wouldn't have by the
24 time they got around to acting.

25 Now that I have made that so clear to you, I want

1 to take a couple of minutes to talk about training. This is
2 a topic that applies to a number of the defendants, not just
3 Khallafalla and Saleh. An awful lot has been said here
4 about training, particularly in the context of Bosnia and
5 Afghanistan, two subjects you heard an awful lot about
6 during the defense summation. The government proved the
7 training, training at Calverton in 1989, training at the
8 Kalifa Mosque in 1992 and '93, and training in Pennsylvania
9 in 1992 and '93. Several defendants, knowing that the
10 evidence of themselves out shooting weapons and practicing
11 military maneuvers is so overwhelming they can't credibly
12 deny it, have sought to put an innocent spin on it. The
13 training for 1989 was all for Afghanistan and nothing else,
14 and all training after that was related to Bosnia.

15 Nobody, I don't think anyone credibly and nobody
16 from the government, is saying that these people didn't care
17 about Afghanistan and Bosnia, which are issues of importance
18 to Muslims and non-Muslims alike. You learned that some
19 people, including Mr. Hampton-El and Mahmoud Abouhalima,
20 actually went to Afghanistan in the late 1980's to
21 participate in the war there. But let's not lose track of
22 common sense. Training wherever it occurs is training.
23 Every spring of his career, Mickey Mantle went down to
24 Florida and he practiced for a month smacking baseballs out
25 of the park, and when the month ended, he traveled to New

1 York or to California or to Boston or to Baltimore or
2 wherever the Yankees happened to be playing that day, and he
3 smacked baseballs out of the parks in those places, using
4 the skills that he honed when he was down in Florida. If
5 you are out practicing shooting guns, countersurveillance
6 techniques, detonating and bombs and sneaking up on targets,
7 that training can be applied in New York City as well as
8 anyplace else, and you don't need me to tell you that
9 because you would have figured it out just using your
10 intelligence and common sense, and also because of the tapes
11 in front of you, the tape recorded evidence that you heard
12 in this trial.

13 I want to point you -- I am not going to ask you
14 to pull the books out, although I will in a little while,
15 but there is a section, pages 32 to 36 of Government's
16 Exhibit 362, and that is the conversation in the night of
17 June 21 to June 22. I am just giving you the cite for now.
18 If you review those pages of the transcript, you will see
19 that there is explicit conversation about how the lessons of
20 Pennsylvania, how the training that took place in
21 Pennsylvania can be applied to some of the things that they
22 are doing now.

23 Before I get more into that point, let me just
24 shift gears for a second. I am referring you to four pages
25 of that transcript, and I know you all heard a number of

1 times during the defense summations there was a lot of talk
2 about pointing your attention to this line and pointing your
3 attention to these particular pages of the transcript. You
4 probably remember that during the vast majority of the trial
5 when many of these large transcript exhibits came into
6 evidence, it was the government who put the transcript into
7 evidence.

8 No one is trying to hide the ball from you.
9 Essentially we are the ones who gave you the ball. It is an
10 eight-month trial. These are summations and it is time to
11 boil the case down to what we think is important to
12 highlight for your attention, but we don't presume to think
13 for you. Those transcripts are all in and the evidence is
14 all important, and just because I say look at these pages or
15 look at those pages, it is all there for you to review if
16 you think it is important enough to do that.

17 To go back to the training and the four pages
18 that I have just cited to you, Siddig Ali, Amir Abdelgani
19 and Tarig Elhassan talked about how the lessons of the
20 Pennsylvania training could be applied to what they were
21 doing in America. You see that again and again in the
22 evidence, this notion that it is important to get as many
23 people who have had training as possible on board for one
24 mission or another.

25 The people who attended the training, you can

1 conclude, were preparing themselves for jihad, jihad
2 wherever it happened to occur. No one is saying they didn't
3 think about Bosnia or Afghanistan, but the important thing
4 to remember is that the skills they were honing in that
5 training were things that could apply here, and the
6 conversation that I referred you to will make that clear.
7 People don't have to steal cars, as you hear talk about in
8 that conversation, worry about FBI surveillance, worry about
9 being careful on the telephone or think about changing their
10 names, changing their patterns or being seen together less
11 frequently if what they are doing is preparing to go to
12 Bosnia. You don't worry about leaving your fingerprints on
13 a car that you have just stolen to put a bomb in because you
14 are worrying about the well known Serbian crime lab.

15 Consider in particular when you think about the
16 arguments that were made to you particularly on behalf of
17 Mr. Elhassan, the "if Salem had been in Pennsylvania"
18 argument. Miss London told you that if Salem had been in
19 Pennsylvania you can bet the defendants would have been
20 indicted for conspiring to blow up a power plant. You
21 should note from the start that the defense often sets up
22 arguments by saying if things had been other than what they
23 were, which is really often a good indication that it is
24 difficult to defend things the way they are.

25 When you hear about how we twisted things around

1 and that if Salem had only been in Pennsylvania there would
2 have been an indictment about that power plant, remember
3 that we are the ones who put Haggag on the stand and asked
4 him about the training, which he recalled as concentrating
5 on Bosnia.

6 But to answer Miss London's point, if
7 Pennsylvania had been wired like the safe house was wired
8 and Salem were there, your common sense tells you that there
9 would have been no such power plant indictment because you
10 would have heard things like, we're going to run up to the
11 power plant as if we were in Bosnia, or, it's cold here but
12 it will be even colder when we get to Bosnia, the very kinds
13 of things that you didn't hear on the CM tapes.

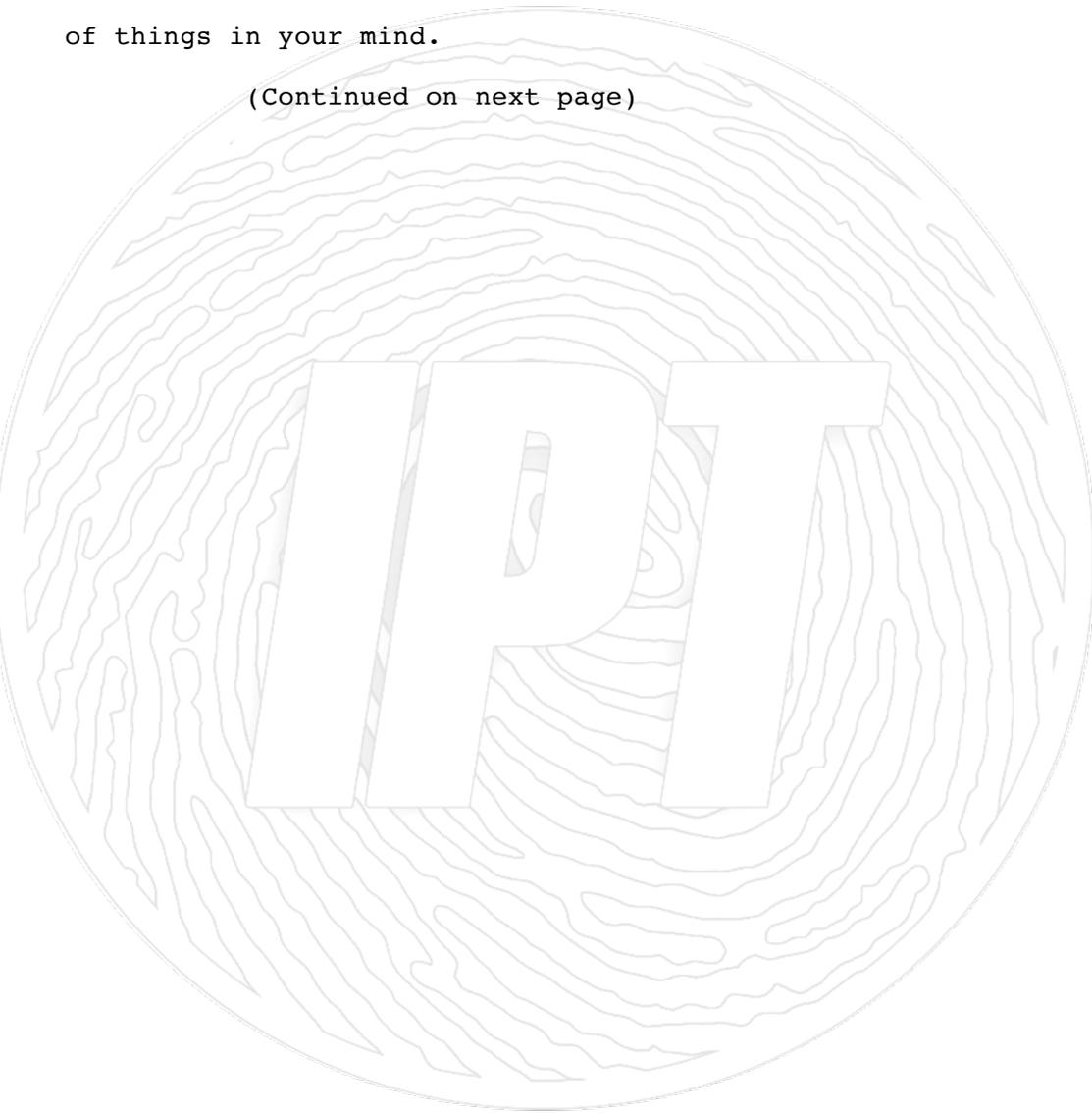
14 Consider this. The defendants are now charged
15 with applying violence against the United States. They have
16 good reason to want to be seen as exclusively thinking about
17 Afghanistan or exclusively thinking about Bosnia or the
18 Philippines or anyplace that isn't America. It's an
19 argument that doesn't make logical sense and it is obviously
20 one that they didn't perceive before the charges were filed
21 against them. There were no sacred covenants about America
22 until the charges that suddenly made them put their "I love
23 America" buttons on.

24 Another issue that the defendants made an
25 argument to you about is that of multiple conspiracy, and

1 the argument there is that the indictment in this case
2 charges more than one conspiracy in the individual
3 conspiracy counts. They make confusing and often illogical
4 arguments on that point, and I would like to raise a couple
5 of things in your mind.

6 (Continued on next page)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 The most important thing in a conspiracy case is
2 figuring out what the agreement is. If the agreement as
3 charged in the indictment is proved, the conspiracy is
4 proved. And it doesn't matter if there happen to be other
5 conspiracies.

6 Let's take, as an example, a group of people who
7 decide they are going to rob a bunch of banks and they do
8 that over the course of a few months. I am hoping this
9 example works better than my last one. While they are at
10 the bank robbery conspiracy, some members obtain guns from
11 people outside the conspiracy, some take the money that they
12 get and launder it. During the course of the bank robbery
13 conspiracy, they decide that the methods work just as well
14 in a post office and decide to rob that too. By the end of
15 all of that, you can see that some of the people in the
16 conspiracy probably have also committed a gun conspiracy, a
17 stolen car conspiracy, a money laundering conspiracy, and a
18 postal theft conspiracy. Can you imagine anyone saying,
19 though, that the bank robbery conspiracy hadn't occurred
20 simply because all those other agreements existed too. The
21 law does not reward you for being a more efficient criminal
22 or having a more efficient group that is able to carry out a
23 lot of crime.

24 The first thing you have to ask yourself is:
25 What is the agreement that is charged in the particular

1 count that you are considering? In this case, in Count 1,
2 the charge is an agreement to wage war against the United
3 States or to oppose its authority by force. Now, many of
4 the different plots that you saw evidence of in this case
5 tell you that that conspiracy existed: the 1992 bombing
6 plans, the bombing of the World Trade Center, the spring
7 1993 bombing plot, Nosair's suggestion in May 1993 to Siddig
8 Ali that he kidnap former President Nixon or former
9 Secretary of State Kissinger. Sheik Omar Abdel Rahman's
10 constant urging that America was an enemy and his advice to
11 Salem that bombing should be more focused on America, and
12 attack the Army.

13 Mr. Jacobs and a couple of the other lawyers made
14 much of the fact that there were a lot of different players
15 and a lot of different events, and they made arguments that
16 focused mainly on Ramzi Yousef and some of the people you
17 heard come up in the World Trade Center part of the
18 investigation. The judge is going to tell you that in a
19 conspiracy you can have numerous players who come in at
20 different points, and membership can change, people's roles
21 can change. The question is, does the agreement that is
22 alleged continue to exist, and is there a core of members
23 who continue to exist throughout the course of the
24 conspiracy?

25 In this case, let me just run through a little

1 bit of the chronology.

2 By 1990, even before Abdel Rahman, that is, Sheik
3 Omar Abdel Rahman, came to the United States, people like
4 Nosair and Abouhalima were already reporting to him about
5 training for jihad. That is Government Exhibits 850 through
6 852. Those men had been involved in training with
7 Hampton-El, Salameh, Ayyad and others as early as 1989. In
8 1990, the same year Abdel Rahman was giving his speech in
9 Denmark about how a few well-placed terror strikes could
10 drive the United States out of the Persian Gulf, Nosair was
11 arrested with the State of Ibrahim speech in his house --
12 urging bombing strikes against what you know to be the
13 United States for its support of Israel.

14 Beginning in 1991, through Salem, you meet most
15 of the people who have already been involved in what amounts
16 to a jihad army for some period of time -- people like
17 El-Gabrowni, Shinawy, Siddig Ali, Abouhalima, and
18 Abouhalima's friend Mohammed Hassan Abdu, the man who would
19 later be looking for John Anticev's address and a guy who
20 with Abouhalima visits Nosair in jail before the bombing of
21 the World Trade Center.

22 The bombing plans picked up steam in 1992. Sheik
23 Omar Abdel Rahman urges that the training continue -- you
24 know that not only from Salem but you know it from Dr. Abdel
25 Rahman's own words in many of the speeches that he made

1 urging jihad and in Government Exhibits 348T, which is the
2 confrontation between Siddig Ali and Dr. Abdel Rahman.
3 Hesham Hemawy, who was called to testify by Dr. Abdel
4 Rahman, told you in his testimony during cross-examination
5 that Dr. Abdel Rahman was always urging jihad against the
6 enemies of Islam and that Dr. Abdel Rahman identified the
7 United States as one of those prime enemies.

8 You learn that Nosair is calling for bombings and
9 telling Salem and Shinawy to get a fatwa from Sheik Omar
10 Abdel Rahman before proceeding. That is in the summer of
11 1992. At the time Salem drops out of the picture, he is
12 supposed to go see Nosair with Siddig Ali and Mustafa Assad,
13 and that is the same Mustafa Assad who Hampton-El will later
14 turn to, to get detonators.

15 Nosair continues, after Salem drops out, to get
16 visits from El-Gabrownny, Abouhalima and Salameh, all of whom
17 are in constant contact with one another while the World
18 Trade Center bomb is being built. Nosair indicates to his
19 wife in one of the exhibits you heard, Government's Exhibit
20 128, that something big is going to happen in New York,
21 something, he says, prior to the bombing of the World Trade
22 Center.

23 MR. STAVIS: Objection, your Honor.

24 THE COURT: Overruled.

25 MR. MCCARTHY: During the bomb construction,

1 Abouhalima -- you heard the evidence -- turns to Siddig Ali,
2 who is already a trusted member of the group, for assistance
3 in testing explosives. Siddig Ali turns to Hampton-El for
4 advice on explosives.

5 Hampton-El, you know by that time, has been a key
6 player with this group for years. His own words tell you,
7 these are the words he spoke on Government's Exhibit 325:
8 that he was supposed to be there the night that Mr. Nosair
9 killed Meir Kahane. And you heard from Haggag's testimony
10 that Mr. Hampton-El was involved in the assessment of what
11 went wrong in connection with Abouhalima after the homicide.
12 After Nosair visited with Shinawy and Salem about bombings,
13 Shinawy contacted Hampton-El, which you know not only from
14 Salem's testimony but you know from the telephone records
15 showing telephone contact between Shinawy and Hampton-El on
16 June 18, 1992, and you also know from the testimony of
17 Shinawy and Hampton-El, who admitted that the meeting
18 occurred, although they didn't share the same version that
19 came out either on the tape recording, Government's Exhibit
20 325, or Salem's testimony.

21 Right after the World Trade Center was bombed,
22 Nosair's friend Nidal Ayyad wrote a letter to The New York
23 Times warning that there is more terrorism to come and that
24 there are plenty of other soldiers ready to carry out
25 similar operations. Nosair told the authorities at Attica

1 that the war would not end until he was released.

2 Abouhalima turned to Siddig Ali after the bombing
3 for assistance in getting out of the country. By that time
4 Siddig Ali has been in paramilitary training, under
5 Hampton-El's supervision, with Amir Abdelgani, Fadil
6 Abdelgani and Tarig Elhassan, among others. Amir Abdelgani
7 later tells Haggag that he is ready to carry out any mission
8 under Siddig Ali's direction.

9 Abdel Rahman, the sheik, went on national
10 television and denied knowing people he knew quite well
11 after the bombing -- abouhalima, Nosair and El-Gabrownny. He
12 also denied knowing Mohammed Salameh, who was connected with
13 him by a telephone record that came into evidence showing a
14 contact between the sheik's apartment and the apartment that
15 Salameh was sharing with Ramzi Yousef. You know that Yousef
16 had come to the United States from Peshawar before the
17 bombing with Ahmed Ajaj, and when they came, Ajaj had
18 those bomb manuals, and on the bomb manual was a telephone
19 number in Peshawar that is the same number that was called
20 numerous times from Omar Abdel Rahman's home.

21 When Siddig Ali met Salem again in March 1993,
22 Siddig Ali is Sheik Abdel Rahman's confidant and his
23 translator. He tells Salem that the World Trade Center
24 bombing was designed to punish the United States
25 economically, and he wants to do a bombing operation against

1 the United States, both for its policies and to punish the
2 United States for imprisoning members of the organization,
3 including the World Trade Center bombing.

4 Siddig Ali then brings in Khallifalla, Amir
5 Abdelgani, Tarig Elhassan, and Victor Alvarez, all of whom
6 provide assistance in the spring bombing plot. Amir
7 Abdelgani and Siddig Ali bring in Fadil Abdelgani on the
8 last day.

9 Siddig Ali turned for materials to old trusted
10 hands -- Hampton-El for detonators, and Mohammed Saleh, the
11 man with the Hamas connections, who has been put in touch
12 with Siddig Ali by Siddig Ali's friends at the Sudanese
13 Mission. Those are the connections that you heard in some
14 of the tapes were providing Siddig Ali with assistance in
15 gaining access to the United Nations.

16 Before going forward with the plans, the spring
17 1993 bombing plans, Siddig Ali does two things: He goes to
18 Nosair who was consulted about the bomb and urges other
19 things like kidnappings of a former American President and
20 Secretary of State Kissinger, and that is for the specific
21 purpose of winning Nosair's freedom and winning the freedom
22 of the bombers of the World Trade Center.

23 Siddig Ali also makes sure that he has gotten
24 approval for a bombing campaign from Sheik Omar Abdel
25 Rahman -- the same man Abouhalima was talking about way back

1 in 1990 when he said, in Exhibit 852, that everything in the
2 beginning and the end goes back to Sheik Omar.

3 There are agreements that run all through that
4 evidence to wage war on the United States and to use the
5 method of bombing and moving explosives in order to carry
6 out that war.

7 A couple of other points about multiple
8 conspiracy. One conspiracy does not become two just because
9 you get assistance from people who happen to be outside the
10 conspiracy. There is very good reason for you to conclude,
11 on the evidence that you heard, that Ramzi Yousef in fact is
12 a member of the conspiracy that is charged in Count One of
13 the indictment. He came with Ajaj, who had the bomb
14 manuals, and as I mentioned a few minutes earlier, those
15 manuals hooked up with the telephone number that Dr. Abdel
16 Rahman called in Peshawar.

17 But even whether you found that Ramzi Yousef was
18 in the conspiracy or wasn't in the conspiracy, it doesn't
19 change the fact that the conspiracy existed. Whether he is
20 in or out, if you use the assistance of other people who are
21 outside the conspiracy, that doesn't change one into two.

22 Also, regardless of what you heard about the
23 Fifth Liberation Battalion, you should understand that the
24 law does not allow you to cut up your conspiracy into
25 distinct little groups just by calling one faction or

1 another faction by a particular name. It doesn't matter
2 what uniform you happen to be wearing on any particular day
3 or what you decide to call yourself. The World Trade Center
4 bombing was carried out exactly the way Nosair was urging
5 back in 1990, and for exactly the reason: to attack
6 American foreign policy in the Middle East and particularly
7 in Palestine. The choice of some of the members to call
8 themselves by a particular name does not change the fact
9 that the agreement was proved and the defendants are members
10 of it.

11 Also, you can have an agreement with more than
12 one objective. There is little doubt here that many of the
13 defendants on trial before you wanted to wage war not only
14 against the United States but against other countries and
15 governments that they perceived as enemies. That does not
16 mean they are not guilty of waging war against America.

17 Simply put, if someone agrees to wage war, a war
18 of terrorism against the United States, it is not a defense
19 that he wants to wage war against others as well.

20 I want to turn to the individual defendants or at
21 least some of them, and the first one I am going to speak
22 about is Fadil Abdelgani. Mr. Lavine spent the majority of
23 his summation talking about the time before Fadil Abdelgani
24 entered the conspiracy. You don't really need to think much
25 about what Fadil Abdelgani must have thought on June 22,

1 1993, the night that he traveled around with Amir Abdelgani
2 and Victor Alvarez looking for stolen cars. You don't even
3 have to focus on how ridiculous it is to suggest that Amir
4 Abdelgani -- I am sorry -- Fadil Abdelgani and his cousin
5 Amir never really talked about what they were doing the day
6 they drove to Yonkers, went to two separate gas stations,
7 picked up barrels containing over a hundred gallons of fuel
8 oil from Mohammed Saleh, and then drove from Yonkers into
9 Queens. Those suggestions were completely disproved by the
10 conversation he hoped you would never see transcribed,
11 Government's Exhibit 381T.

12 Fadil Abdelgani cannot get around what happened
13 after 8 o'clock the night he was arrested. That is June 23.
14 Mr. Lavine spent about three-quarters of his summation
15 talking about everything other than that time frame.
16 Ironically, he then stopped and told you the story of the
17 red herring. And if you think about it, it is easy to see
18 why that story was on his mind. He can't get around those
19 three hours, or those hours, rather -- it is actually more
20 than three -- after 8 o'clock in the evening on June 23.
21 The conversation in Government's Exhibit 381 is the
22 conversation that Fadil Abdelgani lied to you about on the
23 stand, the conversation that occurred when the barrels were
24 delivered. While even now he clings to the notion that he
25 moved like Mr. Magoo from one place to another knowing,

1 nothing. Government's Exhibit 381 makes it clear that
2 bombing, including the bombing of the World Trade Center,
3 was discussed in front of him. He and Amir Abdelgani had in
4 fact talked about the operation and talked about the need
5 for drivers, not for Bosnia, but for car bombs in New York,
6 while they were riding around with the fuel oil. And
7 despite his flat denial on the stand that he never indicated
8 to anyone that he needed to make istakhara prayer in order
9 to decide whether he wanted to make a full-fledged member of
10 the conspiracy, the tape shows that in fact that is exactly
11 what happened.

12 Very simply, after he said, "I'll think about
13 it," and then "I'll come back," he came back. He came back,
14 and he started mixing bombs.

15 That is so clear from the evidence that Mr.
16 Lavine was left with two last gasps. First, the guy that
17 tells you he really didn't know what was happening also
18 adds: Well, if I knew, I was entrapped. Now, you might ask
19 yourselves, why was that such a throwaway at the end or the
20 last minute of his summation? The reason for that is,
21 Mr. Abdelgani, that is, Mr. Fadil Abdelgani, can't even come
22 close to making a colorable claim that he was entrapped by
23 Salem, because he was brought in by Amir Abdelgani. Amir
24 Abdelgani and Siddig Ali deal with him before Salem does on
25 the last night.

1 When that fails, what next? A love letter to his
2 pregnant wife.

3 Now, ladies and gentlemen, I don't say that to
4 poke fun at him. It is always a tragic situation when
5 people get involved in crimes and they have people who get
6 hurt because of that. But you can conclude that that letter
7 and the pitch about that letter is a pitch for your
8 sympathy, from a defendant who really doesn't have much else
9 to hope for. And a couple of things have to be said about
10 that.

11 Judge Mukasey is going to instruct you that you
12 have to decide this case based on the evidence alone. If
13 you are going to be faithful to the oath that you took, you
14 cannot let sympathy or bias of any kind enter into your
15 deliberations. Compassion is also a two-way street. Fadil
16 Abdelgani had a choice in his life: to be in that safe
17 house mixing bombs or not to be. He had more control over
18 his destiny than the innocent victims of the carnage that
19 was being planned would have had, had this plan gone
20 further.

21 Another point on that subject. You heard an
22 awful lot from a number of the lawyers about how these
23 people couldn't possibly be terrorists. And terrorist is a
24 tough name, it is a tough label. You heard that they
25 couldn't possibly be terrorists when they lived such normal

1 and wholesome lives. Mohammed Saleh had his children about
2 him as he discussed how the murder of the Secretary General
3 of the United Nations was a must. Mr. Ricco mentioned
4 Mr. El-Gabrownny's children many times. You heard about
5 Tariq Elhassan's charitable work. Mr. Khallafalla wore a
6 T-shirt that said "New York, New York." Amir Abdelgani was
7 holding down a job just like most of us do.

8 Now, you should understand that you are not here
9 to decide whether these people were normal, average, or
10 wholesome in some aspects of their lives. Nowhere does it
11 say that terrorists can't have feelings. Indeed, it is
12 often the fact that they have passionate feelings that drive
13 them to act in the first place.

14 You heard in this case that Mahmud Abouhalima had
15 a wife and three kids. Nidal Ayyad, in late 1992 and early
16 1993, in the middle of the planning of the World Trade
17 Center bomb, got married and took a honeymoon.

18 As to Mohammed Salameh, you may recall that Mr.
19 Lavine made an argument to you when Fadil Abdelgani was
20 confronted by the fact that he had lied to the Immigration
21 Service, how could Fadil Abdelgani hate America or how could
22 Fadil Abdelgani be out to punish America when he actually
23 lied to try to stay here? And that's an interesting
24 argument, except when you think about the other information
25 that is at your disposal. You heard from Mr. Khalid

1 Ibrahim, who was brought here to testify by Mr. Nosair, that
2 he filed a false affidavit with the Immigration Service for
3 Mohammed Salameh way back when, so that Salameh stay in the
4 country.

5 No doubt, with respect to Salameh, with respect
6 to Ayyad, with respect to Mahmud Abouhalima, you can almost
7 hear those lawyers saying the same kind of things that you
8 heard here: Is that the portrait of a terrorist? You are
9 not here to vote on portraits. You have to vote on the
10 evidence as applied with the judge's instructions.

11 I want to talk for a few more minutes about Fares
12 Khallafalla, and specifically I want to speak to you about
13 Government's Exhibit 362, something that you heard some
14 argument from Mr. Serra on and from Ms. Amsterdam.

15 Ms. Amsterdam very effectively kept turning an
16 hour of highly incriminating conversation on this tape into
17 what amounted to one little sound bite in your minds or at
18 least trying to impress a sound bite on your minds: Fares
19 is not a Fares.

20 At a critical moment of the tape, Siddig Ali and
21 Tariq Elhassan were giving a very hard time to Victor
22 Alvarez while Salem snored away. They said, for Alvarez's
23 benefit, are you in or are you out? Khallafalla, who had
24 had no hesitation whatsoever a month before in joining a
25 mass murder plot, started making fun of Alvarez, laughing

1 and saying, "I'll give you my answer tomorrow." Elhassan
2 told Khallafalla it wasn't right that they should speak to
3 each other in Arabic and leave their Muslim brother Alvarez
4 unable to understand them. Then Khallafalla said, "Shame on
5 us," in Arabic, because he had done so.

6 When you are back in the jury room thinking about
7 the allegations of government fraud and dishonesty that Ms.
8 Amsterdam has thrown around this courtroom about as easily
9 as saying "Good morning," remember this: Ms. Amsterdam has
10 tried to make this tape the core of Khallafalla's defense.
11 She stood here two times at this podium and gave you a
12 version of what happened in Government's Exhibit 362, first
13 in the opening and finally in the summation. And what you
14 got from her are two versions that are so completely
15 different that the only thing they have in common is that
16 neither one of them is true.

17 I put up a part or a portion of Ms. Amsterdam's
18 opening, which is at pages 1826 to '27 of the record.

19 Mr. Fitzgerald made me promise I would use this
20 pointer so he wouldn't be the only one who did it.

21 You'll see that Ms. Amsterdam argued to you about
22 that night -- and this is June 21 into 22 -- "At some point,
23 however, Fares realizes that Salem's definition of God's
24 work is not his own. Finally, things come together, and
25 Fares wants to leave. But it's easier said than done.

1 "With Salem present, Fares is confronted and told
2 that now is the time to speak up and pledge his support.
3 Five times Fares is asked, are you with us? Five times he
4 refuses to commit. Five times he struggles to get himself
5 out of an embarrassing and possibly dangerous conversation
6 by saying, I'll tell you tomorrow. You will hear in
7 recorded conversations, both on video and on audio, that
8 Fares is asked, do you want to pull out now? And he says,
9 I'll tell you my opinion tomorrow.

10 That's it. He's asked again and again he says,
11 I'll tell you my opinion tomorrow. And then to really
12 intimidate and embarrass and stick it to him, they say it in
13 English. And Fares says, annoyed, but determined, that's
14 enough, brother, I'll tell you tomorrow. You can hear those
15 words yourself. They are in English." That's the words on
16 the tape.

17 "And Salem jumps in and says, is this, is this,
18 he starts to demand, and before he can finish, Fares turns
19 to him and says, you want to tell me to go? And he is told,
20 this is not a joke. It's not a joke. This is serious,
21 serious. And Fares does not say, I know.

22 What he says is, then God forgive me. Because up
23 until that time he had not even allowed himself to consider
24 the possibility that Salem would try to turn his good
25 intentions into bad. He had not even let himself think that

1 that was the possibility. Shame on you, shame on you, it
2 goes on in the tape. He's taunted. And finally they turn
3 to Fares and say, take a vacation, get out of here."

4 In that version, you see that Salem is a major
5 player in the confrontation. You can hear it yourself on
6 the tape, she says. Five times they confront Khallafalla to
7 try to get him to commit, and he refuses. Salem is shown
8 jumping in, and Fares says, you want to tell me to go. But
9 he's told it is no joke. She has them taunting him and
10 suggesting, shame on you. Actually that is something said
11 to Fares Khallafalla rather than by Fares Khallafalla.

12 Now, especially given the kind of accusations
13 that have been made here, I should tell you he -- well, I
14 will withdraw that comment.

15 Some of you were taking notes and you may
16 remember some of the other things that were said in the
17 opening. They are not evidence.

18 Let me turn to what Ms. Amsterdam said in
19 summation. In summation she told you that all of a sudden,
20 on June 21, Fares realized that something terrible was going
21 on. When he did, he could hardly contain himself any more.
22 As Salem slept nearby, Siddig Ali pressed him, are you in or
23 are you out? Fares cried, I'll give you my answer tomorrow.
24 Shame on us. Islam, my brother, I'm out of here.

25 Here is some of what she told you. This is

1 quoting from Ms. Amsterdam during summation.

2 "Are you in or are you out?

3 "Siddig says, this isn't a joke, this is real,
4 Fares.

5 "And what does Fares say? Take a look at this.

6 "Siddig says, no, this is not a joke, this is not
7 a joke, this is serious, serious. "And the pacifist
8 moralist won't steal a car, terrorist says, then shame on
9 us. Then shame on us, brother, shame on us. By God, shame.
10 Islam is my brother, Islam is my brother, shame, shame,
11 shame."

12 And then to hammer home the point she asks, "Am I
13 nuts here or do we have an innocent guy on trial?"

14 Then she said, after he says, shame, shame,
15 shame, they tell him, why don't you go home and read the
16 Koran, that will help you."

17 Notice in the second version Salem is asleep, it
18 is Siddig telling Fares, are you serious. It is Fares who
19 is outraged. It is serious, it is not just a training
20 exercise. It is Fares who starts screaming shame on us, and
21 Islam my brother. They tell him, why don't you go home and
22 read the Koran. It is now Fares crying shame, not being
23 taunted.

24 I ask you to think about those two versions, the
25 opening and the summation. Two stories that she told you,

1 that is, that Ms. Amsterdam told you, about the exact same
2 thing, about a crucial piece of evidence that was made the
3 core of the Fares Khallafalla defense presentation. And
4 these conversations, mind you, are in English, so even a
5 lawyer can listen to them and understand, even one of the
6 lawyers involved in the trial.

7 Last week, after she had finished accusing the
8 people at this table here of presenting a false version of
9 this case to you, Ms. Amsterdam talked about what it means
10 when someone gives two entirely different versions of the
11 same event. You know what she said about it? Here it is.
12 "He tells you two completely different stories, and both of
13 them are out-and-out lies. As my grandmother used to say,
14 only the truth doesn't need to be rehearsed. He not only
15 didn't rehearse his story, he didn't even bother to look at
16 the transcript. That is the arrogance that that man had for
17 the judicial system."

18 In any event, there was no reason to rehearse
19 anything about Government's Exhibit 362. It is in evidence,
20 there is a tape and a transcript. And when you listen to
21 it, it is about as plain as day that both of the different
22 versions that you have heard, that you have received from
23 the Khallafalla defense, are out-and-out falsehoods.

24 I am going to play a portion of the tape for you,
25 and again I commend the whole tape to you, because you can

1 conclude that this is one of the most important, if not the
2 most important tapes that you will hear in the case. It is
3 going to take about nine minutes to play the portion of the
4 tape that I am going to play for you, but it is worth doing,
5 because so many of the different defendants are involved.

6 I would ask you, if you would, to take out your
7 books. I am referring you, ladies and gentlemen, to
8 Government Exhibit 362.

9 MR. McCARTHY: Your Honor, one of the jurors
10 needs the book.

11 THE COURT: Mr. McCarthy? We are going to need
12 to take a break now.

13 MR. McCARTHY: Sure.

14 THE COURT: Ladies and gentlemen, we are going to
15 take a short break. Please leave your notes, Government
16 materials behind. Please don't discuss the case and we will
17 resume in a few minutes.

18 (The jury left the courtroom.)

19

20

21

22

23

24

25

1 MR. STAVIS: Your Honor, I had an objection
2 during --

3 THE COURT: I know, and I overruled it.

4 MR. STAVIS: Well, what Mr. McCarthy had done
5 was, he characterized a telephone conversation between
6 Mr. Nosair and his wife as stating that, quote, something
7 big will happen in New York. The exhibit, which is
8 Government Exhibit 128T in evidence --

9 THE COURT: First, what will happen in New York.

10 MR. STAVIS: What will happen in New York. And I
11 understand there is a dispute if it is hurricanes or
12 bombings or what have you. It is not the argument; it is
13 the mischaracterization of the evidence. And I would ask
14 your Honor to instruct the jury that that was not Government
15 Exhibit 128T and that the exhibit is in evidence for them to
16 review during the time of their deliberations.

17 MR. MCCARTHY: Your Honor, I didn't mean to be
18 appearing to quote from it. If it came out that way, that
19 wasn't the way it was intended, but I am happy to tell the
20 jury that we encourage them to look at that transcript.

21 THE COURT: Fine. Yes?

22 MR. JACOBS: Your Honor, I think I would
23 object --

24 THE COURT: I wanted to see you and the
25 government about that one because I might have missed a

1 stitch.

2 THE COURT: Pardon me?

3 THE COURT: I wanted to see you and the
4 government in the robing room.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

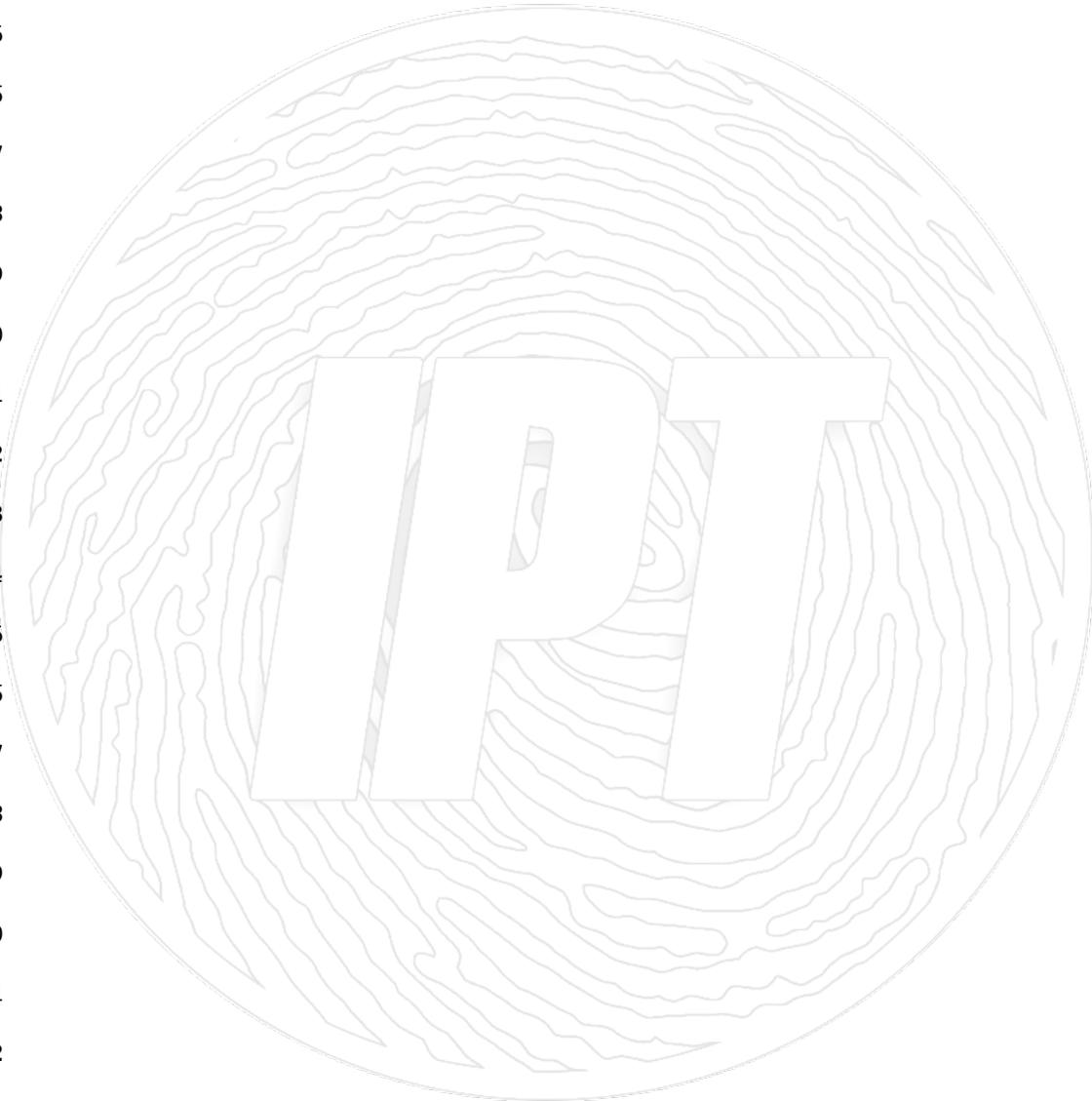
21

22

23

24

25



1 (In the robing room; present: Mr. Jacobs, Mr.
2 McCarthy, Mr. Fitzgerald, and Mr. Khuzami)

3 THE COURT: Mr. Jacobs?

4 MR. JACOBS: Your Honor, concerning Dr.
5 Whitehurst --

6 THE COURT: That wasn't the one I had in mind,
7 but go ahead.

8 MR. JACOBS: Oh, it wasn't?

9 THE COURT: I am sorry, go ahead. Maybe it is.

10 MR. JACOBS: What I thought I heard the
11 government say, I wrote it down quickly, that I think
12 Mr. McCarthy's was arguing it was difficult for the
13 prosecutors to defend themselves when defense counsel was
14 saying they would have done something unethical if they
15 could have gotten away with it.

16 My objection, number one, is that that was never
17 argued by Ms. Amsterdam and me concerning Dr. Whitehurst. I
18 will leave Ms. Amsterdam's comments about the prosecutors
19 for them to argue as they wish, but I am talking about I
20 specifically made the statement to this jury the prosecutors
21 in this case did absolutely nothing wrong whatsoever with
22 respect to Dr. Whitehurst. I think I made it quite clear.
23 And I think that what Mr. McCarthy is doing, and as I said,
24 I think I understand what he is doing, he is putting his
25 credibility in issue and making a personal appeal to the

1 jury that his credibility is on the line here. And I object
2 to that and I would want some instruction on that.

3 MR. McCARTHY: I think it is the response.

4 THE COURT: To what?

5 MR. McCARTHY: Our credibility has been attacked.

6 THE COURT: By?

7 MR. McCARTHY: By Ms. Amsterdam. And she has
8 inextricably linked herself to that defense and put
9 Whitehurst on. What are we supposed to do, sit there and do
10 nothing?

11 MR. JACOBS: I understand their comments with
12 respect to Ms. Amsterdam and I said I am not addressing
13 that. But this has been issued with respect to --

14 THE COURT: It may be that I should have invited
15 you both in here.

16 MR. JACOBS: Maybe that is a good idea.

17 THE MARSHAL: I will find her and tell her to
18 come in.

19 THE COURT: Maybe it is a good idea. In a sense,
20 she said that she was embracing everything that you said and
21 ratifying everything that you said. I guess in a sense you
22 didn't say that, although I can't count the number of times
23 in this case in which there has been characterization, both
24 by you and by her -- certainly by her without your
25 objection -- that there is some substantial connection

1 between the defenses you are making and that, in essence,
2 you are doing something that is harmonious in which you both
3 join.

4 MR. JACOBS: Your Honor, the fact that we may
5 call joint witnesses or there may be parts of our case that
6 we have joint positions on, I am talking about Dr.
7 Whitehurst and specific statements by either one of us with
8 respect to Dr. Whitehurst. As I said, I acknowledge the
9 fact that she did make some apparent accusation or some
10 statement about the prosecutors, and they have, I think,
11 appropriately made what comments they wish to do. But when
12 they get up there and they say defense counsel, and they say
13 that it is difficult to defend yourself when defendants say,
14 and that includes me, we would have done something
15 unethical, when I did just the opposite with this jury, I
16 mean I will stay with Ms. Amsterdam only so far but I don't
17 want to be accused of making an argument not only I didn't
18 make but I specifically told the jury the opposite about.

19 THE COURT: Then the question becomes: How do
20 you cure it?

21 MR. JACOBS: The point is that I understand that
22 under certain circumstances, if I understand the Second
23 Circuit law correctly, the prosecutors under attack
24 personally can defend themselves. We understand the law.

25 THE COURT: She launched a lot of heavy stuff of

1 that kind.

2 MR. JACOBS: The fact that in defense of her
3 client she made certain statements doesn't mean that I am
4 bound by them or that when the government makes an argument
5 about Dr. Whitehurst, where neither one of us referred to
6 unethical behavior on the part of the prosecutors, and when
7 I specifically stated that there was nothing affirmatively,
8 so --

9 THE COURT: A large part of the point of her
10 summation was to distinguish the example of Dr. Whitehurst
11 from the example of everybody else in this case, including
12 the prosecutors.

13 MR. JACOBS: Your Honor, the fact that Ms.
14 Amsterdam made a few comments -- and, as I said, the
15 government has a right, within reason, within proper legal
16 grounds, to comment on it -- it doesn't mean all defense
17 counsel allow the government to put what I consider to be a
18 personal appeal and put their credibility on the line, on
19 Dr. Whitehurst. As I said, if your Honor feels they have a
20 right to appropriately defend themselves on certain
21 statements she made, so be it, but certainly not on Dr.
22 Whitehurst, not after I made the statement to the jury that
23 I did, and now I am getting lumped in accusing the
24 prosecutors of unethical behavior or that they could have
25 gotten away with it if we didn't -- they would have gotten

1 away with it, I don't have it exactly, but they would have
2 done something.

3 THE COURT: What he said, I believe, is: It's
4 pretty tough to defend yourself against the accusation that
5 you would have committed an unethical act -- that wasn't the
6 exact phrasing -- if you had had a chance to do it.

7 MR. JACOBS: He was talking about Dr. Whitehurst,
8 and when I clearly said U.S. Attorney's Office and
9 prosecutors and --

10 THE COURT: The reason I said, when you raised
11 the subject of Dr. Whitehurst, that I didn't think that was
12 the objection but invited you to go ahead was that I didn't
13 make the connection between that and Whitehurst. I simply
14 saw that as standing in some part on its own.

15 MR. JACOBS: Your Honor, the point is that I
16 think, and I will let Ms. Amsterdam speak on her own behalf,
17 with respect to the --

18 THE COURT: A good part of this conversation is
19 going on in her absence.

20 MR. JACOBS: With respect to the Whitehurst
21 matter, I have a specific objection with respect to my
22 comments to the jury and especially a sensitive matter in
23 the U.S. Attorney's Office on Dr. Whitehurst, with my
24 comments to the jury, I don't think that was a fair comment.
25 I will leave the others alone but on that I ask an

1 instruction.

2 MR. FITZGERALD: A factual matter. My
3 recollection was that Ms. Amsterdam made a specific comment,
4 in response to the government's summation, indicating that
5 the government says the system had worked, that they told
6 you, that they told the jury, about Whitehurst information
7 but it was because Whitehurst had threatened to go public.
8 And that was the reason.

9 THE COURT: That I recall her saying.

10 MR. FITZGERALD: So it wasn't as if she made a
11 generalized allegation of unethical tendencies of the
12 government. She specifically linked it to Whitehurst as
13 well.

14 THE COURT: She did. She said the government
15 tells you the system worked. She said it didn't work. The
16 only reason you heard about Whitehurst was because he
17 threatened to go public.

18 MR. McCARTHY: Your Honor, can I leave this
19 matter in the good hands of Mr. Khuzami and Mr. Fitzgerald?

20 THE COURT: Yes. Can I ask one more question of
21 you? Do you know now how much you have left?

22 MR. McCARTHY: More than two hours, less than
23 three hours.

24 MR. FITZGERALD: Left or for the day?

25 MR. McCARTHY: Left from this point forward.

1 THE COURT: I will ask at the end. Let me not
2 divert you. I am sorry.

3 MR. McCARTHY: That is quite all right.

4 (Ms. Amsterdam present)

5 (Conference between Mr. Jacobs and Ms.
6 Amsterdam.)

7 MR. JACOBS: I am trying to get her up to speed.

8 THE COURT: You are coming in late to a
9 conversation that, it turns out, revolves substantially
10 about things you said in your summation. Mr. Jacobs
11 objected at one point when Mr. McCarthy said, in words or
12 substance, its kind of hard to defend yourself against the
13 accusation that you would have done something unethical if
14 you had gotten the chance. Mr. Jacobs made an objection. I
15 overruled it. I was a little bit puzzled at the time that
16 it was coming from him, but in any event I overruled it. I
17 then invited him in to talk about it because I thought
18 perhaps I might not have understood what he was talking
19 about. What he told me he was talking about was that he
20 felt the government was, in essence, arguing that
21 impropriety in connection with Whitehurst had been laid on
22 them by him, and that he didn't like having Mr. McCarthy's
23 and the prosecutors' credibility put on the line and engage,
24 in essence, in vouching, when he had been at some pains to
25 say that he was not accusing the prosecution of anything.

1 We then had a discussion that said you didn't make any such
2 fine distinctions but rather seemed to embrace a large
3 number of people, including prosecutors, in accusations of
4 impropriety. One of the things that you said during your
5 summation was that the government's argument that the system
6 worked was nonsense, the system didn't work; the only reason
7 you heard from Whitehurst was that he threatened to go
8 public.

9 MS. AMSTERDAM: That was his testimony. I mean,
10 it was blown up on the board. That was his testimony. He
11 said the results were corrected because I threatened to go
12 public in a court of law. That was his testimony.

13 MR. FITZGERALD: That is not the only reason the
14 jury heard about it. The inference to the jury was: You
15 wouldn't have been told about this, they wouldn't have
16 disclosed it to you, except he threatened to go public.

17 MS. AMSTERDAM: Excuse me, I mean
18 Mr. Whitehurst's testimony is that the reason it became
19 known was because he threatened to go public in a court of
20 law about it. That is his testimony. I mean, I can't do
21 anything about that.

22 THE COURT: To some extent, I question how
23 competent he is to testify to how it is that his meanderings
24 came be to be disclosed in the first place. But, leaving
25 that aside --

1 MS. AMSTERDAM: Leaving that aside.

2 THE COURT: -- I suppose the question is what do
3 we do about it.

4 MR. JACOBS: The problem I have is that I think
5 an instruction should be given concerning Dr. Whitehurst.
6 There is no allegation on defense counsel's part that the
7 U.S. Attorney's Office did anything wrong nor was that
8 argued, period. That is the question that I would make, and
9 I just don't want this jury thinking that there was some
10 accusation made by me, by counsel, with respect to that, and
11 we are not trying to put the U.S. Attorney's Office's
12 credibility in issue, at least I am not, or I haven't heard
13 anybody else do it with respect to Dr. Whitehurst.

14 MS. AMSTERDAM: Believe me, there is so much
15 testimony that I could be wrong, but having done the
16 Whitehurst examination, I thought I elicited, through Dr.
17 Whitehurst, that in fact, when he ultimately met the
18 prosecutors, he felt that everything was corrected and that
19 they indeed had not threatened him at all. If you look at
20 the testimony, I do believe that I personally elicited that.

21 THE COURT: The issue is not Dr. Whitehurst's
22 testimony.

23 MS. AMSTERDAM: I am late to this party, I am
24 sorry.

25 THE COURT: It isn't Whitehurst's testimony. It

1 is positions that defense counsel have taken in summation
2 with regard to who is participating in fraud and deception
3 and who isn't. The question is whether the stink bomb goes
4 as far as the prosecutors or whether it stops at the FBI.
5 The sense I got, and Mr. Jacobs is nodding --

6 MR. JACOBS: That is exactly it.

7 THE COURT: -- the sense I got from a great deal
8 of what you said, not necessarily on this subject but on
9 other subjects, was that it goes a good deal further than
10 that.

11 MS. AMSTERDAM: I must say that, you know, in
12 speaking about it afterwards with Mr. Jacobs, my belief was,
13 and the record will obviously have to stand where it is, but
14 my belief was that I did, at various times, challenge the
15 government to get up and defend their agents and to look
16 them in the eye and say the agents were telling the truth --
17 which is a very different issue. The only thing that I said
18 that I thought was even remotely close was the comment about
19 they knew or they should have known, and that was regarding
20 the return of tapes, which indeed they not only knew, they
21 returned.

22 I have not, from where I am sitting, taken the
23 position, in my mind, that the government did anything
24 wrong, although I questioned, you know, the solidness, the
25 commonsensical approach as to why Mr. McCarthy returned the

1 tapes. But I am not arguing there was any impropriety on
2 the part of the government. I don't understand why we are
3 here.

4 MR. JACOBS: I have an objection.

5 MS. AMSTERDAM: I don't understand what you are
6 asking for in the way of a remedy.

7 MR. JACOBS: What I am asking for is the jury be
8 instructed that we are not talking about the United States
9 Attorney's Office behavior nor is the credibility of these
10 prosecutors in issue in this case, at least with respect to
11 Dr. Whitehurst. I don't want this jury going back there and
12 making this a personal vote whether the U.S. Attorney's
13 Office was acting unethically or not. Because that is a
14 fight I am going to lose and I don't think it is a fair
15 fight. And that is the problem I have got. And without
16 beating a dead horse, we want to decide the case on the
17 issues, not whether the U. S. Attorney's Office acted
18 properly with respect to Dr. Whitehurst, which we are saying
19 they did, and which we told them.

20 THE COURT: Will you make your arguments to me,
21 not to each other.

22 MS. AMSTERDAM: I am sorry. I think I actually
23 have a different horse in this race than Mr. Jacobs does.
24 At this point the government has said flat-out: I lied. I
25 mean they put up mine, and they said, as my grandmother used

1 to say, the truth doesn't have to be rehearsed. They said
2 flat-out that I have lied -- not misspoken, not didn't have
3 completed transcripts at the beginning or not finalized
4 transcripts or transcripts that didn't go to a process.
5 They got up in front of this jury and said, I lied.

6 THE COURT: They presented what was in a taped
7 conversation. That is what they said.

8 MS. AMSTERDAM: Yes, I think we are in agreement
9 about that. So if the gauntlet is down on the ground and
10 the government is calling me a liar, probably the truth of
11 the matter is that the government might as well come off and
12 I don't really want to back away from the position.

13 Mr. Jacobs seems to be seeking a statement that we absolve
14 the government of all wrongdoing without any quid pro quo
15 that the government is not saying anything.

16 MR. JACOBS: Can I speak to her one minute, your
17 Honor?

18 THE COURT: Yes.

19 (Pause)

20 MR. JACOBS: My application is withdrawn. My
21 apologies, your Honor.

22 THE COURT: My apologies for taking your time.

23 MR. JACOBS: Withdrawn.

24 (Recess)

25

1 (In open court; jury present)

2 THE COURT: Mr. McCarthy.

3 MR. McCARTHY: Thank you, your Honor.

4 Ladies and gentlemen, we are going to
5 Government's Exhibit 362. Before I play the tape, I would
6 like to point a few points to your attention, and the
7 portion of the tape that we are going to be focusing in on
8 is the portion that occurs from pages 45 to 50. A few
9 things before we start. I would ask you to take note of the
10 following things as you go through this conversation.

11 First, remember code names. Code names are
12 something that are discussed in this particular conversation
13 and were discussed on other occasions. Fares Khallafalla's
14 code name is Bono. You can tell that if you refer back to
15 page 35 of the transcript. I am not asking you to do that
16 now, I am just letting you know that is where you can look
17 for it. The government contends that it is obvious when you
18 listen to this tape that this is Siddig Ali and Tarig
19 Elhassan basically grilling Victor Alvarez in order to
20 determine whether he is going to stay in or stay out.

21 You are going to see a reference on page 47 of
22 the transcript to Bono, and I would ask you to listen for
23 that. Bono, as I said, is Fares Khallafalla. They are
24 telling Alvarez at that point in the conversation that the
25 police will pressure him by telling him that someone is

1 already talking and knows that Bono was with him on some of
2 the things that he was doing. Bono is Khallafalla and, as
3 you know from the evidence, Khallafalla and Alvarez went
4 together to try to get stolen cars.

5 On page 48, I would ask you to listen to what
6 Tarig Elhassan says they are going to do if anybody wants to
7 pull out. That is, you are going to hear a discussion where
8 he says if anybody wants to pull out we are going to change
9 the plan.

10 If you look at page 48 of the transcript, if you
11 could do that, toward the bottom, I would ask you to pay
12 close attention to a couple of spots in particular. Mark
13 the spot on page 48, if you would, where there is laughter
14 when Khallafalla first says I'll call you tomorrow. That's
15 a good seven or eight attributions up from the bottom where
16 the double underlining is, and I would ask you to pay
17 particularly close attention when you hear that. That is
18 where we contend that he is making fun of Alvarez.

19 Mark the spot on page 48 also where there is
20 laughter when Tarig Elhassan tells Khallafalla to repeat it.
21 He says say it in English, and then there is general
22 laughter. That is about four attributions or so up from the
23 bottom.

24 I would ask you also to notice that Siddig Ali
25 actually gives Fares a hard time for making a joke. He

1 certainly doesn't give him a hard time, as you will hear,
2 because of some confrontation that they are having.

3 On page 49, you will notice from the double
4 underlines that most of that conversation takes place in
5 Arabic, but especially when you have heard the two different
6 versions, the two very different versions of this
7 conversation that you have heard from the Khallafalla
8 defense, I want you to listen carefully to that and notice
9 that during the Arabic conversation there is no yelling,
10 there is no screaming, and I would ask you if you could
11 remember the way that Miss Amsterdam described this
12 conversation to you last week, compare the way she described
13 it to you, the tone of her voice as she described it to you,
14 to what you actually hear on the tape during the Arabic
15 portion of the conversation.

16 I would ask you also to notice an attribution to
17 Siddig Ali around the middle of the page where it says God
18 is greatest, God is greatest -- that's on page 49. At that
19 portion of the tape the Arabic word you are going to hear is
20 Allah akbar, and you are going to hear him say that twice.
21 I am pointing that to your attention because if you listen
22 to the transition there where Khallafalla is talking to
23 Siddig Ali, and they are having that conversation in Arabic,
24 you will see that when Siddig Ali is saying God is greatest,
25 God is greatest in Arabic, he is actually seeming to agree

1 with whatever it is is the last thing that Khallafalla said,
2 which you see in Arabic. This is not a confrontation, this
3 is not a situation where people are having a dispute between
4 themselves.

5 On page 49 also, notice when Elhassan starts to
6 speak English right after that, that is, right after the
7 exchange between Siddig Ali and Mr. Khallafalla. When you
8 listen to that, you are going to see again that there is no
9 transition, or there is no confrontation. He simply moves
10 right on to the next topic. There is no disagreement, there
11 is no raging argument, and there is certainly no storming
12 out of the room.

13 On page 50, if you could turn over to that for a
14 moment, I want you to focus in on the part of the
15 conversation where Siddig Ali tells Khallafalla to take a
16 vacation. You will recall that this was a big part of the
17 argument, that he was basically be being booted out by
18 Siddig Ali and the others. If you notice during that part
19 of the conversation, Siddig Ali says take a vacation three,
20 four days, OK? After that, Alvarez says come with me to
21 Puerto Rico. You will hear on the tape when you listen to
22 it that when Alvarez says come with me to Puerto Rico, there
23 is great laughter among the other people there. The reason
24 that there is laughter is that it is actually sort of funny
25 to them that Alvarez doesn't get what's going on. Siddig

1 Ali is not asking Khallafalla to go take a hike or go take a
2 vacation.

3 If you look a little further down, after Alvarez
4 says come with me, come with me to Puerto Rico, because he
5 is under the impression that Siddig Ali may actually be
6 talking about a vacation -- and when you review the whole
7 tape you will see that they had earlier spoken to Alvarez
8 about fleeing to Puerto Rico before the bombs started to go
9 off -- right after that Siddig Ali says no, no, no, I am
10 talking about the, ah, ah, the cars. Alvarez says oh, and
11 then there is some laughter. Siddig Ali was not telling
12 Fares Khallafalla to take a hike, he was asking him to take
13 a few days off from work so that they could get the matter
14 of the stolen cars resolved, and when you listen to the
15 transcript, please consider that.

16 We are going to play the tape now and we are
17 going to begin at page 45, and if we have cued it up
18 correctly -- and that's always a gamble -- the tape should
19 be started around about 10 lines down, there is an
20 attribution to Elhassan that says now I'm getting serious
21 and you are getting laughing. We will play the tape from
22 page 45 to page 50. Please listen for those things.

23 (Tape played)

24 MR. McCARTHY: Ladies and gentlemen, that
25 conversation is fatal to Fares Khallafalla's defense.

1 Despite what you have heard in either of the two conflicting
2 versions about how he was being pressed and how he was being
3 confronted, it is clear from the conversation that you just
4 heard that the object of the discussion or the subject of
5 the discussion was in fact Victor Alvarez.

6 Mr. Serra made some arguments to you about that
7 this morning, and while we don't agree with him that the
8 conversation should be interpreted the way he interprets it
9 in terms of what Victor Alvarez can reasonably be seen to
10 have known, there is no question that in terms of whether
11 this is a discussion that is aimed at Alvarez or aimed at
12 Khallafalla, it is clear that it is aimed at Alvarez.

13 You will notice the portion of the conversation I
14 asked you to mark about Bono, where they are telling
15 Khallafalla that somebody is cooperating and knows that you
16 are doing something with Bono, it is clear that that has to
17 be Alvarez and it is clear that it can't be Khallafalla,
18 because if they were directing their remarks to Khallafalla,
19 obviously they wouldn't be saying Bono in that context.

20 Khallafalla is clearly poking fun at Alvarez and
21 laughing. There is no moral outrage. If anyone gets
22 outraged it is actually Siddig Ali, because he is trying to
23 make a point and Fares Khallafalla is trying to make it
24 difficult by clowning around.

25 Frankly, you can conclude from the evidence,

1 Khallafalla can't understand why anyone would have
2 hesitation about joining onto an enterprise that he joined
3 with no hesitation whatsoever. The shame on you, shame on
4 you is said in response to Elhassan correcting Khallafalla
5 for poking fun at a Muslim who can't understand what he is
6 saying. There is no change in tone after the shame, shame
7 portion of the conversation that was described to you last
8 week as if Mr. Khallafalla had cried out in outrage. They
9 go right on without missing a beat to the next topic:
10 stolen cars.

11 The only thing that Khallafalla ends up
12 hesitating about, and you can review the rest of the
13 conversation for yourself, is that he is reluctant to take
14 the time off from work. He wants Siddig Ali to have Alvarez
15 go out and deal with the stolen cars. You can see that at
16 page 54 of the transcript, which I am not asking you to get
17 to at this time. When he tells Siddig Ali that, Siddig Ali
18 ends up going along with him, so that the idea is that the
19 next time it is going to be Khallafalla who goes to get the
20 cars. From Khallafalla's position, from his point of view
21 it made a lot of sense. He had already gone out not once
22 but twice to try to get stolen cars. He had also
23 contributed \$100 to the purchase of the stolen cars.

24 Plus, while it is true that arrests were made two
25 nights later, no one thought that the final stages of the

1 operation had been reached yet, and that is something that I
2 referred you to before. Earlier in the conversation, there
3 is a discussion with Alvarez when they talk to him about
4 taking a vacation and they tell him that he ought to clear
5 out about three or four days before, and they tell him --
6 that is, three or four days before the operation, and they
7 tell him that he should plan that for 10 days to two weeks
8 from now. So you can tell from reviewing this whole
9 conversation that at this stage of the conspiracy they are
10 moving forward with the plans but this is not the final
11 stage of the bombing. You can find that at 38 to 39 of the
12 transcript, the discussion about how much time is left.

13 Given the contributions that Khallafalla was
14 already making, there was nothing significant about him
15 declining to take time off from work even if that annoyed
16 Siddig Ali. There is no evidence that the others, including
17 Amir Abdelgani, who was a cabdriver, had stopped working.
18 These guys were not planning to get caught. That was the
19 reason for the untraceable stolen cars in the first place.
20 There was no reason for them to abandon their regular
21 schedules, which would have called more attention to
22 themselves. There was also no reason for them to empty
23 their bank accounts.

24 Mr. Bernstein made a remark to you during his
25 summation about how it didn't make sense that Amir Abdelgani

1 could have money in the bank because if he really thought
2 this was all for real and he was going to die for jihad,
3 then what sense would it make for him to maintain a bank
4 account when they were still trying to put money together
5 for this operation. The fact of the matter is, nobody was
6 planning to die for jihad, if they could help it, in this
7 operation. They were planning to live on and not be caught.
8 That was the point of having untraceable cars, it was the
9 point in having gloves and not leaving fingerprints.

10 With regard to Khallafalla, think also about
11 this. If the great confrontation that Miss Amsterdam spoke
12 to you about happened, someone would have known about it.
13 These are the same people who worried about what to tell
14 Mohammed Saleh. That is the first conversation I told you
15 about, they are the same people who brandished a machine gun
16 when Wahid Saleh visited the safe house on June 13, 1993.
17 They are the same people who worried about the prints and
18 the surveillance cameras. They spent a lot of time in the
19 discussion that you just heard, and in more of the
20 conversation if you were to listen to the whole
21 conversation, talking about how to stand up to
22 interrogation.

23 Now, according to the defense, supposedly someone
24 among them has just realized after a month that he was
25 committing a crime and stormed out after telling them that

1 it was all wrong. If that had happened, they would have all
2 sprinted out of the safe house door before the police
3 responded to the 911 call that Fares Khallafalla would
4 surely have made if he was concerned about welfare and
5 morality as --

6 MS. AMSTERDAM: I object, your Honor, to that.

7 THE COURT: It is argument.

8 MR. McCARTHY: -- if he was as concerned as the
9 person he was painted to you during Ms. Amsterdam's
10 summation, that's what he would have done, and they
11 certainly would have worried about him doing it. You also
12 know that Khallafalla never pulled out because he was still
13 collecting money from them the day after the Fares is not a
14 Fares comment at the end of Government's Exhibit 362, and I
15 want to give you a few exhibits where you can find that.

16 In Government's Exhibit 774T, at page 4 -- that
17 was a telephone conversation the very next day -- Siddig Ali
18 told someone that if he wanted to contribute money he should
19 give it to Fares Khallafalla. On the same day, in
20 Government's Exhibit 365T, page 7, Siddig Ali told Salem
21 that Khallafalla brought \$50. On June 23, the afternoon the
22 arrests take place, Alvarez asked Siddig Ali to tell Bono,
23 who you know to be Khallafalla, to stay in New Jersey, since
24 Alvarez was going to need him to go look for stolen cars
25 again.

1 Later that evening, at around 7:00, Siddig Ali
2 tried to call Khallafalla, who hadn't arrived home yet. You
3 will find that at Government's Exhibit 368T, at page 9.

4 Late that night, late the night of June 23, Amir
5 Abdelgani told Salem that he believed the tall guy would be
6 going with Alvarez to buy stolen cars. The tall guy, you
7 know, is Fares Khallafalla.

8 Not one of the people involved in the discussion
9 that was recorded in Government's Exhibit 362 ever thought
10 that Khallafalla was no longer one of them, and he clearly
11 was continuing to contribute, even after the night that Miss
12 Amsterdam tells you he stormed out. In fact, Khallafalla
13 was in the safe house three times, the exact same number as
14 Alvarez, the exact same number as Elhassan. The only
15 difference is, he was in the conspiracy much earlier and his
16 participation was more extensive. He didn't mix bombs on
17 the last night but he planned, he bought timers, he bought
18 fertilizer with Siddig Ali on June 19, he contributed funds,
19 and he tried to buy stolen cars twice.

20 Perhaps most importantly, after Government's
21 Exhibit 362, the last conversation Khallafalla is recorded
22 in, they never changed the targets. Remember that in the
23 conversation when Tarig Elhassan was describing what would
24 happen if anybody wanted to pull out, he said if you pull
25 out, no problem, you are still our brother, we will just

1 change the targets. You know that the targets never got
2 changed, which is what they would have done if they thought
3 that Khallafalla was pulling out.

4 Now that I have spent some time on pulling out of
5 the conspiracy, let me tell you why you can't do it.

6 Although I have submitted to you evidence that
7 makes it crystal clear from what you heard on the tapes that
8 Khallafalla in fact never pulled out of the conspiracy, I
9 need to talk to you about an important point in the
10 instructions that you are going to hear from the judge. The
11 "Fares is not a Fares" defense is, bluntly, nonsense for a
12 variety of reasons, and I will get to a couple more of them
13 in a moment.

14 But I should tell you about the most important
15 one, which affects not only Khallafalla but Mohammed Saleh,
16 Ibrahim El-Gabrownny, El Sayyid Nosair and Omar Abdel Rahman,
17 and that is this: You can't pull out of a conspiracy. As
18 his Honor is going to tell you, once you have agreed to the
19 object of the conspiracy, you are in, and you are presumed
20 under the law to remain in until the conspiracy comes to an
21 end. So even if you want to pretend that you left, as
22 Khallafalla does, it doesn't work. If you are found to have
23 joined the conspiracy, that is, if you agreed to wage war
24 against the United States in Count 1 or to use bombing as a
25 method or to ship explosives in interstate commerce, which

1 is the conspiracy charged in Count 5, you are guilty. That
2 makes sense if you think about it, since the crime is the
3 agreement. Once you form the agreement you have committed
4 the crime.

5 The reason that is an important point is, if you
6 go back to May 27, and I am going to speak about this a
7 little bit more later, if the FBI had actually gone in and
8 made arrests on May 27, May 28, on the basis of what had
9 gone on there in that meeting alone, there would have been
10 enough of a basis to convict right there, and if the
11 conspiracy was in existence at that time and people joined
12 it at that time, what that basically means is that Fares
13 Khallafalla walked around for a month guilty of conspiracy.

14 MS. AMSTERDAM: I object to that, your Honor. It
15 is a misstatement of the law.

16 THE COURT: Again, it is my instructions on the
17 law that are going to control. Whatever any lawyer tells
18 you about what the law is, if they don't agree with what my
19 instructions are, it is my instructions that control. You
20 can take legal arguments from lawyers, as you have heard
21 from lawyers before, compare them to what I tell you when I
22 give you my instructions. If they coincide, fine. If they
23 don't coincide, obviously it is what I say, not what any
24 lawyer says that counts.

25 Go ahead.

1 MS. AMSTERDAM: Thank you.

2 MR. McCARTHY: You should listen carefully to
3 those instructions.

4 Another thing. Miss Amsterdam devoted a lot of
5 time to attacking Emad Salem and then told you that you
6 should acquit Khallafalla because Salem said that Fares is
7 not a Fares. The person whose word supposedly you can't
8 take on anything else you can acquit on his word because he
9 blurted out that Fares is not a Fares at the end of the
10 conversation.

11 Ms. Amsterdam told you that if Salem or Siddig
12 Ali had said Fares was a Fares, a soldier, that would have
13 been the centerpiece of the government's case. That is an
14 argument she made to you last week. In fact, that very
15 thing happened. At Government's Exhibit 339T2, page 2,
16 Salem told Siddig Ali that Khallafalla was like a soldier.
17 We didn't argue that to you in summation and it certainly
18 was not the centerpiece of the government's case. It would
19 be silly and it would be as silly to do that, for the
20 government to argue that you should convict someone on that
21 basis, as it is to argue that someone is not guilty on that
22 basis. What Salem and Siddig Ali say about someone is not
23 as important as the words those people speak themselves and
24 the actions they take themselves.

25 I want to talk briefly about stolen cars, a topic

1 that applies to many of the defendants here. Some arguments
2 were made to you about Mr. Khallafalla in particular, who
3 Ms. Amsterdam described as a pacifist moralist who drew the
4 line at stealing cars. The reason for that, you can
5 conclude, is that stolen cars are also fatal to the position
6 that the defense has taken in the case.

7 When she was here last Friday talking about
8 government frauds and tricks, she told you that on June 21,
9 1993, after he had been kept in the dark about details for
10 nearly a month, the pacifist moralist finally began to
11 suspect that something terrible or immoral was going on
12 after he came back from getting the stolen cars that Siddig
13 Ali and Salem had sent him for. Ms. Amsterdam took one
14 sentence out of context in Government's Exhibit 362, Fares's
15 comment to Siddig Ali that the manner of the cars was
16 difficult for him. You may remember that.

17 What Ms. Amsterdam didn't say to you about this
18 deep moral dilemma was that this wasn't Khallafalla's first
19 stolen car trip. It was the second one he had taken in the
20 space of three days. He had gone with Alvarez on June 19
21 and come up empty. In fact, Khallafalla not only looked for
22 the stolen cars but, as I mentioned before, he contributed
23 money for them.

24 You can understand why it is important to try to
25 convince you that stolen cars is not much of an issue, and

1 this is important not only in connection with Khallafalla
2 but also Amir Abdelgani, Tarig Elhassan and Victor Alvarez.
3 Try as they might, it makes no sense, none, that people who
4 have taken not a single step toward going to Bosnia are
5 training in Queens to be able to detonate fuel oil and
6 fertilizer car bombs by beeper in eastern Europe. In
7 Bosnia, where there is open war on the streets with military
8 weapons, where your common sense tells you that things like
9 telephone service are not going to be very dependable and
10 gasoline and fuel oil are not going to be in ready supply
11 and where people can't walk the streets without being shot
12 at, you are supposed to figure that Fares Khallafalla
13 believed he was going to roll right up to the Serbs in a
14 Buick loaded with 55-gallon drums.

15 Ms. Amsterdam focused you on the line where
16 Khallafalla said the cars is difficult for me. She told you
17 Khallafalla must have said this because of a sense of
18 morality. She didn't point you to the three little words at
19 the end of that statement: to get it. Difficult is not the
20 fact of stolen cars, the difficulty is to get the stolen
21 cars. They have gone to several places and they have come
22 up empty. It is sort of like when Amir Abdelgani complains
23 that Alvarez should go get the cars because he thinks it is
24 easier for a Spanish person to do that, not that they find
25 it morally wrong, just that they are finding a practical

1 difficulty getting it done. Your common sense tells you
2 that it is ridiculous, to think that a person who thought he
3 was in a legitimate training exercise for Bosnia would
4 commit felony car theft in New York in order to carry that
5 out.

6 Plus, you also heard that Amir Abdelgani and
7 Fadil Abdelgani worked for a car service called Cousins
8 Medical Livery. In addition, you know from the rest of the
9 evidence that they have all been riding around in Salem's
10 car. Obviously they are fully aware that legal cars are
11 available if this is a training exercise.

12 Let me discuss Mr. Amir Abdelgani and Khallafalla
13 and their first meeting at the safe house. The government
14 contends that they were full-fledged members of the
15 conspiracies charged in the indictment, surely by the end of
16 that meeting, which is May 27 into 28, 1993. That is the
17 day they went to the safe house for the first time. Miss
18 Amsterdam asked, kept asking a number of times about what
19 Fares ever knew about the targets, and that is an argument
20 that was echoed to you in connection with Mr. Amir Abdelgani
21 in connection with the first meeting by Mr. Bernstein.

22 There is plenty of reason to believe that at that
23 meeting they were advised, each of them was advised of at
24 least three targets, the United Nations and the tunnels.
25 Siddig Ali on the tape did at one point mention a target

1 that Khallafalla and Amir Abdelgani had not yet been advised
2 of, but that was before he went ahead and drew on a
3 cardboard and talked about a strike against America, boom,
4 boom, boom.

5 Having said that, it really doesn't matter. The
6 judge is going to tell you that what conspirators are
7 required to agree on is the object of the conspiracy, again,
8 in Count 1 to wage war, in Count 5, to bomb. That's it.
9 There is no requirement that every conspirator be advised of
10 every detail of the plan, and there is no requirement that
11 agreement be reached on every target.

12 You should keep that in mind not only when you
13 consider the targets that Khallafalla and Amir Abdelgani
14 knew about but also when you consider the defense of Sheik
15 Omar Abdel Rahman, whose lawyer had a lot to say about what
16 he knew about targets and when, some of which I am going to
17 discuss with you tomorrow morning. You should also consider
18 that in connection with Fadil Abdelgani, who wants you to
19 believe he didn't know anything, he was just stirring.

20 To go back for a moment to Khallafalla and Amir
21 Abdelgani, when you review Government's Exhibit 320T, which
22 is CM 19, and Government's Exhibit 370T, which is V23, to
23 the lawyers, those are transcripts of the audio and
24 videotapes of the meeting in the safe house on May 27 and
25 28. You are going to see that there is explicit

1 conversation on that tape about the use of force against the
2 United States, about crippling the economy of the United
3 States, and about where the mission of the World Trade
4 Center bombers had gone wrong. It is evident that what was
5 being discussed was a plan to attack America, and it is
6 completely obvious that no one was under the misimpression
7 that Bosnia training was under way.

8 Let me talk to you for a few moments about the
9 defense of Mohammed Saleh. Mr. Jacobs told you that what
10 his client was interested in was training for Bosnia. I
11 have made this argument to you before and I will just repeat
12 it in this context. You can look at Government's Exhibit
13 333 yourselves. It is completely unreasonable to review
14 that entire conversation and come to that conclusion.

15 I want to talk a little bit about some of the
16 things that he focused your attention on in particular, and
17 that is in terms of making to you the argument that it was
18 reasonable for Mr. Saleh to believe that what was being
19 discussed and what he was agreeing to when he said he would
20 press his capabilities was training for Bosnia, and the
21 argument that was made to you about whether he was ever told
22 about the targets.

23 I lost the pointer. Good. This is taken from
24 page 21 of Government's Exhibit 333, which is CM 32, and I
25 just want to point your attention to a few lines of

1 conversation. In this particular part of the conversation,
2 Siddig Ali is discussing or having a discussion with
3 Mohammed Saleh. Salem is also present, if you review the
4 conversation.

5 Siddig Ali says to Mohammed Saleh: We are coming
6 aiming at an Islamic very good action which will not, God
7 willing, effect any harm on Muslims, because you, God
8 willing, will not be connected with and you will not have
9 any relation with it and your name will not appear in it at
10 all. I am telling this God willing, we ask God the almighty
11 to grant us success because we are talking about people who
12 deserve, I mean that you know certain people who have money.

13 What they are discussing at that point in the
14 conversation is trying to get people to contribute money to
15 this venture, a venture which is obviously something that is
16 criminal, because Siddig Ali is making assurances that
17 safeguards will be kept to make sure that the people who are
18 contributing to make this thing happen are not going to be
19 identified with it.

20 Mohammed Saleh asks: Are these jihad subjects
21 for here or for Egypt or in, uh, the point is.

22 Siddig Ali says: Yes, yes, good.

23 Saleh says: The projects here or uh.

24 Siddig Ali says: Here.

25 Saleh says: Yes, means here.

1 And Siddig Ali says: It is military.

2 Saleh says: These projects are a duty, the
3 people who will operate in it must be knowledgeable.

4 Siddig Ali agrees, saying: Extremely.

5 A couple of very important things about that
6 portion of the conversation. It is clear, and it will be
7 more clear as we continue, that it is simply inconceivable
8 that anybody could be under the impression that what is
9 being talked about here is Bosnia. Mohammed Saleh
10 acknowledges being told that the projects are here or, uh,
11 they are having a conversation, uh, about where this action
12 is going to take place, this Islamic very good action, and
13 it is clear they are talking about here.

14 In fact, to the extent that there is any
15 suggestion of a different place, what Saleh wants to know is
16 here or Egypt, and you will understand why when you read the
17 whole conversation in context, because there is a lot of
18 discussion at the beginning of the conversation in
19 particular, about Egypt and about America's role as the
20 people who were having the conversation saw it, in Egypt.

21 Another thing to focus on. You remember Mr.
22 Jacobs made an argument to you about how Salem's description
23 of what had happened here was obviously a wrong one, because
24 he said that he reported to the FBI among other things that
25 they had had a discussion about targets that were military.

1 If you take a look again at page 21 here, the way these
2 people were discussing what they were doing, they were
3 referring to it as a military action. That isn't something
4 that Salem pulled out of whole cloth, it's right there in
5 the transcript.

6 Moving on to page 51 of Government's Exhibit 333.
7 This is a continuation of, as you know, a long conversation
8 between Salem, Siddig Ali and Mohammed Saleh.

9 Siddig Ali says to Saleh: So, if we were to ask
10 you, sheik, based upon what I know about you, what do you
11 think? We have pinpointed specific targets, unintelligible.
12 OK?

13 Saleh says: Hm.

14 And the conversation continues.

15 Siddig Ali, around the middle of the page, says:
16 If we were to ask you, if there were targets here, now, that
17 are going to be hit, to be hit, and it is well studied as a
18 whole case, what can you tell us yourself?

19 Unmistakably clear that what they are talking
20 about is targets here. As you will see when we continue
21 reviewing it, there isn't going to be great mystery about it
22 by the end.

23 Saleh says: By God, this question needs some
24 thing. Planning.

25 Saleh says: I might have already given you the

1 answer about Boutros-Ghali and things of that sort. An
2 issue like this one requires more thinking.

3 That reference to Boutros-Ghali, you will see
4 when you review the whole conversation yourself, is a
5 reference to something Saleh said earlier in this
6 conversation when the topic of United Nations Secretary
7 General Boutros-Ghali came up. Mr. Saleh said the murder of
8 this one is a must.

9 Siddig Ali continues this conversation, saying
10 that we conveyed these things to the Islamic authority, God
11 willing, and as the conversation continues, and I am going
12 to put the next board up, it is clear that what he is
13 talking about is that both he and Salem have discussed this
14 operation with Omar Abdel Rahman, who is the Islamic
15 authority in terms of their conversation.

16 This is the discussion that continues at page 52.
17 The talk about the Islamic authority continues at the top of
18 the page and there is some discussion of Omar Abdel Rahman.
19 At that point Siddig Ali began to write the targets, and
20 again you can ask yourselves if what people think is going
21 on is actually a legitimate training exercise, why in the
22 world they are conducting themselves that way.

23 Salem says: No need to write.

24 Siddig Ali says: Hm, I'm gonna eat, my brother.

25 Siddig Ali continues, and this is the important

1 line: For example, and there is some unintelligible
2 conversation, and this is two, three, OK? Two, three,
3 between what?

4 Salem says: The states.

5 Siddig Ali says: Each and everyone of these
6 things is not a joke.

7 Saleh says: Of course not.

8 Siddig Ali: Complicated, things that are
9 complicated. It's not child's play.

10 Salem: Three targets, three serious acts, three
11 acts that are --

12 Siddig Ali: Big.

13 Salem: Not small.

14 It is clear from this conversation that what is
15 being talked about here are the Lincoln and Holland Tunnels.
16 Between the states, that is clear enough. But the other
17 thing that you know from listening to this conversation and
18 from reviewing the transcript is that they are not just
19 talking about two targets, they are talking about three
20 targets, the Lincoln and Holland Tunnel.

21 At this point there is some unintelligible
22 conversation, and when I say at this point, I am pointing to
23 the bottom of page 52 of the transcript. But it is clear
24 that they go from this conversation to this part of the
25 conversation, and it is clear that they are not talking

1 about two targets, they are talking about three targets.

2 As you know, there is a dispute about that
3 between the parties. The transcript does not reflect the
4 word United Nations. Mr. Salem, who was a participant in
5 the conversation, testified that United Nations was what was
6 being said here. It is the third target. A couple of
7 things about that.

8 There is testimony in the record about what the
9 Arabic word is for United Nations, and he testified about
10 that. The tape is in evidence and you can listen to it. It
11 is true there was an instruction by the court that this
12 transcript was reviewed by interpreters, including a
13 government interpreter who said that he didn't hear the word
14 United Nations.

15 You also know from the evidence you have heard
16 during the case that Mr. Ginsberg testified that he has
17 reviewed transcripts numerous times, and in fact told you
18 that he testified about transcripts at the Waco trial. One
19 of the things he told you about transcripts is that very
20 frequently, even up to the last minute when you listen to
21 them in court, you can hear things that aren't on the
22 transcript. It is clear to you who have listened to this
23 case for nine months now, who have listened to tapes and
24 also read transcripts along with the tapes, it is quite
25 clear that everything that gets said on the tape doesn't

1 find its way onto the transcript.

2 A couple of other things about that conversation.
3 Mr. Jacobs argued to you that it was clear that what they
4 were pressing Mohammed Saleh for was money, and that is true
5 enough, they were certainly seeking money. But there is a
6 portion of the conversation where there is a discussion
7 about the thing that they need for protection. Mr. Jacobs
8 argued to you that they were looking for money for
9 protection. I would submit to you that that doesn't make
10 sense. Mr. Salem testified that at the time that Siddig Ali
11 said what he said about protection, he made a gesture which
12 was to look like a gun. You can conclude from your own
13 review of the conversation when you review it that it is
14 very clear what they are talking about in that portion of
15 the conversation is guns to protect the conspiracy. You can
16 also deduce that not only from the conversation itself --

17 MR. JACOBS: Your Honor, I am going to object.

18 THE COURT: Overruled. It is argument about what
19 is in the transcript.

20 MR. JACOBS: I think it is argument about what
21 Salem testified to and I object. I'd like a side bar.

22 THE COURT: Come on up.

23 (At the side bar)

24 THE COURT: Why don't we let Mr. McCarthy tell us
25 what it is he is talking about.

1 MR. McCARTHY: That is what the guy testified.
2 He said at that point in the conversation where they talked
3 about protection it was a reference to guns. He said Siddig
4 Ali had made a gesture, and in fact when it happened, Mr.
5 Jacobs made an argument or an objection at that point, and I
6 actually picked up the transcript and read a portion of it
7 to Salem to clarify that that was the very portion of the
8 conversation that he was talking about. I don't understand
9 the objection.

10 MR. JACOBS: That is not my recollection at all.

11 THE COURT: It is the jury's recollection that
12 controls. You didn't need a side bar for that.

13 (In open court)

14 THE COURT: Various counsel have argued to you
15 what people testified to or what is in transcripts.
16 Obviously it is your view of the evidence and what people
17 testify to that in fact controls. What the lawyers say is
18 argument and should be treated as such. Go ahead.

19 MR. McCARTHY: Ladies and gentlemen, you can ask
20 to review the testimony about that particular portion if you
21 wish, just like any other testimony that you need to resolve
22 and do your important work in this case.

23 A couple of other things I would like to point
24 out about some arguments that Mr. Jacobs made to you. He
25 made a number of points about the discussion that Salem and

1 Siddig Ali had in CM 31, which is, for your purposes,
2 Government's Exhibit 332. Again, that was the meeting that
3 Salem and Siddig Ali had after the Mohammed Saleh
4 discussion. Much of what was discussed by Mr. Jacobs with
5 respect to that transcript was this business about is there
6 a connection between Mohammed Saleh and Hamas, and by the
7 time he finished arguing it, he basically had Mr. Siddig Ali
8 denying that there was any connection at all. A couple of
9 things about that.

10 Number one, you can look at Government's Exhibit
11 333 yourself, and what you are going to see is that Mohammed
12 Saleh talks about going to the Hamas organizations
13 convention. You are going to see that he talks on numerous
14 different occasions about the young men of Hamas who he has
15 both been involved in training with and he talks about
16 experiences with them overseas. There is the attack on the
17 bus that I mentioned before. There is also --

18 MR. JACOBS: Objection. Objection.

19 THE COURT: Overruled.

20 MR. MCCARTHY: He also talks about, if you review
21 the conversation, an incident near the Dead Sea.

22 You don't have to conclude that whatever Salem
23 had to say on the subject of Mohammed Saleh's connection
24 with Hamas came from what Siddig Ali told him. Salem sat
25 all afternoon with Mohammed Saleh and listened to the same

1 words that you can listen to in reviewing the transcript.

2 But I would like to show you a portion of
3 Government's Exhibit 332 on that subject so that you can see
4 not just what the responses by Siddig Ali were, but the
5 whole conversation in context.

6 Salem says to Siddig Ali: I hear you saying he
7 is a follower of the group, the Hamas group. Perhaps they
8 have something.

9 Siddig Ali says: They have, who are these they?
10 He. We are not dealing with them, we are dealing with him.
11 He is an individual. Am I right or not?

12 Salem: Has he got influence among these people?

13 Siddig Ali says: No, no, no, I know nothing.

14 Siddig Ali is not saying he doesn't have
15 influence with these people, he is not saying he is not
16 among these people, he is saying that he personally doesn't
17 know.

18 Siddig Ali goes on and he says: I am telling you
19 he supports and endorses Hamas.

20 Then if you drop down further, and I don't want
21 to skip over anything that may be important, Siddig Ali
22 says: I mean to say, I do not, and you do know. I do not
23 know if he is, for example, I do not know such things.

24 Siddig Ali says: I do not know the details. I
25 really don't want to lie to you. I came to be acquainted

1 with him through the Sudanese brothers, the members of the
2 Muslim movement in the Sudan. And I came to know that he is
3 one of the well known brothers in the Hamas stream, the
4 Muslim resistance movement.

5 I think it is -- withdrawn. You can conclude
6 that the argument that you heard about that was somewhat
7 overstated, but you can put it together for yourselves,
8 Mohammed Saleh's own words on Government's Exhibit 333 and
9 also the conversation between Salem and Siddig Ali.

10 A couple of other quick points about Mohammed
11 Saleh. Mr. Jacobs made an argument to you about the period
12 of time during which Salem held on to the tapes that relate
13 to June 4, and that is three of the CM's, and for your
14 purposes, Government's Exhibit 332 and 333 were among those.
15 And he told you how Salem held on to those for four days and
16 that that was over some financial disputes that he was
17 having with the FBI or trying to hold them up for money.

18 The evidence in the record is that it wasn't
19 about money at all, it was about the Witness Protection
20 Program, and that was the evidence that came in on that.
21 What Salem was trying to do was to get the agents to react
22 to his complaints about the future safety of himself and his
23 family.

24 There was also an argument made to you about
25 whether the end of Government's Exhibit 333 was erased, and

1 I would submit to you that you know that the end of that
2 tape could not have been erased because Mohammed Saleh's own
3 witness Mr. Ginsberg testified that he was able to find no
4 erasures on the CM's. You can conclude from that testimony
5 that the end of that tape was not erased.

6 THE COURT: Mr. McCarthy, could you come to a
7 break point around the next five minutes or so and then I
8 would like to see you and Mr. Jacobs at the side.

9 MR. McCARTHY: Your Honor, I am at a good break
10 point actually.

11 THE COURT: Can I see you at the side.

12 (At the side bar)

13 THE COURT: I nominated Mr. Jacobs only because
14 you happen to be discussing his client. This is really to
15 ask you on a worst case basis how much more you have, worst
16 case being the longest.

17 MR. McCARTHY: Half a day.

18 THE COURT: That is the worst case. I asked you
19 for the truth, you gave me the truth.

20 I can't charge tomorrow. I think I ought to tell
21 them that now.

22 MR. McCARTHY: I am sorry, Judge.

23 THE COURT: It is not your fault. You are the
24 last break on a large, tall structure. Let me tell them
25 that now and I will also tell them why.

1 MR. JACOBS: Judge, assuming the government went
2 in the morning, three, four hours, and we took the two-hour
3 break for Jummah, would your Honor consider breaking the
4 charge in half?

5 THE COURT: No, I don't want to do that. I don't
6 think it is reasonable. We lose a lot more than what we
7 say. I appreciate the suggestion but I would rather do it
8 in one fell swoop.

9 MR. JACOBS: It is your Honor's decision.

10 (In open court)

11 THE COURT: Ladies and gentlemen, part of the
12 reason for the discussion at the side had to do with whether
13 or not, given the various schedulings that have to be
14 accomodated here, I am going to be able to give you your
15 instructions tomorrow, and I am not going to be able to give
16 do that. I will have to do it on Saturday. The reason for
17 that is simply that if I were to try to instruct you
18 tomorrow, you would wind up getting some of those
19 instructions toward the end of the day when people are tired
20 and people's interests occasionally flag. The instructions
21 are lengthy. They are going to take about four hours.
22 There is nothing in there that other juries haven't heard
23 and applied but there is a lot of it, and I want you to be
24 alert and awake when you get those, not to get them in the
25 afternoon and be perhaps less than awake and alert.

1 So it is my decision. We are going to break
2 probably after about half a day tomorrow, and I will give
3 you the instructions on Saturday. What that means in
4 practical terms is that the sequestration won't start
5 tomorrow, it will start Saturday.

6 With that, I will ask you again please not to
7 discuss the case, please don't read, see or hear anything
8 about this case or any related matter, and see you tomorrow
9 morning at 9:00.

10 (Jury excused)

11 MS. AMSTERDAM: Your Honor, I need to see the
12 court. I have an objection and a motion for a mistrial. I
13 can do it in open court or in the robing room as your Honor
14 wishes.

15 THE COURT: Why don't we not delay everyone else
16 and do it in the robing room.

17 MS. STEWART: Judge, since all counsel were not
18 invited to that last side bar, we are not to understand that
19 the government has received any open door to giving a
20 rebuttal all day tomorrow.

21 THE COURT: They certainly have not. What I
22 asked Mr. McCarthy was, on a worst case basis, the worst
23 case being the longest, how much more do you have? And he
24 gulped and said half a day. That was worst case. It is on
25 that basis that I proceeded. I assume it is going to be

1 less than that, number one.

2 But number two, if it is any more than an hour,
3 and it is clearly more than an hour, then I can't do it,
4 because your clients have commitments and I made a
5 commitment to them, and I am not going to lay on these
6 people a 200-page charge and keep them until about 6:30 in
7 the evening and around 5:00 get down to concepts like
8 reasonable doubt. I don't think anybody wants that, I don't
9 think it is in anybody's interests. But there is no open
10 door to what you suggested. The short answer to your
11 question is no, and you just got the long answer.

12 Ms. Amsterdam. Mr. Jacobs.

13 (In the robing room)

14 MS. AMSTERDAM: Your Honor, at this point I am
15 going to move for a mistrial based on an improper rebuttal.
16 I would like the record to reflect that by my count in any
17 event, Mr. McCarthy started his summation at about 10:00
18 this morning and addressing simply issues raised by me or in
19 connection with my client or raised jointly by Mr. Jacobs
20 and myself, he has spent 90 percent of his day on those
21 issues. By my estimation, and I am saying by my estimation,
22 by my estimation he spent two and a half hours on
23 fact-specific issues related to my client which I would
24 estimate is five times longer than the government spent on
25 my client in total in their first summation. I think it

1 defies any concept of a rebuttal to say this was a rebuttal
2 summation. This was a summation in chief and in fact what
3 they did was they chose to lay low, they chose to only touch
4 tangentially on my client in their main summation, and then
5 launched a full thrust, full throttle attack on my client in
6 what is supposed to be a brief rebuttal.

7 THE COURT: Why don't I ask Mr. McCarthy to
8 respond.

9 MR. McCARTHY: The Fares Khallafalla defense case
10 didn't have much to do with Fares Khallafalla either. What
11 Ms. Amsterdam and Mr. Jacobs did, but Mr. Jacobs to a much
12 lesser extent than Ms. Amsterdam did, was to attack the
13 integrity of the prosecution, attack everything that this
14 case was based on from the beginning, attack all of the
15 conduct of the agents who participated in the case, attack
16 the informant, and basically attack the prosecution from the
17 ground up, finishing off with attacking the prosecutors who
18 put the case in in front of the jury.

19 If you are going to make a full frontal assault
20 on the entirety of the government's case and on the
21 integrity of the prosecution, you shouldn't be heard later
22 on to complain that they are responding to things other than
23 the specific facts that relate to your client.

24 THE COURT: That is not what her complaint is.

25 MS. AMSTERDAM: My complaint is that you spent

1 five times longer on the facts of my client in rebuttal than
2 on the summation in chief.

3 MR. McCARTHY: I don't know any legal
4 principle -- even assuming what Miss Amsterdam said was
5 accurate, it is up to us how we structure the rebuttal, and
6 I haven't made any arguments that are not fair comeback to
7 things that Miss Amsterdam didn't argue.

8 THE COURT: I don't know that that is entirely
9 the thrust of her argument, but that having been said, I
10 don't think that what you say is going on is in fact what is
11 going on, because he has stuck pretty closely to exhibits
12 that you purported to analyze in small grid that he is
13 saying in large grid mean something quite different from
14 what you analyzed in small grid.

15 If what you are saying in essence is that it was
16 unfair of Mr. Fitzgerald not to tell you in his initial
17 summation what the large grid analysis was of those
18 exhibits, I guess if we were talking about complicated
19 financial statements that might be an argument but we are
20 not. We are talking about transcripts that have been
21 available to everybody for months, and it seems to me that
22 if you choose to read something into a very small portion of
23 a transcript that it has to be done with full awareness of
24 how a larger part of that transcript can hurt you even if
25 the government hasn't shown you in its summation precisely

1 how that larger transcript can hurt you.

2 MS. AMSTERDAM: I don't know the case law, and
3 clearly if there is a conviction I will be familiar with the
4 case law, but it does strike me as I sit here that the
5 government is not in the position of simply allocating their
6 time between their summation in chief and rebuttal in any
7 way that they deem appropriate. I don't think it is an
8 appropriate set of rules that one takes a pass on the
9 summation, waits to see what the defense argues and then
10 gets up in rebuttal and spends five times the amount of time
11 on those facts.

12 THE COURT: That is a gross distortion. Mr.
13 Fitzgerald laid out specifically the nature of the case
14 against each of the defendants. There was no taking of a
15 pass on anybody. Indeed I thought Mr. Fitzgerald gave your
16 client rather more attention than perhaps in the grand
17 scheme of things he might have deserved in his initial
18 summation, largely because you gave more attention to
19 perhaps more aspects of the case than you might have
20 otherwise, because of a tactical decision that you and Mr.
21 Jacobs jointly made. I don't want to get into analyzing and
22 second guessing people's tactics.

23 MS. AMSTERDAM: I am not arguing about the agent
24 come-back. I understand that that comes back.

25 THE COURT: I think he spent more time talking

1 about your client in part because you spent more time using
2 your client in essence as the springboard for some larger
3 arguments about the safe house defendants generally, through
4 the course of the trial and in your approach to the case. I
5 thought Mr. Fitzgerald took more time than perhaps is
6 warranted and Mr. McCarthy is taking a good deal of time
7 with the nature of what you were talking about in your
8 summation, because obviously it does and I think was
9 intended to and has the natural effect of affecting the
10 entire case for the government. So it is perhaps a form of
11 flattery that you don't want to have, but nonetheless it
12 says something about what the reach is of a lot of what you
13 were saying in your summation.

14 MS. AMSTERDAM: Reasonable people can differ
15 reasonably about this. Obviously if it comes to that point,
16 I just want a record to be made that I think that on balance
17 when you weigh the amount of time that Mr. Fitzgerald spent
18 on facts such as June 21, my client leaving that safe house,
19 compared with the amount of time that Mr. McCarthy chose to
20 spend on that same issue, I think that there is a legitimate
21 argument that a reasonable person could make that they
22 deliberately withheld viewing certain evidence at the
23 beginning so that they would hold it and wait and use it in
24 rebuttal, and I don't think that that is what rebuttal is
25 meant to be. Rebuttal to me by the very definition of the

1 word means you rebut issues raised by the defense.

2 THE COURT: You told him his leaving of the safe
3 house was the centerpiece -- not the centerpiece, there were
4 a number of centerpieces, and that was one of them -- of
5 your case. He walks out and doesn't come back. He walks
6 out and Fares is not a Fares, and I can't do it the way you
7 did it but it was a significant part of your summation and
8 he is entitled to respond to it.

9 MS. AMSTERDAM: I don't mean to interrupt, your
10 Honor, but obviously that had been my defense from day one.
11 Mr. McCarthy referred to my opening statement. There was no
12 surprise on the part of the government that that was my
13 argument. It has been my opening, it has been my
14 cross-examination, it has been every facet of this case.
15 They chose tactically not to address it in their main
16 summation, so that they could get the maximum tactical
17 advantage by doing it in rebuttal. Had they addressed it in
18 their main summation, I would have had the opportunity to
19 rebut many of the arguments Mr. McCarthy is making now, and
20 I will as an alternative ask for a surrebuttal.

21 THE COURT: I thought that that was coming. Both
22 applications are denied. The transcript is in. The nature
23 of a transcript case is an open book and I don't think that
24 they have to dwell on every single detail of a transcript in
25 order to point out the flaws in a theory that you advance

1 when they don't dwell on a particular aspect of a
2 transcript, not in an 8-month case. I understand your
3 position. As you say, you have your record.

4 (Discussion off the record)

5 THE COURT: I have been asked when I am going to
6 give out copies of the charge. They are not all ready now.
7 I would prefer to give them out the day that I am going to
8 give the charge, for a couple of reasons.

9 Number one, we have had a charging conference. I
10 have made changes in the charge as requested. I have made a
11 number of changes in the charge that were not requested
12 where I thought things could be phrased better or where I
13 took things out or put things in, in response to people
14 flying various theories in their summations, as I said I
15 would. I said that nobody is getting any guarantees that
16 this is exactly the way it is going to be and if you rely to
17 your detriment, you rely to your detriment, that it is a
18 good faith preview but that is all it is. One or two people
19 made some arguments that I thought either took things that
20 were in the charge and put them in a light that they were
21 never intended to be in, or else made some arguments that
22 were not dealt with in the charge that in view of the way
23 the summations went should be. They are very, very minor
24 segments of the charge, but they are there.

25 MR. JACOBS: My only thought basically is, it may

1 be much ado about nothing and people may read it and there
2 will be no --

3 THE COURT: The second basis is, I don't feel
4 like reading about it in the press, which has happened
5 before in this case.

6 MR. JACOBS: I am not sure what interest the
7 press has in your Honor's seditious conspiracy charge.

8 THE COURT: None.

9 MR. JACOBS: On a more serious point, if we get
10 the charge Saturday morning, I don't know what changes there
11 are and I don't know what people want to read or not read.
12 I just think your Honor is inviting potential problems of
13 people while they are reading and listening to the charge --
14 obviously your Honor has indicated that you made some
15 changes.

16 My suggestion would be whether you want to do it
17 under a protective order. If that is your Honor's concern,
18 I have no problem taking your Honor's charge under a
19 protective order tomorrow afternoon, 3, 4:00, whenever your
20 Honor is ready. We can come in Saturday morning before your
21 Honor charges and maybe there will be nothing to say. But
22 if we have something to say, I think it puts us under a gun
23 to do it on the fly as your Honor is reading to the jury,
24 and then we can resolve objections that we might have
25 afterwards.

1 I throw that out.

2 THE COURT: Understanding that only the most
3 serious and weighty objections are going to carry and I
4 don't think that I made any serious or weighty changes, I
5 would be willing to do that. Assuming that I have enough
6 copies. Understand that duplicating what is required here
7 are 50 copies of a 200-page document.

8 MR. JACOBS: As I said, I only do that so we can
9 get Saturday morning moving and we don't have to have
10 conferences after your Honor gives the charge.

11 THE COURT: I have agreed with you.

12 MR. JACOBS: Thanks.

13 (Proceedings adjourned until 9:00 a.m., Friday,
14 September 22, 1995)

15

16

17

18

19

20

21

22

23

24

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

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

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

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

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

S5 93 Cr. 181 (MBM)

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

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

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

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

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

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

Defendants.

-----x

September 22, 1995
9:10 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

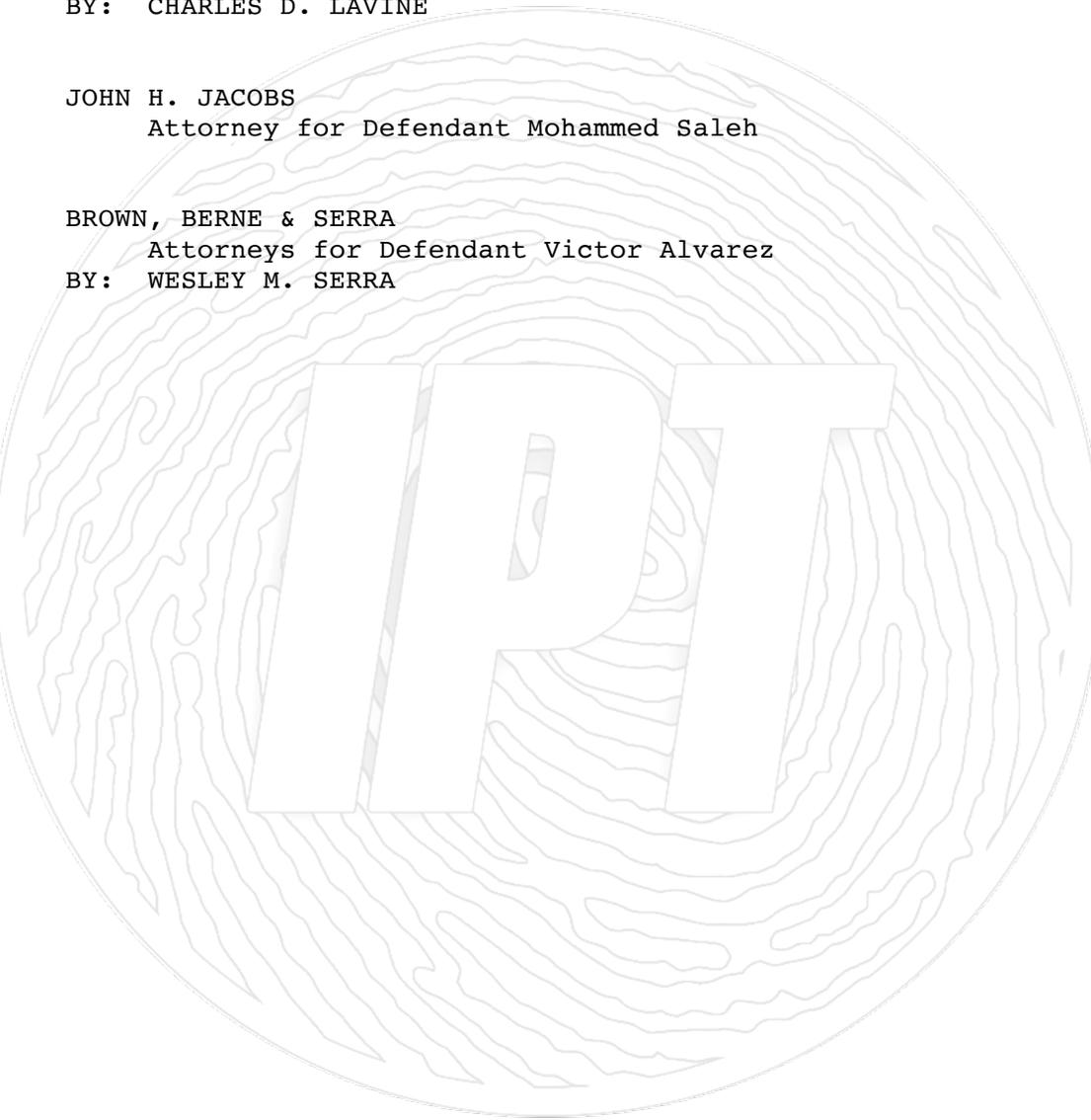
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Trial resumed)

2 (In open court; jury present)

3 THE COURT: Good morning, ladies and gentlemen.

4 JURORS: Good morning, your Honor.

5 THE COURT: Mr. McCarthy.

6 MR. McCARTHY: Thank you.

7 Good morning, ladies and gentlemen.

8 JURORS: Good morning.

9 MR. McCARTHY: I am going to finish up this
10 morning by talking to you about a number of the other
11 defendants some of whom we didn't spend much time talking
12 about yesterday. I would like you to think about a couple
13 of things when you think about the defense claims in general
14 and the things that we spoke about yesterday. We spent a
15 good deal of the time yesterday talking about the events in
16 the safe house, spent a lot of time dealing in particular
17 with the exhibit from June 21 into June 22 -- and that is
18 Government's Exhibit 362 -- and the activities that occurred
19 in the safe house on the night of June 21 into June 22.

20 You should understand that while some of the
21 arguments with respect to that were focused on
22 Mr. Khallafalla in particular, that exhibit is particularly
23 important because it really goes to the root of the case
24 against all of the defendants who were in the safe house
25 that night, and it addresses many of the important things

1 that you heard about, stolen cars in particular, and in
2 particular Siddig Ali.

3 When you consider the claims that have been made
4 to you about Siddig Ali in this case and the attack that has
5 been made on him and the effort that has been undertaken to
6 try to make you see Siddig Ali as a government creation,
7 sort of, I think I referred to it yesterday as a
8 Frankenstein monster who was created by Emad Salem, you need
9 to remember that when you consider the arguments that were
10 made about Siddig Ali coming unglued, as it were, Siddig
11 Ali, who was sitting here before you at the beginning of the
12 trial, is actually sort of the glue that holds the group of
13 defendants who are before you on trial together. He is like
14 that fly paper that none of them is able to get off them.

15 When you think about it, think about Sheik Omar
16 Abdel Rahman counseling violence, urging violence, urging
17 his followers to strike out in violence, Siddig Ali as his
18 confidant and recruiting a group of individuals, the people
19 that you saw, people at the back table and Mr. Alvarez.

20 Siddig Ali, as we move from the safe house
21 defendants, the group that is sometimes referred to as the
22 safe house defendants, to the people who have been in the
23 conspiracy for a period of time that is much longer is sort
24 of a bridge that --

25 MS. STEWART: Can Mr. McCarthy speak up? We are

1 having a hard time hearing.

2 MR. McCARTHY: I am sorry. I will try not to
3 holler at you but speak loud enough for them.

4 Siddig Ali is sort of a bridge figure that brings
5 the whole group together, and you should consider that when
6 you consider the arguments that attack him. It is actually
7 Siddig Ali a defense creation, not Siddig Ali a government
8 creation.

9 I want to say a few more things about Mohammed
10 Saleh, who we were speaking about at the end yesterday.

11 With respect to the receipts, Mr. Jacobs made a
12 number of arguments to you about whether the receipts were
13 actually evidence that the fuel oil had been paid for. A
14 few things to think about those receipts.

15 First of all, you know from the evidence that it
16 was not Mohammed Saleh's idea in the first place to make
17 those receipts. His employee asked him should I take cash
18 or make out a receipt, and in response to that he said a
19 receipt. Think about that in a couple of ways. To have
20 done otherwise, for Mohammed Saleh to have taken some other
21 tack would necessarily have meant cutting in the employee,
22 cutting in somebody who was not involved in the details of
23 what was going on, which was something obviously that
24 Mohammed Saleh was not going to do.

25 Also think about the way that he designed the

1 receipts. The receipts, if you recall, had no name, had no
2 vehicle or no license plate identification number. They
3 simply said Sudanese, and some information about the
4 transaction.

5 MR. JACOBS: Objection.

6 MR. McCARTHY: I wasn't finished describing them.

7 MR. JACOBS: Sorry.

8 MR. McCARTHY: There was information about the
9 transaction but in terms of information that was traceable
10 to the people who were involved, the term Sudanese was used.
11 There were no names and there was no information to trace
12 any vehicle that had come into the gas station to be
13 involved.

14 MR. JACOBS: Objection.

15 THE COURT: Again, what lawyers say about
16 exhibits and about evidence does not control. It is what
17 the evidence shows. The lawyers can argue to you but it is
18 only the evidence that decides the case.

19 MR. McCARTHY: My colleagues correct me. The
20 license plate was actually put on the first transaction but
21 it was deliberately not on the second transaction. That is
22 what the evidence is. But in terms of a name, the term
23 Sudanese is what was used.

24 Mr. Jacobs also made some arguments to you about
25 Government's Exhibit 361, suggesting that that transcript

1 indicates that Mr. Siddig Ali is saying that the fuel oil
2 was paid for, that they were taking donations from the
3 Sudanese brothers, and the argument is that that money was
4 used to pay Mohammed Saleh for the oil. If you look at that
5 conversation in context, what you will find is that at that
6 point in the conversation where Siddig Ali says that there
7 are some Sudanese brothers who provided some contributions,
8 and that is in connection with Amir Abdelgani and Fares
9 Khallafalla, who were taking up the collection, so to speak,
10 they go on to talk about other things that they are going to
11 purchase with that \$150. They talk about getting wires and
12 getting salt, which you can conclude from the evidence is a
13 code word for fertilizer. The \$150 that Mr. Jacobs is
14 pointing to is clearly not payment for the oil, it is
15 clearly payment for other things, and if you read the entire
16 conversation you will see that.

17 I also ask you to think about the arguments that
18 were made to you about whether Saleh actually thought that
19 these receipts showed his innocence, or whether it is
20 reasonable to think that these receipts are an indication of
21 innocence, the fact that the receipts were made.

22 If the receipts had actually been evidence of
23 innocence, evidence that this was a legitimate transaction
24 for which a payment has been made, there is no question that
25 Mohammed Saleh would have been running to his lawyer with

1 those receipts to show his consciousness of innocence.
2 Instead, the evidence that you heard was that he actually
3 called his employee and had him destroy the receipts. Mr.
4 Jacobs' attack on that argument is that that simply shows
5 his consciousness of guilt -- I am sorry -- it simply shows
6 his state of mind not at the time that the crimes in this
7 case were committed but at a time after the crimes in the
8 case were committed, that he was scared, he was in jail, and
9 he made a mistake.

10 When you think about the arguments that are made
11 to you about his consciousness, his state of mind at the
12 time the crimes were being committed as opposed to at
13 sometime afterwards when he was in jail, I would ask you to
14 think about some evidence that Mr. Jacobs never addressed in
15 the time that he was up here speaking to you, and that is
16 what happened on the flight that Mohammed Saleh was
17 arrested. If you recall the evidence about that, it was
18 that Agent Parr from the Secret Service and some of the
19 other agents came to Mr. Saleh's house, who was the first
20 person who was arrested, and what you heard was, they found
21 him in bed hiding under the covers with the covers pulled
22 over his head, fully dressed in his gas station uniform.
23 That night after he was arrested, the agents brought him
24 back to the FBI, and essentially what he did was lie his
25 head off when he was talked to by the agents about what had

1 happened. If you recall, what he did was he denied that he
2 had supplied any fuel oil at all. You know, the very
3 transaction that he now says that there are receipts for and
4 receipts were only done because it was a legitimate
5 transaction, when he made statements to the FBI the night he
6 was arrested, he denied that the transactions had happened
7 at all.

8 And the other thing that you know he did was, he
9 tried to pin the whole thing on Emad Salem, and when you
10 take a look at the facts of what happened and compare that
11 to the substance of the statement that Mr. Saleh made after
12 he was arrested, it is clear that he was conscious of the
13 fact that he had been involved in something wrong and was
14 lying to cover his tracks.

15 I would suggest to you that innocent people don't
16 need to lie, and that is a theme that cuts through not only
17 Mr. Saleh but some of the other defendants that we will talk
18 about this morning, Mr. Elhassan, Victor Alvarez, and
19 Mr. Hampton-El, who testified here before you.

20 Tarig Elhassan told you basically a ridiculous
21 story, that all he was thinking about was Bosnia, as he was
22 involved in a legitimate training exercise. You recall that
23 he was forced to admit, when 350 pages of the hours and
24 hours of conversation that he had between June 19 and June
25 23 were placed before him, that there was no mention of

1 Bosnia throughout that period of time. To try to repair the
2 damage on that, Miss London made some arguments to you which
3 pointed to you many places during the course of the
4 investigation and during the course of the other transcripts
5 where Bosnia is mentioned in a variety of places.

6 The point to look for there is how many of the
7 places where she told you Bosnia was mentioned are places
8 where Tarig Elhassan was a participant in the conversation.
9 The point that was being made when Mr. Elhassan was on the
10 stand was, although Tarig Elhassan testified to you on
11 direct examination that his consuming passion throughout the
12 entire time that he was involved in this case was Bosnia,
13 that that was the singular thing, the most important thing,
14 the driving force of all his actions and the thing that was
15 on his mind, there is not a single mention of that during
16 the time that he is involved in conversation.

17 Let me say something else about that. You may
18 remember that when Mr. Jacobs was here arguing to you, he
19 mentioned the fact that Mr. Khuzami had placed a stack of
20 transcripts in front of Mr. Elhassan and asked him where is
21 Bosnia. Mr. Jacobs then took a transcript and kept reading
22 it and finding references to Bosnia and saying here is
23 Bosnia, Mr. Khuzami, here is Bosnia, Mr. Khuzami.

24 What you ought to remember about that is that
25 when Mr. Khuzami was asking the questions about the stack of

1 transcripts, he was asking questions to Mr. Elhassan, who
2 had made an issue about how important Bosnia had been to him
3 and how it was always on his mind throughout the relevant
4 period of time. The transcript that Mr. Jacobs was pointing
5 to when he said here is Bosnia, Mr. Khuzami, was not the 350
6 pages of Tarig Elhassan conversation that Mr. Khuzami had
7 placed before Mr. Elhassan in his testimony. He was
8 speaking about a different transcript.

9 A couple of other things about Mr. Elhassan. A
10 number of the defendants have argued to you that Salem made
11 me do it or Salem is responsible for everything that happens
12 in the case. Mr. Elhassan takes that defense to about as
13 absurd a degree as it could be taken to by any of the
14 defendants, because with respect to Mr. Elhassan, in the
15 tape that you heard yesterday you hear him flat out saying
16 America must change, America can be broken down. You hear
17 him explicitly discussing America as the focal point of the
18 bombing operation that was being planned in 1993.

19 This is a point, I would suggest to you, where
20 the Salem defense totally breaks down. Salem was asleep
21 during much of that conversation, and while it may be that
22 they can suggest to you, with some color, perhaps, that
23 Salem was able to choreograph activities, able to set up
24 where people were going to be, all things that don't meet up
25 with the evidence, I suggest to you that it is impossible,

1 or I suggest to you at least that there is no evidence at
2 least that Salem is a ventriloquist. Elhassan was speaking
3 from his heart and from his mind. It is his words that are
4 the most important evidence of what was on his mind and what
5 was on his mind was not Bosnia. What was on his mind was
6 America.

7 I would like to speak to you for a few minutes
8 about some of the things that Mr. Serra argued to you
9 yesterday. You may recall that Mr. Serra poked fun at the
10 government's cross-examination of Dr. Aranda because we
11 pointed out that Dr. Aranda had interviewed a lot of people
12 from Victor Alvarez's childhood in Puerto Rico but didn't
13 interview any of Victor Alvarez's coworkers at the deli that
14 he worked at in New York. You should realize that that
15 isn't the only thing that Dr. Aranda didn't investigate. He
16 also didn't interview anyone from the Muslim community in
17 New York that Victor Alvarez had been living in in the last
18 five years, and he speculated about brain damage that
19 Alvarez might have sustained without consulting any medical
20 texts or any medical information to test that idea.

21 Despite what Mr. Serra was suggesting to you
22 yesterday, we are not making light or trying to put down
23 anything about Dr. Aranda's profession. The point is in
24 this case, you didn't need a psychiatrist for Victor
25 Alvarez, and that is because you got Victor Alvarez. You

1 got him on the stand and you got him on tape. You watched
2 him testify in English, his second language, and in a couple
3 of hours, maybe more, of direct examination, you saw him
4 answer every single question without the assistance of an
5 interpreter.

6 MR. SERRA: Objection. May we approach?

7 THE COURT: Yes.

8 (At the side bar)

9 THE COURT: Did he have the assistance of an
10 interpreter?

11 MR. SERRA: Yes, over and over.

12 MR. McCARTHY: Not on direct.

13 MR. SERRA: On direct. I don't know how it is
14 reflected in the record because he was answering in English
15 and he was largely answering in English, but that simply
16 isn't so.

17 MR. McCARTHY: I didn't mean to suggest that he
18 didn't have the interpreter there --

19 THE COURT: You said without the assistance of an
20 interpreter.

21 MR. McCARTHY: I will clarify what he said.

22 (In open court)

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

24 THE COURT: Please.

25 MR. McCARTHY: Ladies and gentlemen, you watched

1 Mr. Alvarez testify. I don't mean for a moment to suggest
2 that he didn't have the assistance of the interpreter. The
3 interpreter sat next to him the whole time that he testified
4 and we know that periodically he did have the interpreter
5 render his answer or render a question to him. My point is
6 that you were sitting here for all of his testimony and you
7 got the opportunity to see how often he needed actually to
8 consult with the interpreter in order to get a question and
9 an answer out.

10 No one is saying that Mr. Alvarez is the
11 brightest guy you'll ever find, but I would suggest to you
12 that he showed a certain degree of criminal cleverness on
13 the stand. He made up a story to answer the evidence.
14 Remember what the testimony of Dr. Aranda was. Dr. Aranda
15 suggested to you that Mr. Alvarez has difficulty perceiving,
16 relating what he has perceived and recalling events, that he
17 has a problem with his memory. The Victor Alvarez that you
18 saw on the stand perceived that he was getting hurt by some
19 of the proof that came in at trial. He related a story that
20 was aimed at answering that proof, and the way he
21 constructed the story that was aimed at answering the proof
22 was to recall events many of which had happened two years
23 ago, recall dates, places and times, in order to invent
24 scenarios that he reasonably thought answered the proof.

25 Mr. Serra argued to you that we didn't call a

1 psychiatrist, and he said that perhaps Dr. McCarthy or
2 Dr. Fitzgerald or Dr. Khuzami would be in a sense testifying
3 to you about what you should think of all that. What I
4 would suggest to you is that you don't need a psychiatrist
5 when you have the witness himself on the stand, the
6 defendant himself Mr. Alvarez.

7 The judge is going to tell you in his
8 instructions how to evaluate testimony, and you should
9 evaluate the testimony of Dr. Aranda just like you evaluate
10 the testimony of every other witness, that is to say, take a
11 look at what he says and see how it stacks up against the
12 rest of the evidence that you have in the case.

13 What I would suggest to you is, review Dr.
14 Aranda's testimony against the testimony of Victor Alvarez,
15 and think about the Victor Alvarez that you saw both in the
16 evidence at the trial and on the witness stand. If you take
17 a review of Mr. Alvarez's tape recorded conversations, you
18 will hear him ask a lot of questions, you will hear him
19 often ask for explanations about what is going on, you will
20 hear he knows where to get stolen cars, you will hear him
21 negotiate price of stolen cars and suggest to Siddig Ali how
22 much money ought to be taken along in order to obtain the
23 stolen cars that they are trying to obtain. You will hear
24 him volunteer an Uzi to a bombing plot and you will hear him
25 say I am prepared to do anything necessary to make this

1 succeed.

2 Mr. Serra harped a lot and pounded away a lot on
3 the fact that Mr. Alvarez was not let in on many details,
4 and there is no question that Siddig Ali tried to keep
5 Mr. Alvarez out of a number of details. But the point here
6 again is something that we mentioned yesterday. Listen to
7 the charge. The question is, did Mr. Alvarez agree with the
8 general objective of the conspiracy? Conspirators are not
9 required to know every single detail of the conspiracy. The
10 question for you is whether he came to the agreements that
11 are charged in the indictment.

12 A couple of other things. The cocaine defense.
13 The fact that Mr. Alvarez tested positive for cocaine does
14 not tell you when he ingested cocaine and how much he
15 ingested. On that subject, I would like you to consider the
16 fact that the proof that you have before you in this trial
17 is a course of continuous behavior by Mr. Alvarez between a
18 period of time of about four to five days, from June 19 till
19 the early morning hours of June 24. It is unreasonable to
20 think that he was in a cocaine stupor for every minute of
21 that time. It is unreasonable to think when you look at the
22 course of his activities over that period of time that he
23 was unable to contemplate or understand what he was doing.
24 That argument isn't even made to you in that sense.
25 Mr. Alvarez is not claiming that he was incapable of

1 committing the crime because of cocaine.

2 Also, even if Mr. Alvarez was taking cocaine all
3 the times that he said he was, and I would suggest to you
4 that there is good reason to doubt that based on the sense
5 of his testimony before you, you are entitled to evaluate
6 whether or not that necessarily made him incapable. There
7 is nothing in the record that indicates that the fact that
8 somebody is taking cocaine means that he is necessarily
9 unable to understand exactly what it is that he is doing at
10 the time.

11 Mr. Serra spent a lot of time discussing
12 Government's Exhibit 352 with you, and he pointed in
13 particular to this as one of the examples of times when Mr.
14 Alvarez walks into the conversation and suddenly the
15 conversation stops, the conversation shifts and he is then
16 unable to pick up the flow of the conversation, the argument
17 being that whatever they were discussing before Mr. Alvarez
18 came in the door, suddenly once he came in the door they
19 stop, they get less explicit and they go into fewer details.
20 In particular, he pointed you to page 191 of that transcript
21 as an example of that happening.

22 I would suggest to you that you should look at
23 that transcript and in particular you should continue
24 reading it to page 194. This is the continuation of the
25 conversation Government's Exhibit 352 that Mr. Serra pointed

1 to when he told you that the conversation sort of stopped
2 and changed when Mr. Alvarez came in the door. You will see
3 at page 194 what happens after Mr. Alvarez is in is that
4 they actually do some testing which is explicitly related to
5 a bomb.

6 Salem says: This is the timer, just to get an
7 idea what it is, this is the timer -- he goes on -- which
8 will be connected with the bomb. Say you want to pull the
9 plug after one minute, which is not time for you to run
10 away. The bomb will go off. Instead, unintelligible, in a
11 straight bomb, and we, I just, Siddig asked me to set it for
12 one minute, so we'll pull the plug, then we will count one
13 minute, we will see the red light go off, means the bomb
14 exploded.

15 Then you heard the transcript presented to you
16 during the evidence at trial, Mr. Salem counted to 62, and
17 you will see it is Alvarez and Khallafalla he is discussing
18 this with him at the time. Mr. Alvarez tells him that he is
19 fast, meaning he counted too fast, and the conversation
20 continues along.

21 They are testing a bomb. It is hard to think of
22 something more explicit that they could do in front of
23 Mr. Alvarez and you ought to evaluate that when you are
24 thinking about the claims that were made to you that the
25 conversation shifts because they are so concerned to keep

1 Victor out of the loop of what they are doing.

2 Also, when you consider the argument about
3 whether Victor Alvarez said yes or not on June 19 to being
4 in, whether or not it was teed up in a way that he could
5 understand and that he committed to being involved, I would
6 ask you to consider these things. Victor Alvarez didn't
7 just say yes on June 19. He said yes when he went into the
8 safe house in Government's Exhibit 362 -- that is the June
9 21 and 22 conversation -- with Tarig Elhassan and Siddig Ali
10 where he was explicitly told in no uncertain terms that this
11 was an attack on America. Even after that conversation, he
12 supplied the Uzi. Even after that conversation he mixed
13 bombs in the safe house.

14 Mr. Serra is a terrific and very persuasive
15 lawyer, and I think you can imagine that if you let him pick
16 apart the trip that you took to the courthouse this morning
17 step by step, he might be able to start convincing you that
18 you weren't actually sitting here. But the evidence isn't
19 supposed to be considered step by step. Mr. Serra very
20 effectively considered each individual piece against
21 Mr. Alvarez. But what you are going to hear when you hear
22 the judge's instructions is that it is not each piece of
23 evidence in isolation, it is all the evidence as a whole.
24 If you take all of Mr. Alvarez's conversations as a whole
25 and all the evidence in this case against him, read it

1 together in a chronological whole. The claims that he made
2 to you in defense just don't hold up. He is guilty of the
3 charges in the indictment.

4 With respect to Mr. Hampton-El, the most
5 persuasive argument that I can make to you about his guilt
6 is the same one that Mr. Wasserman made to you. You saw him
7 testify over a number of days. Mr. Hampton-El's testimony
8 tells you that innocent people don't need to lie, and you
9 watch what he said. Beyond that, I will just point to a few
10 places where I submit the facts were particularly blurred
11 during Mr. Wasserman's account, or the remarks that Mr.
12 Wasserman made to you in summation.

13 You recall that Mr. Wasserman told you that
14 Siddig unbundled for the first time at the end of the tape,
15 Government Exhibit 325, which is the meeting in the safe
16 house on May 30. He says at that point in the conversation,
17 and this is toward the end of the conversation, Hampton-El
18 made it clear that he wanted no part of this, saying
19 basically excuse me, you're talking about killing innocent
20 people, I want no part of this.

21 You can review that conversation, and I would ask
22 you to bear this in mind. Mr. Wasserman told you in his
23 opening statement that Hampton-El should have said no. By
24 the time he stood here and closed before you, his position
25 is that Hampton-El not only did say no but he said no

1 clearly, in a conversation that you heard.

2 Look at the transcript, listen to the tape.

3 Neither the tape nor the transcript ever indicate anyplace
4 where Hampton-El said no.

5 To try to answer that part of his problem, Mr.
6 Wasserman argued to you that you should focus on the tone.
7 He told you that tone is important. I would suggest to you
8 that you should listen to the tone, the tone that is so
9 crucial, as Mr. Wasserman argued it to you. If you listen
10 to that conversation, you see that there is no change in
11 tone. They simply move right along and continue to have the
12 conversation. By the end of it, Mr. Hampton-El is telling
13 them, people who have told him that they want to do a
14 bombing operation on innocent people, if you get the money,
15 we can do it.

16 Also consider this. Siddig Ali and Salem have
17 many conversations after that conversation, after the
18 Government's Exhibit 325. They have one the next day, they
19 have any number of conversations that you heard about with
20 Hampton-El after that. Ask yourselves, do either one of
21 them ever suggest that toward the end of the conversation,
22 Government's Exhibit 325, that Hampton-El rejected what they
23 are about? I suggest to you that that never happened.

24 Also think about Mr. Hampton-El's subsequent
25 course of behavior after Government's Exhibit 325. In

1 particular I focus you on the meeting that he had with Salem
2 and Siddig Ali on June 16 where they discussed detonators,
3 and the June 19 telephone calls, where he is moving along
4 with Mustafa Assad, trying to obtain the detonators for
5 Salem and Siddig Ali.

6 I would also suggest to you something else, and
7 this is actually something interesting that Mr. Bernstein
8 argued to you on behalf of Amir Abdelgani. You recall
9 toward the end of his summation, Mr. Bernstein played you a
10 tape recording, and that was a tape recording of a
11 conversation that arose out of a financial dispute between
12 Hampton-El and Amir Abdelgani, where Amir Abdelgani was
13 coming to Hampton-El to try to get reimbursement for money
14 that he had laid out in connection with the Pennsylvania
15 training. What you heard in that conversation was an
16 absolute unequivocal no from Clement Hampton-El. I ask you
17 to compare that tape and transcript which is in evidence
18 with the claims that Hampton-El is making now about having
19 said no to the plans of Siddig Ali and Emad Salem. If that
20 tape tells you anything, Clement Hampton-El knows how to say
21 no, and he never said it to Salem and Siddig Ali.

22 Mr. Wasserman made some arguments to you about
23 the efforts he says were made to keep Hampton-El out of the
24 details, and I would suggest to you that a lot of that was
25 simply absurd. Government's Exhibit 325, if you read the

1 entire thing, is essentially an example of Mr. Hampton-El
2 sitting around and getting details all afternoon from Salem
3 and Siddig Ali.

4 Also, consider the fact that Hampton-El during
5 the course of the conversation, tells them don't give me
6 details, and that isn't the first time that you hear about
7 that in the evidence. You know that before Salem even came
8 on the scene in 1993, when Siddig Ali and Haggag turned to
9 Hampton-El for weapons in connection with the Mubarak plot,
10 they went to Hampton-El and asked him for those weapons, and
11 he said don't give me the details.

12 MR. WASSERMAN: Objection.

13 THE COURT: Again, it is the jurors' recollection
14 of the evidence that controls. It is a characterization not
15 a quotation. Go ahead.

16 MR. McCARTHY: I don't mean to to be quoting
17 Mr. Hampton-El. I wasn't a participant in the conversation
18 any more than Mr. Wasserman was. My suggestion to you is
19 that what he told Salem and Siddig Ali was that all he
20 wanted to know was whether it was Islamically correct. If
21 it was Islamically correct, he didn't care about what the
22 details were.

23 Consider that when the judge gives you his
24 instruction on conscious avoidance or willful ignorance,
25 which is something I won't belabor because we talked about

1 it yesterday. You can't hide your head in the sand. You
2 can't try to keep yourself away from particular details, in
3 the hope of not being prosecuted.

4 Also in connection with the argument that
5 Mr. Hampton-El was kept out of details, I would ask you to
6 focus on a few other things. When Salem during the course
7 of that conversation even mentioned Ali Shinawy's name,
8 he got yelled at. He basically got chastised, and you can
9 listen to this on the tape, by Siddig Ali and Hampton-El,
10 telling him, no need to mention names. It is a little bit
11 absurd to think that if it was indicated to Salem that he
12 shouldn't even be mentioning the name of somebody he had
13 been involved in a bombing discussion with, that what Siddig
14 Ali was expected to do was say bombs repeatedly all through
15 the conversation.

16 I also suggest to you that when you review that
17 conversation, there is no doubt that what they are talking
18 about is bombs. You heard the conversation, it is explicit.
19 You also heard Hampton-El talk about C-4 and guys with C-4.
20 And you learned from the rest of the evidence that the
21 person that he described as one of the people with C-4, one
22 of the people that Mr. Hampton-El said in his testimony that
23 he was making up off the top of his head was a real live
24 person, Marcus Robertson, the son-in-law of Hampton-El's
25 friend of 20 Yonkers, a man by the name of Suliman El-Hadi.

1 You should remember that when you remember explicitly
2 Mr. Hampton-El's testimony about that. There is a portion
3 of Government's Exhibit 325 where he talks about a guy who
4 got arrested and the father-in-law coming to him. If you
5 remember, Mr. Hampton-El in his testimony basically said he
6 simply made that up off the top of his head. What you heard
7 from the rest of the evidence is that Hampton-El has been a
8 friend for 20 years with a man by the name of Suliman
9 El-Hadi and that Suliman El-Hadi is the father-in-law of a
10 man named Marcus Robertson who fits the bill of the person
11 that Hampton-El was describing in Government's Exhibit 325.

12 Hampton-El said that the people who had access to
13 C-4 previously were now in jail and that made access
14 difficult. That's what he said in Government's Exhibit 325.
15 You heard that Robertson, after his 1991 arrest, cooperated
16 and testified against a group of people concerning bank
17 robberies, just like Hampton-El was describing in
18 Government's Exhibit 325.

19 Mr. Wasserman tried to minimize that by
20 suggesting that there was no real connection between
21 Robertson and what was being discussed on the tape by
22 Hampton-El. He suggested that Robertson was arrested on a
23 simple Pennsylvania gun charge.

24 Mr. Wasserman, when he was speaking to you,
25 called Robertson and the C-4 connection a wonderful tale.

1 But remember that Agent Dressler was here and he testified
2 that Robertson not only had the local Pennsylvania gun
3 charge but he also pled guilty to much bigger charges,
4 robbing banks and post offices. And while Mr. Wasserman now
5 calls the connection a wonderful tale, while Agent Dressler
6 was here he never went through the details of it with him,
7 and Mr. Wasserman never --

8 MR. WASSERMAN: Objection. May I have a side
9 bar?

10 THE COURT: Yes.

11 (At the side bar)

12 MR. McCARTHY: I am trying to hew to what I
13 understood was argued the other day.

14 MR. WASSERMAN: I think that you are shifting the
15 burden to the defense, which is not permissible, number one,
16 and, number two, the fact that the government well knows
17 that the arrest is July of '91, and they are just simply
18 evading that particular point. There is no evidence in this
19 case of anybody being arrested with C-4 or anything like
20 that, and it is not my burden to go question Agent Dressler
21 about that. This man was arrested in Pennsylvania in July
22 '91.

23 MR. McCARTHY: I told the jury that he was
24 arrested in 1991.

25 MR. WASSERMAN: No, you didn't say that.

1 MR. FITZGERALD: He told the jury it is a
2 wonderful tale. It is one thing to say there is no
3 evidence, but if he is going to assert this is a fiction --
4 he never asked the agent if it was a wonderful tale.

5 THE COURT: If when you cross-examined the agent
6 you didn't ask him about other details, then you didn't ask
7 him about other details.

8 MR. WASSERMAN: There is no evidence in this
9 record about anybody having C-4 connected with Marcus
10 Robertson, period, and that Marcus Robertson was arrested in
11 July '91, which is not something Mr. McCarthy mentioned.

12 MR. MCCARTHY: I wouldn't have gone into this. I
13 understood that this had been argued before and there had
14 been a ruling. That is the reason I went into it.

15 THE COURT: You can make your arguments. What I
16 ruled on was that your client in essence testified that he
17 took something out of the air. The government is entitled
18 to argue that it wasn't something out of the air because it
19 corresponded with facts. Those facts are for the jury to
20 find.

21 MR. WASSERMAN: But there is nothing in the
22 record about anybody connected to C-4. It is cotton candy.
23 Zero, nada, nothing.

24 MR. FITZGERALD: He asked the witness if it was a
25 simple gun charge and stands up before the jury and says it

1 is a gun charge, it's a wonderful tale.

2 MR. WASSERMAN: Excuse me. The fact of the
3 matter is that the government well knows --

4 THE COURT: The government had an opportunity to
5 question him as well. If you didn't bring out that there
6 was C-4, you didn't bring it out, and if that is the state
7 of the record, you can't argue it.

8 MR. WASSERMAN: Thank you, sir.

9 (In open court)

10 MR. McCARTHY: I would suggest to you, ladies and
11 gentlemen, when you consider the testimony of Agent Dressler
12 and the words that Mr. Hampton-El spoke in Government's
13 Exhibit 325, what he tried to suggest to you in his
14 testimony, that is, what Mr. Hampton-El tried to suggest to
15 you in his testimony, as a tale that he invented, pulled out
16 of the thin air, is simply not so.

17 Mr. Wasserman also made an argument to you about
18 the test bombing, and I want to say a few words about that.
19 He basically says that the government threw out the test
20 bombing and --

21 THE COURT: Excuse me, Mr. McCarthy. Can you
22 come to a convenient break point.

23 MR. McCARTHY: Yes, your Honor.

24 THE COURT: Ladies and gentlemen, we are going to
25 take a short break. Please leave your notes and other

1 materials behind. Please don't discuss the case and we will
2 resume in a few moments.

3 (Jury excused)

4 THE COURT: One of the jurors was uncomfortable.

5 MR. JACOBS: Your Honor, Miss Amsterdam and I had
6 an application with respect to the government's summation
7 last night.

8 THE COURT: Now?

9 MR. JACOBS: It's up to your Honor.

10 THE COURT: Come on back.

11 (In the robing room)

12 THE COURT: Yes.

13 MR. JACOBS: Your Honor, having had a chance to
14 review the minutes this morning, I want to renew the
15 application that we were discussing yesterday about the
16 personal comments attacking Miss Amsterdam and me. In
17 particular, there is reference twice to Miss Amsterdam and I
18 concealing evidence in the case, and I think those comments
19 were personal, they have no place in the case. Not only do
20 they not have any place in the case but they are certainly
21 not supported by anything, and I refer to the following
22 comments.

23 Page 20098, talking about Miss Amsterdam and I,
24 the government said: Well, did they make sure the truth got
25 in front of you? Did they make sure that the facts didn't

1 get twisted? Did they make sure not to manipulate the
2 evidence? Did they treat you like they wanted to make sure
3 you knew exactly what they were up to?

4 Following up that, they say, 20099: If you are
5 going to make those kind of allegations, if you are going to
6 talk about us, meaning the prosecutors covering up the
7 truth, you ought to make sure your own house is in order.

8 Following that up again, Mr. McCarthy stated,
9 directly concerning concealing evidence, about Whitehurst:
10 For all the talk about coverup and concealment, they have
11 been doing this kind of stuff from the first day of trial.

12 I think those comments are totally inappropriate
13 in this case. There was no suggestion whatsoever by either
14 Miss Amsterdam or I ever in this case, either outside the
15 presence of the jury and certainly not in front of the jury,
16 that the United States Attorney's Office did anything to
17 cover up or conceal anything.

18 THE COURT: Are you serious? What trial did you
19 attend?

20 MR. JACOBS: U.S. Attorney's Office concealing
21 evidence. I am not talking about the FBI.

22 THE COURT: I am not talking about you
23 particularly, I am talking about your colleague. A specimen
24 was offered, if you recall. Remember the hidden ball trick?
25 It concerns a stratagem that you used, asking the jurors to

1 open their books and close their books. That is legitimate
2 comment.

3 MR. JACOBS: Your Honor, I agree. Your Honor,
4 the strategy that I used in my examination of Salem was
5 certainly fair comment by the government and I have no
6 criticism of the government making that point. But when the
7 government says for all the talk about coverup and
8 concealment they have been doing that from the first day I
9 don't think is an appropriate comment. It is a personal
10 attack against us, I don't think it has any place in the
11 case, and having had a chance to review it last evening, I
12 think the prosecutor should be admonished and the jury
13 should be given an appropriate instruction. I don't think
14 that is the way this trial has been conducted by Miss
15 Amsterdam and me and I certainly didn't make statements
16 about my client in my opening statement to indicate that the
17 government should have that kind of comment.

18 THE COURT: Mr. Jacobs, some of those comments
19 were aimed at you, most of them were aimed at Miss
20 Amsterdam. I find it very telling that there was no
21 objection at the time to the comments --

22 MR. JACOBS: Right here. The minute they said it
23 I yelled objection, your Honor said sustained. Not correct.

24 THE COURT: I said sustained as to what?

25 MR. JACOBS: Objection. And they are still doing

1 it, objection overruled, right at the moment that that
2 comment came in.

3 THE COURT: Again, you did it during the trial.
4 As I pointed out, she filled her summation with personal
5 vituperation against the agents and against the prosecutors,
6 and to start arguing now that it is indelicate to accuse in
7 return, it seems to me, is a bit much.

8 MR. JACOBS: The fact that the jurors had a
9 transcript in front of them that I asked them not to refer
10 to --

11 THE COURT: That is not the only instance.

12 MR. JACOBS: Your Honor, concerning my conduct in
13 this case before the jury, I don't think that comment was
14 appropriate. I made an objection. I don't think I tried
15 this case where I should be accused of concealing evidence
16 before this jury and I don't think that is a fair comment by
17 Mr. McCarthy, and I ask for the appropriate relief.

18 THE COURT: Which is?

19 MR. JACOBS: Which is I think the jury should be
20 instructed that his comments concerning the fact that Mr.
21 Jacobs concealed evidence is inappropriate and should be
22 stricken. That comment was not appropriate and the jury
23 should disregard those comments.

24 MS. AMSTERDAM: I certainly join in that
25 application.

1 THE COURT: You have no standing to join in that
2 application. You less than any other person --

3 MS. AMSTERDAM: Your Honor, it doesn't help to
4 scream at me.

5 THE COURT: I am not screaming, I am being
6 emphatic.

7 MS. AMSTERDAM: I feel that the attack, you may
8 believe or the government may believe the attack was
9 personal. I frankly believe that I did everything to keep
10 the government out of it, and I want the record to reflect,
11 and I have a right to make a record here, that it was Mr.
12 McCarthy's decision to make tapes and return those tapes to
13 Mr. Salem over Agent Roth, the FBI's legal counsel's direct
14 assertion -- I want to complete the record -- that I kept
15 Mr. McCarthy out of that. We made no motion to recuse Mr.
16 McCarthy in this case. We allowed Mr. McCarthy to do the
17 summation, a fact that I now regret because I believe that
18 Mr. McCarthy's involvement in the investigation of this case
19 and his concern about his personal conduct in the
20 investigation of the case led to the emphatic personal,
21 violent attack that I incurred yesterday, including a
22 five-hour rebuttal out of an eight-hour rebuttal aimed only
23 at my client and me, and I think it that it comes from a
24 position that Mr. McCarthy is personally upset that I
25 attacked issues regarding his conduct not in the prosecution

1 of this case but in the investigation matter of this case.

2 THE COURT: Are you done?

3 MS. AMSTERDAM: Yes.

4 THE COURT: I think you are free to make a
5 record, I don't think you are free to invent one. I think
6 that is what you just did.

7 Do you want to say something?

8 MR. FITZGERALD: Briefly, I must say that I find
9 the last remarks scurrilous, that Mr. McCarthy -- in
10 essence, the government devoted a fair amount of attention
11 to Mr. Khallafalla in its main summation. Ms. Amsterdam
12 stood up on behalf of Mr. Khallafalla and said that the
13 government, we have an innocent man here, the government is
14 blurring him, not singling him out, are we tricking the
15 jury, led the jury to believe that an innocent man was going
16 to be convicted because he was being blurred into the other
17 defendants.

18 THE COURT: It was also that the government was
19 in essence pulling the routine of somebody jumping out of
20 the stands and finishing the last mile of the marathon,
21 fraudulently pinning a number on himself and basically
22 pinning the number of your client.

23 MS. AMSTERDAM: That is an image that I have used
24 repeatedly which originates from Ben Brafman, and which I
25 have never heard any objection whatsoever.

1 THE COURT: He is responding to it.

2 MS. AMSTERDAM: That led to calling me a liar in
3 the summation? That led to referring to the fact that my
4 grandmother --

5 THE COURT: The fact that you misrepresented an
6 exhibit led to calling you a liar in the summation, and it
7 is a fact.

8 MS. AMSTERDAM: All may be fair in love and war
9 but all is not fair in a criminal trial. One can use things
10 such as mischaracterization of evidence, but when a client
11 is on trial for his life I think a personal attack on his
12 lawyer which comes from a personal place is inappropriate
13 and has no place in a criminal court of law.

14 THE COURT: Miss Amsterdam, I will say it again.
15 You less than anybody have standing to argue about personal
16 attacks, because you made personal attacks your strategy in
17 your summation, personal attacks on everybody. The
18 response, it seems to me, was well within permissible
19 limits. You dished it out, now you want to tell us you
20 can't take it. I don't see it, I really don't.

21 As far as Mr. Jacobs saying that the attack was
22 directed at him, to the extent it was directed at him,
23 chapter and verse was given.

24 MR. JACOBS: The chapter and verse that was given
25 here about my coverup and concealment states here that it

1 concerns the background of my client and I didn't give the
2 background of my client. I think Miss Amsterdam gave it on
3 her client. I said he works the gas station and all that
4 kind of stuff, which obviously was brought out throughout
5 the case. It is the words coverup and concealment, your
6 Honor.

7 THE COURT: Let me see.

8 MR. JACOBS: I am offended by the words.

9 I picked that up.

10 Like I say, I don't mind the comment on the
11 transcript and they have a right to say Jacobs is being
12 cute, but coverup and concealment is pretty strong.

13 MR. FITZGERALD: First, in his opening Mr. Jacobs
14 did describe about his education, came from the United Arab
15 Emirates and his business connections. Secondly, about the
16 prosecutors he said we were doing a dance. Even though he
17 was kind enough to say we were professional --

18 THE COURT: You were doing a professional dance.

19 I would offer to pour the following oil, unless
20 you think it is counterproductive --

21 MR. JACOBS: Go ahead.

22 THE COURT: -- that lawyers are permitted to make
23 arguments and lawyers are permitted to argue emphatically
24 and the lawyers on all sides have. Occasionally what starts
25 out as emphatic becomes personal. But again, the jurors are

1 not here to evaluate lawyers, they are here to evaluate
2 evidence, and the case is going to be decided on the basis
3 of the evidence. If you want me to do that I will do it.
4 If you don't want me to do it, I won't.

5 MR. JACOBS: We would.

6 MR. FITZGERALD: My only suggestion is that we do
7 it at the end of all the summations so it doesn't seem as
8 though we are singling out Mr. McCarthy.

9 THE COURT: I will.

10 MS. AMSTERDAM: I just want the record to be
11 clear that that is not in lieu of my request for a mistrial.
12 I need to have the record clear.

13 THE COURT: I understand your need to have a
14 record clear. I don't see anything that comes close to
15 warranting a mistrial.

16 MS. AMSTERDAM: I am mindful of the fact that the
17 Second Circuit recently affirmed a conviction where the
18 lawyer failed to move specifically on sufficiency of
19 evidence even though the circuit found that there was a lack
20 of sufficiency of evidence, and I need -- and I apologize if
21 it is an inconvenience to the court in terms of timing but I
22 need to have records clear and that is why I say those
23 things.

24 THE COURT: As long as we are going to make the
25 record clear, Ms. Amsterdam, let's make the record clear. I

1 have not gone out of my way, that's the wrong phrase, but I
2 have given every lawyer in this case, every lawyer the
3 opportunity to make a record, on me, on one another, on
4 everybody else.

5 MS. AMSTERDAM: Absolutely.

6 THE COURT: It is not a question of
7 inconvenience, it is a question of my view of the
8 relationship to reality.

9 MS. AMSTERDAM: I have no quarrel with your
10 Honor. Your Honor always lets people make a record. I just
11 wanted your Honor to be aware why I was so emphatic about
12 making a record here because I am mindful that people are
13 sometimes deemed in a position to have waived because they
14 didn't make the record as emphatically as they should.

15 THE COURT: I am now enlightened.
16 Do you know how much more he has?

17 MR. FITZGERALD: I can find out. My guess is
18 less than two hours, hour and a half, but I can be more
19 precise.

20 THE COURT: Would you, please.

21 MR. FITZGERALD: Yes.

22 If I could put one other thing on the record,
23 with respect to the argument made by Mr. McCarthy, when he
24 said cover up the transcripts, concealing the transcripts, I
25 think we should remember that he gave a specific example

1 where people were closing the books.

2 MR. JACOBS: Just to be clear, I told the jurors
3 it is in their book, they should look at it in summation but
4 I wasn't going to read it. I have no problem. Your Honor
5 knew it was coming too. I don't blame the government for
6 getting up there and doing it, I expected that.

7 THE COURT: It was when I said before, the hidden
8 ball trick. It is an old strategy in baseball and an old
9 strategy in litigation. You can try it and they can notice.

10 MR. FITZGERALD: Two hours is the word I heard.

11 THE COURT: Then we will take a break.

12 (Continued on next page)

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (In open court, jury present)

2 THE COURT: Mr. McCarthy?

3 MR. McCARTHY: Thank you, your Honor.

4 Ladies and gentlemen, there are three more things
5 I have to say to you about Mr. Hampton-El. The first of
6 them deals with the evidence that you heard about test
7 bombing. Mr. Wasserman suggested that we threw out the
8 evidence that there may have been a test bombing prior to
9 the bombing of the World Trade Center that Mr. Hampton-El
10 was involved in, in order to smear him, and that we ended up
11 actually having to back off from that position.

12 A couple of things to think about, about that.
13 First of all, we are the ones who told you that, since you
14 have gotten different accounts of the testimony -- and let
15 me back up for a second and say what those were.

16 You recall the testimony a couple of times Siddig
17 Ali said that he and Mahmud Abouhalima had the explosives in
18 the car prior to the bombing of the World Trade Center, and
19 after that conversation he turned to Mr. Hampton-El for
20 advice about explosives. Some of the times when Mr. Siddig
21 Ali described that event, he put Mr. Hampton-El involved in
22 a test bombing at the World Trade Center; on other times he
23 did not. We are the ones who told you that you should
24 accept it as a given that there was no test bombing. We not
25 only put in the conversations that showed the two different,

1 competing versions; we also elicited from Mr. Salem and
2 Mr. Haggag that Siddig Ali had given different accounts of
3 that at different times. But we made the argument to you
4 that you should assume that the other version, the version
5 that does not involve an actual test bombing, is true. And
6 the way you know that is reliable is because that comes out
7 of a conversation that Siddig Ali had with Mohammed
8 Abouhalima that is in evidence before you.

9 The point of that evidence, the point of the
10 evidence about Mr. Hampton-El being involved with Siddig Ali
11 in a discussion about explosives, after the conversation
12 with Mahmoud Abouhalima in the car, is before you for an
13 important point, and that point is this: Regardless of what
14 Mr. Hampton-El has testified and what Mr. Wasserman has
15 argued to you that the rest of the evidence shows about how
16 serious Mr. Hampton-El thought that things were when Siddig
17 Ali and Mr. Salem came to see him on May 30 about
18 detonators, you can conclude, from what went on prior to the
19 bombing of the World Trade Center, what went on in
20 connection with that conversation about explosives, that
21 regardless of what Mr. Hampton-El would have you believe now
22 in his testimony, when those two guys came to his door that
23 day and he let them in, after what went on between him and
24 Salem in 1992 in connection with Shinawy and what went on
25 with Siddig Ali in connection with Mahmud Abouhalima, he had

1 every reason to know that these two guys were for real and
2 that this was serious business. And you know from the way
3 he conducted himself after that meeting, making actual
4 concrete efforts to get them the detonators they needed,
5 telling them on the last night that he was continuing to try
6 because it was a duty, that he took this thing very
7 seriously.

8 A couple of other things. Mr. Hampton-El has
9 played for you from his FISA conversations -- that is, the
10 wiretap that was on his home -- a couple of his what we call
11 "I love America" speeches, basically conversations that he
12 had with people at a time when he was very surveillance
13 conscious, which you know from Government's Exhibit 325, at
14 a time that you know, from the way he conducted himself on
15 the phone, that he was very conscious of the fact that he
16 was under surveillance, very suspicious of the fact that he
17 was also under electronic surveillance, which means that he
18 suspected that his telephone was wiretapped; that those are
19 self-serving statements that he makes on those
20 conversations, the ones that he played for you about what he
21 says now or what he would like you now to believe he feels
22 about this country.

23 The best example that you have of that is the May
24 31 conversation that he put in evidence as Defendant
25 Hampton-El Exhibit N-1, the conversation with Garrett

1 Wilson. I would like you to keep in mind, when you review
2 that conversation, that that conversation occurs the day
3 after Siddig Ali and Salem are in the Dojo with
4 Mr. Hampton-El discussing the bombing plot. And when you
5 review that evidence, I would ask you to ask yourself, is
6 the guy that you hear talking on the phone the same guy you
7 heard talking to Salem and Siddig Ali when he didn't think
8 he was being recorded the day before?

9 The last thing I want to address are the
10 passports. Mr. Wasserman made an argument to you that what
11 Hampton-El was actually trying to get for Mustafa Assad and
12 what he was trying to get for Siddig Ali and Salem were
13 passports, not detonators. Now, I think that when you
14 review the evidence it is clear to you that that is simply
15 not what was going on. Not that there isn't any
16 conversation at all about passports, but it is unmistakably
17 clear, if you take all of the Hampton-El conversations in
18 order and look at them in order, it is clear what he is
19 reaching out for is detonators. It is clear not only from
20 the way Hampton-El talks, it is clear not only from the
21 conversation that occurred in Government's Exhibit 325; it
22 is clear from the conversations that Siddig Ali and Emad
23 Salem have when they are talking about Hampton-El and
24 whether he will come through. What they are talking about
25 is, is he going to come through for them with detonators?

1 What Mr. Wasserman says here about the passports
2 was that they "aren't quite as relevant, important, even
3 emotional, if you will, if you were talking about a bombing
4 conspiracy."

5 Now, I must confess I don't know exactly what
6 that means. But let me suggest this to you: When you
7 listen to the Court's instructions on conspiracy, listen to
8 what is required to show conspiracy, listen to the fact that
9 what is required is agreement on the objective of the
10 conspiracy, and consider the fact that even if it was
11 correct that passports were what was the driving object of
12 these conversations, if Hampton-El was trying to get
13 passports for people he was trying to help flee the country
14 after a bombing campaign, he is guilty of trying to make it
15 succeed.

16 I would like to focus your attention for a while
17 on Ibrahim El-Gabrownny. In order to do that, I have to
18 focus a little bit on Mr. Ricco, who gave a fairly brief but
19 very powerful summation before you. I would suggest to you
20 that he is a pretty gifted lawyer. Some lawyers know their
21 stuff, other lawyers understand people. Mr. Ricco is both.
22 He can get at your emotions and tap them probably like no
23 one you have ever been able to hear before. And when he
24 spoke to you last week sometime, he was using all of that
25 considerable talent to tap your emotions.

1 In defense of Ibrahim El-Gabrowny, he began
2 speaking to you by invoking the eloquent words of Dr. Martin
3 Luther King, Jr, who is actually a symbol of people who care
4 about peace, about tolerance, and about making judgments
5 about people based not on outward appearances but based upon
6 the content of a person's character.

7 The image of Dr. King and the arc of truth that
8 he spoke about was invoked in the defense of Ibrahim
9 El-Gabrowny.

10 Now, on March 4, 1993, when that same Ibrahim
11 El-Gabrowny was arrested, there were a number of interesting
12 items in his home. Perhaps the most interesting were copies
13 of tapes that he was stockpiling. One of those tapes and a
14 transcript of it came into evidence before you, Government
15 Exhibit 163R-2. He needed to stockpile those tapes because
16 they were to be distributed to get the word out, to spread
17 the message. It wasn't a message about tolerance, it wasn't
18 a message about peace, and it wasn't a message about judging
19 people who were different by the content of their character.
20 It was a message promoting hatred. It was a message
21 glorifying murder, indeed glorifying the assassination of
22 someone as he gave a speech. Think about that. A message
23 that says, we are about jihad, and our jihad is not the
24 inner striving that Imam Siraj Wahaj talked about when
25 Mr. Ibrahim El-Gabrowny brought him here to testify. The

1 jihad that he talked about is the jihad that is described in
2 163R-2, which I placed before you, the jihad that says:
3 "The Islamic nation will not awake, will not arise, except
4 at the sounds of bombs and bullets that will awaken the
5 people of this nation because this is the only way."

6 The message continued that jihad was about
7 fighting and killing the enemies of Islam -- whoever they
8 decide the enemies of Islam are. That is the message that
9 Ibrahim El-Gabrownny was spreading and promoting. And as
10 much as he is straining -- and is he ever -- to get you to
11 see every inch of the case against him through the shadow of
12 Emad Salem, this is one he is not going to be able to get
13 out of that way.

14 This exhibit is not one of those Emad Salem tapes
15 that they would like to pull out every time they figure
16 there is a problem in the evidence. These are the
17 tape-recorded words, the message, of El Sayyid Nosair, and
18 it is a message that would have been about as foreign to
19 Martin Luther King as it ought to be to every one of you.

20 Mr. Ricco invoked that image to strike a chord in
21 you. He is doing it because, as he told you at the end of
22 his summation, he thinks a trial is about impressions. And
23 he is probably right about that; they are certainly
24 important.

25 As far as impressions go, Ibrahim El-Gabrownny has

1 a major problem, because of the facts and the evidence in
2 this case. Because, when the long arc of truth bends in
3 Ibrahim El-Gabrownny's direction and the light shines on him,
4 he's got to be seen for what he is. And what he is is the
5 guy who couldn't get enough of El Sayyid Nosair. What he is
6 is the guy who couldn't spread enough of El Sayyid Nosair's
7 message, couldn't spread it far enough, couldn't spread it
8 wide enough. And what he is is a guy who is up to his
9 eyeballs in Mohammed Saleh, Nidal Ayyad, Mahmud Abouhalima
10 and Omar Abdel Rahman.

11 MR. JACOBS: Objection.

12 THE COURT: Overruled.

13 MR. JACOBS: Objection, your Honor.

14 THE COURT: Overruled.

15 MR. FITZGERALD: Salameh, not Saleh.

16 MR. McCARTHY: I obviously made a mistake. I am
17 sorry, Mr. Jacobs, and I am sorry, Mr. Saleh. I meant to
18 say Mohammed Salameh. If I said Mohammed Saleh, that was an
19 error.

20 Now, Mr. Ricco did his level best to make you
21 look at Mr. El-Gabrownny always through the prism of Emad
22 Salem. What I am suggesting to you is that Mr. El-Gabrownny
23 needs to be examined for himself. Mr. Ricco tried hard to
24 leave you with the impression that Mr. El-Gabrownny is the
25 hard-working family man. How many times did Mr. Ricco

1 mention his family and his kids to you during the course of
2 his summation? But Mr. El-Gabrowny has a side that he likes
3 to keep hidden, and there is a whole other side to him.

4 El-Gabrowny is drowning in a sea of terrorism.
5 You're supposed to figure that the guy helping Sayyid Nosair
6 send a clarion call to Muslims everywhere to begin the jihad
7 didn't see and didn't know what Sayyid Nosair was about.
8 Nosair is ready to announce to the world what Nosair and his
9 jihad is about, but not to his cousin and his trusted
10 friend, Ibrahim El-Gabrowny. The loyal cousin with the
11 phony Nicaraguan passports, bearing the same photo of Nosair
12 that the man Mr. Ricco called El-Gabrowny's friend, Mohammed
13 Salameh, is running around with while he's building the
14 World Trade Center bomb and ringing El-Gabrowny's phone off
15 the hook.

16 Now, as Mr. Ricco told you, Ibrahim El-Gabrowny
17 is no dope. He is an engineer and a businessman who ran the
18 lucrative Nosair defense fund that everyone in the world
19 except Mr. Kunstler, the defense lawyer, seemed to know
20 about. Your common sense tells you that El-Gabrowny did not
21 have his friends and his associates forced on him. He
22 embraced them. He doesn't need people like Nosair, Salameh,
23 Abouhalima, Ayyad, the sheik, and Siddig Ali -- whom you
24 heard Mr. El-Gabrowny is the one who introduced to Emad
25 Salem. Those people were in Ibrahim El-Gabrowny's life for

1 a long time before Emad Salem ever showed up. They were in
2 and around him because he chose it, he chose to have them
3 there.

4 Mr. Ricco says that is guilt by association.
5 Well, I would suggest to you that he's got a pretty
6 convenient view of guilt by association, and it is a credit
7 to his skill as a lawyer that he could stand here and make
8 it sound so right, so logical.

9 Let's look at it. From September 1992, through
10 the time of the World Trade Center bombing, El-Gabrowny is
11 in constant contact with the people who built and planted
12 the bomb. Nidal Ayyad has just blown up the World Trade
13 Center and, lo and behold, he calls El-Gabrowny two days
14 later and at about that time leaves a message for
15 El-Gabrowny that something is important. You are supposed
16 to dismiss that evidence because to consider it would be
17 guilt by association. On the other hand, on March 4, 1993,
18 El-Gabrowny assaulted two law enforcement officers on the
19 street in front of his home in Brooklyn. He's got the phony
20 passports for one of the terrorists in his pocket. He's
21 mass producing the jihad anew speech up in his apartment.
22 Don't consider that -- that is guilt by association.

23 But feel comfortable rejecting the testimony of
24 the cops. Reject Corrigan, reject Burke. Why? Because Mr.
25 Ricco destroyed their testimony here? He didn't even try to

1 suggest they were lying, I would suggest to you, when he was
2 cross-examining them. Mr. Ricco tells you to reject the
3 accounts of the police, not because of the way that they
4 testified before you but because, after all, they are cops
5 and it was Brooklyn, and you know what the deal is when you
6 get between a cop and something he wants in Brooklyn.
7 You've got to hand it to him the way that he described it.
8 It seemed so inoffensive at the time you never even noticed
9 the logic of what he was telling you; but in Mr. Ricco's
10 world we don't scrutinize a man who surrounds himself with
11 terrorists because that would be guilt by association, but
12 we don't even give the police the time of day because you
13 know how those people are. We don't look at their
14 substance, we don't look at the content of their character.
15 We simply label them and reject them.

16 Think about the cops who came in here and
17 testified. Remember what Mr. Ricco told you about the gun
18 that Mr. El-Gabrowny had in his house. Remember how you
19 learned that that gun was boxed up and chained? Well, how
20 do you know that and how do you figure that Mr. Ricco knew
21 it to tell it to you? You know it because the same cops who
22 carried out the arrest were part of the same team of people
23 who searched the house. They searched the house and they
24 found the gun boxed up and chained up. They didn't try to
25 plant it on El-Gabrowny, they didn't try to make it worse

1 than it was. What they gave you was the truth.

2 Now, what about the assaults themselves? Mr.
3 Ricco told you that the police couldn't even describe those
4 with a straight face. Were you here for that? Did we all
5 miss something? Was there a point where we all left the
6 room and Mr. Ricco yucked it up with the police who were on
7 the stand? Is that the way that you remember it happening?
8 I would suggest to you that that is never the way it
9 happened. The police came in, Corrigan and Burke, and they
10 gave you a straight, serious account of what each of them
11 saw from their individual perspectives. Did they exaggerate
12 it? Did they blow it out of proportion? No. It wasn't a
13 dragged-out brawl. But they were assaulted by El-Gabrowny.
14 Burke told you that his clothes suffered a little damage but
15 he went to work the next day. Corrigan sustained some minor
16 injuries, but that didn't stop him from carrying on.

17 The cops are sort of like somebody who has a
18 minor traffic accident in which no one is seriously injured.
19 A guy jumps out of the car, he is not injured, he sees a
20 couple of dents, sees that there is probably only about \$500
21 damage, and that is what he tells the insurance company:
22 the real story. Does that mean the accident didn't happen?
23 Because he didn't show up in a neck brace and sue for a
24 million dollars, does that mean the accident didn't happen?
25 Because he didn't try to turn a fender-bender into vehicular

1 homicide, do we reject his account?

2 The police, who are not guilty by association any
3 more than the terrorists are, gave you straightforward
4 accounts of what Judge Mukasey is going to describe for you,
5 in his instructions, as assault. And I imagine, when the
6 judge describes it for you, he'll do it with a straight
7 face, because assaulting cops who are injured when they are
8 trying to do their jobs is something that is serious, even
9 if no one gets seriously injured and even if it is one of
10 those Brooklyn cops.

11 I want to go back for a minute to the notion of
12 guilt by association. Guilt by association is something we
13 don't like in this country, and it is ingrained in our core
14 beliefs that a person is held accountable for what he does,
15 not who he knows. Remember Mr. Stavis reminding us all of
16 what Senator Joe McCarthy -- who is no relation, by the
17 way -- Joe McCarthy with his list of purported
18 communist sympathizers, smearing people in an offensive
19 way because of who they are. Around here, nobody is
20 guilty by association.

21 But let's think about what it is and what it
22 isn't. The judge is going to tell you that the way that you
23 look at a case is not by judging it in bits and pieces, not
24 by judging the evidence in isolation piece by piece. You
25 don't get an accurate look at what went on until you take

1 the whole of it together and see how the pieces seem to fit.

2 Association is part of that mix. Association
3 does not amount to guilt. You can't convict someone if you
4 find that all he did was know someone or know some people
5 who were up to no good. But that does not mean, as most of
6 the lawyers have suggested to you, that association is not
7 relevant. Association is certainly relevant to the lawyers
8 when it is not there. Remember Ms. Stewart talking about
9 how come was it, if the sheik had all these tapes, no one
10 who was arrested seemed to have any of the sheik's tapes?
11 She used that argument, a lack of association, to urge a
12 theory of innocence on you. You may recall also that there
13 was about ten minutes between the time she made that
14 argument and the time that she told you that Mohammed
15 Salameh, when he was arrested, had a copy of a book by Sheik
16 Omar Abdel Rahman on him. When she addressed that evidence
17 she told you that that was just an attempt to smear Dr.
18 Abdel Rahman with Salameh. The absence of the tape is
19 crucial; the presence of the book is a smear.

20 Association is something for you to consider
21 especially in a conspiracy case where the crime is people
22 agreeing with each other to violate the law. The question
23 is whether their association is something that is criminal.

24 A couple of things to think about along those
25 lines, and specifically about Ibrahim El-Gabrownly. For all

1 the good things that people like Ali Shinawy had to say
2 about Ibrahim El-Gabrownny, I would like to focus you on the
3 side he would like to keep hidden. He has things to
4 explain: links to Nosair and the others; the passports, the
5 stun guns; the bombing conversations with Salem. He still
6 tries to get you to decide this case on the basis of
7 impressions, and the first impression he relies on is the
8 one, oddly enough, by Louis Napoli on one of the
9 tape-recorded conversations, which is Defense Exhibit WW, I
10 think it is Nosair Exhibit WW, at page 11, and there was an
11 exchange during that conversation where Napoli says:

12 "Gabrownny ain't going to go out putting no bombs down, you
13 know what I mean?"

14 Now, he's floated that out to you as an
15 impression of Ibrahim El-Gabrownny by Mr. Napoli. And it was
16 a calculated thing to do. Detective Napoli, the evidence
17 shows, is someone who had contact with El-Gabrownny since
18 1991. And that impression of El-Gabrownny is something that
19 is urged on you as something important for your
20 consideration.

21 You have to consider this as well, though: Look
22 at that entire conversation, because you will see that when
23 El-Gabrownny floats that out as his impression, Anticev and
24 Salem, who know El-Gabrownny at least as long and at least as
25 well as Napoli, do disagree with that impression.

1 Also think about this: Consider Government's
2 Exhibit 327T. That is a conversation between Salem and
3 Siddig Ali. Salem in that conversation tells Siddig Ali
4 about a lot of the events that happened in 1992, and that is
5 important for a couple of reasons.

6 Number one -- I think we discussed this already
7 once but I will say it again -- Salem is giving Siddig Ali
8 an account of events that is verifiable, because he is
9 talking about people that Siddig Ali has an independent
10 relationship with: Nosair, El-Gabrowny, and others. It is
11 important for you to consider whether it makes sense that
12 Salem would give that version to somebody who could verify
13 it if the account that he gave you on the stand was not
14 true.

15 But the other thing you should think about in
16 terms of impressions is: During that conversation Salem is
17 implicating El-Gabrowny in a bombing operation, in a
18 conversation with someone that El-Gabrowny knows: Siddig
19 Ali. You should observe Siddig Ali's reaction when you
20 review that call, or that conversation. He is not shocked,
21 he is not surprised, he is not taken aback at all. His
22 impression of El-Gabrowny certainly was not consistent with
23 the one of Detective Napoli, and he knows El-Gabrowny longer
24 and better than Napoli does.

25 El-Gabrowny tried to correct his impression

1 problem basically with the Emad Salem defense. He needs you
2 to see Salem's shadow everywhere there is evidence, because
3 if you don't, then you will see what he is trying to hide,
4 which is himself.

5 About Salem, Mr. Ricco makes a couple of points,
6 and I would like to discuss it. First, the tapes. Make no
7 bones about it, there are no devastating conversations with
8 El-Gabrownny on tape, and we never tried to suggest
9 otherwise. But that raises two points. Number one, isn't
10 it inconsistent with the view of Salem that has been
11 presented to you? He is supposed to be able to trap people
12 on tape and he is supposed to be able to make people on tape
13 sound as he wills them to sound. You were told he was
14 basically the splice king. He could whip it up and make it
15 sound whatever way he wanted. You got more specimens of
16 conversation with Ibrahim El-Gabrownny available to him than
17 virtually anyone else in the case, and the fact of the
18 matter is you don't have an incriminating conversation. It
19 is certainly inconsistent with the view of Salem as the man
20 who is splicing and dicing tapes in order to create
21 incriminating evidence.

22 There is no tape involving El-Gabrownny, but there
23 is powerful corroboration. How? Remember this: Salem told
24 the agents about El-Gabrownny back in 1992. He stated that
25 there were many times they did not talk about bombs, but at

1 times they did. He made plain to the agents back in 1992
2 about the plot to kill Schlesinger, to kill Dov Hikind, the
3 escape plan, the 12 bombs, the Jewish targets. Emad Salem
4 also reported to the agents that Ibrahim El-Gabrownny was
5 interested in the construction of high explosives and was
6 involved with Salem in building bombs.

7 Mr. Ricco spoke to you about whether Salem had
8 told this to Anticev and Napoli only one time, as if its OK
9 only one time to have a conversation about building high
10 explosives. But if you review the evidence of what Salem
11 reported to the agents, Salem advised that on one time they
12 had a conversation about explosives and on another occasion
13 they had a conversation about detonators. You know that
14 from the cross-examination of Anticev and you know that from
15 Nosair Exhibit WWT in evidence, where Salem tells Napoli and
16 Anticev many of the things he told them in 1992. They
17 disagree with him about the World Trade Center and whether
18 Salem ever reported that, but they don't disagree with him
19 about anything else.

20 That is important because it means that Salem is
21 locked in. He has said, back in 1992, that Ali El-Gabrownny,
22 Mr. El-Gabrownny's brother, is not involved in any bombing or
23 terrorist acts but that Ibrahim was. That is a version of
24 events that he gave in 1992. It's locked him in.

25 The reason that is important is, it turns March

1 4, 1993 into sort of a moment of truth for El-Gabrowny. And
2 what does he do? He assaults two agents and he is carrying
3 Nosair's fraudulent passports and a letter referring to the
4 Great Shaytan, the Great Satan. In his house are the stun
5 guns, the Jihad Anew speech, the negatives for the Nosair
6 photos and the Nidal Ayyad "important" message -- a picture
7 that is completely consistent with the portrait that Emad
8 Salem gave the agents in 1992, months before the World Trade
9 Center was ever bombed.

10 March 4, 1994, has always presented a problem for
11 El-Gabrowny, and I would like to go through some of the
12 various ways Mr. Ricco has tried to explain away that side
13 of El-Gabrowny and the events of those days. I will talk to
14 you briefly about the passports, the stun guns, the
15 detonators, the phone messages and phone records.

16 Regarding the passports, Mr. Ricco suggested to
17 you that it is a weak case when you have to quote back what
18 the lawyer said in his opening. You be the judge of that.
19 Mr. Ricco opened by trying to pin the passports on Salem.
20 He said it didn't matter what answer Salem gave on the
21 passport. Now, if you remember, the argument that got made
22 in the opening to you and the argument that Mr. Ricco made
23 in summation are different. In the opening, Mr. Ricco told
24 you it wasn't going to matter what Salem said about the
25 passports, because Salem was a liar. By summation he told

1 you, it really didn't matter what Salem said about the
2 passports, because it is a crime. So there is a slightly
3 different twist to what Mr. Ricco argued to you about that.

4 But the important thing here is, Mr. Ricco knows
5 that the impression that he created in you of the family
6 man, the good side of Ibrahim El-Gabrowny, is inconsistent
7 with the man who is in possession of those passports --
8 criminal documents linking him to Salameh and Nosair at the
9 time the World Trade Center is blown up. So he did his best
10 to present the best light for his client by trying to dump
11 it on Salem. Then the passports came into evidence before
12 you and you saw that there could be no possible link to
13 Salem. They were actually issued before Salem came into the
14 investigation.

15 You also heard a call in evidence between Salem
16 and Mohammed El-Gabrowny and that is a call in evidence
17 where they discuss the Nosair passports and Mohammed
18 El-Gabrowny informs Salem during the course of that
19 conversation that the passports that Ibrahim had were Sayyid
20 Nosair's and his family.

21 Now, Mr. Ricco talked to you about a missing
22 call, a missing conversation, a conversation that we have no
23 tape of, a conversation the phone records indicated took
24 place between the telephone of Emad Salem and the telephone
25 of Mr. El-Gabrowny on March 4. Now, Mr. Ricco suggests that

1 this is an answer to a riddle, suggests that the call may be
2 another one of those kryptonite calls, a call that if we
3 only had it, it would make all the other evidence disappear
4 or somehow make innocent sense.

5 A couple of things about the argument that he
6 made to you. Mr. Ricco suggested that this call, whatever
7 it was about, was a call that was made right before Ibrahim
8 El-Gabrowny was arrested. That just doesn't check out with
9 the rest of the evidence. If you recall, the telephone
10 record that he showed you indicated that the call lasted for
11 about ten minutes and it occurred and was over prior to 1
12 o'clock in the afternoon. The testimony that is before you
13 is that Mr. El-Gabrowny didn't get arrested until after 2
14 o'clock in the afternoon. So, to the extent that it was
15 suggested to you that this call was made only minutes before
16 Mr. El-Gabrowny was arrested, sort of tried to suggest that
17 there may have been some kind of setup involved, that simply
18 doesn't check out. The call between Salem and El-Gabrowny,
19 whatever it was about, didn't happen until about an hour
20 before El-Gabrowny was actually arrested.

21 The other thing is, you should ask yourselves, as
22 long as we are talking about phantom calls that we don't
23 have a tape for, what could be so devastating about this
24 call? Certainly the evidence shows that Salem was
25 unconnected to the passports. It wouldn't have made sense

1 for Salem to call El-Gabrowny to tell him to remove the
2 passports from the house, because you heard evidence that
3 the reason that the agents were at El-Gabrowny's house on
4 March 4 was to execute a search warrant. It simply doesn't
5 make sense that there could be a call between Salem and
6 El-Gabrowny that would explain away the passports that he
7 had in his pocket, the stun guns, the tapes, and the other
8 evidence that was in the house, including Nidal Ayyad's
9 phone message.

10 Also, if this call, the call between Salem and
11 El-Gabrowny before the arrest, is such a dirty little
12 secret, you might ask yourselves, why does Salem keep
13 telling everybody about it? It is true we don't have a
14 tape, but it doesn't make sense that he would destroy a tape
15 of a call because he was worried about what was said on the
16 call and yet run all over town telling everybody about the
17 conversation he had with Ibrahim right before the arrest.
18 And there is evidence in the record that he told the sheik
19 about the call, he told Dr. Mehdi about the call, and he
20 reported it to the agents.

21 A couple of things about the stun guns. Mr.
22 Ricco tried to make it sound silly that Nosair was talking
23 about using stun guns in future operations. And I want to
24 ask you, how silly exactly do you think that is? Nosair
25 knows that he got caught with the murder weapon which linked

1 him to the other shootings. If he had killed with one gun
2 and had a stun gun and used it in his escape, his defense
3 might actually have been successful. He might have gotten
4 away with killing Meir Kahane and he might have gotten away
5 instead of having to shoot it out on the street. Common
6 sense also tells you that if you think about what went wrong
7 in the plan and if you think about, as Nosair did, the
8 tactical breakdown of what had happened, the stun gun
9 presented not only presented a better opportunity to escape
10 because of the lack of shooting, but the lack of gunfire
11 would likely have caused less attention to Nosair and made
12 his escape more easy. Plus, if he had killed, gotten rid of
13 the weapon and used the stun gun to escape, had he been
14 caught he may not have been connected to the weapon. So it
15 is not as odd an idea as it was made to sound to you during
16 the defense summations.

17 Also, Mr. Ricco, in order to make that argument
18 to you, sort of twisted around an argument that we made. He
19 made two suggestions. He said that the government was
20 arguing to you that Nosair had decided that he'd use stun
21 guns in all the operations, as if he went in to do the Meir
22 Kahane operation and he would have stun gunned Kahane. That
23 was never the argument that we made to you.

24 The argument that we made to you is that you
25 carry out the operation and you use the stun guns to escape.

1 That is what the evidence suggests.

2 Mr. Ricco also suggested that Mr. Fitzgerald was
3 playing with words when he said that Nosair was running guns
4 and that when you don't have -- and that was Mr. Ricco's
5 characterization of it -- when you don't have direct proof
6 you start playing with words.

7 Mr. Fitzgerald never said running guns. The
8 transcript of the remark shows that Mr. Fitzgerald said that
9 Nosair was running with a gun down the street, not that he
10 was in the business of selling guns, as Mr. Ricco tried to
11 suggest our argument was to you.

12 Lawyers make mistakes. Mr. Ricco may have
13 misheard it. But the fact is, the government's argument was
14 not that Nosair was running guns; the government's argument
15 was Nosair was running with a gun, and the stun guns were to
16 be used to facilitate an escape, not to carry out the actual
17 goal of the operation itself.

18 Mr. Ricco also wants the detonator story to sound
19 ridiculous. Remember, Salem told you about Ibrahim
20 El-Gabrownny's volunteering to get detonators from
21 Afghanistan. And what he said to you along those lines was:
22 Can you imagine that when they are in the thick of a bombing
23 operation, why would Ibrahim El-Gabrownny leave everything
24 and go to Afghanistan to get detonators? No one ever said
25 he would; no one ever argued that he would. The evidence

1 before you was that Mr. El-Gabrownny was going to try to get
2 detonators into this country from overseas. No one ever
3 suggested that he was going to put himself on a plane, go
4 get them and bring them back himself.

5 Now, one technique that lawyers frequently use to
6 minimize corroboration is to try to isolate different pieces
7 of proof and examine each one on its own. You have seen a
8 lot of that, and that in fact is how Mr. Ricco went after
9 the phone records. Take them piece by piece, not as a
10 whole. It is as if, if you were trying to figure out if
11 there is a fire. Well, just because it is hot doesn't mean
12 there is a fire, and that is true; just because you smell
13 smoke doesn't mean there is a fire, and that is true; just
14 because you hear someone yell fire doesn't mean there is a
15 fire, and that is true; just because you hear crackle,
16 crackle, crackle in the next room doesn't mean there is a
17 fire, and that is true. But if you start to put all those
18 things together, you are entitled to conclude that there is
19 a fire.

20 Government's Exhibit 508, telephone chart, shows
21 calls between Sheik Omar Abdel Rahman and El-Gabrownny. Now,
22 Mr. Ricco tried to take that one apart by saying: Of course
23 they are speaking to each other. You heard that the sheik
24 lectured at the mosque and you heard that Mr. El-Gabrownny
25 was connected to the mosque, so obviously they spoke to each

1 other. That proof was not in there for that reason. You
2 will recall that after the bombing of the World Trade
3 Center, Sheik Omar Abdel Rahman got on television and denied
4 knowing Mr. El-Gabrownny. That is the significance of that
5 proof.

6 One of the other exhibits that Mr. Ricco focused
7 you on was Government's Exhibit 150, which was the message,
8 the important message from Nidal Ayyad. And he said to you
9 that he was glad, as it turned out, that there was a way to
10 date that exhibit. You recall that it was dated probably
11 February 28 that that message came in. And he told you that
12 it is a good thing there was an actual date on that, because
13 if there hadn't been, the government probably would have
14 come in and told you that call was made on the day the World
15 Trade Center was exploded.

16 Well, again, as we said yesterday, it is a little
17 hard to respond to an argument that you would have done
18 something had things been otherwise. But in this case we
19 actually can. You recall that there is an exhibit in
20 evidence, Government's Exhibit 164, which was the telephone
21 answering machine tape at Mr. El-Gabrownny's house. That
22 tape, as you heard, contains a message from Mohammed
23 Salameh. It is not dated. The government never argued to
24 you, never suggested to you, and isn't suggesting to you
25 now, that that was a contact between Mohammed Salameh and

1 El-Gabrowny on the day of the World Trade Center. But I ask
2 you to consider that when you consider an argument that the
3 government would have done it a different way if the facts
4 had allowed. There is no basis for that.

5 There are certain facts that are beyond dispute
6 and you should consider them when you consider the assault
7 on Salem that is the basis of Mr. El-Gabrowny's defense.
8 El-Gabrowny has stun guns in his apartment which were bought
9 in May 1992, right after the meeting that Nosair and Salem
10 had at Attica. Remember on this point Mr. El-Gabrowny is
11 not the only one who had stun guns. A stun gun was removed
12 from the apartment of Mahmud Abouhalima as well when his
13 apartment was searched.

14 El-Gabrowny is in contact with the telephones of
15 many of the players and with Omar Abdel Rahman before the
16 bombing of the World Trade Center.

17 Salameh rents the van to carry the bomb, using a
18 license registered to El-Gabrowny's address.

19 He also, that is, Salameh also uses El-Gabrowny's
20 address when he visits Nosair at Attica.

21 El-Gabrowny at the time of his arrest is mass
22 producing speeches of Nosair, calling for the Islamic nation
23 to awake by the sounds of bombs and bullets.

24 El-Gabrowny is called by Nidal Ayyad just two
25 days before the World Trade Center bombing.

1 El-Gabrowny is called by Ayyad two days after the
2 World Trade Center bombing with the message "important."

3 El-gabrowny has the fraudulent Nosair passports
4 and the negatives to match.

5 The passports link El-Gabrowny to Salameh, and
6 El-Gabrowny slugs two federal agents.

7 When you compare that with Salem's version of
8 events from 1992, that is corroboration. It is not a bear
9 in a pen.

10 I want to speak to you about El Sayyid Nosair.

11 Given the overwhelming evidence of Nosair's guilt
12 on the charges in the indictment --

13 THE COURT: Mr. McCarthy, do you want to come to
14 a convenient break point? Is this it?

15 MR. McCARTHY: Yes.

16 THE COURT: Ladies and gentlemen, we are going to
17 take what would otherwise have been a morning break. Please
18 leave your notes and other materials behind. Please don't
19 discuss the case. We will resume in a few minutes.

20 (Recess)

21

22

23

24

25

1 (In open court; jury not present)

2 MS. LONDON: Your Honor, my client is not here.

3 THE COURT: We are not going to start without the
4 presence of your client. I am just here so that we don't
5 delay when he gets back.

6 Mr. Ricco is not here.

7 MR. WASSERMAN: I will get him.

8 THE COURT: This is principally for his benefit.
9 Here he is.

10 At one point before the break, Mr. McCarthy said,
11 or formulated one of his arguments in terms of what Mr.
12 Ricco knows or knew or doesn't know or didn't know. I said
13 that I was going to give comments to the jury principally at
14 Mr. Jacobs' and Ms. Amsterdam's request about back and forth
15 about lawyers, but that is going to include a statement
16 about what lawyers know and don't know, and please don't
17 formulate it that way again. I understand this is to some
18 extent on the fly, but this is not about what lawyers know
19 or don't know.

20 MR. McCARTHY: Yes, Judge.

21 (Jury present)

22 THE COURT: Go ahead, Mr. McCarthy.

23 MR. McCARTHY: Thank you, your Honor.

24 Sayyid Nosair is buried under a mountain of
25 evidence. He is buried under a mountain of evidence. What

1 did his lawyers do in response to the mountain of evidence?
2 What Mr. Stavis did was stand here for two days and talk to
3 you about Afghanistan, and then when he occasionally drifted
4 into the evidence in this case, what you got were
5 misstatements of the evidence and misstatements of the
6 position that the government took about the evidence, or
7 both. Let me show you.

8 We proved that El Sayyid Nosair was the murderer
9 of Meir Kahane and the shooter of Irving Franklin and Carlos
10 Acosta by eyewitness evidence, by ballistics evidence, and
11 by confessions. So powerful was that evidence that the
12 ballistics evidence virtually never even made it into
13 Mr. Stavis's summation. Virtually unchallenged.

14 Let me talk about the attacks on eyewitnesses,
15 none of whom came even close to being shaken during this
16 trial. Mr. Stavis's attack on Ari Gottesmann, who was one
17 of the first witnesses that you saw in this case,
18 essentially boils down to the argument that his account is
19 destroyed by the testimony of Dr. Hirsch, who was the
20 medical examiner. You will recall, if you will, that this
21 was Mr. Stavis's big smoking gun. He put up a chart for you
22 demonstrating Gottesmann's testimony that the shooter was
23 approximately 5 to 10 feet from Meir Kahane, and that is the
24 chart that I have before you from 2654 of the record.

25 How far was the gunman from Rabbi Kahane when he

1 shot Meir Kahane?

2 Answer: About the distance I was.

3 Question: Five to 10 feet?

4 Answer: Approximately.

5 That testimony, you were told, was basically
6 undermined by the testimony of the medical examiner Dr.
7 Hirsch. Notice the difference. In examining Dr. Hirsch,
8 what Mr. Stavis asked him, in connection with a line of
9 questioning that revolved around the stippling, was.

10 "Q Dr. Hirsch, based on these dimensions and
11 the moderately dense gunpowder stippling that you saw, do
12 you have an opinion regarding how many inches separated the
13 muzzle of the .357 magnum from the entrance wound?

14 "A. I have such an opinion. It is my opinion
15 that it was several inches."

16 Mr. Gottesmann was asked about was the difference
17 between the gunman and the victim. What Hirsch was asked
18 about was the distance between the gun and the victim. I
19 would suggest to you, notwithstanding what you have been
20 told, that that was a very important difference, and here is
21 why.

22 This is the gun that murdered Meir Kahane, the
23 gun that shot Carlos Acosta and Irving Franklin. I am
24 standing approximately five feet away from this chart. Even
25 assuming that the shooter planted his feet and didn't lurch

1 forward, if I take the gun and hold it out, as you can see,
2 I am still five feet away from the victim. The gun is
3 several inches from the victim.

4 There is nothing inconsistent in that testimony.

5 Even Mr. Stavis didn't have the nerve it would
6 require to stand here and tell you Carlos Acosta did not
7 give you a truthful account. You observed Mr. Acosta on the
8 stand. What you basically saw in the defense argument was
9 that a lawyer who promised you in the openings that he was
10 going to produce medical evidence that never came in during
11 the trial decided to turn amateur psychologist. Acosta is
12 not lying, you were told, he is just mistaken about Nosair
13 because he can't possibly come to grips with the tragedy of
14 shooting an unarmed, innocent man, the man that Carlos
15 Acosta told you that he saw from less than 10 feet away, the
16 man who shot him once in the chest and twice towards the
17 head, two places most likely to cause fatal injury, a
18 trained marksman. Mr. Stavis told you that the Carlos
19 Acosta you observed on the stand was the type of person who
20 would shoot someone by mistake and not have the courage to
21 admit that he made a mistake. You don't need anything more
22 from me to decide that.

23 He also made an argument to you about the
24 videotape, and the videotape is in evidence and you can look
25 at it. The argument that he made with respect to Mr. Nosair

1 on the videotape is that you can see Mr. Nosair get up and
2 start to leave the room. If you watch that videotape, the
3 person that he identified as Mr. Nosair doesn't leave the
4 room at all. He gets up and he turns in the direction of
5 the person we contend is Mohammad Salameh. He contended to
6 you that it can't be Mohammad Salameh because the Mohammad
7 Salameh that you know is a skinny guy and the guy who is in
8 the videotape is husky. If you take a look at the
9 videotape, look at the person who we contend is Salameh.
10 You can't tell whether he is skinny or not, he is wearing a
11 heavy coat. But the point is that there is no indication in
12 that film that Nosair got up and left the room. The best he
13 can do is, he got up and turned his back.

14 We also know a couple of other things about that
15 and I just want to run through them briefly. There are at
16 least 50 seconds between the time that the person in the
17 film gets up and turns his back and the time that the film
18 turns off. We know that Meir Kahane was still alive at the
19 time that the film turned off. We don't know how much time
20 may have elapsed between the time the film was turned off
21 and the time of the actual shooting, but there is evidence
22 in the record to suggest that it was not an inconsiderable
23 amount of time because Mr. Gottesmann testified to you about
24 some of the activities that went on afterwards, including
25 the question and answer session and some book signing.

1 Anybody who wanted to get out of that room had plenty of
2 time to do it. If Sayyid Nosair wanted to make himself
3 scarce, he had plenty of time to do it. He didn't, because
4 he did the murder. And one thing you know is that whoever
5 murdered Meir Kahane waited until the film was shut off to
6 do it.

7 In connection with his discussion of the Franklin
8 shooting, Mr. Stavis gave us the pleasure of watching
9 himself and Mr. Patel slow dance together in what was
10 supposed to be a recreation of the bear hug that
11 Mr. Franklin gave Mr. Nosair at the rear doorway of the
12 Morgan D room the night that Mr. Nosair shot him.
13 Mr. Franklin, who you saw here and who testified, is a
14 large, 77-year-old man. Mr. Nosair was much younger, much
15 shorter, and stocky. Unlike Mr. Patel and Mr. Stavis, Mr.
16 Nosair was not there for a slow dance. He was trying
17 desperately to get out of a room where he had just murdered
18 someone. He had a head of steam by the time he encountered
19 Mr. Franklin. If any of you have sat and suffered through a
20 Giant game, you know that what often begins as a
21 face-to-face confrontation, particularly between somebody
22 who is planted and trying to stop someone and someone who is
23 trying to get past him, often doesn't stay face to face for
24 very long.

25 Remember this also. Mr. Stavis reminded you that

1 he didn't ask Mr. Franklin any questions at all on
2 cross-examination. He told you gee, there was nothing to
3 ask him. Well, if this scrap between Nosair and Franklin
4 was such a core issue in the case and the very powerful
5 proof he told you to pay close attention to in the opening
6 statement, do you think Mr. Stavis might have asked
7 Mr. Franklin to step down and demonstrate sort of like he
8 and Mr. Patel did, and sort of like what many of the other
9 witnesses were asked to do? Mr. Franklin was never asked to
10 demonstrate exactly what happened between him and Mr.
11 Nosair. He wasn't even asked to describe it, let alone to
12 come down and show it to us.

13 But the biggest distortion in connection with
14 Franklin is the medical charts. The reason this
15 face-to-face confrontation is such a big deal is because of
16 the contention that Mr. Stavis made to you that Mr. Franklin
17 was shot in the side of his thigh, and Mr. Stavis tried to
18 make an argument to you about whether that indicated it was
19 possible for the gunman to have used a particular hand in
20 order to carry out the shooting.

21 You may recall he said that the path of the
22 bullet was from one side of the thigh to the other, and that
23 argument was made to you to support the view that it was
24 impossible for somebody shooting with the left hand to have
25 fired that gun. This required a little razzle dazzle. Here

1 is the chart. You can look at it, Nosair DDD in evidence.
2 Mr. Stavis asked you to look at this medical record and
3 conclude from it that the bullet entry wound had to be on
4 the right side of the thigh and that the exit wound came out
5 the inside. If you take a look at the chart, you will see
6 that it doesn't reflect front to back as opposed to side to
7 side. Irving Franklin was not shot in the side of the
8 thigh, and the very medical records that this is a part of
9 establish that.

10 There is an exhibit, Government's Exhibit 24,
11 which is the medical records of Irving Franklin. These
12 exhibits, this exhibit is in evidence for you. I am just
13 going to point you to a few pages. This is Nosair DDD,
14 which is a part of the exhibit, and that is what the chart
15 is a blow-up of. If you look at the page in the medical
16 records which is marked 90 in red at the bottom and 51 in
17 blue at the top -- it's the page behind the chart that I
18 just showed you -- there is an entry that describes the
19 wound as anterior to post. Anterior is a word that I had to
20 look up in the dictionary but it is sort of like wajihah.
21 It means front. Irving Franklin was shot in the front of
22 the thigh, not in the side.

23 You can also see, if you look at the medical
24 records page 140 and page 50 at the bottom, to anterior
25 right thigh.

1 This was not, however, something that required
2 you to do a deep analysis of medical records for. There is
3 a photograph in evidence, Government's Exhibit 6L, which
4 shows Mr. Franklin. Mr. Franklin is bleeding out of the
5 front side of his thigh, not the side.

6 Once you are done with the medical records, what
7 do you take on next? How about the ballistics? Mr. Stavis
8 told you to rely on the testimony of Detective Solowsky, and
9 that is supposed to be testimony that is going to show you
10 that Mr. Nosair could not possibly have shot the gun with
11 his right hand. Because it is clearer if I do it this way
12 than any way I could describe it to you, I would like you to
13 take a look at a chart.

14 I am sorry. Mr. Fitzgerald tells me I misspoke.
15 The argument is that he couldn't have shot with the left
16 hand. I think I said the right hand. This is what
17 Mr. Stavis said about Detective Solowsky. When you consider
18 the fact that Mr. Nosair is right-handed, there is a piece
19 of evidence, a piece of testimony from Detective John
20 Solowsky, who was a ballistics expert. He testified on page
21 3337 of the record that a right-handed person cannot fire a
22 powerful gun like a .357 magnum with his left hand because
23 of the recoil. We thought we would get out page 3337 of the
24 record to see if we missed anything. This is his actual
25 testimony.

1 "Q Did you measure the recoil on this gun?

2 "A. No, sir.

3 "Q .357 magnum has, your experience, a good
4 kick to it, doesn't it?

5 "A. It does, yes.

6 "Q Are you right-handed or lefthanded?

7 "A. I am right-handed.

8 "Q Did you ever fire a .357 magnum with your
9 left hand?

10 "A. I may have, I don't recall.

11 "Q You don't recall?

12 "A. I doubt it.

13 "Q Doubt it, because it would be difficult to
14 hold onto with your left hand, wouldn't it?

15 "A. I am right-handed, why would I shoot with
16 my left hand?

17 "Q But it would be difficult to fire with
18 your left hand.

19 "A. More difficult than with my right hand.

20 "Q Thank you."

21 That is the evidence that he says, that
22 Mr. Stavis says supports the proposition that a right-handed
23 person cannot fire a powerful gun like a .357 magnum with
24 his left hand because of the recoil.

25 The ballistics evidence in this case in this case

1 does not show that Nosair might have been the shooter, they
2 show that he had to have been the shooter. If you recall
3 the ballistics testimony, the same gun that killed Meir
4 Kahane shot Irving Franklin at the door and shot Carlos
5 Acosta. That gun was found next to Nosair on the street.
6 In Nosair's pockets was ammunition that fit the gun. Nosair
7 is the murderer.

8 You may think about an argument that Mr. Stavis
9 made to you about how the real gunman would have known to go
10 out the closest exit and then the employee door and not the
11 main door of the hotel. And he said to you that if there
12 had been any real investigation instead of just a "get the
13 Arab" mentality, there would have been some checking of the
14 cameras that would have charted that path out. The
15 ballistics evidence completely destroys that argument.
16 Because the same gun was used to shoot Nosair and to shoot
17 Irving Franklin who was at the rear door, it is clear that
18 whoever shot Meir Kahane didn't go out the exit that
19 Mr. Stavis suggested to you.

20 Also ask yourselves this: Think about the
21 phantom gunman that you heard about who was supposedly being
22 chased. Do you think he would have taken the time to leave
23 his weapon with Nosair and stuff the ammunition in Nosair's
24 pocket? Do you think it would attract attention, even in
25 New York, for a guy in the middle of a shooting suddenly to

1 decide to give up his gun, place it next to Nosair, and then
2 stick his hand in Nosair's pocket as Nosair lies on his back
3 and place the bullets there? I suggest to you that that is
4 completely unreasonable.

5 Mr. Stavis also addressed the confessions, and
6 the way he did that was to suggest that the government was,
7 to borrow the term that he coined, pulling a Whitehurst.
8 The lawyer who made this argument about Detective Solowsky's
9 testimony told you that the government pulls a Whitehurst,
10 meaning that it practices duplicity, it twists the facts,
11 and it manipulates the truth.

12 Then what he did, he put this chart on the board
13 for you, Government's Exhibit 163R2, and he pointed you to a
14 portion of it. This is the third full paragraph. And he
15 read it to you:

16 God the almighty enabled his extremely brave
17 people with his great power to destroy one of the top
18 infidels. They were preparing him to dominate, to be the
19 prime minister some day. They were preparing him despite
20 their assertion that they reject his agenda and he is a
21 racist, he is racist and all of that.

22 And Mr. Stavis stood before you and he asked you,
23 is there one word of that where you see a confession to that
24 crime? And he argued that, by arguing to you that this
25 exhibit contained a confession, the government was pulling a

1 Whitehurst, trying to put one over on you. What Mr. Stavis
2 didn't show you when he made that argument to you was the
3 third page of the same exhibit. It is also in evidence.

4 I feel as if I want to do the jihad over again
5 and to fight anew. God saved my life, God the almighty
6 saved my life for a reason, for an insight known only to
7 God. I believe that this is so that I will return to the
8 jihad. I will return to the battle, to the jihad for the
9 sake of God. God the almighty is always with me. By God I
10 am alive. God saved my life through a miracle. A bullet
11 goes through my neck and despite it, all the doctors, the
12 physicians are saying I am alive because of the miracle God
13 the almighty made with me.

14 If you look at all the evidence, you will come to
15 the right result.

16 Mr. Stavis also addressed some of the legal
17 requirements after treating the law, or treating the
18 evidence that applied to the different shooting camps, and
19 he basically argued to you that the proof that Nosair killed
20 Kahane was not enough to make out the racketeering shooting
21 counts in the indictment, and that is true. But follow what
22 the argument was.

23 As you know, the government contends that
24 Mohammad Salameh and Bilal Alkaysi were at the murder scene
25 with Nosair. It is useful for you to understand how it is

1 that the same people in the thick of the Kahane murder are
2 also in the thick of the bombing of the World Trade Center.
3 But Mr. Stavis's argument to you basically was that to find
4 Nosair guilty of the shooting counts you have to find that
5 Salameh and Alkaisi were actually there.

6 I would urge you to listen carefully to the
7 judge's instructions on this point. You are going to learn
8 that the legal requirement is that an organization engaged
9 in racketeering existed and that the murder of Meir Kahane
10 was related to that organization. The government does not
11 have to prove that the entire organization or even any other
12 member of it participated in the shooting.

13 There is good reason for you to conclude on the
14 basis of all you heard that Salameh and Alkaisi and Mahmoud
15 Abouhalima and even, at one time in the planning stage
16 Clement Hampton-El, may well have been involved. It is not
17 necessary to find guilt on the count. You will find, when
18 you hear the judge's instructions, it doesn't matter if all
19 the other members of the organization were out on a cruise
20 someplace. If Nosair committed the homicide, committed the
21 shootings, and he was a member of the organization, and he
22 did it with the intention of maintaining or increasing his
23 role in the organization, he is guilty of the counts.

24 You should also consider the arguments that were
25 made to you and why they might be made to you. Nosair is

1 overwhelmingly proven to be guilty of those counts. It is
2 much easier to try Salameh's case or Alkaisi's case, because
3 at least with respect to that you have something to say.
4 You don't have to find that Salameh and Alkaisi are guilty
5 in order to find Nosair guilty.

6 The other attack that he made on the enterprise
7 counts was to try to convince you that El Sayyid Nosair, if
8 he was involved in an enterprise at all, was involved in a
9 different enterprise, and that was the Afghan jihad
10 enterprise. Remember Mr. Stavis kept saying to you over and
11 over again, remember the two sheiks, the two sheiks, the two
12 sheiks. Sheik Omar Abdel Rahman, he said, is not Nosair's
13 sheik. Nosair's sheik is Abdullah Azzam, the real sheik.

14 My question is, who was Nosair reporting to in
15 1990, in 1991, and through 1993? How many of you realize
16 that there is proof beyond any doubt whatsoever that Nosair
17 was not reporting to Sheik Azzam during any of that time?

18 Remember the chart? The chart sat here for the
19 better part of two days during the testimony. The chart
20 with Sheik Abdallah Azzam sat here staring at you longer
21 than many of the lawyers had in summing up to you. Sheik
22 Azzam, the so-called real sheik, was dead. Sheik Azzam was
23 dead in 1989. Khaled Ibrahim, in questions put to him by
24 Mr. Stavis, testified that the photograph in this magazine
25 was actually the cover of the Sheik Abdallah Azzam memorial

1 issue in February 1990. Sheik Azzam died in 1989. At all
2 times relevant to this indictment, Sheik Abdallah Azzam was
3 dead. By the time Nosair was calling Sheik Abdel Rahman on
4 the cassette recordings that you heard that were seized from
5 his house in evidence, by the time he was making those calls
6 on the phone where he was talking to Sheik Abdel Rahman
7 about training and Israeli immigration to Palestine, which
8 was one of the issues Meir Kahane was speaking about the
9 night he was killed, Azzam had already been dead for several
10 months.

11 Keep that in mind when you think about the hours
12 that Mr. Stavis went on talking about the Afghan jihad.
13 Mr. Stavis kept saying why is the government afraid of
14 Afghanistan, why didn't Mr. Fitzgerald mention Afghanistan
15 once during the government summation? I was here too, and I
16 confess we didn't mention Afghanistan. Nor did we talk
17 about the Beatles, the Yankees, or the weather. What we are
18 here to talk about is the evidence in the case, the evidence
19 that go to the charges that are in the indictment. Knowing
20 that proof of Nosair's involvement in the seditious
21 conspiracy comes largely out of Nosair's mouth, Mr. Stavis
22 distorted what those words meant, and I will go through some
23 examples of that.

24 Government's Exhibit 128 is a call between Nosair
25 and his wife in September 1992. Several months before the

1 World Trade Center was bombed but after, you know from the
2 evidence, the planning for that bombing was already under
3 way, Mr. Stavis actually stood here and told you that when
4 Nosair blurted out a reference to, quote, what was going to
5 happen in New York, close quote, he was talking about a
6 future hurricane, a hurricane that was going to hit New
7 York. Think about that. Nosair is talking to his wife
8 about how hurricanes may have already struck the United
9 States and how those hurricanes were the answers to his
10 prayers. He then says wait till they see what will happen
11 in New York, and his wife, who obviously knows that their
12 calls are being monitored, essentially tells him to shut his
13 big mouth.

14 Hurricanes. Is there something peculiar about
15 future hurricanes that makes people who talk freely about
16 past hurricanes suddenly not want to discuss it any more?
17 There is, if the hurricane you are talking about is the one
18 that the bad apples you spent so much time with are
19 concocting with urea nitrate and fertilizer or the
20 components that the World Trade Center bomb was made with.

21 The most telling distortion of what was argued to
22 you came in connection with Government's Exhibit 76T.

23 Again, I am not going to say much more than to show you what
24 was argued and what Mr. Stavis said about it. This is what
25 AUSA Pat Fitzgerald said about Government's Exhibit 76T, and

1 you will recall 76T, which I should also put up, is what we
2 have called the state of Ibrahim speech.

3 These portions have been highlighted for you
4 before.

5 Therefore the enemies of God will be busy in
6 rebuilding their infrastructure and rebuilding their morale,
7 and therefore the lands from the hands of the enemies of
8 God, the traitors and the hypocrites will be at this moment
9 in a very psychological weakness from what they see around
10 them, and this is because the forces on which they were
11 depending were crushed into pieces and are in tragic
12 collapse.

13 The government argued, what he is saying here is
14 we have to take back the Holy Land or we've got to distract,
15 we have to blow up the buildings. The buildings are not in
16 the Holy Land. You don't do a distraction by attacking the
17 target. You don't attack a land to distract it. You attack
18 the forces on which they depend, and the forces on which
19 they were depending are America. In his view, Israel
20 depends on America. You blow up the tall buildings, you
21 distract, you break the morale. The forces on which Israel
22 depends are distracted. Then you can make your move. This
23 is what Mr. Stavis argued to you that the government argued.

24 Under the simple formulation of Mr. Fitzgerald,
25 the Holy lands referred to in Government's Exhibit 76T are

1 Jersey City, Brooklyn, right here in America, anything to
2 get you to believe that there is a war on America. Not once
3 but twice, Mr. Stavis again. To Mr. Fitzgerald, the Holy
4 land is here in America. Jersey City is Holy land, holy
5 Muslim land that we have to take back. Brooklyn is holy
6 Muslim land that we have to take back.

7 I suggest to you that that is a completely
8 unreasonable account of what was argued to you and I suggest
9 to you that it was an argument that was made to you in the
10 face of overwhelming evidence against which there is no
11 argument.

12 I want to talk about Dr. Omar Abdel Rahman.
13 Faced with the outline of key exhibits, which put aside some
14 pretty important testimony by Salem and Haggag and focussed
15 on Omar Rahman's words, Miss Stewart dealt with it in a few
16 days.

17 First she tries to convince you that Omar Abdel
18 Rahman is out of the loop; second, that none of us can
19 understand what these words dealing with violence mean
20 because there is a culture gap and this is really religion.
21 Third, she gave you razor blades, and fourth, watermelons.
22 I will address those arguments in increasing order of
23 ridiculousness.

24 It is tough to take someone whom she elsewhere
25 refers to as brilliant and a leader and convince you that he

1 doesn't know what is going on in conversations around him.
2 Miss Stewart did that by taking exhibits and isolating them
3 and trying to convince you that that one exhibit alone was
4 used to prove everything and doesn't.

5 We will see that he knew the plans, he knew the
6 targets, and he knew about the conversations between Mahmoud
7 Abouhalima and Siddig Ali before the World Trade Center was
8 blown up.

9 I want to focus first on Government's Exhibit
10 311, which is the well known CM 10. Right now Abdel Rahman
11 would love you to figure that Salem just dropped out of the
12 sky one day into Abdel Rahman's kitchen, brought up a
13 terrorist plot out of the blue and then the whole thing
14 disappeared as fast as it came when Abdel Rahman walked out
15 the door. I would submit to you that even if you believe
16 that outlandish version of the events, Abdel Rahman would
17 still be guilty, based on what went on in that kitchen
18 alone. But you have much more.

19 In Government's Exhibit 306T, Siddig Ali, who was
20 a lot closer to Abdel Rahman than Salem was, told Salem that
21 he had already discussed the plot to bomb the United Nations
22 with Abdel Rahman, and Abdel Rahman had said it was a must.
23 Siddig Ali didn't leave it at that. He even encouraged
24 Salem to go and ask the sheik about it himself. That
25 conversation tells you several things.

1 For one, your common sense tells you that Siddig
2 Ali is not making this up. It is one thing for him to tell
3 Salem a tall tale that Salem can't reasonably verify. It is
4 another thing for him to tell Salem to go in and speak to
5 somebody and know that Salem is going to act on that.

6 Siddig Ali had to be confident that if Salem did
7 what Siddig Ali was encouraging him to do, Abdel Rahman was
8 not going to act like he was hearing all of this for the
9 first time.

10 If you think about it, when you review
11 Government's Exhibit 311, Abdel Rahman didn't act like he
12 was hearing it for the first time. Before they ever got to
13 the point where Salem could ask about the UN bombing and
14 whether it was permissible, they had this exchange.

15 Salem said: Siddig and I are now trying to do a
16 job if God is willing. But I will be carrying it out
17 through my experience. I do not know whether it is licit or
18 illicit. Abdel Rahman's response, go visit Mahmoud and ask
19 him about Siddig.

20 Why is Abdel Rahman, without getting any
21 description from Salem about what Salem and Siddig Ali are
22 planning to do, cutting off Salem and telling him to go
23 visit Mahmoud Abouhalima, a person whom Abdel Rahman, you
24 know from the other evidence, is publicly trying to distance
25 himself from? He is doing it because he has already spoken

1 to Siddig Ali and he he knows what they are planning is a
2 terrorist bombing, just as Siddig Ali said in the previous
3 conversation. He is doing it because he knows this is
4 something major and he is doing it because he thinks it is
5 worth the risk of sending Salem in to see Mahmoud
6 Abouhalima, who is in a federal jail.

7 In Government Exhibit 306T, the Salem/Siddig Ali
8 conversation I referred you to earlier, you learned that
9 this is exactly how Omar Abdel Rahman operates. At page 10
10 of that exhibit, there is a discussion about not getting
11 into details, just give him the general idea of what you are
12 doing, he doesn't want to be told details.

13 Miss Stewart made an argument to you about why it
14 was that Sheik Omar Abdel Rahman would have \$60,000 in cash
15 in his house at the time it was searched while the others
16 are looking around trying to scrape money together to carry
17 out a bombing plot. That answer is given to you in the
18 evidence as well. Government's Exhibit 307 is another
19 conversation between Salem and Siddig Ali, where the subject
20 of going to the sheik for money arises, and you will see
21 when you review that conversation that what Siddig Ali said
22 to Salem was going to him for money was the same thing as
23 getting him into details. The sheik approves bombings, he
24 doesn't fund them.

25 The whole system is designed to allow Abdel

1 Rahman to work his evil without getting caught, so that
2 later on when his followers do exactly what one would expect
3 them to do, when they act in response to his commands to
4 perform violent jihad against enemies of Islam, he has what
5 he hopes is deniability. You should consider that when the
6 judge gives you instructions on conscious avoidance, which I
7 won't repeat in argument on because I discussed that with
8 you earlier. Just keep in mind, you can't be an ostrich.
9 You can't hide from the details and you can't do it
10 purposely.

11 Miss Stewart told you that the sheik tried to
12 divert and calm Salem by changing the subject to Siddig Ali
13 and Siddig Ali's trustworthiness. I ask you, is that a fair
14 account of what happened? Were a few details left out when
15 that argument was made to you? Like what the sheik actually
16 did was send Salem in to see Mahmoud Abouhalima. What he
17 essentially did was tell him to go see an authentic
18 terrorist in order to find out whether another person Salem
19 thought was a terrorist was actually authentic or not.

20 MS. STEWART: Objection, Judge.

21 THE COURT: Again, it is a characterization, not
22 a quotation. It is what the evidence says that controls.

23 MR. McCARTHY: However you characterize it, the
24 fact is that what Omar Abdel Rahman told Salem to do to
25 divert and calm him, as you were told, was to go in and see

1 Mahmoud Abouhalima, and what he essentially was telling him
2 was this. Before you haul off and plan to blow something up
3 with Siddig Ali, make sure you go to the prison, talk with
4 Mahmoud Abouhalima, and get to the bottom of whether Siddig
5 Ali is an informant.

6 The other thing he told him: Think about whether
7 the American army isn't a better target than the one you are
8 thinking of.

9 What about what Miss Stewart told you about the
10 aftermath of the kitchen conversation? Abdel Rahman never
11 agreed to anything. He was never even consulted on targets
12 like the Lincoln and Holland Tunnel. Where is the
13 agreement?

14 Those claims are wrong both under the evidence
15 that you heard in the case and the law. The crimes in this
16 case are not agreeing with Salem to anything. Abdel Rahman
17 is charged with seditious conspiracy and he was in that
18 agreement a long time before Emad Salem ever walked into his
19 kitchen.

20 As for agreeing to the targets, Abdel Rahman is
21 charged with conspiring to bomb. There is no legal
22 requirement that he be informed with precision about the
23 targets that the other conspirators settled on, though he
24 was. The question is whether he agreed to the destruction
25 by explosives of property, and the man that you heard say

1 shake the ground under their feet a month before his
2 followers bombed the World Trade Center was certainly all
3 for bombing. As you saw, he not only agreed to it, he had a
4 particular target in mind: the American army.

5 Miss Stewart talked a lot about what Salem had
6 told Siddig Ali about his conversation in the kitchen with
7 the sheik, and the thrust of that argument was about whether
8 Salem had accurately reported the conversation that he had
9 had with Abdel Rahman to Siddig Ali. You know that Siddig
10 Ali and Abdel Rahman met and spoke with each other
11 themselves, often, and often without Salem. Siddig Ali
12 himself spoke with Abdel Rahman both before and after
13 Salem's kitchen conversation. Siddig Ali even told Salem in
14 Government's Exhibit 311 that he was surprised by the
15 sheik's reaction to Salem about the UN because the sheik had
16 already told Siddig Ali an operation against the United
17 Nations would be a good thing, and Siddig Ali had already
18 started his preparations on that basis, including making
19 contact with his contacts at the UN mission to get access to
20 the garage, that is, the Sudanese Mission to the United
21 Nations.

22 In essence, Siddig Ali had gotten the same answer
23 as to whether it was permissible or not. Yes. But he was
24 given different tactical advice.

25 Knowing that Abdel Rahman had given him the OK

1 and that he had also told Salem that the UN bombing
2 operation was not prohibited, Siddig Ali continued. He
3 continued to plan it and began to plan the bombing of the
4 tunnels.

5 May 29, 1993, you may recall, is the day that
6 Siddig Ali, Amir Abdelgani and Salem went together to scout
7 the tunnels. You learned that the next day the sheik called
8 Siddig Ali, and that is Government's Exhibit 742T. He asked
9 Siddig Ali where he had been the day before, and Siddig Ali
10 told him on three separate times that he had gone on an
11 important errand about which, and I will quote, I will tell
12 your Honor, God willing, when I see you later.

13 They arranged to meet at the Abu Bakr Mosque.
14 The Abu Bakr Mosque meeting, you learned from the evidence,
15 is the one Salem reported on the microcassette. What do you
16 know about it? It is Government's Exhibit 639. Siddig Ali
17 and Abdel Rahman had already been talking to each other by
18 the time the recording starts. The tape shows that Salem
19 was actually summoned by Siddig Ali and the sheik, and that
20 when he came over to them they began to chastise him for
21 talking to Abdel Rahman in his apartment. That was
22 Government Exhibit 311. Talking to the sheik in the
23 apartment was something Siddig Ali had previously warned
24 Salem not to do.

25 You need to put that conversation in context with

1 a couple of other things, and it will help you to determine
2 what happened.

3 Another exhibit I want to point your attention to
4 is Government's Exhibit 326. That is a conversation that
5 occurs on May 30, 1993. If you look at that conversation,
6 the last 18 pages of that conversation are the trip from the
7 Abu Bakr Mosque after Salem and Siddig Ali have the meeting
8 with the sheik, to the next place they go. The first 17
9 pages are the trip in the car after the meeting with
10 Hampton-El. From page 18 forward it is the trip where Salem
11 and Siddig Ali talk to each other after the meeting in the
12 Abu Bakr Mosque.

13 What you know when you put all the evidence
14 together is that Siddig Ali had plenty of time to speak with
15 Abdel Rahman and inform him about the very important errand
16 that he had been on the day before, which you know to be
17 scouting the bombing targets. Abdel Rahman knew about the
18 FBI and the United Nations before. The evidence suggests to
19 you that he learned about the tunnels that day.

20 MS. STEWART: Objection, Judge.

21 THE COURT: Overruled. That's argument. Go
22 ahead.

23 MR. MCCARTHY: That, by the way, is an
24 interesting twist for you to think about, that is, the
25 personal meeting that they had in the mosque. Miss Stewart

1 made much of the wiretap that was on the sheik's telephone,
2 the phone where you heard him talking mainly with people
3 overseas about things like attacking tourist buses, whether
4 he should publicly admit that he was the head of Gamal
5 Islamiya, how it was good that two U.S. marines had been
6 killed in Somalia, and how funny and clever he was when he
7 had denied knowing Mahmoud Abouhalima in an interview on CNN
8 after the bombing of the World Trade Center, by saying my
9 driver, I don't even have a car.

10 (Continued on next page)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Ms. Stewart told you that is the best the
2 government can do. Even if that were true, I suggest to you
3 that ain't bad: discussing whether to admit that you are
4 the head of a terrorist organization and getting reports on
5 attacks on tourist buses. But the important thing to
6 remember here is the reality of the situation. Abdel Rahman
7 is sitting in New Jersey directing the activity of people
8 overseas, a world away, as Ms. Stewart put it. He has no
9 alternative but to use the telephone, and even in those
10 conversations, as you heard people use code names, spoke in
11 a secretive manner that was often hard to follow.

12 As Ms. Stewart told you, Abdel Rahman locally was
13 constantly surrounded by people and moved freely from mosque
14 to mosque in New York and New Jersey. He did not need to
15 use the telephone to conduct local business, and your common
16 sense tells you that a guy who feels like he has to whisper
17 in his kitchen is not going to be blathering about terrorist
18 business locally on the telephone.

19 I want to go back for a moment to the Abu Bakr
20 Mosque meeting. In that meeting Omar Rahman told Salem,
21 don't talk to me about these matters, especially in the
22 apartment where there are probably bugs that we will never
23 detect. But, he added, "the path to God is obvious.
24 Whoever wants to make a good work to God, the path before
25 him is obvious. It does not need any consultation or

1 anything. The path to God is clear."

2 It is little wonder that the sheik would like you
3 to boil this conversation down to a dispute about the
4 accurate translation of "wajihah," an Arabic word that
5 throughout the Arabic world and Arabic dictionaries means
6 "front," but which the servant of God's translator says
7 means "symbol." Given the full context -- and Ms. Stewart
8 did tell you that you need to think about context -- the
9 lies that Abdel Rahman told to cover himself after the World
10 Trade Center bombing, that nonsense about the covenant with
11 America -- you have plenty of reason to conclude that a
12 "front" is exactly what Omar Abdel Rahman was. But don't
13 get lost in one little word. Look at the whole conversation
14 and the circumstances in which it came up. Look at Abdel
15 Rahman moving from one topic to another, moving from topic
16 one -- the path is clear -- to topic two -- let's figure out
17 who the informant is.

18 Take a look at that conversation. Look at it
19 with Government's Exhibit 326T. As I said, that's the
20 conversation between Salem and Siddig Ali after the Abu Bakr
21 Mosque meeting. In that conversation -- and I am going to
22 direct your attention in it, to pages 24 over to 25 --
23 Siddig Ali tells Salem after the meeting: "The sheik told
24 me that all talk right now under these circumstances
25 circulated. Hah. And frankly Emad came to my house and

1 told me about something. Tell Emad not to talk to me about
2 these things in my house."

3 Siddig Ali and Emad Salem continued to have the
4 conversation. And Siddig Ali says that: "At this time
5 Abdel Rahman told him he wanted him at this time to be
6 restricted to being a caller. I do not want to be involved
7 with these tactics, anything that has something like this,
8 because people far and close are trying by all means."

9 It is apparent what is going on here. Abdel
10 Rahman is not trying to discourage bombing, he is not out of
11 the loop, as you heard, and he is certainly not worried
12 about the covenant with America. He is worried about
13 getting caught. Before Salem came over to them, he had told
14 Siddig Ali to tell Salem, don't talk to me about operations
15 in my house, and people are on to me now, so be careful what
16 you say at all times. I want the people only to know me as
17 a caller.

18 Think about another thing. June 17, 1993 is the
19 day that Abdel Rahman held a press conference in his
20 apartment and then held Court with Siddig Ali and Haggag to
21 discuss the Mubarak assassination plot and Mahmud
22 Abouhalima's report from jail that Siddig Ali might be an
23 informant. Think about this.

24 Abdel Rahman is in front of the assembled press
25 announcing that the United States is going to be held

1 accountable for Mubarak. He is sitting there, and while he
2 is saying that, he is sitting with his translator, Siddig
3 Ali, who has a towel over his head, and with Emad Salem. At
4 the time he is saying those words, he is sitting in a room
5 with two men who he knows are about to carry out a massive
6 bombing campaign against America.

7 He then sends the reporters away and sits in a
8 room with the same men, and Haggag, to discuss what went
9 wrong with the assassination of Mubarak. You can read that
10 lengthy transcript. He would have you dismiss it now as
11 another Salem setup. But what upsets him is that Salem did
12 what he was supposed to do -- he got them talking and he got
13 them to reveal themselves. This conversation shows he is
14 not out of the loop. He is actually on the inside loop:
15 the loop that knew about the discussion about explosives
16 between Abouhalima and Siddig Ali before the World Trade
17 Center was bombed; the one that talks Hampton-El out of
18 visiting Sayyid Nosair in prison after Kahane --

19 MS. STEWART: Objection, Judge.

20 THE COURT: Again, it is argument. The jurors
21 will decide whether the evidence supports it or not. Go
22 ahead.

23 MR. McCARTHY: I don't mean to suggest, ladies
24 and gentlemen, that that aspect came up in the conversation
25 with Haggag. Let me be clear about that. The support for

1 the fact that Hampton-El and Sheik Omar Abdel Rahman talked
2 about whether Hampton-El should go visit Nosair in jail
3 comes from Government Exhibit 325, and that comes out of
4 Hampton-El's own mouth, not Dr. Abdel Rahman.

5 This is the inner loop, though. It is the inner
6 loop not only that talks about assassinations of foreign
7 leaders, but also the one that searches out the informant to
8 protect the rest of the organization. Something to think
9 about when you consider all of the investigating about the
10 informant that Omar Abdel Rahman did.

11 Judge Mukasey is going to tell you that to find
12 someone guilty of seditious conspiracy you simply have to
13 find that the agreement existed and that the defendant
14 joined it. Was it something he became part of and wanted to
15 make succeed? If he did, he's guilty, even if the agreement
16 was never acted on.

17 I submit to you that even if you did not have the
18 other evidence about Omar Abdel Rahman's hatred of America
19 and about the way he used his position of authority to urge
20 violence against this country, if you follow the judge's
21 instructions you could convict Omar Abdel Rahman on the way
22 he tried to protect the conspiracy alone.

23 Unable to fight convincingly the words that are
24 actually his and the words that are actually on the tape,
25 the defense tries another tack, which is the culture gap.

1 The defendant would have you conclude that the words on the
2 tapes don't really mean what they may sound to you like they
3 mean because you come from a different way of life. You
4 have got to put yourself in a different frame of mind, a
5 different culture, a world where, when you tell a bomber or
6 someone who tells you he is a bomber to inflict damage on
7 the American Army, it really means something else.

8 I would like to go back to CM-10, which is
9 Government's Exhibit 311. To try to bring you back across
10 that gaping cultural divide, Ms. Stewart actually stood here
11 and compared the discussion between Salem and Abdel Rahman
12 to something she said might be more familiar to you. Here's
13 what she said.

14 "If a repentant Catholic says, 'Father, forgive
15 me for I have sinned,' do we demand curses and denunciations
16 no matter how bad the crime? No, because in our culture we
17 understand that culture. We understand that confession is
18 not mandatory but preferred, and that the priest is
19 authorized to forgive someone."

20 A confession. A session where someone admits his
21 sins to God through a priest and asks forgiveness. Is that
22 the kitchen conversation that you heard? Is that what you
23 heard on tape? Father, forgive me for I have sinned? Is
24 that what this is? No. This is: Father, I am thinking
25 about a really big sin -- a mass murder, in fact. What do

1 you think? It is "Father" then responding: "It's OK if you
2 want, but I think those are probably not the best people to
3 kill. If you really want to do something worthwhile, kill
4 somebody else."

5 Is that something you think gets explained away
6 by a gap in culture? I suggest to you that that is an
7 offensive argument.

8 You learned in this case that there are millions
9 of Muslims all over the world. To get caught in a terrorist
10 conspiracy discussing bombings which amount to mass murder
11 and hide yourself behind Islam and the practice of religion
12 is to defame that religion. Do you really think hundreds of
13 millions of Muslims throughout the world spend their time
14 with religious leaders discussing where best to place a
15 bomb?

16 Returning to the religion front, Ms. Stewart
17 pointed over at the government's table indignantly and she
18 talked about the Imams of the U.S. Attorney's Office, they
19 just don't understand, in Islam there is no room for
20 denunciation. The sheik is dutybound to give a fatwa.

21 Of course, you know that is not true because you
22 have a number of conversations where the servant of God is
23 telling Salem and Siddig Ali: Keep this stuff away from me
24 now. I don't want to talk about it.

25 But forget about that for a second. Forget about

1 how hopelessly inconsistent that position is with the
2 evidence you heard in this case. Let's give them that one
3 for the moment. The servant of God is dutybound to give a
4 fatwa. Salem has just come in and said: Siddig and I are
5 planning mass murder. What do you think?

6 How about "No"?

7 How about all of that drivel that you heard on
8 the press conferences about the covenant with America. How
9 our visa is a solid contract to maintain the safety and
10 piece of the place we have chosen to live in? How about all
11 that stuff for the TV cameras about how aggression is wrong?
12 If that is what Omar Abdel Rahman really feels, why not just
13 say it? Why not say "No"?

14 Is it that hard to say, "No, I think the mass
15 murder of innocent lives is wrong?" Well, it is if you're
16 the guy who says "shake the ground beneath their feet." It
17 is if you're the guy who uses your authority to tell your
18 followers: "We are terrorists. We don't shrink from the
19 word. We are proud to be terrorists. We are here to
20 terrorize the enemies of Allah and the main enemy is
21 America." If that is where you're coming from, "No" is not
22 in your vocabulary when it comes to war on the United
23 States.

24 Did the confessional end there? The answer to
25 that is clearly no. "The mass murder you've got in mind is

1 not prohibited but it's not a good idea either." That is
2 essentially what he said. Why? Because mass murder is
3 against the laws of God and man? Because the servant of God
4 is offended by the very mention of it? No. It's bad public
5 relations. It will put Muslims in a bad light. Why?
6 Because people see the United Nations as a center for peace,
7 and if we're attacking a center for peace, it is going to be
8 hard for me to get up in front of all those TV cameras and
9 tell the public we're about peace and love and
10 understanding. It's going to be a lot harder for me to con
11 the reporters with the nonaggression shtick I've been
12 running since Mahmud Abouhalima blew up the World Trade
13 Center.

14 So what does he tell Salem? In essence, he says,
15 "Let's remember who we are, let's remember who the real
16 enemy is: America. The UN is OK; it's a blow against the
17 United States and the whole West: the supporters of
18 Mubarak; the lifeline of Israel. But there are better
19 targets out there. There are much more focused ways to
20 strike at the heart of our main enemy."

21 So he says, "I've got a better idea. Find a plan
22 to inflict damage on the American Army itself." He's gone
23 beyond the yes/no part of the fatwa, the part as to whether
24 it can legitimately be done or not. He's already answered
25 "Yes." Now he's into strategic or tactical advice on what

1 should be the proper target for the bombing.

2 Even then it doesn't end. After the sheik says:
3 "Keep it in the Army," Salem says, "Well, what about the FBI
4 Headquarters at 26 Federal Plaza?" If you were waiting to
5 hear about the covenant with America, don't hold your
6 breath. The servant of God's response to that is: slow
7 down. He's telling him, we are not in a hurry, and when we
8 do something we want to get it right. And he gives an
9 example, he refers to another person and another event, and
10 that in the transcript, you may recall, is: "the man who
11 redacted redacted," he refers to that event, and he tells
12 Salem that the man who pulled that one off trained for three
13 years.

14 I submit to you that that is not part of "Forgive
15 me for I have sinned." It is no deep religious encounter.
16 Judge Mukasey told you, in the instructions that he gave you
17 back in February before you heard any of the evidence in
18 this case, that it is not a defense for a person to claim
19 that he was doing something criminal in the name of
20 religion. That's the law. You can't use your religion in
21 order to commit crime or as an excuse for committing crime.
22 But you didn't need a law, I would suggest to you, to tell
23 you that. Your common sense, your sense of decency, tells
24 you that it is offensive and it is wrong to plot the taking
25 of innocent human life and then try to hoodwink the world

1 into thinking there was some high-minded religious principle
2 forcing your hand. It doesn't take the Imams of the U.S.
3 Attorney's Office to tell you that's not Islam. And it's an
4 affront to the millions of upright, practicing Muslims in
5 the world to invoke their rich tradition in what --

6 MS. STEWART: Objection, Judge.

7 THE COURT: Again, it is argument.

8 MS. STEWART: There is no evidence, Judge.

9 MR. MCCARTHY: -- to invoke their rich tradition
10 in the name of what Omar Abdel Rahman did in that kitchen
11 that night.

12 It has probably occurred to you by now that the
13 defense of Dr. Abdel Rahman was very similar to the defense
14 of some of the other defendants. It was an exercise in
15 groping for one theory after another as the evidence came
16 in.

17 Remember, Ms. Stewart opened by telling you that
18 the proof would not even show the sheik associated with
19 conspirators outside of prayer in the mosque -- except
20 perhaps with a defendant or two. By the end, after the
21 evidence came in, Ms. Stewart was reduced to telling you in
22 her summation that the evidence of association between Omar
23 Abdel Rahman and Mahmud Abouhalima is so abundant and richly
24 documented that the sheik would never have lied about it
25 unless he had a good reason. Well, the tape exhibits are so

1 devastating that Abdel Rahman has to try ridiculous
2 arguments to avoid them. When you think about how silly the
3 explanations are, think of how desperate Abdel Rahman is to
4 avoid the consequences of what he was caught doing.

5 Remember the water melon? That one was so
6 ludicrous that Ms. Stewart couldn't seem to do much more
7 than float it out there in the middle of nowhere. The idea
8 seemed to be that Salem had told one of his Egyptian friends
9 that he had the sheik on a melon -- which was a way of
10 saying that he had gotten Abdel Rahman to say something
11 incriminating on a tape. Of course, the way Ms. Stewart
12 argued it to you, it meant not that Salem had gotten the
13 sheik to say something on a tape but that Salem actually had
14 the physical tape. From that, it was argued that it was a
15 missing tape because it wasn't among those that were seized
16 from him. You are supposed to believe that there is a
17 missing CM-10. There is not a shred of evidence of that,
18 and even if there had been, it would not change the words on
19 Government's Exhibit 311, the tape in evidence before you.

20 Remember the watermelon. Ms. Stewart kept asking
21 each of the search agents about it. The agents she first
22 told you broke down the door at midnight, but then had to
23 concede that she had gotten carried away a little bit in the
24 opening. Those agents, the guys who left without taking the
25 \$62,000, really tripped over themselves. They made the

1 mistake of photographing a watermelon, and then they were
2 confronted with this critical piece of proof during
3 cross-examination and they had to admit that they had no
4 idea what happened to the watermelon.

5 Now, finally you know, thanks to the summation of
6 Ms. Stewart. The agents must have whisked away the
7 watermelon that they pretended not to remember on
8 cross-examination because they knew it had been planted by
9 the FBI or Salem with a secret device for recording hidden
10 inside.

11 Imagine that. The FBI has the sheik's phone
12 wiretapped, they have an informant going in and out of the
13 apartment, but to hedge their bets, out of all the places
14 that you might plant a listening device in the home of a man
15 who doesn't see and travels a lot, they chose a watermelon.

16 The defense has argued to you that the evil
17 geniuses down at the FBI had the discipline, organization,
18 and brainpower necessary to pull off the biggest, broadest
19 fraud in the history of prosecution, probably. And yet you
20 are also supposed to believe that the same rocket scientists
21 might not have figured out that the last thing they would
22 have heard on the secret watermelon was the sound of the
23 milk chilling.

24 The watermelon defense actually pales in
25 comparison to the razor blades. Those were the items that

1 were supposed --

2 MS. STEWART: Objection. May we approach
3 sidebar, your Honor?

4 THE COURT: Yes.

5 (At the sidebar)

6 MS. STEWART: Your Honor, they have to pray.

7 MR. MCCARTHY: I am very near the end. I have
8 less than 15 minutes left.

9 MS. STEWART: It is a window of time. Can I just
10 consult one moment with them, because it is a window of
11 time. If they don't pray in that time, then they have lost
12 that forever.

13 THE COURT: I understand that, but --

14 MS. STEWART: We were told an hour, and we
15 started at 9 o'clock this morning.

16 THE COURT: Ms. Stewart, he says 15 minutes. I
17 am going to let him do it.

18 MS. STEWART: I know, but persons who respect
19 the --

20 THE COURT: I will let you consult with your
21 client, but I am going to tell you that I am going to let
22 him go another fifteen minutes.

23 MS. STEWART: Over my objection, Judge. If you
24 are going to do it anyway, there is no point in consulting
25 with him.

1 THE COURT: Do you want to consult and come back
2 to report to me?

3 (Pause)

4 My client says it is probably OK, as long as they
5 get in there sometime before 1.

6 (In open court)

7 THE COURT: Go ahead.

8 MR. McCARTHY: Thank you, your Honor.

9 Let me briefly try to discuss the razor blades
10 defense. Ms. Stewart made the argument to you that she
11 reminded you that Salem had asked Floyd to pick up, on June
12 29, 1993, some razor blades for him. Ms. Stewart suggested
13 to you that perhaps those razor blades were used to slice
14 and dice the tapes. To cut this a little bit short, I would
15 just remind you of the testimony of Mr. Ginsberg, who spent
16 a lot of time going through not only the CM tapes but also
17 Salem's personal tapes. There is not any evidence
18 whatsoever that there was any splicing and dicing of the
19 recordings.

20 Ms. Stewart also built her defense on the fact
21 that in January 1992 Detective Napoli made a statement to
22 Salem about the sheik, about trying to put him in it. Now,
23 was Detective Napoli trying to put the sheik in it? Yes, of
24 course he was. Is there something wrong with that? Only if
25 you want to twist the words into something that they didn't

1 mean. Napoli was investigating crimes. He wasn't creating
2 crimes. He was developing evidence of the crime of
3 conspiracy that he had every reason to think was ongoing.
4 By January 1992, and probably long before that, he had
5 information that Omar Abdel Rahman was: the head of a
6 terrorist organization in Egypt, the person who bragged
7 about being linked to the fatwa for Sadat assassination, the
8 person Nosair reported to on telephone conversations that
9 were taken from his home at the time of the Kahane homicide,
10 and a person that Mahmud Abouhalima reported to.

11 I would suggest to you that Louie Napoli did not
12 put Omar Abdel Rahman in it. He was already in it up to his
13 neck. The sheik hasn't been trapped, he has been revealed.

14 One other thing about the "putting him in it"
15 conversation. It is especially interesting when you
16 consider it in the context of Ms. Stewart's portrait of
17 Salem, the international spy who was here on his last
18 mission to get Omar Abdel Rahman at any cost. Remember the
19 recording. What does Napoli ask? Did the sheik talk about
20 training? Did he talk about Nosair? And what does Salem
21 answer? No, he didn't say anything about those things.
22 Salem, the guy you are supposed to believe is above no dirty
23 trick to get the sheik, is given an opportunity by Napoli,
24 the detective who wants to put the sheik in it, to say
25 whatever he wants to say about the sheik, and he tells him:

1 No, I can't say he was talking about those things.

2 I should probably speak for a couple of minutes
3 about BB-T, which is a piece of evidence that you can be
4 sure that the sheik made just for you, one of the videotapes
5 that Ms. Stewart played in summation, where Abdel Rahman
6 lied to the media after the bombing of the World Trade
7 Center.

8 As Ms. Stewart told you, that was a tape that was
9 made on April 6, 1993. The World Trade Center had been
10 bombed about a month before, and the sheik knew that he was
11 right in the thick of things: with a lot of telephone
12 traffic, with people he now wants to deny knowing after the
13 bombing; people you learned he was helping raise funds for
14 while the cameras weren't rolling; people in jail like
15 Mahmud Abouhalima that he was getting messages from; people
16 who were calling him "your eminence" a long time before the
17 bombing; a bombing that happened only a month after he's
18 recorded speaking in Brooklyn about shaking the ground under
19 the feet of the enemies of Islam.

20 What does Abdel Rahman do? Ms. Stewart said that
21 he does not weasel, does not waffle, and she calls him
22 forthright, and then finally addresses whether he lied to
23 protect Mahmud, and says, he was "certainly looking to do
24 that."

25 She also said to you: Where were the prosecutors

1 when the testimony came out that he was asked to lie? We
2 were here. And I ask you: So what? As if it's not a lie
3 when a bomber asks you to do it. The evidence showed that
4 Mahmud was in this country before April 6, 1993. You can
5 look at Rahman's own exhibit, Abdel Rahman's Exhibit BB-T.
6 Abdel Rahman is describing what Mahmud Abouhalima's lawyer
7 said about what happened to Abouhalima in Egypt. By April 6
8 Abouhalima was already here. At that point in time there
9 was absolutely no reason at all to try to protect him from
10 Egypt. And even if you were going to accept the fact that
11 he lied justifiably to protect Mahmud Abouhalima from the
12 Egyptian Government, what then of denying knowing
13 El-Gabrownny? What then of denying knowing Nosair? He also
14 denied knowing Salameh, and you saw that there was a phone
15 record that came into evidence showing connection between
16 the two of them.

17 "We have an obligation to say the truth." Ms.
18 Stewart said that her client was exactly what his book
19 claimed to be: a word of truth. In a trial, as far as the
20 truth is concerned, you have to go with the evidence. And
21 the evidence in this case is that the truth for Omar Abdel
22 Rahman is whatever serves his interest at the moment.

23 The evidence of Omar Abdel Rahman's guilt, like
24 the evidence of the guilt of the other defendants on trial
25 before you, is so overwhelming that he was forced to resort

1 to razor blades and watermelons and the last desperate
2 attempt of people who can't answer the evidence: the jury
3 should not apply the law.

4 Did Ms. Stewart come out and say that? Well, she
5 actually came pretty close. She played the Egyptian card to
6 the hilt. Ms. Stewart is, she told you, dismayed that this
7 country counts Egypt as among it's allies. What is the
8 defense in that? Sure the sheik wants to see Mubarak dead,
9 but he's got good reasons?

10 Naturally, Abdel Rahman would have you feel
11 outrage over Mubarak without giving a second of thought to
12 the bloodbath he himself has done everything in his power to
13 turn Egypt into. When it comes to his bragging about the
14 murder of Sadat and his rationalizing about how only one
15 British woman has been killed in the Islamic group's terror
16 campaign against Egypt's tourist industry, here comes that
17 cultural gulf again. Mubarak should inflame you. Abdel
18 Rahman's terrorism is something you simply have to
19 understand in context.

20 Well, this isn't a referendum on whether you like
21 Mubarak or not, any more than it's a trial of Salem or a
22 trial of the agents. If it is a referendum on anything, it
23 is a referendum about these defendants and the rule of law.
24 In America, you don't get to murder Mubarak or Meir Kahane
25 and then say, well, I had my reasons. In America, we settle

1 our differences at the ballot box or in courts of law. We
2 don't shoot it out in the street and we don't forgive those
3 who would, simply because in their minds they had a good
4 reason. In America, judges give juries the law, and juries
5 take a sacred oath to apply it. In America, it is the rule
6 of law that governs.

7 Abdel Rahman's last gasp? If Omar Abdel Rahman
8 promoted violence in the face of what he saw as oppression,
9 he shouldn't be held to account because he had his reasons
10 and he thought they were noble and he had the right to
11 pursue them no matter what the power structure and its
12 unenlightened laws may have said.

13 Here is what Ms. Stewart told you.

14 "'It is not permissible to obey a ruler who is
15 not obedient to God or his Messenger' -- that is Sheik Omar.
16 Religion isn't separate from justice; religion isn't
17 separate from righteous resistance, from directed political
18 action, and if it is, it should not be.

19 "Politics involves our everyday individual and
20 group relation to the power structures that govern us, and
21 oppression is real, and oppression is wrong, and the human
22 reaction to oppression, countenanced in law, both
23 international and local, is self-defense or justification.
24 The use of equal force to counter that of the oppressors;
25 the foot on the neck; the gun in the back."

1 Is that what it comes down to? Is that what you
2 are ready for? The likes of Omar Abdel Rahman and the other
3 men in this courtroom deciding the time and the place for
4 what they call "directed political action" but you know as
5 terrorism? Human reaction to oppression is justified as
6 self-defense? Well, the humans in this case are the men in
7 this courtroom. They've decided the oppressor is America,
8 and the human reaction that they have settled on is
9 terrorism, its brutality, and its war.

10 Are you ready to overlook the law? Are you ready
11 to violate the oath that you took to apply the law? Not the
12 law of Omar Abdel Rahman, but the law you are going to
13 receive from a United States judge? Not apply the law just
14 so that Sheik Omar Rahman can put his foot on the neck and
15 his gun in the back of those who he in his infinite wisdom
16 has decided are the oppressors? Are you ready to surrender
17 the rule of law to the men in this courtroom because they
18 decided they had good reasons to hate and to kill?

19 If you ever think you are, remember this: There
20 is no freedom without the rule of law. Your freedom of
21 speech, your freedom to practice any religion or no
22 religion, your freedom to travel from place to place, even
23 to travel from New York to New Jersey through a tunnel, all
24 the freedom that you enjoy every day, depends on the rule of
25 law. The second that you decide that you are ready to let

1 those who are willing to place and use violence place their
2 agendas over the rule of law, the civilized part of
3 civilized society is over. In America, in this country,
4 that's not how it works. The government asks you to apply
5 the law. Thank you.

6 THE COURT: Thank you, Mr. McCarthy.

7 Ladies and gentlemen, we are going to break now
8 for the day. Before I give you an instruction that I have
9 given you on every day of this trial, I want to tell you
10 something else. It is something that I have saved until the
11 end of the summations, because it really applies to
12 virtually all of them.

13 You have spent two or two and a half weeks
14 listening to very able lawyers argue as vigorously as they
15 can their positions. They have argued about the evidence
16 and they have argued about the arguments that one or another
17 of them has made. And that is fair game. Occasionally,
18 lawyers dealing with other lawyers' arguments have stepped
19 over the line with respect to lawyers dealing with other
20 lawyers. That is not what this case is about, as I am sure
21 you are aware.

22 This case is about the evidence. It is to be
23 decided on the basis of the evidence and not on the basis of
24 the lawyers or what they say about one another. It is not
25 what the lawyers think, it is not who the lawyers are, it is

1 what the evidence shows that counts.

2 With that, I am going to excuse you and again ask
3 you: please do not see, hear or read anything about this
4 case or any related matter. I will give you your
5 instructions on the law tomorrow at 9 o'clock. See you
6 then.

7 (The jury left the courtroom.)

8 THE COURT: I am going to excuse the defendants.
9 I would like to see counsel in the robing room, if I may.

10 (continued on next page)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 (In the robing room)

2 THE COURT: I hadn't asked you in here to hear
3 Ms. Amsterdam.

4 MS. AMSTERDAM: No. I have an appearance before
5 Judge Patterson at 1 and I wonder if this is something Mr.
6 Jacobs can cover for me.

7 THE COURT: He can. It is something you have
8 already heard and it relates to the charge.

9 Unbeknownst to some of you, perhaps, when Mr.
10 Jacobs and Ms. Amsterdam were in here yesterday, they asked
11 whether I would give out copies of the charge today before I
12 gave it, so that if there was some -- they didn't put it
13 this way but this is a gloss on the conversation -- if there
14 was something that I missed I could hear it before I deliver
15 the charge. With some reluctance I said yes but that I
16 didn't want to read about this before I deliver.

17 I assume everyone hear can take the pledge. I am
18 happy to give out the charge. Understand, this is not about
19 picking nits. I hope you will find it reflects the things
20 we talked about in the charging conference, both the rulings
21 in your various favors and the rulings against you. It also
22 reflects editorial changes I made, some strictly stylistic
23 and some that I thought were spins in the charge that I
24 thought were not what I meant. Those, I think, were not
25 terribly significant but they are there. So if you want to

1 read it for that, read it for that.

2 MR. JACOBS: Are we going to get it sometime this
3 afternoon, your Honor?

4 THE COURT: Yes.

5 MR. JACOBS: In case somebody might have some
6 question, would your Honor give us an opportunity maybe at
7 8:30 tomorrow morning -- maybe there will be nothing. I
8 don't know.

9 THE COURT: I will give you a chance at 9. For
10 example, I told Miss Stewart that Dr. Abdel Rahman's name
11 wasn't going to be in that paragraph, it ain't in that
12 paragraph. It speaks in general terms. I had to reframe
13 it. I did reframe it, I hope it is to your liking. If it's
14 not, it's not.

15 A number of things I don't want, I don't want
16 people to start now giving me arguments that could have been
17 made and should have been made at the charging conference.
18 This is really not the time for that. Also, all the
19 arguments that you made at the charging conference are
20 preserved.

21 MR. JABARA: We would only go to the new
22 material.

23 MR. JACOBS: Your Honor, we understood the
24 charging conference and what the objections were.

25 THE COURT: I would rather give it to you because

1 it is small stuff.

2 MS. SCHWARTZ: Let me give it out.

3 MS. STEWART: Judge, I am constrained at this
4 point to make a motion for a mistrial on behalf of Dr. Abdel
5 Rahman based upon the fact that we were denied the right to
6 bring in Islamic experts to talk about many of the facts
7 that the government summed up on, what Muslims all over the
8 world were listening to, whether they really thought that
9 thousands of Muslims were supportive of Dr. Rahman's type of
10 Muslim political position, that he was duty bound to give a
11 fatwa, that it was not a religious encounter but it was a
12 criminal encounter in the kitchen, that he was hiding behind
13 his religion, and it was offensive to hoodwink the jury
14 behind one of the world's great religions. For all those
15 reasons, Judge, I am asking for a mistrial on behalf of
16 Dr. Abdel Rahman.

17 THE COURT: The application is denied for the
18 reasons that I denied the application to call those people,
19 and I also don't think that their proffered testimony speaks
20 to all the issues you mentioned. In any event, you have
21 your record.

22 Does everybody have a copy?

23 MR. WASSERMAN: One question about Sunday's
24 schedule. Has your Honor decided?

25 THE COURT: As I understand it, they will be

1 permitted to go to church first, those who want to. I
2 believe that that probably doesn't get them to the
3 courthouse until 11:00. That is what I was told by the
4 marshals. We will start at that time.

5 MR. BERNSTEIN: The back end of the day is of
6 concern in terms of what time the court will release us to
7 our family obligations.

8 THE COURT: It is always my practice to let the
9 jury decide when the end of the day comes.

10 MR. BERNSTEIN: The concern I have here is that
11 the jury presumably is not observant in the Jewish faith and
12 doesn't recognize that the holiday begins at a particular
13 time on Sunday night, and that is when it begins rather than
14 the following day, unlike most Christian holidays, which is
15 in the morning rather than the evening. I understand that I
16 am not going to see my family on time because my family is
17 going to be further away, Judge, but there are still some
18 aspects of all of our travel concerns, and being with some
19 people who doing to temple that evening, being able to make
20 temple on time.

21 THE COURT: I think I can reliably tell you that
22 you are not going to make it to temple on time.

23 MR. BERNSTEIN: I am not the only person in the
24 room. I know I am not going to get to temple on time or see
25 my family. Is there some sense --

1 THE COURT: I will call a halt at the usual time,
2 which is 5:00.

3 MR. BERNSTEIN: 5:00 is fine. I just wanted some
4 sense that we were not working into 7 or 8 or 9:00. The
5 jury could very well choose to deliberate, as we go on, late
6 into the evenings.

7 THE COURT: They may. I seriously doubt that
8 Sunday will be the time that they decide to kick off that
9 strategy. I am really reluctant to make a firm commitment.
10 It is my plan now to call a halt at 5:00. If I want to call
11 a halt at 5:00 and they send a note back to the effect that
12 they are in the middle of some important discussion that
13 they want to continue, I have to tell you, this is going to
14 come first.

15 MR. BERNSTEIN: I understand.

16 THE COURT: The likelihood of that, though, is
17 remote. But we have done this once before, which is to
18 speculate on jury notes that haven't yet been sent in.

19 (Pages 20406-20409 sealed)

20 (Proceedings adjourned until 9:00 a.m., Saturday,
21 September 23, 1995)

22

23

24

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

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

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

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

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

S5 93 Cr. 181 (MBM)

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

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

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

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

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

Defendants.

-----x

September 23, 1995
9:00 a.m.

22 Before:

23 HON. MICHAEL B. MUKASEY,

24 District Judge
25 and a Jury

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

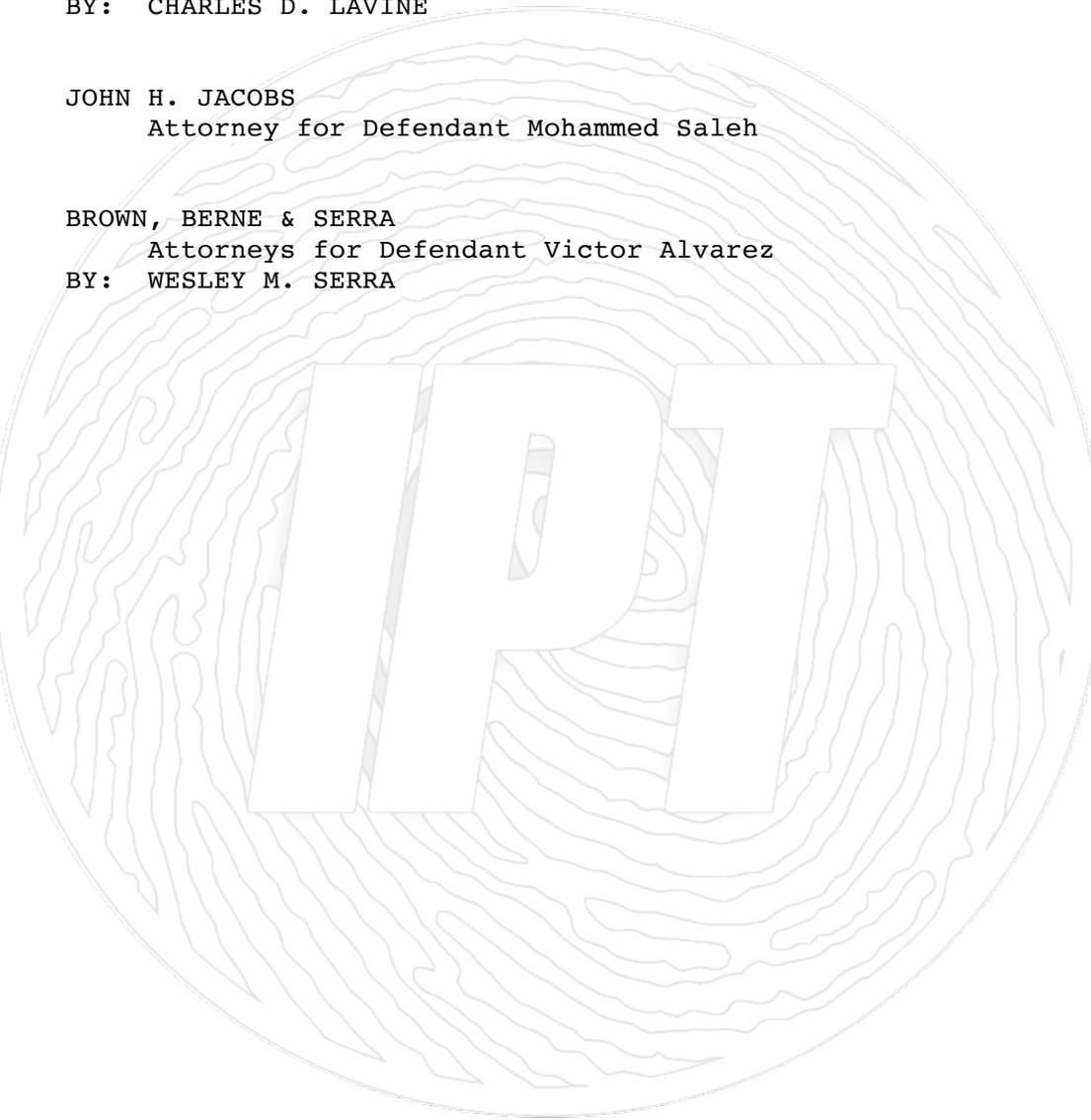
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Trial resumed)

2 (Pp. 20414-20416 sealed)

3 (In the robing room)

4 THE COURT: I gather, Mr. Serra, you have a bone
5 to pick?

6 MR. SERRA: Your Honor, I noticed in the charge
7 that your Honor had added to what was circulated a month ago
8 a voluntary intoxication charge, which the government did
9 request.

10 THE COURT: I said that I would.

11 MR. SERRA: I don't remember it being that
12 explicit, Judge. Maybe I missed it. Did you get my letter
13 of September 6? I am just asking because otherwise I was
14 going to ask you to docket it if it hasn't been, so there is
15 a record made and I don't need to make one now. I have a
16 copy, Judge.

17 THE COURT: May the record reflect that I am
18 being shown --

19 MR. PATEL: It refreshes your recollection?

20 THE COURT: It does not.

21 MR. SERRA: Your Honor, I can summarize what is
22 in it, although I would ask you to docket it.

23 THE COURT: This is essentially the point, I
24 think, that you made orally, or part of the point that you
25 made orally. I will docket the letter. But I believe we

1 discussed it.

2 MR. SERRA: The main point is that that is not --
3 well, your Honor, I don't -- maybe I missed it. If it is in
4 the record, it is in the record. I don't remember the Court
5 saying you were going to give it. As a matter of fact, I
6 think that is why Mr. McCarthy first sent -- my letter is
7 replying to a letter from the government. The government
8 put it in writing, I replied to it, and that is the last
9 thing you have there. You heard two and a half hours of my
10 summation. That is not my defense.

11 THE COURT: I know that. That is why I said
12 "among other things," and you, I think, cautioned me to make
13 sure that I didn't suggest that it was your defense. And
14 that is what I believe that I did.

15 MR. SERRA: Your Honor, I don't think it is in
16 the charge quite that clear that you made it clear it was
17 not my defense. You did say, you put in a sentence at the
18 end, about how the defense presented things through Dr.
19 Aranda. Frankly, I have a problem with that language. If
20 you recall my summation, I made more arguments from the
21 government's transcripts that Mr. Alvarez did not understand
22 what was going on than I did from Dr. Aranda's testimony.
23 It wasn't just Dr. Aranda. It was Dr. Aranda, my client's
24 own testimony, and government exhibits.

25 Judge, the main point is that the defense is much

1 more complicated than can be neatly encapsulated in a
2 two-page charge. I think that there is a concern that the
3 jury will think, after my two and a half hour summation,
4 that what I am arguing is my client ought to be acquitted
5 because he was high the whole time.

6 THE COURT: I will make a suggestion. First of
7 all, does anybody else have any --

8 MR. SERRA: Your Honor, may I add one more thing
9 about that?

10 THE COURT: Yes.

11 MR. SERRA: Maybe I missed it; I don't recall the
12 Court ever saying that was going to be given. I would have
13 specifically dissociated myself from that defense. I would
14 have said in my summation that my defense is not voluntary
15 intoxication if I knew it was going to be charged.

16 THE COURT: I believe that the record indicates
17 that I was going to put something together, and I remember
18 committing myself to do that. You said you didn't like the
19 Sand language because it appeared to be a principal defense,
20 and I said I would try to put something together that said
21 it was not. I will consider making a change, but let me
22 hear from anybody else who has a problem, and I will get
23 back to you.

24 Let the record reflect I haven't heard from
25 anybody.

1 What page is that on?

2 MR. BERNSTEIN: 169.

3 MR. WASSERMAN: I have one minor point. Please
4 go ahead.

5 THE COURT: No, tell me what it is.

6 MR. WASSERMAN: On page 190, your Honor, you had
7 added the bottom paragraph, in response to a joint proposal
8 from the government and myself.

9 THE COURT: Yes.

10 MR. WASSERMAN: And I just would ask that since
11 you reflected Q50 in the paragraph before it, if you mention
12 the Q series in the paragraph beneath.

13 THE COURT: Is it enough for you if I mention it
14 orally?

15 MR. WASSERMAN: Yes, that is fine. Absolutely.

16 THE COURT: Good.

17 MR. WASSERMAN: Thank you.

18 THE COURT: Now let me go back to Mr. Serra's
19 problem. 169?

20 MR. SERRA: Frankly, your Honor, Mr. McCarthy in
21 rebuttal summed up on what he called straw men. My position
22 is voluntary intoxication as far as my defense is concerned
23 is a straw man. It is setting something up that is not my
24 defense.

25 THE COURT: Wait a second. You elicited that

1 testimony, I believe, did you not?

2 MR. SERRA: Yes, but never presenting it as a
3 defense, which is what the charge is.

4 THE COURT: The charge does not say it is a
5 defense.

6 MR. McCARTHY: And a defense is whatever the jury
7 decides a defense is.

8 THE COURT: Wait. The charge does not say it is
9 a defense. The charge makes clear it is not. That is the
10 law. I am sympathetic to the problem that you raised before
11 about mentioning it and giving it undue emphasis and not
12 giving sufficient emphasis to what you say is your defense,
13 of Dr. Aranda, and on the tapes. I mean, you want me to add
14 that?

15 MR. SERRA: Your Honor, it should be clear my
16 first request is not to charge this.

17 THE COURT: I will not not charge it.

18 MR. SERRA: OK. Then after that, yes, "I remind
19 you also that Mr. Alvarez, through his attorney" -- and his
20 attorney, because Mr. Alvarez made other arguments to" --

21 THE COURT: No, Mr. Alvarez did not make
22 arguments, and if what you are telling me is that his
23 testimony was an argument, I don't think I should tell them
24 that, with all due respect, as people say to me.

25 MR. SERRA: "Based on the testimony of Dr. Aranda

1 and Mr. Alvarez and government exhibits." Tapes, if you
2 want to say the tapes.

3 THE COURT: "And certain tapes." OK. "And that
4 evidence."

5 I am going to make this change physically on the
6 copies. It will take me a couple of minutes, and I will
7 replace those copies in the jurors' books, because it will
8 take me ten minutes if you let me go and run and do it.

9 (Pp. 20423-20425 sealed)

10 (continued on next page)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 (Recess)

2 (In the robing room)

3 MS. STEWART: I know you must be overjoyed to see
4 us, Judge, but we were just rereading, flipping through the
5 pages, as it were, and when we came to the solicitation
6 charge, in rereading the entire thing, and perhaps we just
7 missed it and I am very apologetic for this, but the charge
8 of soliciting definitely goes to: It must be an attempt by
9 means of an explosive to destroy or damage an American
10 military establishment. It is cited in the law when you
11 read to them the law on page 65, but then on page 66 you
12 say: "the threatened use of physical force against the
13 property," and then you go on to say that "an attack by fire
14 or explosives is such a crime," but not that it must be by
15 fire or explosives, that they must find that that is what he
16 intended Salem to do, to attack by fire or explosives. And
17 then, reading through the rest of it, it is just never
18 mentioned again, just an attack.

19 THE COURT: What page?

20 MS. STEWART: Starting on 65.

21 THE COURT: On page 66 I say two elements.

22 "First, that Dr. Abdel Rahman solicited, commanded, induced
23 or otherwise tried to persuade Mr. Salem to damage or
24 destroy by fire or explosives an American military
25 installation." That is what I say.

1 MS. STEWART: Right. It is the next, the second
2 part.

3 MR. McCARTHY: They can't convict unless they
4 find the first.

5 THE COURT: There are two elements.

6 MS. STEWART: On 67 it does say that an attack,
7 just an attack without more, in the first paragraph there.

8 THE COURT: But what you are saying is, in
9 essence, all the elements have to be in every reference.

10 MS. STEWART: I know that that is not proper
11 form, I agree with that, that you can't put every element in
12 what is 300 pages long.

13 THE COURT: I can't. I appreciate your point,
14 but I believe I made it on 66. If you want me to stress it
15 orally, I will.

16 MS. STEWART: I would appreciate it.

17 THE COURT: I will not just stress it in my tone
18 of voice, but I will say: and I emphasize that the attack
19 intended is one to be carried out by fire or explosives, as
20 I said. In essence, I will repeat orally what is here.

21 MS. STEWART: Thank you.

22 THE COURT: Thank you. I will do it. Thank you
23 for pointing it out, although I have to tell you that you
24 gave me heart failure initially.

25 MS. STEWART: I knew I was doing that and I

1 hesitated.

2 THE COURT: I don't like when people do commas
3 and semicolons, but this isn't commas and semicolons, and
4 you are right to do it.

5 MS. STEWART: Thank you.

6 (In open court, jury present)

7 THE CLERK: The Court is about to instruct the
8 jury. Those spectators wishing to leave may do so now.
9 Those spectators wishing to remain must remain seated until
10 the completion of the Court's charge.

11 Marshal, please lock the door.

12 (continued on next page)

13
14
15
16
17
18
19
20
21
22
23
24
25

1 THE COURT: Good morning, ladies and gentlemen.

2 JURORS: Good morning.

3 THE COURT: I am sorry we are getting started
4 somewhat later than I had planned, but there was a
5 last-minute logistical difficulty.

6 Members of the jury, you are about to enter your
7 final duty, which is to decide the fact issues in this case.

8 Before you do that, I will instruct you on the
9 law. Please pay close attention to me now. I will go as
10 slowly as I can and try to be as clear as possible.

11 I told you at the very start of the trial that
12 your main function during the taking of testimony would be
13 to listen carefully and observe each witness who testified.
14 It has been obvious to me and to counsel that you have
15 faithfully discharged this duty. It is evident that you
16 followed the testimony with close attention.

17 I should tell you a few things about this thick
18 set of instructions before I begin to read them with you.
19 First, these instructions are laid out essentially in three
20 sections. The first, which is quite short, deals with your
21 role as jurors, the role of the Court, and other preliminary
22 matters. The second, which is by far the longest, describes
23 the indictment and the elements of each count you will be
24 asked to decide. The third section discusses some
25 principles you should use in weighing the evidence that

1 applies to the charges, and in measuring the credibility of
2 witnesses.

3 Just so that you are not left wondering how long
4 it will take me to get through these instructions, it should
5 take a little under four hours, and we are going to break
6 several times, because nobody should be forced to listen to
7 the sound of my voice for that long without several breaks.

8 Finally, please don't be dismayed or discouraged
9 by the length of these instructions. The main reason why
10 they are so long is that several counts are being submitted
11 to you for decision, and the various elements of each count
12 have to be explained separately. But you should be aware
13 that there is virtually nothing in this charge that has not
14 been a part of instructions submitted to other juries that
15 have reached verdicts in other cases. I think you will find
16 that if you proceed step by step and count by count, you
17 should have no difficulty applying these instructions to
18 help you weigh the evidence and decide the case.

19 For your convenience, there is a table of
20 contents to help you locate particular instructions you may
21 wish to consult, although as I will instruct you later, no
22 part of this charge should be considered out of context.

23 You have now heard all the evidence in the case
24 as well as the final arguments of the lawyers for the
25 parties.

1 It is my duty at this point to instruct you as to
2 the law. It is your duty to accept these instructions of
3 law and apply them to the facts as you determine them, just
4 as it has been my duty to preside over the trial and decide
5 what testimony and evidence is relevant under the law for
6 your consideration.

7 On these legal matters, you must take the law as
8 I give it to you. If any attorney has stated a legal
9 principle different from any that I state to you in my
10 instructions, it is my instructions that you must follow.

11 You should not single out any instruction as
12 alone stating the law, but you should consider my
13 instructions as a whole when you retire to deliberate in the
14 jury room. Each of you has a copy of these instructions to
15 take with you into the jury room.

16 You should not, any of you, be concerned about
17 the wisdom of any rule that I state. Regardless of any
18 opinion that you may have as to what the law may be -- or
19 ought to be -- it would violate your sworn duty to base a
20 verdict upon any other view of the law than the one I give
21 you.

22 Your role, as I have said, is to consider and
23 decide the fact issues that are in the case. You, the
24 members of the jury, are the sole and exclusive judges of
25 the facts. You pass upon the weight of the evidence; you

1 determine the credibility or believability of the witnesses;
2 you resolve whatever conflicts there may be in the
3 testimony, and you draw whatever reasonable inferences and
4 conclusions you decide to draw from the facts as you have
5 determined them. In doing so, you must weigh and consider
6 the evidence without regard to sympathy, prejudice or
7 passion for or against any party.

8 I will later discuss with you how to pass upon
9 the credibility -- or believability -- of the witnesses.

10 In determining the facts, you must rely upon your
11 own recollection of the evidence. What the lawyers have
12 said in their opening statements, in their closing
13 arguments, in their objections, or in their questions is not
14 evidence. You should bear in mind particularly that a
15 question put to a witness is never evidence. It is only the
16 answer that is evidence. Nor is anything I may have said
17 during the trial or may say during these instructions with
18 respect to a fact matter to be taken instead of your own
19 independent recollection. What I say is not evidence.

20 If there is any difference or contradiction
21 between what any lawyer has said and what you decide the
22 evidence showed, or between anything I may have said and
23 what you decide the evidence showed, it is your view of the
24 evidence -- not the lawyers' and not mine -- that controls.

25 The evidence before you consists of the answers

1 given by witnesses -- the testimony they gave, as you recall
2 it -- and the exhibits that were received in evidence,
3 including stipulations as to facts or testimony.

4 As I said, the evidence does not include
5 questions. Only the answers are evidence. But you may not
6 consider any answer that I directed you to disregard or that
7 I directed struck from the record. Do not consider such
8 answers.

9 In weighing the evidence presented to you, your
10 assessment should not be influenced by how much time the
11 lawyers spent on particular topics, or how emphatically or
12 eloquently they spoke about particular topics. Similarly,
13 it is not who introduced an exhibit, or who called a
14 witness, or who did not question a witness, that is
15 important, but rather what the exhibit or the witness's
16 testimony proves. It is for you alone to decide the weight
17 and importance of evidence you heard; one of your principal
18 tasks is to separate the important from the unimportant, and
19 focus on what you find is important. Evidence that took
20 five minutes to present may be more important than evidence
21 that took an entire day to present. It is not how much time
22 or effort the lawyers spent on particular evidence, but what
23 that evidence proves, that is important.

24 Since you are the sole and exclusive judges of
25 the facts, I do not mean to indicate any opinion as to the

1 facts or what your verdict should be. The rulings I have
2 made during the trial are not any indication of my views of
3 what your decision should be as to whether or not the
4 government has proved its case.

5 I also ask you to draw no inference from the fact
6 that on occasion I asked questions of certain witnesses.
7 These questions were only intended for clarification or to
8 move things along, and certainly were not intended to
9 suggest any opinion on my part as to the verdict you should
10 render or whether any of the witnesses may have been more
11 credible than any other of the witnesses. It is important
12 that you understand that if I did express such an opinion
13 you would not be obliged in any way to follow it.

14 Also, anything I may have said during the trial
15 or may say during the course of this charge with regard to
16 any matter of evidence or testimony is not to be taken in
17 place of your own recollection.

18 I may refer to evidence during the course of this
19 charge. If I do, I will try to refer to it as accurately as
20 I can. If I should make a mistake, it is your recollection,
21 and yours alone, that controls. You are not to take
22 anything that I say as evidence or as controlling upon you
23 in any way in your determination of the facts. It is your
24 own independent recollection of the evidence that controls.

25 It is the duty of the attorney for each side of a

1 case to object when the other side offers testimony or other
2 evidence that the attorney believes is not properly
3 admissible. Counsel also have the right and duty to ask the
4 Court to make rulings of law and to request conferences at
5 the sidebar out of the hearing of the jury. All those
6 questions of law must be decided by me, the Court. You
7 should not bear any prejudice against an attorney or his
8 client because the attorney objected to the admissibility of
9 evidence, or asked for a conference out of the hearing of
10 the jury, or asked the Court for a ruling on the law.

11 While I am on the subject of the lawyers, you may
12 well have developed impressions over these months of the
13 lawyers in this case -- favorable impressions of most of
14 them, I hope; perhaps mixed impressions of others; perhaps
15 you may even have unfavorable impressions of some. Such
16 impressions are natural. But please remember, it is not the
17 lawyers who are on trial here, and your decisions in this
18 case cannot be based on whether you like or dislike counsel
19 for one party or another or whether you think they speak
20 well or badly. Lawyers are here to help present evidence
21 and to argue its significance, but it is the evidence or
22 lack of evidence alone that must decide the case, not your
23 feelings -- good or bad -- toward the lawyers.

24 As I already indicated, my rulings on the
25 admissibility of evidence do not indicate any opinion about

1 the weight or effect of such evidence. Again, you are the
2 sole judges of the believability of all witnesses and the
3 weight and effect of all evidence.

4 Your verdict must be based solely upon the
5 evidence, or the lack of evidence, developed at trial.

6 It would be improper for you to consider, in
7 reaching your decision as to whether the government
8 sustained its burden of proof, any personal feelings you may
9 have about any defendant's race, religion, national origin,
10 sex, or age. All persons are entitled to the presumption of
11 innocence and the government has the burden of proof, as I
12 will discuss later.

13 It would be equally improper for you to allow any
14 feelings you might have about the nature of the crimes
15 charged to interfere with your decision-making process.

16 It would also be improper for you to base your
17 verdict on any feelings of sympathy you may have for any
18 defendant. In order to reach a true and just verdict, you
19 must not let fear or prejudice, or bias or sympathy
20 interfere with your deliberations.

21 To repeat, your verdict must be based exclusively
22 upon the evidence or the lack of evidence in the case.

23 As I have said, you are to perform the duty of
24 being the sole and exclusive judges of the facts without
25 bias or prejudice as to any party. You are to perform your

1 final duty in an attitude of complete fairness and
2 impartiality.

3 The case is important to the government because
4 the enforcement of criminal laws is a matter of great and
5 legitimate concern to the community. Equally, it is
6 important to the defendants, who are charged with serious
7 crimes.

8 The fact that the prosecution is brought in the
9 name of the United States of America entitles the government
10 to no greater consideration than that given to any other
11 party to a litigation. By the same token, the government is
12 entitled to no less consideration. All parties, whether
13 government or individuals, stand as equals at the bar of
14 justice.

15 With these preliminary instructions in mind, let
16 us turn to the charges against the defendants, as contained
17 in the indictment. Each of you has been provided with a
18 copy of the indictment to use during your deliberations. It
19 is in the front pocket of your book. You may also refer to
20 it during this charge, if you wish. I remind you that an
21 indictment itself is not evidence. It merely describes the
22 charges made against each defendant and is the means by
23 which each defendant was formally notified of the charges
24 against him. It is an accusation. It may not be considered
25 by you as evidence of the guilt of a defendant, and of

1 course only the evidence or the lack of evidence decides
2 that issue.

3 The indictment in this case is best summarized as
4 being divided into five different categories or groups of
5 charges. In one group, all defendants are charged in one or
6 more counts with agreeing to violate federal law -- a crime
7 called conspiracy. Specifically, every defendant on trial
8 before you is charged in Count One with a conspiracy
9 violation that I described for you at the very start of the
10 trial: the crime that is often referred to as "seditious
11 conspiracy," although those words do not appear in the body
12 of the law that defines the crime. In addition to that
13 conspiracy charge, two other conspiracies are charged in the
14 indictment: Count Five charges all defendants on trial with
15 conspiring to violate the federal bombing and explosives
16 laws; and Count Three charges that the defendant Omar Ahmad
17 Ali Abdel Rahman conspired with others, including Siddig
18 Ibrahim Siddig Ali, to murder Hosni Mubarak, President of
19 Egypt.

20 In a second category of offenses, the defendant
21 Omar Ahmad Ali Abdel Rahman alone is charged with two counts
22 of soliciting or requesting others to commit crimes of
23 violence. Specifically, Count Two charges that Dr. Abdel
24 Rahman solicited Siddig Ali, Abdel Rahman Haggag -- referred
25 to in the indictment as "Abdo Mohammed Haggag" -- and Emad

1 Salem to murder Hosni Mubarak, President of Egypt; and Count
2 Four charges that Dr. Abdel Rahman solicited Emad Salem to
3 attempt to damage or destroy American military
4 installations.

5 In a third category of offenses, several
6 defendants are charged with violations alleged to have been
7 committed during the course of the bombing conspiracy I
8 mentioned a moment ago. Specifically, seven defendants --
9 Clement Hampton-El, Amir Abdelgani, Fares Khallafalla, Tarig
10 Elhassan, Fadil Abdelgani, Mohammed Saleh, and Victor
11 Alvarez -- are charged in Count Six with attempted bombing.
12 Victor Alvarez is charged in Counts Fifteen and Sixteen with
13 violations of the federal firearms laws: that is, he is
14 charged in Count Fifteen with unlawfully transporting or
15 shipping a firearm in interstate commerce, and he is charged
16 in Count Sixteen with using and carrying a firearm during
17 and in relation to the bombing conspiracy charged in Count
18 Five.

19 The fourth category of offenses involves the
20 defendant El Sayyid Nosair and the events of November 5,
21 1990. Mr. Nosair is charged in Count Seven with murdering
22 Meir Kahane in aid of racketeering activity -- a concept I
23 will describe to you in detail a little later. Mr. Nosair
24 is charged in Counts Eight and Nine with a violent assault
25 on Irving Franklin and Postal Police officer Carlos Acosta,

1 in aid of racketeering activity. He is charged in Count Ten
2 with attempting to murder Postal Police Officer Acosta. In
3 Counts Eleven, Twelve and Thirteen, Mr. Nosair is charged
4 with using a firearm in connection with violent crimes --
5 respectively, the assaults on Meir Kahane, Irving Franklin,
6 and Postal Police Officer Acosta. Mr. Nosair is also
7 charged in Count Fourteen with possessing a firearm with an
8 obliterated serial number.

9 The fifth category of offenses involves only the
10 defendant Ibrahim El-Gabrowny and relates to the events of
11 March 4, 1993. Count Twenty-two charges that [redacted]
12 Mr. El-Gabrowny forcibly assaulted persons authorized to
13 execute a search warrant issued in connection with the
14 investigation of the World Trade Center bombing. Counts
15 Twenty and Twenty-one charge Mr. El-Gabrowny with assaults
16 on two different federal law enforcement officers:
17 respectively, Special Agent Michael Burke of the Federal
18 Bureau of Alcohol, Tobacco and Firearms, and Detective
19 Thomas Corrigan, a Special Deputy United States Marshal
20 assigned to a federal task force. Finally, Counts
21 Twenty-three through Twenty-eight charge Mr. El-Gabrowny
22 with offenses arising out of his alleged possession of false
23 identification documents.

24 When you read the indictment, you will notice
25 that it charges acts occurred "on or about" certain dates.

1 It does not matter if a specific transaction is alleged to
2 have occurred on or about a certain date and the testimony
3 indicates that in fact it was a different date. The law
4 requires only a substantial similarity between the dates
5 alleged in the indictment and the dates established by the
6 evidence. The same goes for most of the other contentions
7 as to time and duration in the indictment. For example,
8 with respect to the counts of conspiracy charged in the
9 indictment, it is not necessary for the government to prove
10 that a conspiracy existed for the entire time specified in
11 the indictment, so long as it existed at some time during
12 the period alleged. Nor must the government prove the exact
13 dates alleged so long as there is a substantial similarity
14 between the dates in the indictment and the proof at trial.

15 Further, when I describe the elements of each
16 count of the indictment, I will refer you to the pages in
17 the indictment where that count appears. I will not read
18 each count of the indictment to you, but you must read each
19 count for yourselves during your deliberations so that you
20 can determine whether the government has proved the charge
21 contained in that count. The indictment alleges that all
22 the crimes charged were committed by some or all defendants
23 as part of what the government charges were the activities
24 of a jihad organization or group, described on pages 2
25 through 6 of the indictment.

1 As you will see, the charges in Counts Seventeen,
2 Eighteen and Nineteen are not being submitted to you for
3 decision. You should not speculate on why that is so, but
4 simply consider and decide the charges in the remaining
5 counts.

6 Finally, you may notice that some of the counts
7 charge similar crimes -- for example, the three conspiracy
8 counts have several features in common. Sometimes during
9 these instructions, in order to avoid repetition, I will
10 refer you explicitly to language in an earlier instruction
11 that can be applied to a later count. However, sometimes I
12 have not done that. Whatever similarity you may detect
13 among different counts of the indictment, you may not apply
14 the instructions for one count to help you decide another
15 count unless I have told you explicitly to do so.

16 Count One charges that all of the defendants and
17 other persons, participated in a conspiracy, which is simply
18 an unlawful agreement, with each other and with other
19 persons, to do at least one of two things: (1) to levy a
20 war of urban terrorism against the United States, or (2) to
21 oppose by force the authority of the United States. This
22 charge is contained on pages 6 through 28 of the indictment,
23 and is alleged to have been carried out by the defendants as
24 members of the group described on pages 2 through 6 of the
25 indictment.

1 Count One charges that all of the defendants
2 violated Section 2384 of Title 18, United States Code, which
3 reads in relevant part as follows:

4 "If two or more persons in any State or
5 territory, or in any place subject to the
6 jurisdiction of the United States, conspire
7 to . . . levy war against [the United States]
8 or to oppose by force the authority [of the
9 United States] . . ."
10 they shall be guilty of a crime."

11 In order to find a defendant guilty of the crime
12 charged in Count One of the indictment, you must find beyond
13 a reasonable doubt:

14 First, that two or more persons conspired or
15 agreed with one another with the goal of making war against
16 the United States, or of opposing by force the authority of
17 the United States;

18 Second, that two or more members of the
19 conspiracy either formed the conspiracy or pursued its goals
20 in the United States, or its Territories or in any place
21 subject to the jurisdiction of the United States; and

22 Third, that the defendant you are considering
23 joined in that agreement with awareness of one or more of
24 its unlawful goals.

25 As I have just told you, the first thing that the

1 government must prove at this trial, beyond a reasonable
2 doubt, is that the conspiracy charged in Count One actually
3 existed. The essence of the crime of conspiracy is an
4 agreement between two or more persons to do something that
5 violates the law. Whether the agreement is ever carried
6 out, or whether it succeeds or fails, does not matter.
7 Indeed, the agreement need not be consistently followed.
8 The unlawful purpose in this case is to wage a war of urban
9 terrorism against the United States, or to oppose by force
10 the authority of the United States.

11 The government must prove, beyond a reasonable
12 doubt, that the particular conspiracy the defendants are
13 charged with participating in existed, and existed at or
14 about the time alleged in the indictment. If you find that
15 the conspiracy charged in Count One of the indictment did
16 not exist, you cannot find any defendant guilty on Count One
17 of the indictment.

18 A conspiracy has sometimes been called a
19 partnership for criminal purposes in which each partner
20 becomes the agent of every other partner and has the
21 authority to act and speak on behalf of every other partner.
22 However, to establish the existence of a conspiracy, the
23 government is not required to show that two or more people
24 sat around a table and entered into a formal contract,
25 orally or in writing, stating that they have formed a

1 conspiracy to violate the law, and setting forth the means
2 by which it was to be carried out or the part to be played
3 by each conspirator. Indeed, it would be extraordinary if
4 there were such a formal document or specific agreement. It
5 is enough if two or more persons, in any manner, whether
6 they say so directly or not, come to a common understanding
7 to violate the law. Express language or specific words are
8 not required to indicate agreement to, or membership in, a
9 conspiracy.

10 It is important, in order to understand what a
11 conspiracy is, to keep in mind the difference between the
12 object or goal of the conspiratorial agreement -- that is,
13 the criminal act that two or more people agree to commit --
14 and the agreement itself. A conspiracy -- the agreement to
15 commit a crime -- is a violation of law entirely separate
16 and distinct from the criminal act that the members of the
17 conspiracy agree to commit. Let me give you an example that
18 has nothing to do with this case. If two or more people
19 were to agree to rob a bank, that agreement itself would be
20 a crime. It would make no difference, as far as conspiracy
21 law is concerned, whether or not the conspirators actually
22 carried out their plan to rob the bank. If the government
23 could prove beyond a reasonable doubt that there was an
24 agreement to rob the bank, those defendants who had agreed
25 to rob the bank would be guilty of conspiracy. On the other

1 hand, even if the bank actually was robbed by someone, there
2 would be a robbery but no conspiracy if the government could
3 not prove that the person who actually robbed the bank
4 agreed to the robbery beforehand with another person.

5 Just as is true of the bank robbery example I
6 used, it does not matter whether the conspiracy charged in
7 Count One was successful or not. The question is whether
8 two or more persons formed an agreement to wage war against
9 the United States, or to oppose its authority by force. If
10 two or more persons did agree to do one of those things, the
11 crime of conspiracy is complete. It does not matter whether
12 the persons who formed the agreement actually carried out
13 their plans, or whether the agreement ultimately was
14 successful.

15 Of course, proof concerning the accomplishment of
16 the object of a conspiracy may be the most persuasive
17 evidence of the existence of the conspiracy itself. In
18 other words, success of the venture in carrying out an act,
19 if you believe it was carried out, is often the best proof
20 of the venture or the agreement. But, as I just said, it is
21 not necessary that a conspiracy actually succeed in its
22 purpose for you to conclude that it existed.

23 Also, in determining whether there has been an
24 unlawful agreement, you may consider the acts and conduct of
25 the alleged members of the conspiracy that are done to carry

1 out an apparent criminal purpose. This is true whether the
2 acts and conduct were performed by one or more of the
3 defendants, or whether they were performed by persons who
4 are not named in this indictment as defendants, provided
5 that you find those persons were members of the conspiracy
6 charged in this indictment. Sometimes, the only evidence
7 available is that of disconnected acts on the part of the
8 alleged individual conspirators. However, when taken
9 together and in connection with the reasonable inferences
10 that flow from them, those acts may show a criminal
11 agreement just as conclusively as more direct proof.
12 Whether any acts that were proved during this trial show a
13 conspiracy, or not, is for you to decide.

14 If, upon consideration of all the evidence,
15 direct and circumstantial, you find beyond a reasonable
16 doubt that the minds of at least two persons met -- that is,
17 that they agreed, as I have explained a conspiratorial
18 agreement to you, to work together in furtherance of the
19 unlawful scheme charged in the indictment -- then proof of
20 the existence of the conspiracy is established.

21 In Count One, the defendants are charged with
22 agreeing to make war against the United States, or to oppose
23 by force the authority of the United States. Although two
24 separate objects or goals are charged, you may find the
25 conspiracy proved if it is established that either one of

1 those objects was agreed to by two or more persons. The
2 government is not required to prove both goals. However,
3 the government must prove at least one of those objects or
4 goals beyond a reasonable doubt. If the government has not
5 proved that at least one of those goals was a goal of the
6 conspiracy charged in Count One, your verdict must be not
7 guilty.

8 The two goals of the conspiracy charged in the
9 indictment -- (1) to wage war against the United States, or
10 (2) to oppose by force the authority of the United States --
11 both have as a common ingredient not only the use of force
12 but also the opposition to the United States, functioning
13 through its government.

14 In other words, it is not enough for the
15 prosecution to prove that two or more persons agreed to
16 commit random acts of violence, or to prevent some person or
17 people who work for the government from doing their job, or
18 simply to violate a law of the United States. Rather, the
19 prosecution must prove that those who participated in the
20 conspiracy intended to use force for the purpose of
21 attacking the United States, functioning through its
22 government. The prosecution may prove such intent by
23 showing that the conspirators intended to use force directly
24 against the United States Government or one of its agencies,
25 including any department or military installation. The

1 prosecution may prove such intent also by showing that the
2 conspirators intended to inflict such widespread damage on
3 civilian targets and persons that the act reasonably could
4 be considered as an attack on the United States, functioning
5 through its government.

6 In order to establish a defendant's intent, it is
7 not required that the prosecution also prove his motive --
8 that is, his reason for acting with intent. However, in
9 determining whether a defendant acted with intent to levy
10 war or oppose by force the authority of the United States,
11 you may consider all the evidence in the case, including
12 proof of what motivated a particular defendant to use force,
13 if you find he was so motivated. If you find that the
14 conspirators intended to use force against civilian targets,
15 you may consider whether a conspirator wanted to use force
16 that would inflict widespread punishment or suffering as
17 retribution for some policy or act of the United States
18 Government, or that would have the effect of attempting to
19 force the United States Government to perform some act or to
20 change some policy.

21 However, when the law uses the words "levy war
22 against the United States," that does not mean that the
23 conspirators must have been planning to overthrow the
24 government, or to replace it with another government, or to
25 seize United States territory. Nor does it mean that the

1 target of force must necessarily be a government employee or
2 government property. Rather, I instruct you that an attack
3 even on people who do not work for the government, and even
4 on property that does not belong to the government, may be
5 considered an act of "war" against the United States if it
6 caused or threatened damage that would be widespread enough
7 to show an intent to threaten the peace and safety of a
8 large segment of the population, that such widespread damage
9 was intended by members of the conspiracy, and that the
10 purpose of causing such widespread damage was either to
11 punish or retaliate against the United States Government for
12 an act or policy that it followed, or to force the United
13 States Government to perform some act or change some policy.

14 You should consider the acts, if any, that were
15 planned, and how severe the consequences of each planned act
16 were or might have been, as well as the statements and other
17 conduct by defendants that you consider to be relevant.

18 Taking all these factors into consideration, you must then
19 decide, based on your common sense, whether the acts that
20 the conspirators planned to commit could constitute a "war"
21 against the United States as I have explained that concept
22 to you. Again, let me remind you that the only acts you may
23 consider here are those that the prosecution has proved,
24 beyond a reasonable doubt, that the conspirators either
25 committed or planned to commit.

1 To determine whether any of the acts that
2 defendants conspired to commit constituted "opposing by
3 force the authority of the United States," you should
4 consider whether the proved acts, whether they were actually
5 committed or simply planned, included elements of force, and
6 whether they were intended to oppose or undermine the
7 authority of the United States Government to conduct one or
8 more of its official functions, and could have had that
9 effect. Force is defined in the conventional sense. An act
10 involves force where it threatens or results in violence, or
11 if it threatens or results in harming or destroying
12 property, or harming or killing people. An act opposes the
13 authority of the United States when, if successfully carried
14 out, it would adversely affect the ability of the United
15 States Government to govern the country or to perform one of
16 its proper functions. Here I want to caution you that
17 affecting the ability of the United States Government to
18 govern or to perform one of its proper functions must be a
19 principal purpose of the person who commits the act, and not
20 merely an incidental effect of an act that is planned or
21 carried out for another purpose. In other words, in order
22 to be guilty of conspiring to oppose by force the authority
23 of the United States, a person must help plan an act that
24 could have that effect, and must intend to oppose the
25 authority of the United States, and not simply to do

1 something for another purpose even though it may have the
2 incidental effect of interfering with the authority of the
3 United States.

4 So the question for you to consider is what was
5 in the minds of those who planned the use of force, if you
6 find any such plan existed. To establish the existence of
7 the conspiracy charged in Count One, the government must
8 prove that two or more people agreed to use force for the
9 purpose of attacking the United States, functioning through
10 its government, as I have explained that concept to you.
11 However, if you find that there was simply an agreement to
12 attack people or places without an intention to attack the
13 United States, functioning through its government, then the
14 conspiracy charged in Count One would not be proved and your
15 obligation would be to return a verdict of not guilty as to
16 that count.

17 As you can probably see from the objects or goals
18 I have just described, an agreement to use force is a
19 necessary ingredient of each. To prove someone guilty of
20 the conspiracy charged in Count One, the government must
21 show that the conspirators agreed that physical force would
22 be used. In this case the indictment charges that the
23 conspirators agreed to use force by planning and carrying
24 out certain acts of violence, including bombings. Again, it
25 is not necessary for the government to show that force was

1 actually used by the conspirators. Nor is it necessary for
2 the government to prove that the conspirators agreed as to
3 every detail of how force was to be used, or as to the
4 specific targets for the use of force. Indeed, just as
5 participants in a legitimate business venture may be unaware
6 of details or may disagree about details, and still be
7 working together to make a profit, so too participants in a
8 criminal venture may be unaware of details or disagree about
9 details and still be working together to further a criminal
10 purpose. However, the government must prove at least that
11 the conspirators intended to use force.

12 As to any goal or goals which you may find the
13 conspirators agreed to promote, you must be unanimous. For
14 example, if some of you find that the conspirators agreed
15 only to wage a war of urban terrorism, and the remaining
16 jurors find that the conspirators agreed only to oppose by
17 force the authority of the United States, that is not
18 enough. You must be unanimous as to one or the other, or
19 both.

20 The third element that the government must prove
21 beyond a reasonable doubt in order to establish that a
22 conspiracy as charged in Count One existed, is that the
23 conspiracy, as I have explained it to you, was formed or
24 pursued in the United States or its Territories or in a
25 place subject to its jurisdiction. In order to find the

1 existence of a conspiracy of the sort charged in Count One,
2 you must find that the conspiracy was joined by a defendant
3 or pursued in the United States, its Territories, or in any
4 place subject to its jurisdiction.

5 There may not be any dispute that the specific
6 acts charged, if proved, occurred in the United States.
7 Nonetheless, in order to find the conspiracy charged in
8 Count One, you must find that a conspiracy with one of the
9 two goals I mentioned was formed or pursued in the United
10 States or its territories or in a place subject to its
11 jurisdiction.

12 If you find that the government has proved beyond
13 a reasonable doubt that the conspiracy charged in the
14 indictment existed, then you must determine whether each
15 individual defendant was a member of that conspiracy. I
16 remind you that guilt is individual and that you must
17 consider each defendant's participation or lack of
18 participation separately. In determining whether the
19 defendant you are considering became a member of the
20 conspiracy, you must determine not only whether he
21 participated in it, but whether he did so with knowledge of
22 its unlawful purpose. Did the defendant join with an
23 awareness of at least one of the unlawful aims and purposes
24 of the conspiracy?

25 In defining the requirement of participation in

1 the conspiracy, I said that you must determine whether or
2 not the defendant you are considering knowingly joined in
3 the agreement with intent to further at least one of the
4 conspiracy's two unlawful goals -- (1) waging a war of urban
5 terrorism against the United States, or (2) opposing by
6 force the authority of the United States.

7 When you consider whether a particular defendant
8 was a member of the conspiracy charged in Count One, you
9 must determine whether he knowingly and intentionally agreed
10 to further one of the two unlawful purposes of the
11 conspiracy -- to wage a war of urban terrorism against the
12 United States, or to oppose by force the authority of the
13 United States. I have already explained these goals to you
14 when I explained the nature of the conspiracy charged in
15 Count One, and I am not going to repeat that explanation
16 here. It is contained on pages 22 through 26 of these
17 instructions and it applies when you are deciding whether a
18 defendant agreed to further one of these goals.

19 To have guilty knowledge, a defendant need not
20 know the full extent of the conspiracy, nor need he know all
21 of the activities of the conspiracy. Further, the defendant
22 need not know who all the co-conspirators are. Indeed, a
23 single act may be enough to bring the defendant within the
24 membership of the conspiracy provided that the defendant was
25 aware of the conspiracy and knowingly associated himself

1 with one of its unlawful aims.

2 Of course, mere association or relationship with
3 a conspirator does not make someone a member of a
4 conspiracy. Nor is knowledge without participation or
5 participation without knowledge sufficient. What is
6 necessary is that the defendant you are considering
7 participated by agreeing to further one of the unlawful
8 purposes of the conspiracy. In other words, in order to
9 participate in a seditious conspiracy, a defendant must have
10 had knowledge of at least one of the two unlawful purposes
11 of the conspiracy -- (1) to make war on the United States
12 or (2) to oppose by force the authority of the United
13 States -- and must have agreed to aid in the accomplishment
14 of one of those ends. Now, although mere presence or mere
15 association with conspirators is not enough, it is a factor
16 you may consider, among others, to determine whether a
17 defendant was a member of the conspiracy. The defendant's
18 presence may establish his membership in a conspiracy if all
19 of the circumstances considered together show that his
20 presence was intended to advance the goals of that
21 conspiracy. He must not only have been present, he must
22 have known about the conspiracy, and he must have intended
23 by his presence to participate in the conspiracy, or to help
24 it succeed. In other words, presence itself may demonstrate
25 membership in a conspiracy only if that presence is a

1 functional part of the conspiracy.

2 If you find that a conspiracy of the kind charged
3 in Count One existed and that the defendant you are
4 considering participated knowingly and intentionally in it,
5 the extent or length of his participation has no bearing on
6 whether or not he is guilty. A defendant may join a
7 conspiracy at any point after it begins, and leave before
8 the conspiracy ends, and still be held responsible as a
9 conspirator. Once a conspiracy has been proved, the act of
10 any conspirator becomes, in the eyes of the law, the act of
11 all of the members of the conspiracy. Thus, if you find
12 that a seditious conspiracy existed and that a particular
13 defendant participated in the conspiracy, then even if the
14 defendant you are considering participated in the conspiracy
15 to a degree more limited than that of another
16 co-conspirator, that defendant is equally guilty so long as
17 he was a conspirator at any time during the relevant period.

18 If you find that a defendant joined the
19 conspiracy charged in Count One, then that defendant is
20 presumed to remain a member of the conspiracy -- and is
21 responsible for all actions taken in furtherance of the
22 conspiracy after he joins -- until the conspiracy has been
23 completed or abandoned or otherwise ended, for example by
24 the arrest of some or all conspirators.

25 The question then is: Did the defendant you are

1 considering join the conspiracy charged in Count One and
2 participate in it with the awareness of at least one of its
3 basic purposes and aims?

4 In defining the requirement of participation in
5 the conspiracy, I have used the words "unlawful," "willful,"
6 and "knowing." As I explained before, these terms mean that
7 you must find beyond a reasonable doubt that the defendant
8 knew what he was doing and he did it deliberately and
9 voluntarily as opposed to mistakenly or accidentally.

10 The word unlawful simply means contrary to law,
11 that is, to do something which the law forbids. Agreeing to
12 engage in sedition, defined as the two goals of making war
13 against the United States, or opposing by force the
14 authority of the United States, is unlawful.

15 A person acts knowingly if he acts purposely and
16 deliberately and not because of mistake or accident or other
17 innocent reason.

18 A person acts willfully if he acts voluntarily,
19 intentionally and with a bad purpose, that is, a purpose to
20 do something the law forbids. Of course, it is not
21 necessary that the defendant knew that he was violating any
22 particular law. But you must be convinced beyond a
23 reasonable doubt that he was aware that what he was doing
24 was, in general, unlawful.

25 Your decision whether a defendant acted

1 knowingly, intentionally or willfully, and whether he joined
2 the conspiracy with intent to make war on the United States,
3 or to oppose by force the authority of the United States,
4 involves a decision about that defendant's state of mind.
5 Since it is not possible to look into a person's mind to see
6 what he was thinking, you must consider all the facts and
7 circumstances shown by the evidence and exhibits in order to
8 determine what his state of mind was.

9 In our everyday affairs, we are continually
10 called upon to decide from the actions of others what their
11 state of mind is. Therefore, you may well rely on
12 circumstantial evidence in determining a defendant's state
13 of mind. It is up to you, based on all the evidence, to
14 determine whether each defendant knowingly and intentionally
15 entered the alleged conspiracy, and whether he did so with
16 one of its unlawful goals in mind. Of course, you may
17 consider a defendant's statements as well if you find them
18 relevant to the issue of his state of mind.

19 I mentioned a few moments ago that the arrest of
20 some or all of the conspirators is one way that a conspiracy
21 might come to an end. I instruct you that the arrest of a
22 conspirator does not necessarily end that conspirator's
23 participation in the conspiracy. If you find beyond a
24 reasonable doubt that a defendant participated in a
25 conspiracy in some way despite being incarcerated, the fact

1 that he happened to be incarcerated has no bearing on the
2 question of whether he was a member of the conspiracy. If
3 you find that he participated while in jail, he may still be
4 found to be a member of the conspiracy. On the other hand,
5 if you do not find that a defendant participated in the
6 conspiracy while in jail, then his acts after confinement in
7 jail could not show his participation in the conspiracy.

8 When I say that the government must prove the
9 existence of an agreement between two or more persons, it is
10 important to recall that an agreement between a defendant
11 and someone you find to have been a government agent, such
12 as Emad Salem, is not enough to establish a conspiracy. The
13 government must prove that at least two people who were not
14 government agents agreed to wage a war of urban terrorism
15 against the United States, or to oppose by force the
16 authority of the United States. If you find that at least
17 two people who were not government agents agreed to one or
18 more of those goals, that is enough to prove the existence
19 of the conspiracy, even if they also thought that Emad Salem
20 was part of the conspiracy and not a government agent.
21 Also, it is possible for two people to agree to one or more
22 of these goals through someone who is a government agent,
23 but there must be two or more people who are not government
24 agents agreeing to one or more of these goals, and each must
25 be aware that someone other than the government agent also

1 is participating in the conspiracy.

2 You will recall that I have admitted into
3 evidence acts and statements of others who, the government
4 charges, were accomplices or co-conspirators of the
5 defendants on trial here.

6 The reason for allowing this evidence to be
7 received against the defendants has to do with the nature of
8 the crime of conspiracy. A conspiracy is often referred to
9 as a partnership in crime. As in other types of
10 partnerships, when people enter into a conspiracy to
11 accomplish an unlawful end, each and every member becomes an
12 agent for the other conspirators in carrying out the
13 conspiracy.

14 Therefore, the reasonably foreseeable acts,
15 declarations, statements, and omissions of any member of the
16 conspiracy and in furtherance of the common purpose of the
17 conspiracy, are deemed, under the law, to be the acts of all
18 of the members, and all of the members are responsible for
19 such acts, declarations, statements, and omissions.

20 If you find, beyond a reasonable doubt, that the
21 defendant you are considering was a member of the conspiracy
22 charged in the indictment, then any acts done or statements
23 made in furtherance of the conspiracy by a person also found
24 by you to have been a member of the conspiracy, may be
25 considered against that defendant. This is so even if such

1 acts were done and statements were made in the defendant's
2 absence and without his knowledge.

3 However, before you may consider the statements
4 or acts of a co-conspirator in deciding the issue of the
5 defendant's guilt, you must first determine that the acts
6 and statements were made during the existence, and in
7 furtherance, of the unlawful scheme. If the acts were done
8 or the statements made by someone whom you do not find to
9 have been a member of the conspiracy, or if they were not
10 done or said in furtherance of the conspiracy, they may not
11 be considered by you in deciding whether a defendant is
12 guilty or not guilty.

13 I am not going to discuss in detail how each
14 defendant is claimed to have furthered the conspiracy
15 charged in Count One, or any other crime charged in this
16 indictment, but I do want to discuss briefly evidence that
17 has been introduced about statements by some defendants
18 expressing their opinions about various political, public or
19 religious issues. I want to emphasize to you that
20 expression of opinion alone -- opinion in the sense of a
21 point of view -- even an opinion advocating violence, is not
22 a crime in this country. Evidence of these statements by
23 certain defendants was introduced for any of three purposes,
24 and those are the only purposes for which you may consider
25 such statements of opinion on political, public or religious

1 issues:

2 First, you may consider whether such statements
3 are evidence of why a defendant was taking certain actions
4 at the time he spoke -- what his purpose was.

5 Second, you may consider whether a defendant's
6 opinions expressed at one time are evidence that at some
7 other time he took actions in accordance with those
8 opinions, if you find other evidence supports a finding that
9 he took such actions.

10 Third, you may consider whether a defendant was
11 an authority figure to other people, knew that those other
12 people acted on the basis of his opinions, and, knowing
13 that, expressed his opinion to those he was aware would act
14 in conformity with it. There are two parts to that: He
15 must in fact be an authority figure to others, and he must
16 know that he is. An expression of opinion by a defendant
17 under those circumstances may be considered by you as
18 evidence that a conspiracy or criminal venture charged in a
19 particular count existed, and that the defendant in question
20 was a member of that conspiracy. Whether or not such an
21 expression of opinion is evidence of a defendant's
22 participation in a conspiracy is something for you to decide
23 based not only on the expressed opinion itself, but also on
24 other circumstances, including other conduct and other
25 statements by that defendant, and other conduct and

1 statements by others who you may find are members of the
2 conspiracy, if you find a conspiracy existed.

3 What this means is that there are potentially
4 three categories of statements that you may find were proved
5 in this case. One is simple statements of a point of view
6 on a political, social or religious issue without any of the
7 related circumstances I discussed in the numbered paragraphs
8 above. Those statements may never be treated as evidence of
9 a crime. The second category includes statements expressing
10 a point of view that you find relevant for one of the three
11 purposes I mentioned above. The third category is
12 statements that do not express a point of view at all, but
13 which you may find were made to further some purpose of a
14 conspiracy. Those statements, if you find they were made,
15 may be treated as evidence in and of themselves and given
16 whatever weight you think they deserve.

17 Although this instruction appears as part of the
18 instructions as to Count One, you should use it to help you
19 evaluate the evidence as to any count for which you find it
20 relevant.

21 I want to say a few words about how religion may
22 be involved as an issue in this case, and also about how it
23 is not an issue in this case. These are essentially the
24 same instructions I gave you on this subject at the start of
25 the trial, and they continue to apply.

1 The government has argued to you that among the
2 motives or reasons some defendants had for committing the
3 acts charged in the indictment were certain of their
4 religious beliefs. Some defendants have argued that the
5 government was motivated by opposition to their religion in
6 bringing these charges, and some have argued that their
7 religious beliefs were not a motive for violence.

8 You will recall that when I described a few
9 moments ago the elements of the conspiracy charged in Count
10 One, motive was not among them. The government does not
11 have to prove that someone had a motive or reason for
12 committing a crime, but only that he acted with the intent
13 to further one of the unlawful goals I described a few
14 moments ago.

15 A defendant does not have to prove anything, and
16 certainly not that the government had a motive or reason for
17 bringing charges. However, the government may try to prove
18 and argue a motive, and a defendant may try to prove and
19 argue a motive by the government as well. Let me illustrate
20 this with an example that has nothing to do with this case.
21 If the government charges a defendant with bank robbery, it
22 does not have to prove the defendant's motive for committing
23 the robbery. However, the government may, if it wishes,
24 present evidence that the defendant needed the money badly
25 as evidence that he had a motive to rob the bank. Of

1 course, the defendant may try to show that he was in fact a
2 millionaire and did not need the money, and argue that the
3 government was picking on him only because he was wealthy.

4 However, it is important for you to understand
5 that although the government may introduce proof of
6 religious belief and argue motive from that, you may not
7 find that a defendant committed any offense charged in this
8 indictment merely because you may disagree with or dislike
9 his religious beliefs. Nor may you find that he did not
10 commit an offense simply because you agree with or admire
11 his religious beliefs.

12 Every person in this country, including each of
13 these defendants, has the right to believe what he or she
14 wishes. To put the matter simply, if you find beyond a
15 reasonable doubt that a defendant committed, or helped or
16 counseled others to commit, one or more of the crimes
17 charged in this indictment with the required state of mind,
18 it is not a defense that he acted in the name of religion,
19 and your verdict as to that defendant should be guilty.

20 On the other hand, if you find that there is not
21 enough evidence to prove beyond a reasonable doubt that a
22 defendant committed a crime, his religion cannot provide the
23 basis for a criminal conviction, and your verdict as to that
24 defendant should be not guilty.

25 As with the previous instruction I gave you,

1 although this instruction appears as part of the
2 instructions as to Count One, you should use it to help you
3 evaluate the evidence as to any count for which you find it
4 relevant.

5 In this case, the defendants have argued, among
6 other things, that the government's proof fails to show the
7 existence of only one overall conspiracy. Rather, they
8 argue that if any conspiracy has been proved it is actually
9 two or more separate and independent conspiracies with
10 various groups of members.

11 Whether there existed a single unlawful
12 agreement, or many such agreements, or indeed, no agreement
13 at all, is a question of fact for you to determine in
14 accordance with the instructions I am about to give you.

15 When two or more people join together to further
16 one or more common unlawful designs or purposes, a single
17 conspiracy exists. By way of contrast, multiple
18 conspiracies exist when there are separate unlawful
19 agreements to achieve distinct purposes. Proof of several
20 separate and independent conspiracies is not proof of the
21 single, overall conspiracy charged in the indictment, unless
22 one of the conspiracies proved happens to be the single
23 conspiracy described in the indictment.

24 You may find that there was a single conspiracy,
25 despite the fact that there were changes in either

1 membership, by the termination, withdrawal, or addition of
2 new members, or activities, or both, so long as you find
3 that some of the co-conspirators continued for the entire
4 duration of the conspiracy to act for the purposes charged
5 in the indictment.

6 The fact that the members of a conspiracy are not
7 always identical does not necessarily imply that separate
8 conspiracies exist.

9 On the other hand, if you find that the
10 conspiracy charged in the indictment did not exist, you
11 cannot find any defendant guilty of the single conspiracy
12 charged in the indictment. This is so even if you find that
13 some conspiracy other than the one charged in this
14 indictment existed, even though the purposes of both
15 conspiracies may have been the same, and even though there
16 may have been some overlap in membership.

17 Similarly, if you find that a particular
18 defendant was a member of another conspiracy, and not the
19 one charged in the indictment, then you must acquit that
20 defendant of the conspiracy charge.

21 But if you find that the conspiracy charged in
22 the indictment was proved, and that a defendant was a member
23 of the conspiracy charged in the indictment, then your
24 verdict as to that defendant should be guilty even if you
25 find that he was also a member of some other conspiracy as

1 well.

2 Therefore, what you must do is determine whether
3 the conspiracy charged in the indictment existed. If it
4 did, then you must determine the nature of the conspiracy
5 and who were its members.

6 Count Two of the indictment charges defendant
7 Omar Ahmad Ali Abdel Rahman with soliciting others to murder
8 Hosni Mubarak of Egypt, in violation of Sections 1111 and
9 1116 of Title 18 of the United States Code. Count Two
10 appears on page 29 of the indictment.

11 Section 1111 of Title 18 states that: "Murder is
12 the unlawful killing of a human being with malice
13 aforethought" -- that is, killing in a planned and
14 purposeful way.

15 Section 1116 of Title 18 provides that: "Whoever
16 kills or attempts to kill a foreign official . . . shall be
17 punished as provided under Section 1111 'Foreign
18 official' means a . . . President [of a foreign country]."

19 The solicitation statute, Section 373 of Title 18
20 of the United States Code, provides that -- and now I am
21 quoting from the statute:

22 "Whoever, with intent that another person
23 engage in conduct constituting a felony that has
24 as an element the use, attempted use, or
25 threatened use of physical force against the

1 person or property of another in violation of
2 the laws of the United States, and under
3 circumstances strongly corroborative of that
4 intent, solicits, commands, induces, or
5 otherwise endeavors to persuade such other
6 person to engage in such conduct [shall be guilty
7 of a crime]."

8 The government must prove each of the following
9 two elements beyond a reasonable doubt to sustain its burden
10 of proving the defendant guilty.

11 First, that Dr. Abdel Rahman solicited,
12 commanded, induced or otherwise tried to persuade Siddig
13 Ibrahim Siddig Ali, Abdel Rahman Haggag -- referred to in
14 the indictment as "Abdo Mohammed Haggag" -- or Emad Salem to
15 commit the murder of Hosni Mubarak as President of Egypt;
16 and

17 Second, that Dr. Abdel Rahman's actions strongly
18 indicated that he intended Mr. Siddig Ali, Mr. Haggag, or
19 Mr. Salem to actually commit the murder of Mr. Mubarak.

20 For you to find that Dr. Abdel Rahman solicited
21 others, you must determine that the alleged solicitation,
22 command or inducement was serious and substantial. In
23 general, this means that the solicitation or command must be
24 made under circumstances showing that Dr. Abdel Rahman was
25 serious that the murder be carried out. For example, a

1 person at a baseball game who shouts "kill the umpire" would
2 not be guilty of solicitation to murder because the
3 circumstances would not support the conclusion that he
4 genuinely wanted the result. But if the setting is like the
5 one in an old Western movie and there is a lynch mob
6 surrounding the jail, and a person shouts encouragement to
7 that mob surrounding the jail to lynch a prisoner, he might
8 be found to have intended that other persons actually murder
9 the prisoner.

10 In addition, you must find that Dr. Abdel Rahman
11 engaged in conduct that can be described as commanding,
12 urgently requesting, inducing, or trying to persuade
13 Mr. Siddig Ali, Mr. Haggag, or Mr. Salem to carry out the
14 murder of Mr. Mubarak. You need not find that he solicited
15 all three of those people, only that he solicited one of
16 them. However, you must agree unanimously on which one of
17 those three he solicited, if any, in order to return a
18 guilty verdict on this count.

19 The second element you must determine is whether
20 Dr. Abdel Rahman's actions strongly indicated that he
21 intended others to commit the murder of Hosni Mubarak. If
22 you find that Dr. Abdel Rahman solicited others to murder
23 Hosni Mubarak, you must then consider whether Dr. Abdel
24 Rahman acted with the required state of mind. In order to
25 find him guilty, you must find that he actually intended

1 that the murder of Hosni Mubarak be carried out.

2 I instruct you that it is no defense to a
3 prosecution of Dr. Abdel Rahman for soliciting a crime that
4 Mr. Haggag, or Mr. Salem would not have been persuaded to
5 murder Hosni Mubarak, either because Mr. Salem was a
6 government agent, or Mr. Haggag was unwilling to commit the
7 solicited act.

8 Count Three of the indictment charges charges
9 defendant Omar Ahmad Ali Abdel Rahman with conspiring with
10 Siddig Ibrahim Siddig Ali and others to murder Hosni Mubarak
11 of Egypt in violation of Sections 1111 and 1116 of the
12 United States Code, Title 18. Count Three appears on page
13 30 of the indictment, although you will see it incorporates
14 or includes certain acts charged in Count One. The relevant
15 statute on this subject is Section 1117 of Title 18, which
16 reads in relevant part as follows:

17 If two or more persons conspire to violate
18 Section 1111 . . . or 1116 of this title and
19 one or more of such persons do any overt act to
20 effect the object of the conspiracy . . ."
21 they shall be guilty of a crime.

22 As I told you a few moments a go, Section 1111 of
23 Title 18 makes it a crime to commit murder, which is defined
24 as the unlawful killing of a human being with malice
25 aforethought, and Section 1116 makes it a crime to kill or

1 attempt to kill a foreign official, official guest, or
2 internationally protected person. The statute provides that
3 the term "foreign official" includes the president of a
4 foreign country.

5 In order to find Dr. Abdel Rahman guilty of the
6 conspiracy charged in Count Three of the indictment, you
7 must find beyond a reasonable doubt:

8 First, that two or more persons entered the
9 unlawful agreement charged in Count Three of the indictment
10 starting some time around 1991 and continuing through around
11 August 1993;

12 Second, that the defendant knowingly joined in
13 that agreement, with some knowledge of the unlawful aim and
14 objective of the scheme;

15 Third, that one of the members of the conspiracy
16 knowingly committed at least one of the overt acts charged
17 in the indictment to further the objective of the
18 conspiracy.

19 Count Three charges Dr. Abdel Rahman with
20 conspiring with Siddig Ali and others to murder Hosni
21 Mubarak. Let me remind you that Count One of the indictment
22 charged all the defendants with a different kind of
23 conspiracy -- seditious conspiracy. The nature of these two
24 crimes is essentially the same, insofar as they both consist
25 of an agreement of two or more persons to accomplish some

1 unlawful purpose, so it should come as no surprise to you
2 that two of the elements of the crimes are the same. The
3 requirements of finding that persons entered into an
4 unlawful agreement, and knowing participation by the
5 defendant in the conspiracy are essentially the same in both
6 of these conspiracy counts. One difference, however, is
7 that the conspiracy to murder charged in Count Three
8 requires the commission of at least one overt act in
9 furtherance of the conspiracy. The overt acts Dr. Abdel
10 Rahman allegedly committed are listed on page 30 of the
11 indictment. I will not read them to you now; you will read
12 them yourselves during your deliberations.

13 In spite of the similarities in the nature of the
14 crimes charged in Counts One and Three, because of the
15 differences in wording between the two statutes involved, I
16 have formulated the instructions in Count Three in a way
17 that is different from the formulation that is used in Count
18 One. Do not be concerned about any differences you may
19 detect, but simply apply the instructions for each count
20 only to that count, unless you are told explicitly to refer
21 back to instructions from the prior count.

22 As I have just mentioned, the requirement of an
23 agreement is identical in Counts One and Three of the
24 indictment, and therefore, the instruction for finding an
25 agreement is also the same. I will not repeat that

1 instruction in detail here. Instead, I refer you to pages
2 17 through 20 of these instructions for an explanation of
3 the first element of conspiracy, insofar as it relates to
4 the existence of an unlawful agreement. Of course, here the
5 government must prove that the purpose of the conspiratorial
6 agreement charged in Count Three was to commit the murder of
7 Hosni Mubarak. As I have already explained, murder is the
8 unlawful killing of a human being, with malice aforethought.

9 Just a few more points before we turn to the
10 second element of the conspiracy. First, the indictment
11 charges that the conspiracy to murder charged in Count Three
12 existed from in or about 1991 and continuously thereafter up
13 to and including August 1993. It is not essential that the
14 government prove that the conspiracy started and ended on
15 those specific dates. Instead, it is enough if you find
16 that the conspiracy was formed and that it existed for some
17 substantial time within the period set forth in the
18 indictment.

19 Second, a conspiracy, once formed, is presumed to
20 have continued until its objectives are accomplished, or
21 there is an affirmative act of termination by its members,
22 or it is otherwise terminated -- for example, by the arrest
23 of one or more of the conspirators. So too, once a person
24 is found to be a member of a conspiracy, he is presumed to
25 continue his membership until its termination.

1 The second element of conspiracy is membership,
2 or participation in the conspiracy. This element was also a
3 requirement for finding seditious conspiracy, so much of the
4 following instruction may sound familiar.

5 If you find beyond a reasonable doubt that the
6 conspiracy charged in the indictment existed, you must
7 determine whether Dr. Abdel Rahman was a member of that
8 conspiracy. In determining whether he became a member of
9 the conspiracy, you must determine two things: (1) whether
10 he participated in it, and (2) whether he did so with
11 knowledge of its unlawful purposes. Did the defendant join
12 with an awareness of at least some of the unlawful aims and
13 purposes of the conspiracy?

14 To have guilty knowledge, a defendant need not
15 know the full extent of the conspiracy. Similarly, a
16 defendant need not know all of the activities of the
17 conspiracy or even who all the co-conspirators are. Indeed,
18 a single act may be enough to bring a defendant within the
19 membership of the conspiracy, provided that the defendant
20 was aware of the conspiracy and knowingly associated himself
21 with its criminal aims.

22 Mere association with a conspirator does not make
23 someone a member of the conspiracy. Nor is knowledge
24 without participation sufficient. What is necessary is that
25 the defendant you are considering participate with knowledge

1 of at least some of the unlawful purposes of the conspiracy
2 and with the intent to aid in the accomplishment of those
3 ends. It is not necessary, however, that a defendant
4 receive or even anticipate any financial benefit from his
5 participation in the conspiracy, so long as the defendant
6 participated in it in the way that I have explained.

7 If you find that the conspiracy existed and that
8 the defendant you are considering participated knowingly and
9 willfully in it, the extent of his participation has no
10 bearing on whether or not he is guilty. A defendant may
11 join a conspiracy at any point during its progress and be
12 held responsible for all that occurs thereafter. Even if
13 the defendant participated in the conspiracy to a degree
14 more limited than that of another co-conspirator, the
15 defendant is equally culpable so long as he was a
16 conspirator.

17 The question, then, is did the defendant you are
18 considering join the conspiracy and participate in it with
19 awareness of at least some of its basic purposes and aims.

20 In defining the second element of conspiracy, the
21 requirement of participation in the conspiracy, I have used
22 the words "unlawful," "willful," and "knowing." I have
23 previously defined these terms for you in explaining
24 seditious conspiracy on page 32 of these instructions, and I
25 will not repeat those definitions now.

1 In determining whether a defendant knowingly
2 participated in the conspiracy, you must find, beyond a
3 reasonable doubt, that he was aware of the conspiracy and
4 knowingly associated himself with its aim. However, in
5 determining whether a defendant had some knowledge of the
6 unlawful aim or objective of the conspiracy charged in Count
7 Three, you may also consider whether that defendant
8 deliberately ignored what would otherwise have been obvious
9 to him. If you find beyond a reasonable doubt that the
10 defendant acted with a conscious purpose to avoid learning
11 the truth, then you may find that the defendant acted
12 knowingly. However, guilty knowledge may not be established
13 by demonstrating that the defendant was merely negligent,
14 foolish, or mistaken.

15 If you find that the defendant was aware of a
16 high probability that the unlawful aim and objective of the
17 conspiracy was to carry out a murder, and that the defendant
18 acted with deliberate disregard of the facts, you may find
19 that the defendant acted knowingly. However, if you find
20 that the defendant actually did not know of the unlawful aim
21 and objective of the conspiracy, he may not be convicted.

22 The third element that the government must prove
23 beyond a reasonable doubt, to establish the offense of
24 conspiracy as charged in Count Three, is that at least one
25 of the overt acts charged in the indictment was knowingly

1 committed by at least one of the conspirators in furtherance
2 of the conspiracy, at or about the time and place alleged.
3 I want to emphasize that although an overt act need not be
4 proved in order to establish the conspiracy charged in Count
5 One, an overt act must be proved to establish the conspiracy
6 charged in Count Three. That is one way in which the
7 elements of the two counts differ.

8 The indictment on page 30 charges that various
9 overt acts were committed. I am not going to read them
10 aloud now; you are to read them yourselves when you
11 deliberate in the jury room. In order for the government to
12 satisfy this third element, it does not have to prove all of
13 the overt acts alleged in the indictment, but it must prove
14 at least one.

15 The government must prove beyond a reasonable
16 doubt that the overt act was committed for the purpose of
17 carrying out the unlawful agreement. In order for the
18 government to satisfy this element, it must prove beyond a
19 reasonable doubt that at least one overt act which you find
20 was committed was knowingly and willfully done by at least
21 one conspirator to further or carry out some object or
22 purpose of the conspiracy. In this connection, you should
23 bear in mind that the overt act, standing alone, may be a
24 perfectly lawful act. Frequently, however, an apparently
25 innocent act loses its harmless character if it is a step in

1 carrying out or assisting a conspiratorial scheme. You are
2 therefore instructed that the overt act does not have to be
3 an act that, in and of itself, is criminal or constitutes an
4 objective of the conspiracy.

5 You need not find that a particular defendant
6 committed the overt act. It is enough for the government to
7 prove beyond a reasonable doubt that one of the conspirators
8 knowingly committed an overt act in furtherance of the
9 conspiracy. Such an act becomes, in the eyes of the law,
10 the act of all of the members of the conspiracy.

11 You are further instructed that the overt act
12 need not have been committed at precisely the time alleged
13 in the indictment. It is enough if you are convinced beyond
14 a reasonable doubt that it occurred at or about the time and
15 place stated.

16 As I pointed out in connection with Count One,
17 you will recall that I have admitted into evidence acts and
18 statements of others who, the government charges, were
19 accomplices or co-conspirators of the defendant Dr. Abdel
20 Rahman.

21 The reason for allowing this evidence to be
22 received against this defendant has to do with the nature of
23 the crime of conspiracy. A conspiracy is often referred to
24 as a partnership in crime. As in other types of
25 partnerships, when people enter into a conspiracy to

1 accomplish an unlawful end, each and every member becomes an
2 agent for the other conspirators in carrying out the
3 conspiracy.

4 Therefore, the reasonably foreseeable acts,
5 declarations, statements, and omissions of any member of the
6 conspiracy that are in furtherance of the common purpose of
7 the conspiracy, are deemed, under the law, to be the acts of
8 all of the members, and all of the members are responsible
9 for such acts, declarations, statements, and omissions.

10 If you find, beyond a reasonable doubt, that the
11 defendant you are considering was a member of the conspiracy
12 charged in the indictment, then any acts done or statements
13 made in furtherance of the conspiracy by a person also found
14 by you to have been a member of the conspiracy, may be
15 considered against that defendant. This is so even if such
16 acts were done and statements were made in the defendant's
17 absence and without his knowledge.

18 However, before you may consider the statements
19 or acts of a co-conspirator in deciding the issue of the
20 defendant's guilt, you must first determine that the acts
21 and statements were made during the existence, and in
22 furtherance, of the unlawful scheme. If the acts were done
23 or the statements were made by someone whom you do not find
24 to have been a member of the conspiracy, or if they were not
25 done or said in furtherance of the conspiracy, they may not

1 be considered by you in deciding whether the defendant is
2 guilty or not guilty.

3 Count Three of the indictment charges that Dr.
4 Abdel Rahman conspired with Siddig Ibrahim Siddig Ali and
5 others known and unknown to the grand jury. A person cannot
6 conspire with himself and therefore you cannot find the
7 defendant guilty unless you find beyond a reasonable doubt
8 that he participated in the conspiracy charged with at least
9 one other person. However, that person need not be named in
10 the indictment and need not be another defendant in this
11 case. But I caution you again that that person cannot be
12 Emad Salem, who was a government agent.

13 I am going to stop here for a break, ladies and
14 gentlemen. Please leave your copies of the charge and any
15 other materials you may have behind. Please do not discuss
16 the case, and we will resume in a few minutes.

17 (The jury left the courtroom.)

18 MR. McCARTHY: Your Honor, I looked at the
19 verdict sheet, and it indicates that if the jury acquits on
20 Count Nine, which is the attempted murder in aid of
21 racketeering on Acosta, it must acquit on Count Ten. I
22 think this is an issue that came up in the charging
23 conference, and I don't think it is correct. The jury could
24 acquit on Count Nine if it doesn't find the racketeering
25 enterprise, which is not an element of Count Ten. I think

1 it could be repaired, and I would suggest it in the
2 following way.

3 THE COURT: Why don't we excuse the defendants so
4 they can do whatever they have to do.

5 MR. McCARTHY: Yes.

6 THE COURT: Which page of the verdict form?

7 MR. McCARTHY: It is page 5 of the verdict sheet
8 and it would be page 112 of the charge.

9 THE COURT: You are saying the charge has to be
10 corrected as well?

11 MR. McCARTHY: Yes, your Honor.

12 MR. McCARTHY: My suggestion at 112 would be,
13 with respect to the fourth paragraph, about six lines down,
14 the sentence that begins: "If you find that." I believe it
15 would be correct if it said: "If you find that the
16 government has not proved beyond a reasonable doubt the
17 elements of the crime of attempted murder of Carlos Acosta,
18 as they are explained on page 104, then you must return a
19 verdict of not guilty as to Count Ten as well."

20 THE COURT: But if all that is described on page
21 104 are the elements, then what is the need for the change?

22 MR. McCARTHY: Because right now what it says is
23 that if you find that the government has not proved beyond a
24 reasonable doubt that Mr. Nosair committed the crime of
25 attempted murder --

1 THE COURT: No, it does not. Read on. "Of
2 Carlos Acosta as that crime is explained on page 104."

3 MR. McCARTHY: Right. But the crime that is
4 described on page 104 is the crime of attempted murder in
5 aid of racketeering. That is one element of that crime.
6 But if you take that in conjunction with the verdict sheet
7 in particular, where it says that they have to acquit on
8 both if they acquit on the first --

9 THE COURT: Has not proved beyond a reasonable
10 doubt that -- what was the language?

11 MR. McCARTHY: I am sorry, your Honor?

12 THE COURT: What was the proposed language?

13 MR. McCARTHY: "The government has not proved
14 beyond a reasonable doubt the elements of the crime of
15 attempted murder as they are explained on page 104."

16 THE COURT: All right.

17 MR. McCARTHY: My other suggestion, and maybe I
18 can get that out before Mr. Stavis makes whatever objection
19 I think he is about to make, would be just to drop the note
20 on page 5 as it pertains to Count Nine.

21 THE COURT: Mr. Stavis?

22 MR. STAVIS: Yes, it has taken about nine months,
23 but I agree with Mr. McCarthy with regard to the verdict
24 sheet. I don't, however, understand the change on page 112.

25 THE COURT: The change on page 112 confines them

1 to their finding on the murder elements and doesn't say that
2 if they don't find the racketeering element on Count Nine,
3 then they can't find attempted murder on Count Ten, which is
4 misleading. In other words, I should not instruct them as
5 to Count Ten in a way that would allow them, if they don't
6 find the racketeering elements on Count Nine -- not would
7 allow them but would require them -- if they don't find the
8 racketeering elements of Count Nine, would require them to
9 return a not guilty verdict on Count Ten simply because they
10 haven't found the racketeering element of Count Nine. That
11 is the problem. It is conceivable that they could fail to
12 find the racketeering element of Count Nine but nonetheless
13 find attempted murder in Count Ten if they find the act.

14 MR. STAVIS: I understood that with regard to the
15 verdict sheet. However, on page 112 you are referring to
16 the crime of attempted murder. Back on page 104 --

17 THE COURT: That was my first attempt, in arguing
18 with Mr. McCarthy, to save myself the correction. But as he
19 pointed out, it is the crime, and it should be more focused
20 on the elements described on that page.

21 MR. PATEL: Your Honor, I was just reading it
22 over. Perhaps your Honor should say what your Honor just
23 said, that you are focusing on the racketeering elements.

24 THE COURT: I should not permit them to consider
25 on Count Ten the racketeering elements of Count Nine.

1 MR. PATEL: Exactly. Maybe I missed -- may I
2 have a moment with Mr. McCarthy?

3 THE COURT: Surely.

4 (Pause)

5 MR. PATEL: Emily Latella.

6 THE COURT: If it weren't for the last minute, a
7 lot of things wouldn't get done. I may have a sign made
8 with that on it.

9 (Recess)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 (In open court; jury present)

2 THE COURT: Hello again.

3 I am planning to go, if we all can stand it,
4 until about page 119 before we break for lunch. We are up
5 to page 65 of the charge, for those of you who may be
6 following.

7 We turn now to Count Four, which is set forth on
8 page 31 of the indictment. In Count Four, the indictment
9 charges Omar Ahmad Ali Abdel Rahman with soliciting Emad
10 Salem to damage or destroy by fire or explosives an American
11 military installation, in violation of Section 844(f) of
12 Title 18 of the United States Code. Section 844(f) of Title
13 18 provides, quoting from the statute:

14 "Whoever maliciously damages or destroys, or
15 attempts to damage or destroy, by means of an
16 explosive, any building, vehicle or other
17 personal or real property in whole or in part
18 owned, possessed or used by, or leased to, the
19 United States, any department or agency thereof
20 or any institution or organization receiving
21 federal financial assistance shall [be guilty of
22 a crime]."

23 The solicitation statute is Section 373 of Title
24 18 of the United States Code, which I read to you in
25 connection with Count Two, and which appears on page 46 of

1 the charge. I will not reread it here; you may refer to
2 that page if you wish to read it.

3 The government must prove each of the following
4 elements beyond a reasonable doubt to sustain its burden of
5 proving the defendant guilty of the crime charged in Count
6 Four:

7 First, that Dr. Abdel Rahman solicited,
8 commanded, induced or otherwise tried to persuade Mr. Salem
9 to damage or destroy by fire or explosives an American
10 military installation -- and here I emphasize that it has to
11 be by fire or explosives; and

12 Second, that Dr. Abdel Rahman's actions strongly
13 indicated that he intended Mr. Salem to attack an American
14 military installation, through the use, attempted use or
15 threatened use of physical force against the property of an
16 American military installation. I charge you that an attack
17 by fire or explosives on an American military installation
18 is such a crime.

19 For you to find that Dr. Abdel Rahman solicited
20 Emad Salem, you must determine that the alleged
21 solicitation, command or inducement was serious and
22 substantial. In general, this means that the solicitation
23 or command must be made under circumstances showing that
24 Dr. Abdel Rahman was serious that an attack on the American
25 military installation be carried out.

1 In addition, you must find that Dr. Abdel Rahman
2 engaged in conduct that can be characterized as commanding,
3 entreating, inducing or trying to persuade Mr. Salem to
4 carry out an attack on the military installation. You need
5 not find that he did all of those things. However, in order
6 to return a guilty verdict, you must find beyond a
7 reasonable doubt that he did one of those things.

8 The second element you must determine is that
9 Dr. Abdel Rahman's actions strongly indicated that he
10 actually intended Emad Salem to cause an attack on a
11 military installation. A military installation falls within
12 the definition of property owned by the United States.

13 I instruct you that it is no defense to a
14 prosecution for soliciting a crime that Emad Salem could not
15 be convinced to attack an American military installation
16 because he was a government agent, or was otherwise
17 unwilling to commit the solicited act. The issue here is
18 the state of mind of the defendant, Dr. Abdel Rahman, not
19 the state of mind of the person he allegedly asked to do the
20 act, Emad Salem.

21 Count Five of the indictment charges all the
22 defendants with conspiring together and with others -- that
23 is, with participating in an unlawful agreement -- to
24 violate Sections 844(i) and 842(a)(3)(A) of Title 18 of the
25 United States Code. Section 844(i) makes it a crime to use

1 fire or explosives to damage or destroy, or attempt to
2 damage or destroy, buildings, vehicles or real estate used
3 in interstate or foreign commerce, or to cause explosive
4 materials to be transported in interstate commerce. Count
5 Five appears on pages 32 and 33 of the indictment and
6 incorporates or includes certain acts that appear as part of
7 Count One.

8 The alleged targets of this conspiracy were the
9 United Nations complex, the Federal Office Building at 26
10 Federal Plaza, the Lincoln and Holland Tunnels, and the
11 George Washington Bridge. The destruction of any of these
12 targets could have involved the destruction of buildings,
13 vehicles or real estate used in interstate or foreign
14 commerce.

15 Section 842(a)(3)(A) makes it a crime to
16 transport, ship, cause to be transported or receive in
17 interstate commerce any explosive materials which are
18 defined in Section 841(c) as explosives, blasting agents,
19 and detonators.

20 The relevant statute on this subject is Section
21 371 of Title 18 of the United States Code, which provides in
22 relevant part as follows, and now I am quoting from the law:

23 "If two or more persons conspire to commit
24 any offense against the United States and one or
25 more of such persons do any act to effect the

1 object of the conspiracy, they shall be guilty
2 of a crime."

3 In order to find the defendant you are
4 considering guilty of the crime charged in Count Five of the
5 indictment, you must find beyond a reasonable doubt:

6 First, that two or more persons entered the
7 unlawful agreement charged in Count Five at or about the
8 time charged. That agreement must have taken place in or
9 have been intended to have an effect in the United States,
10 and must have included at least one of the following two
11 goals:

12 A. to damage or destroy, or attempt to damage or
13 destroy, by means of fire or an explosive, any building,
14 vehicle or any other real or personal property used in
15 interstate or foreign commerce or in any activity affecting
16 interstate or foreign commerce; or

17 B. to transport, ship, cause to be transported,
18 or receive in interstate or foreign commerce explosive
19 materials;

20 Second, that the defendant under consideration
21 unlawfully, knowingly and willfully joined in that agreement
22 with awareness of at least one of its unlawful goals; and

23 Third, that one of the members of the conspiracy,
24 not necessarily a defendant on trial before you, committed
25 one of the overt acts charged in the indictment in order to

1 further some objective of the conspiracy.

2 With respect to the part of the first element
3 that deals with how you determine whether an unlawful
4 agreement exists, I refer you to pages 17 through 20 of
5 these instructions, which are part of the charge on Count
6 One and discuss how you determine whether a conspiracy
7 existed. You should apply these pages to Count Five as
8 well. Of course, here the government must prove that the
9 purpose of the conspiratorial agreement charged in Count
10 Five was to carry out a bombing or cause explosives to be
11 transported in interstate or foreign commerce.

12 The conspiracy the government must prove as to
13 Count Five is one with at least one of the two aims
14 described in the indictment: (a) to damage or destroy, or
15 attempt to damage or destroy, by means of fire or an
16 explosive, any building, vehicle, or any other real or
17 personal property used in interstate or foreign commerce or
18 in any activity affecting interstate or foreign commerce; or
19 (b) to transport, ship or cause to be transported or to
20 receive in interstate or foreign commerce explosive
21 materials.

22 As I explained in connection with the seditious
23 conspiracy charged in Count One, the conspirators need not
24 have agreed to both goals -- one is sufficient. You must,
25 however, be unanimous as to which goal or goals you find the

1 conspirators agreed to.

2 Here, I remind you that there is no requirement
3 that the conspiracy was a successful one. That is, if you
4 find that a conspiracy existed, you need not find that the
5 conspirators actually carried out any bombings or actually
6 transported, shipped or received any explosive materials in
7 interstate and foreign commerce. Of course, if you find
8 that any bombings were carried out or that any explosive
9 materials were transported in interstate or foreign commerce
10 by unlicensed persons, you may consider such an actual
11 bombing or shipment of explosives to be evidence that the
12 conspiracy to carry out those prohibited activities existed.
13 To prove guilt, however, the government must establish
14 either that there was an agreement to engage in the
15 destruction or attempted destruction of buildings, vehicles
16 or other real or personal property used in interstate or
17 foreign commerce, or in any activity affecting interstate or
18 foreign commerce, or that unlicensed persons agreed to
19 transport, ship or receive explosive materials in interstate
20 or foreign commerce, not necessarily both.

21 You will note that the crimes that were the
22 alleged goals or objects of this conspiracy refer to
23 property "used in interstate or foreign commerce or in any
24 activity affecting interstate or foreign commerce," and to
25 explosives being transported, shipped or received in

1 interstate and foreign commerce.

2 Interstate commerce means commerce or business
3 carried out between a place in one state and a place in
4 another state. It means commerce between places within the
5 same state but passing through any place outside that state.
6 Foreign commerce means commerce between a state and some
7 foreign country. I instruct you that, unlike residential
8 property, business-related and government-related property
9 is generally used in or affecting interstate -- and often
10 foreign -- commerce, even if it has only a slight effect on
11 interstate or foreign commerce.

12 As I explained to you from the outset, the charge
13 in Count Five is a conspiracy charge. That means it focuses
14 on the criminal agreement, not the crime that was the object
15 of the conspiracy. It is probably obvious to you that since
16 there is no requirement that the conspiracy be successful --
17 that is, that the government prove that the object crime was
18 ever actually committed -- neither is there a requirement
19 that the government prove that there was actually an effect
20 on interstate or foreign commerce. The government does not
21 have to prove that explosives were actually moved in
22 interstate commerce or even that property used in or having
23 some effect on interstate or foreign commerce was in fact
24 damaged or destroyed. What is required is that the
25 agreement into which the conspirators entered had a

1 potential to affect interstate or foreign commerce in some
2 way. Of course, if you find that commerce was in fact
3 affected by the conspirators' activities, that effect would
4 satisfy the requirement of showing a potential effect on
5 commerce.

6 Also, there is no requirement for the government
7 to show that a defendant knew his activities had a potential
8 effect on commerce. As I have stated, what is required is
9 that you find, regardless of what the defendant may have
10 known, that the conspiracy had the potential to affect
11 interstate or foreign commerce.

12 The first element the government must prove
13 beyond a reasonable doubt includes that the conspiracy was
14 either formed or in some way acted upon within the United
15 States.

16 With respect to the second element, the
17 government must establish that the defendant under
18 consideration unlawfully, knowingly and willfully joined the
19 conspiracy with awareness of at least one of its unlawful
20 ends. I direct your attention again to pages 56 through 59
21 above, which are a part of the charge on Count Three, where
22 I discussed with you the principles relating to what the
23 government must establish about the extent of knowledge and
24 participation by an alleged conspirator in order to
25 establish guilt. These principles apply to this count as

1 well.

2 To sustain its burden of proof, the government
3 must show beyond a reasonable doubt that at least one overt
4 act was knowingly committed by at least one of the
5 coconspirators and that the purpose of that act was to
6 further or carry out some object or purpose of the
7 conspiracy. I have already described for you, in connection
8 with Count Three, at pages 60 to 61 above, what an overt act
9 requirement is, and what it means for an act to be in
10 furtherance of a conspiracy. I will not repeat those
11 instructions, which apply equally to the overt act
12 requirement in the Count Five conspiracy.

13 I remind you that the overt acts that relate
14 specifically to Count Five are listed on page 33 of the
15 indictment.

16 I have previously instructed you as to how you
17 may consider the acts and statements of those you may find
18 were members of the conspiracy. These instructions appear
19 at pages 62 through 63 above, and you should apply them to
20 this count as well.

21 Also, as I have instructed you earlier at page
22 64, in order to find that any defendant participated in the
23 conspiracy charged in this count, you must find that there
24 was more than one conspirator who was not a government
25 agent. You should consult that earlier instruction here as

1 well.

2 Count six charges that seven defendants --
3 Clement Hampton-El, Amir Abdelgani, Fares Khallafalla, Tariq
4 Elhassan, Fadil Abdelgani, Mohammed Saleh and Victor
5 Alvarez -- attempted to bomb buildings, vehicles and other
6 real and personal property in violation of Section 844(i) of
7 Title 18 of the United States Code. That statute reads in
8 relevant part as follows:

9 "Whoever maliciously damages or destroys, or
10 attempts to damage or destroy, by means of fire
11 or an explosive, any building, vehicle, or other
12 real or personal property used in interstate or
13 foreign commerce or in any activity affecting
14 interstate or foreign commerce ..."
15 shall be guilty of a crime.

16 The indictment charges in Count Five that the
17 defendants conspired to violate the law I just quoted, while
18 Count Six alleges that they actually violated the statute by
19 attempting to bomb. Conspiracy to commit a crime is an
20 entirely separate and distinct charge from the actual
21 violation or substantive charge which may be the object of a
22 conspiracy, which here is attempted bombing. You must
23 determine each defendant's guilt or lack of it separately on
24 each of these counts. In your deliberations, however, you
25 may rely at times on the same evidence as to each count.

1 In order to prove the charge of attempting to
2 bomb, the government must show beyond a reasonable doubt as
3 to a defendant that:

4 First, the defendant intended to destroy by fire
5 or explosives any buildings, vehicles, or property used in
6 interstate or foreign commerce or affecting interstate or
7 foreign commerce; and

8 Second, that the defendant willfully took some
9 action that was a substantial step in an effort to bring
10 about or accomplish the bombing.

11 The mere intention to commit a specific crime
12 does not amount to an attempt. In order to convict any
13 defendant of an attempt, you must find beyond a reasonable
14 doubt that the defendant intended to bomb and that he took
15 some action which was a substantial step toward the
16 commission of the bombing.

17 In order to establish that the defendants
18 intended to violate Section 844(i), the government must
19 prove beyond a reasonable doubt the following three things:

20 First, that the defendant you are considering
21 intended to set fire to or intended to use an explosive to
22 damage or destroy property;

23 Second, that the property was used in or affected
24 interstate or foreign commerce; and

25 Third, that the defendant acted maliciously.

1 The first element of the offense which the
2 government must prove beyond a reasonable doubt is that the
3 defendants, by means of fire or explosive, intended to
4 damage or destroy property.

5 To find beyond a reasonable doubt that a
6 defendant intended to destroy or damage the property in
7 question by an explosive, you need not find that the
8 explosion actually occurred. You also need not find that
9 the defendant actually possessed an explosive. You need
10 only find that the defendant intended to use a substance
11 which when ignited would cause an explosion.

12 The term "explosion" is used in its customary or
13 ordinary sense; that is, an explosion is a rapid expansion
14 of gases caused by a rapid burning of material, which may
15 cause a sharp noise.

16 If you find, therefore, that the defendants
17 intended to damage or destroy property by means of fire or
18 explosives, as I have defined the term for you, the first
19 element of attempting to bomb is satisfied.

20 Next, the government must prove beyond a
21 reasonable doubt that the property which the defendants
22 intended to damage or destroy was property used in or
23 affecting interstate commerce.

24 Interstate commerce means commerce or business
25 between any place in one state and another place outside

1 that state. It also means commerce between places within
2 the same state, but passing through any place outside that
3 state.

4 Business-related property, as opposed to
5 residential property, is considered as being used in or
6 affecting interstate commerce, even if it has a minimal
7 effect on interstate commerce. That is to say,
8 business-related property may be considered as affecting
9 interstate commerce if food or drink which has moved in
10 interstate commerce is sold there, or if oil or gas which
11 has moved in interstate commerce is used to heat the
12 building.

13 The government need not prove that explosives
14 were shipped in interstate commerce but only that the
15 property which the defendants intended to damage or destroy
16 was used in or affected interstate commerce.

17 If you find, therefore, that the facts show
18 beyond a reasonable doubt that the property in question
19 comes within the definition of "property used in or
20 affecting interstate commerce," which I have just described
21 to you, the second element of the offense is established.

22 If you find that any of the defendants intended
23 to damage or destroy property within the definition I have
24 given you, by means of fire or explosive, you must then
25 consider whether any such defendant acted with the required

1 state of mind to be guilty of a violation of 18 U.S.C.
2 Section 844(i). You may not find a defendant guilty for
3 acting mistakenly or carelessly. In order to find a
4 defendant guilty, you must find that he intended
5 deliberately to set a fire or use explosives.

6 In determining whether a defendant's actions
7 amounted to a substantial step toward the commission of a
8 bombing, it is necessary to distinguish between mere
9 preparation on the one hand and the actual doing of the
10 criminal deed on the other. Mere preparation, which may
11 consist of planning the offense, or of devising, obtaining
12 or arranging a means for committing the offense, is not an
13 attempt, although some preparations may amount to an
14 attempt. The acts of a person who intends to commit a crime
15 will constitute an attempt where the acts themselves clearly
16 indicate an intent to willfully commit the crime, and the
17 acts are a substantial step in a course of conduct that is
18 planned to culminate in the commission of the crime.

19 Factual impossibility is not a defense to a
20 charge of attempting to commit a crime if the crime could
21 have been committed if the relevant factual circumstances
22 had been as the defendant believed them to be. In other
23 words, a person is guilty of an attempt to commit a crime
24 if, acting with the state of mind otherwise required for the
25 commission of the crime, he intentionally engages in conduct

1 which would constitute the crime if the relevant factual
2 circumstances were as he believed them to be.

3 In Count Six of the indictment, each of the seven
4 defendants I mentioned is also charged with having aided and
5 abetted an attempted bombing. Again, the aiding and
6 abetting statute, Section 2 of the United States Code, Title
7 18, reads as follows:

8 "Whoever commits an offense against the
9 United States or aids, abets, counsels, commands
10 induces or procures its commission, is
11 punishable as a principal."

12 Under this statute, it is not necessary for the
13 government to show that a defendant physically committed the
14 crime with which he is charged in order for you to find him
15 guilty. A person who aids or abets another to commit an
16 offense is just as guilty of that offense as if he committed
17 it himself. Accordingly, you may find a defendant guilty of
18 Count Six if you find that the government has proved beyond
19 a reasonable doubt that another person actually committed or
20 attempted to commit the offense, as I have explained the
21 concept of attempt to you, and that the defendant you are
22 considering aided and abetted that person in committing or
23 attempting to commit the offense.

24 As you can see, the first requirement is that you
25 find that another person has committed or attempted to

1 commit the crime charged. Obviously, no one can be
2 convicted of aiding and abetting the criminal acts of
3 another if no crime was committed or attempted by the other
4 person in the first place. But if you do find that a crime
5 was committed or attempted, then you must consider whether
6 the defendant aided or abetted the commission or attempted
7 commission of the crime.

8 In order to aid or abet another to commit a
9 crime, it is necessary that the defendant you are
10 considering willfully and knowingly associated himself in
11 some way with the crime charged, that he willfully and
12 knowingly tried by some act to help make the crime
13 successful. Of course, the mere presence of a person where
14 a crime is being committed, even coupled with knowledge that
15 a crime is occurring, or the mere acquiescence by a person
16 in the criminal conduct of others is not enough to establish
17 aiding and abetting. An aider or abettor must participate
18 in the crime charged as something he wished to bring about.

19 In order to determine whether a defendant aided
20 and abetted a crime, ask yourself, did the defendant
21 participate in the crime charged as something he wished to
22 bring about? Did he associate himself with the criminal
23 venture knowingly and willfully? Did he seek by his actions
24 to make the criminal venture succeed? If he did, then he is
25 an aider and abettor, and therefore guilty of the offense

1 you have found to have been committed. If he did not, then
2 he is not an aider and abettor, and he is not guilty of that
3 offense.

4 Here too, in determining whether a defendant
5 acted knowingly, you may consider whether that defendant
6 deliberately closed his eyes to what otherwise would have
7 been obvious to him. If you find beyond a reasonable doubt
8 that the defendant acted with a conscious purpose to avoid
9 learning the truth, then you may find that the defendant
10 acted knowingly. However, guilty knowledge may not be
11 established by demonstrating that the defendant was merely
12 negligent, foolish or mistaken.

13 If you find that the defendant was aware of a
14 high probability that he was associating himself with an
15 attempted bombing, and that his actions would help make that
16 crime successful, but the defendant acted with a deliberate
17 disregard of those facts, you may find that the defendant
18 acted knowingly. However, if you find that the defendant
19 actually did not know about the criminal venture or the
20 effect of his actions, he may not be convicted.

21 I will now instruct you on the elements of the
22 crimes charged in Counts Seven through Fourteen. Each of
23 these counts is brought against the defendant El Sayyid
24 Nosair and they all relate to the events of November 5,
25 1990, including the murder of Meir Kahane and the assaults

1 on Irving Franklin and Postal Officer Carlos Acosta.

2 Count Seven of the indictment charges El Sayyid
3 Nosair with murdering Meir Kahane for the purpose of
4 maintaining and increasing his position in the Jihad
5 Organization, an alleged criminal enterprise. Count Seven
6 appears on pages 34 and 35 of the indictment

7 Section 1959(b)(2) of Title 18 of the United
8 States Code defines an enterprise as "any... group of
9 individuals associated in fact although not a legal entity,
10 which is engaged in or the activities of which affect
11 interstate or foreign commerce."

12 In order to meet its burden of proof that the
13 defendant El Sayyid Nosair is guilty of the crime charged in
14 Count Seven, the government must establish beyond a
15 reasonable doubt each of the following elements:

16 First, that on or about November 5, 1990, Mr.
17 Nosair murdered Meir Kahane;

18 Second, that Mr. Nosair was a member of the Jihad
19 Organization, and that that was an enterprise engaged in,
20 and the activities of which affected, interstate or foreign
21 commerce; and

22 Third, that Mr. Nosair murdered Meir Kahane at
23 least in part for the purpose of maintaining or increasing
24 his position in the Jihad Organization.

25 With respect to Count Seven of the indictment,

1 the first element that the government must prove beyond a
2 reasonable doubt is that on or about the date charged in
3 Count Seven, the defendant El Sayyid Nosair murdered and
4 conspired to murder Meir Kahane.

5 In order to find that the defendant Nosair
6 murdered Meir Kahane, you must find that the government has
7 proved, beyond a reasonable doubt, both of the following two
8 elements:

9 First, that on or about November 5, 1990, Mr.
10 Nosair did in fact cause the death of Meir Kahane; and

11 Second, that on or about November 5, 1990, the
12 defendant specifically intended to cause the death of Meir
13 Kahane.

14 Under the murder statute, a person intends to
15 cause the death of another person when his conscious
16 objective is to cause the death of the person.

17 For you to find Mr. Nosair guilty of this count,
18 you must find also that he was, before the alleged murder
19 took place, a member of the Jihad Organization described at
20 pages 2 through 6 of the indictment, and that that
21 organization was an enterprise, as defined in Section
22 1959(b)(2) of Title 18 of the United States Code, engaged in
23 racketeering activity. That section defines an enterprise
24 as "any union or group of individuals associated in fact ...
25 which is engaged in, or the activities of which affect,

1 interstate or foreign commerce."

2 This element has four parts: the existence of
3 the enterprise or group; the defendant's membership in that
4 enterprise; the enterprise's engagement in acts of
5 racketeering; and the enterprise's effect on interstate
6 commerce.

7 The first element that the government must prove
8 beyond a reasonable doubt is that the enterprise alleged in
9 the indictment existed.

10 An enterprise under the statute does not have to
11 have a particular name, or, for that matter, have any name
12 at all. It does not have to be a commonly recognized legal
13 entity such as a corporation, a trade union, a partnership
14 or the like, nor need it be registered or licensed as an
15 enterprise.

16 The statute makes clear that an enterprise may
17 be, and I am quoting, "a group of individuals who are
18 associated in fact although not a legal entity."

19 Thus, an enterprise may be a group of people
20 informally associated together for a common purpose of
21 engaging in a course of conduct. In addition to having a
22 common purpose, this group of people must have a core of
23 personnel who function as a continuing unit. Furthermore,
24 the enterprise must continue to exist in substantially
25 similar form through the period charged. This does not mean

1 that the membership must remain identical, but the
2 enterprise must have a recognizable core that continues
3 through the duration.

4 The indictment describes the enterprise alleged
5 as a "Jihad Organization," further described in paragraphs 1
6 through 12 at pages 2 through 6 of the indictment. You are
7 to read those pages yourselves.

8 If you decide that the Jihad Organization was
9 composed of a "group of individuals," you must then
10 determine whether it was engaged in "racketeering activity."
11 The term "racketeering activity" is defined by a statute,
12 Title 18, United States Code, 1961(1). It includes acts or
13 threats involving murder and arson, as well as acts
14 involving retaliating against informants.

15 If you decide that the Jihad Organization existed
16 and engaged in racketeering activity, you must decide
17 whether there was any effect at all on interstate or foreign
18 commerce from the activities of the group. The effect can
19 be minimal; it need not be substantial. Nor need Mr. Nosair
20 be aware of the effects. All that is necessary is that the
21 activities of the enterprise affect interstate or foreign
22 commerce in some minimal way -- for example, by members
23 traveling in interstate or foreign commerce or conducting
24 activities, criminal or otherwise -- that in some way
25 affected property in interstate or foreign commerce.

1 In summary, if you find that there was, in fact,
2 a group of people characterized by (1) a common purpose or
3 purposes, (2) an ongoing formal or informal organization or
4 structure, (3) core personnel who functioned as a continuing
5 unit during a substantial time period within the time
6 charged in the indictment, and (4) an effect on interstate
7 or foreign commerce as I have described, then you may find
8 that an enterprise existed.

9 However, I instruct you that if you do not find
10 that the government has proved beyond a reasonable doubt
11 that the Jihad Organization described in Count One existed,
12 then you cannot find that Mr. Nosair was a member of that
13 organization and you must find him not guilty of the crime
14 charged in Count Seven.

15 If you find that Mr. Nosair murdered Meir Kahane
16 and that Mr. Nosair was a member of the Jihad Organization,
17 which was an enterprise engaged in racketeering activity,
18 and an enterprise whose activities affected or would affect
19 interstate or foreign commerce, then you must decide next
20 whether Mr. Nosair murdered Meir Kahane in order to maintain
21 or increase his position in the Jihad Organization.

22 To establish this last element, the government
23 need not prove that Mr. Nosair had as his only or even his
24 most important purpose maintaining or increasing his
25 position in the Jihad Organization. Rather, the necessary

1 motive requirement will be satisfied if you infer that Mr.
2 Nosair committed the murder of Meir Kahane because he knew
3 it was expected of him by reason of his membership in the
4 enterprise, that he committed it in furtherance of that
5 membership, or because by committing the murder he would
6 gain prestige or position within the Jihad Organization.
7 Any of these reasons would be sufficient, if proved beyond a
8 reasonable doubt. If, on the other hand, you find that the
9 murder was unrelated to the Jihad Organization, then you
10 must find Mr. Nosair not guilty on this count.

11 Counts Eight and Nine charge El Sayyid Nosair
12 with violent crime in aid of racketeering activity. Counts
13 Eight and Nine can be found on pages 35 and 36 of the
14 indictment. In those counts, Mr. Nosair is accused of
15 assaulting Irving Franklin (Count Eight) and attempting to
16 murder and otherwise assaulting Carlos Acosta (Count Nine)
17 with a dangerous weapon, with the result that serious bodily
18 injuries were sustained by each of the victims. These
19 counts have two elements in common with the murder charged
20 in Count Seven, as follows: As was true of Count Seven, the
21 government must establish the existence of the enterprise
22 charged and that Mr. Nosair committed the violent crime
23 charged, in connection with maintaining or increasing his
24 position in the enterprise -- something I will discuss
25 further in a moment.

1 Count Eight charges Mr. Nosair only with assault
2 on Irving Franklin. Count Nine charges Mr. Nosair both with
3 attempted murder of Carlos Acosta and with assault on Carlos
4 Acosta. In other words, Count Nine charges two crimes and
5 you will be asked to render verdicts as to both. I will
6 instruct you first as to the attempted murder charge in
7 Count Nine. I will then instruct you as to the assault
8 charges in Counts Eight and Nine. The assault charges in
9 the two counts have the same elements.

10 In order to meet its burden of proof that the
11 defendant Mr. Nosair attempted to murder Mr. Acosta as
12 charged in Count Nine, the government must establish beyond
13 a reasonable doubt each of the following elements of the
14 crime:

15 First, that on or about November 5, 1990, Mr.
16 Nosair attempted to murder Mr. Acosta;

17 Second, that Mr. Nosair was a member of the Jihad
18 Organization, an enterprise engaged in and the activities of
19 which affected interstate or foreign commerce; and

20 Third, Mr. Nosair attempted to murder Mr. Acosta
21 in connection with maintaining or increasing his position in
22 the Jihad Organization.

23 With respect to Count Nine of the indictment, the
24 first element that the government must prove beyond a
25 reasonable doubt is that on or about the date charged in

1 Count Nine, the defendant El Sayyid Nosair attempted to
2 murder Carlos Acosta. In order to find that the defendant
3 Mr. Nosair attempted to murder Carlos Acosta, you must find
4 that the government has proved beyond a reasonable doubt
5 both of the following two elements:

6 First, that on or about November 5, 1990, Mr.
7 Nosair specifically intended to cause the death of Carlos
8 Acosta; and

9 Second, that on or about November 5, 1990, Mr.
10 Nosair willfully took some action that was a substantial
11 step in an effort to bring about or accomplish the murder.

12 A person intends to cause the death of another
13 person when his conscious objective is to cause the death of
14 that person. He need not know who the person is in order to
15 have such an intent.

16 I instruct you that firing a weapon at another
17 person is a substantial step in accomplishing a murder, if
18 there is in fact an intent to murder.

19 I have explained the second element, membership
20 in the Jihad Organization, in connection with my
21 instructions on Count Seven. Those instructions may be
22 found at pages 98 through 100 of this charge, and they apply
23 to this count as well, except that we are dealing here with
24 a charge of attempted murder rather than actual murder. I
25 will not repeat those instructions again here but simply

1 refer you to them and ask you to apply those instructions to
2 this count as well, and remind you that you must find an
3 intent to murder Carlos Acosta before you may convict.
4 Obviously, the charge in Count Nine that we have been
5 discussing relates to Carlos Acosta as the victim rather
6 than Meir Kahane, and you should consider the instructions
7 that I gave earlier with that change in mind.

8 With respect to the third element, attempted
9 murder in connection with maintaining or increasing Mr.
10 Nosair's position in the Jihad Organization, you may apply
11 the legal principle of transferred intent, which I will now
12 explain to you. That principle says that if a defendant
13 planned to commit a murder to maintain or increase his
14 position in an enterprise and, in attempting to carry out
15 that plan, committed a violent assault or attempted murder
16 on another person, the intent of the planned murder may be
17 transferred to the other crimes.

18 What this means for your purposes is that the
19 government may prove the third element in Count Nine by
20 proving that on November 5, 1990, the defendant El Sayyid
21 Nosair planned to cause the death of Meir Kahane for the
22 purpose of maintaining or increasing his position in the
23 enterprise, and then attempted to murder Carlos Acosta in
24 the course of carrying out or immediately fleeing from the
25 Kahane homicide.

1 I remind you that Mr. Nosair may not be convicted
2 of attempted murder on Count Nine unless the government has
3 established the existence of the enterprise charged and that
4 Mr. Nosair acted with a purpose to maintain or increase his
5 position in that enterprise, which you may decide by
6 applying the principle of transferred intent that I just
7 described. I remind you that you must consider each count
8 separately.

9 In order to meet its burden of proof that the
10 defendant Nosair assaulted Irving Franklin and Carlos Acosta
11 in connection with maintaining or increasing his position in
12 an enterprise, the government must establish beyond a
13 reasonable doubt each of the following elements, which you
14 should consider separately for Mr. Franklin and Mr. Acosta:

15 First, that on or about November 5, 1990, Mr.
16 Nosair assaulted Mr. Franklin as charged in Count Eight, and
17 Mr. Acosta as charged in Count Nine, with a dangerous
18 weapon, resulting in serious bodily injury;

19 Second, that Mr. Nosair was a member of the Jihad
20 Organization, an enterprise which engaged in and the
21 activities of which affected interstate or foreign commerce;
22 and

23 Third, that Mr. Nosair assaulted Mr. Franklin as
24 charged in Count Eight and Mr. Acosta as charged in Count
25 Nine, in connection with maintaining and increasing his

1 position in the Jihad Organization.

2 An assault is an unlawful attempt with force and
3 violence to do injury to the person of another, with such
4 apparent present possibility of carrying out such an attempt
5 as to put the person against whom the attempt was made in
6 fear of personal violence.

7 To establish assault with a dangerous weapon, the
8 government must prove that an assault occurred and that it
9 was carried out with a dangerous weapon. To establish
10 assault resulting in serious bodily injury, the government
11 must prove that an assault occurred and that it caused the
12 person assaulted serious bodily injury. I instruct you that
13 you may find gunshot wounds are serious bodily injuries.
14 You must make the determinations separately as to Irving
15 Franklin in Count Eight and Carlos Acosta in Count Nine.

16 As I have mentioned, the indictment charges that
17 the crimes described in Counts Eight and Nine were committed
18 in aid of racketeering activity, that is, in order for Mr.
19 Nosair to maintain or increase his position in the Jihad
20 Organization, which is the racketeering enterprise charged
21 in the indictment. If you find that Mr. Nosair committed
22 the assaults charged in Counts Eight and Nine or the
23 attempted murder charged in Count Nine, you may decide
24 whether any such crime was committed in aid of racketeering
25 activity by applying the legal principle of transferred

1 intent, which I have already explained to you and which I
2 will now repeat. That principle says that if a defendant
3 planned to commit a murder to maintain or increase his
4 position in an enterprise and, in attempting to carry out
5 that plan, committed a violent assault or attempted murder
6 on another person, the intent of the planned murder may be
7 transferred to the other crimes.

8 What this means for your purposes is that the
9 government may prove the second and third elements of the
10 offense charged in Counts Eight and Nine by proving that on
11 November 5, 1990, the defendant El Sayyid Nosair
12 specifically intended to cause the death of Meir Kahane for
13 the purpose of maintaining or increasing his position in the
14 enterprise, and then willfully shot Irving Franklin, as
15 charged in Count Eight, and Carlos Acosta, as charged in
16 Count Nine, in the course of carrying out or immediately
17 fleeing from the Kahane homicide.

18 I remind you that Mr. Nosair may not be convicted
19 on Counts Eight and Nine unless the government has
20 established the existence of the enterprise charged and that
21 Mr. Nosair acted with a purpose to maintain or increase his
22 position in that enterprise, which you may decide by
23 applying the principle of transferred intent that I have
24 just described. I remind you again that you must consider
25 each count separately.

1 Count Ten charges Mr. Nosair with the attempted
2 murder of Postal Police Officer Carlos Acosta, in violation
3 of Section 1114 of Title 18 of the United States Code.

4 Section 1114 of Title 18 of the United States
5 Code provides: "Whoever kills or attempts to kill any ...
6 officer or employee of the postal service ..." shall be
7 guilty of a crime.

8 In order to meet its burden of proof that the
9 defendant Mr. Nosair attempted to murder Mr. Acosta, the
10 government must establish beyond a reasonable doubt each of
11 the following elements of the crime:

12 First, that on or about November 5, 1990, Mr.
13 Nosair attempted to murder Mr. Acosta; and

14 Second, that Mr. Acosta was a postal police
15 officer and was engaged in the performance of his official
16 duties at the time in question.

17 I have explained the first element of this charge
18 in connection with my instructions on Count Nine. Those
19 instructions may be found on page 103 of this charge and
20 they apply to this count as well. I will not repeat them
21 again here but simply refer you to them and ask you to apply
22 those instructions to this count as well.

23 If you find that the government has not proved
24 beyond a reasonable doubt the elements of attempted murder
25 of Carlos Acosta as they are explained on page 104, then you

1 must return a verdict of not guilty as to Count Ten as well.
2 If you find that the government proved beyond a reasonable
3 doubt that Mr. Nosair did commit the crime of attempted
4 murder of Carlos Acosta, as that crime is explained on page
5 103, you must nonetheless consider the first element above.

6 The second element the government must prove
7 beyond a reasonable doubt is whether on or about November 5,
8 1990, Mr. Acosta was employed by the post office and was
9 engaged in the performance of his official duties. The
10 government does not have to prove that Mr. Nosair knew the
11 identity of Mr. Acosta or that Mr. Nosair knew Mr. Acosta
12 was an employee of the post office, or that Mr. Nosair knew
13 Mr. Acosta was engaged in the performance of his official
14 duties.

15 The crime of attempted murder of a post office
16 employee is designed to protect federal employees and
17 federal functions, and therefore it is sufficient for the
18 government to show that Mr. Nosair intended to perform the
19 acts which are charged upon a man who in fact was a federal
20 employee engaged in the performance of his official duties.
21 I instruct you that a postal police officer is a federal
22 employee, but whether or not Mr. Nosair knew that Mr. Acosta
23 was a postal police officer at the time of the alleged
24 attempted murder is irrelevant to such a determination and
25 should not be considered by you.

1 In Count Eleven of the indictment, El Sayyid
2 Nosair is charged with using a firearm to commit the murder
3 of Meir Kahane. The relevant statute on this subject is
4 Section 924(c) of Title 18 of the United States Code, which
5 provides: "Whoever, during and in relation to any crime of
6 violence ... for which he may be prosecuted in a court of
7 the United States, uses or carries a firearm, shall [be
8 guilty of a crime]."

9 The government must prove each of the following
10 elements beyond a reasonable doubt to sustain its burden of
11 proving the defendant guilty on Count Eleven:

12 First, that Mr. Nosair committed a crime of
13 violence -- here, the murder of Meir Kahane -- for which he
14 might be prosecuted in a court of the United States; and

15 Second, that Mr. Nosair knowingly used or carried
16 a firearm in connection with the murder of Meir Kahane.

17 The first element that the government must prove
18 beyond a reasonable doubt is that Mr. Nosair committed a
19 crime of violence for which he might be prosecuted in a
20 court of the United States.

21 Mr. Nosair is charged in Count Seven of the
22 indictment with committing the crime of murder. I instruct
23 you that murder is a crime of violence. However, it is for
24 you to decide whether the government has proved beyond a
25 reasonable doubt that the defendant committed the crime of

1 murder in aid of racketeering, as charged. If you find that
2 the government has not proved beyond a reasonable doubt that
3 Mr. Nosair committed the crime of murder in aid of
4 racketeering and you have returned a verdict of not guilty
5 as to Count Seven, then you must return a verdict of not
6 guilty as to Count Eleven as well.

7 The second element that the government must prove
8 beyond a reasonable doubt is that Mr. Nosair knowingly used
9 a firearm during and in relation to committing the murder of
10 Meir Kahane. A firearm is any weapon which will or is
11 designed to or may be readily converted to expel a
12 projectile by the action of an explosive.

13 Under this statute, to use a firearm means to
14 have the firearm available in such a way that it furthered
15 the commission of the murder of Meir Kahane or was an
16 integral part of the commission of that crime.

17 To satisfy this element, you must find also that
18 the defendant knowingly used the firearm. This means that
19 he used the firearm purposely and voluntarily, and not by
20 accident or mistake. It also means that he knew that the
21 weapon was a firearm, as we commonly use that word.

22 We are going to stop here and break for lunch.
23 Ladies and gentlemen, please leave your materials behind.
24 Please do not yet discuss the case, and we will resume this
25 afternoon.

1 (Jury excused)

2 THE COURT: I would like to try to resume at 2,
3 if we can.

4 MR. McCARTHY: Judge, can I take a second with
5 Mr. Stavis before your Honor leaves.

6 (Pause)

7 MR. McCARTHY: Your Honor, I am sorry I didn't
8 catch this before. On page 112, in the long paragraph that
9 is the last paragraph on the page, on the third line and on
10 the next to last line, your Honor refers to page 103 when it
11 actually should be 104. I didn't catch it until your Honor
12 actually read the jury the charge.

13 THE COURT: I don't propose to retype those
14 pages. I propose simply to tell them this afternoon when we
15 start that the references on page 112 and they should turn
16 back to them, the references on page 103 should be page 104.

17 MR. McCARTHY: Thank you.

18 THE COURT: Thank you. I am terribly sorry -- I
19 am not terribly sorry, I am just sorry. I don't want to
20 overstate it.

21 (Luncheon recess)

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION

2:10 p.m.

(Trial resumed; jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

THE COURT: We are well past the halfway point, so what we have to do this afternoon is a good deal less than what we did this morning.

We are going to pick up at page 118, but before we start I would like to refer you back just for a minute to page 112, if you go back to that page. There is a large paragraph, about halfway down the page, that begins with the phrase "I have explained the first element." On the third line of that paragraph, it refers to page 103. That should be page 104. So if you could make that change in pen, you won't be misled if you should have to refer to it. And if you would make the same change on the last line of that paragraph, where it says page 103, that should be page 104.

We are going to start on page 118, we will take a break at about page 159, and then we will come back and we will finish up. Now I am on page 118.

In Counts Twelve and Thirteen of the indictment, which are found on pages 37 and 38 of the indictment, El Sayyid Nosair is charged with using a firearm to commit assault on Irving Franklin and attempt to murder Postal

1 Police Officer Carlos Acosta, respectively. The relevant
2 statute on this subject is the same as for Count
3 11 ---Section 924(c) of Title 18 of the United States Code,
4 which provides: "Whoever, during and in relation to any
5 crime of violence . . . for which he may be prosecuted in a
6 court of the United States, uses or carries a firearm, shall
7 [be guilty of a crime]."

8 The government must prove each of the following
9 elements beyond a reasonable doubt to sustain its burden of
10 proving the defendant guilty on Counts Twelve and Thirteen:

11 First, that Mr. Nosair committed a crime of
12 violence for which he might be prosecuted in a court of the
13 United States -- here the assault on Irving Franklin in
14 connection with Count Twelve, and the attempted murder of
15 Carlos Acosta in connection with Count Thirteen; and

16 Second, that Mr. Nosair knowingly used or carried
17 a firearm in connection with the assault on Mr. Franklin and
18 attempted murder of Mr. Acosta.

19 I have already explained the elements of
20 committing a crime of violence and using or carrying a
21 firearm in connection with a crime of violence when I
22 instructed you as to the elements of Count Eleven. These
23 elements have the same meaning here, and I will not repeat
24 the explanation. It may be found on pages 115 through 117
25 of these instructions, and you should apply the same

1 explanation here. Obviously the charges we are discussing
2 now relate to Irving Franklin and Carlos Acosta as the
3 victims rather than Meir Kahane, and you should consider the
4 instructions I gave earlier with that change in mind.
5 However, I instruct you specifically that if you have
6 returned a not guilty verdict on Count Eight, charging the
7 assault on Irving Franklin, then you must also return a not
8 guilty verdict on Count Twelve, and if you have returned a
9 not guilty verdict on Count Ten, charging the attempted
10 murder of Carlos Acosta, then you must also return a not
11 guilty verdict on Count Thirteen.

12 In Count Fourteen of the indictment, found on
13 page 38 of the indictment, El Sayyid Nosair is charged with
14 possessing a firearm which had the importer's and
15 manufacturer's serial number removed, obliterated and
16 altered, and which firearm had previously been shipped and
17 transported in interstate commerce.

18 The applicable statute, Section 922(k) of Title
19 18 of the United States Code, provides that -- now I am
20 going quoting from the statute:

21 "It shall be unlawful for any person
22 knowingly to . . . possess . . . any firearm
23 which has had the importer's or manufacturer's
24 serial number removed, obliterated or altered and
25 has, at any time, been shipped or transported in

1 interstate commerce."

2 The government must prove each of the following
3 elements beyond a reasonable doubt to sustain its burden of
4 proving defendant Nosair guilty:

5 First, that Mr. Nosair knowingly possessed a
6 firearm which had the importer's or manufacturer's serial
7 number removed, obliterated, or altered at the time he
8 possessed it; and

9 Second, that the firearm had been shipped or
10 transported in interstate commerce.

11 The first element which the government must prove
12 beyond a reasonable doubt is that on or about November 5,
13 1990, Mr. Nosair knowingly possessed a firearm with the
14 importer's or manufacturer's serial number removed,
15 obliterated or altered.

16 A "firearm," as I have said in connection with
17 earlier counts, is any weapon which will or is designed to
18 or may be readily converted to expel a projectile by the
19 action of an explosive. To "possess" means to have
20 something within a person's control.

21 The government must prove also that the firearm
22 in question had the importer's or manufacturer's serial
23 number removed, obliterated, or altered at the time
24 Mr. Nosair possessed it. There is no need to prove that all
25 of the serial numbers were changed, or that none of them

1 were readable. The government need prove only that any of
2 the numbers were either removed, obliterated, or altered in
3 some fashion.

4 To satisfy this element, you must find also that
5 Mr. Nosair knowingly possessed the firearm. This means that
6 he possessed it purposely and voluntarily, and not by
7 accident or mistake. It means also that he knew that the
8 weapon was a firearm, as we commonly use the word.

9 The second element the government must prove
10 beyond a reasonable doubt is that the firearm Mr. Nosair is
11 charged with possessing was shipped or transported in
12 interstate commerce.

13 Here, you have heard the testimony of Stephen
14 Bettenhauser that the firearm in question was manufactured
15 by the Sturm, Ruger Company, and you have heard Kimberly
16 Pritula, who works for that company, testify that the
17 company had no manufacturing facilities in New York State at
18 or before the time in question; you may consider that
19 testimony in deciding this issue.

20 In Count Fifteen, found on page 39 of the
21 indictment, Victor Alvarez is charged with transporting a
22 firearm in interstate commerce in connection with the plot
23 to blow up various buildings and structures in the New York
24 City area, in violation of section 924(b) of the United
25 States Code.

1 Section 924(b) of Title 18 of the United States
2 Code provides -- now I am quoting from the statute:

3 "Whoever, with intent to commit therewith an
4 offense punishable by imprisonment for a term
5 exceeding one year, or with knowledge or
6 reasonable cause to believe that an offense
7 punishable by imprisonment for a term exceeding
8 one year is to be committed therewith, ships
9 transports, or receives a firearm . . . in
10 interstate or foreign commerce shall be [guilty
11 of a crime]."

12 In order to convict Mr. Alvarez of the offense
13 charged, you must find that the government has proved beyond
14 a reasonable doubt the following elements:

15 First, that Mr. Alvarez had knowledge or
16 reasonable cause to believe that other defendants were
17 planning the bombing conspiracy charged in Count Five; and

18 Second, that in furtherance of that crime,
19 Mr. Alvarez shipped or transported a firearm in interstate
20 or foreign commerce, or caused a firearm to be shipped or
21 transported in interstate or foreign commerce.

22 The first element which the government must prove
23 beyond a reasonable doubt is that Mr. Alvarez had knowledge
24 or reasonable cause to believe that others were planning the
25 bombing conspiracy charged in Count Five.

1 However, it is not necessary for the government
2 to prove that Mr. Alvarez had actual, direct knowledge of
3 the bombing conspiracy charged in Count Five. It is
4 sufficient to satisfy this element if you find that
5 Mr. Alvarez had reasonable cause to believe from the facts
6 presented to him that there was a bombing conspiracy as
7 described in Count Five. Thus, if you determine that
8 Mr. Alvarez had possession of facts which, although not
9 amounting to knowledge of a specific plan, would cause a
10 reasonable person of Mr. Alvarez's intelligence and
11 experience, knowing the same facts, to reasonably conclude
12 that there was a bombing conspiracy, this element is
13 satisfied.

14 In connection with this first element, I instruct
15 you that if you find that the conspiracy charged in Count
16 Five did not exist, you must find Mr. Alvarez not guilty on
17 Count Fifteen.

18 The second element which the government must
19 prove beyond a reasonable doubt is that Mr. Alvarez shipped
20 or transported a firearm or caused it to be shipped or
21 transported in interstate or foreign commerce.

22 The words "ships and transports" have their
23 common meaning. A "firearm," as I have explained to you
24 already, is any weapon which will or is designed to or may
25 be readily converted to expel a bullet as that term is

1 commonly used. For the purposes of this count, interstate
2 commerce means that the firearm was transported or shipped
3 between one state and another state.

4 In order for the government to satisfy this
5 element, it must prove that the firearm was shipped,
6 transported, or received across state lines and that
7 Mr. Alvarez knowingly caused the firearm to be shipped or
8 transported across state lines. An act is done knowingly if
9 you find that the defendant acted purposely and voluntarily,
10 and not by mistake or accident. In other words, the
11 government must prove beyond a reasonable doubt that
12 Mr. Alvarez knew that what was being shipped or transported
13 was a firearm.

14 In Count Fifteen of the indictment, Victor
15 Alvarez is charged also with having aided and abetted the
16 shipment, transportation, or receipt of a firearm in
17 interstate commerce.

18 I have already explained the concept of aiding
19 and abetting in connection with the instructions as to Count
20 Six. Those instructions appear on pages 91 through 93
21 above, and they apply here as well. I will not repeat them
22 again here, but you should apply those instructions as to
23 aiding and abetting that appear on pages 90 through -- I
24 guess that should be 93 -- above to the charge of aiding and
25 abetting the shipment, transportation, or receipt of a

1 firearm in interstate commerce as charged against
2 Mr. Alvarez in Count Fifteen. That should actually be 91
3 through 93. That is on the fourth line from the bottom of
4 page 129. It should be 91 through 93.

5 In Count Sixteen, found on page 40 of the
6 indictment, Victor Alvarez is charged with using and
7 carrying a firearm in relation to the bombing conspiracy
8 charged in Count Five of the indictment. The relevant
9 statute on this subject is one I have quoted in my
10 instructions as to Counts Eleven, Twelve and Thirteen. It
11 is section 924(c) of Title 18 of the United States Code,
12 which provides: "Whoever, during and in relation to any
13 crime of violence . . . for which he may be prosecuted in a
14 court of the United States, uses or carries a firearm, shall
15 [be guilty of a crime]."

16 The government must prove each of the following
17 elements beyond a reasonable doubt to sustain its burden of
18 proving the defendant guilty on Count Sixteen:

19 First, that Mr. Alvarez committed a crime of
20 violence for which he might be prosecuted in a court of the
21 United States; and

22 Second, that Mr. Alvarez knowingly used or
23 carried a firearm in connection with that crime.

24 The first element the government must prove
25 beyond a reasonable doubt is that Mr. Alvarez committed a

1 crime of violence for which he might be prosecuted in a
2 court of the United States.

3 Mr. Alvarez is charged in Count Five of the
4 indictment with participating in a bombing conspiracy. I
5 instruct you that the crime of participating in a bombing
6 conspiracy is a crime of violence. However, it is for you
7 to determine whether the government has proved beyond a
8 reasonable doubt that the defendant participated in the
9 bombing conspiracy as charged. Further, I instruct you that
10 if you find that the government has not proved that
11 Mr. Alvarez participated in the bombing conspiracy charged
12 in Count Five, and your verdict on that count as to
13 Mr. Alvarez is not guilty, then you must find Mr. Alvarez
14 not guilty on this count -- Count Sixteen -- as well.

15 The second element the government must prove
16 beyond a reasonable doubt is that Victor Alvarez knowingly
17 used or carried a firearm during and in relation to the
18 bombing conspiracy. The government need not prove both that
19 Mr. Alvarez used and carried a firearm. It need prove only
20 one or the other. Thus, if the government has proved only
21 that Mr. Alvarez carried a firearm, that would be sufficient
22 to find him guilty of the crime charged.

23 A "firearm" is any weapon which will or is
24 designed to or may be readily converted to expel a
25 projectile by the action of an explosive.

1 Under this statute, to use a firearm means to
2 have the firearm available in such a way that it furthered
3 the commission of the bombing conspiracy, or was an integral
4 part of the commission of the crime. It is not necessary
5 that the government prove that Mr. Alvarez fired or even
6 displayed the weapon. As long as Mr. Alvarez had the
7 firearm available to protect criminal endeavors if
8 necessary, that is sufficient to establish use of the
9 firearm.

10 Under this statute, to carry a firearm means to
11 have it within your control so that it was available in such
12 a way that it furthered the bombing conspiracy, or was an
13 integral part of the commission of the crime.

14 To satisfy this element, you must find also that
15 Mr. Alvarez knowingly carried or used the firearm. This
16 means that he carried the firearm purposely and voluntarily,
17 and not by accident or mistake. It also means that he knew
18 that the weapon was a firearm, as we commonly use the word.
19 However, the government is not required to prove that the
20 defendant knew that he was breaking the law.

21 In Count Sixteen of the indictment, Victor
22 Alvarez is charged also with having aided and abetted using
23 and carrying a firearm in the bombing conspiracy.

24 I have already explained to you the concept of
25 aiding and abetting in connection with Count Six. That

1 instruction appears on pages 91 through 93 above, and it
2 applies here as well. I am not going to repeat it, but you
3 should simply apply that instruction to this count as well.

4 I will now describe the elements of the crimes
5 charged in Counts Twenty through Twenty-eight, which relate
6 to defendant Ibrahim El-Gabrownny alone, and cover the events
7 of March 4, 1993. Counts Twenty through Twenty-two contain
8 charges growing out of the confrontation between law
9 enforcement officers and Mr. El-Gabrownny preceding
10 Mr. El-Gabrownny's arrest on that date. Counts Twenty-three
11 through Twenty-eight relate to allegedly forged passports
12 and other documents allegedly found in Mr. El-Gabrownny's
13 possession that day.

14 Counts Twenty and Twenty-one of the indictment
15 charge defendant Ibrahim El-Gabrownny with striking Michael
16 Burke, a Special Agent of the United States Department of
17 the Treasury, Bureau of Alcohol, Tobacco and Firearms, also
18 known as the "ATF," and Thomas Corrigan, a New York City
19 detective who was also a Special Deputy United States
20 Marshal, on March 4, 1993, while these officers were
21 executing a search warrant issued in connection with the
22 investigation into the World Trade Center bombing. The
23 relevant statute, Section 111(a)(1) of the United States
24 Code, Title 18, provides:

25 "Whoever forcibly assaults, resists, opposes

1 impedes, intimidates, or interferes with any
2 [federal officer] while engaged in or on account
3 of the performance of official duties . . ."
4 shall be guilty of a crime.

5 In order to find the defendant Ibrahim
6 El-Gabrownny guilty of the crimes charged in Counts Twenty
7 and Twenty-one, you must find the following facts beyond a
8 reasonable doubt:

9 First, that on or about March 4, 1993, Michael
10 Burke, the alleged assault victim in Count Twenty, was
11 employed by the United States Department of the Treasury,
12 Bureau of Alcohol, Tobacco and Firearms, and Thomas
13 Corrigan, the alleged assault victim in Count Twenty-one,
14 was a Special Deputy United States marshal;

15 Second, that on or about that date, the defendant
16 forcibly assaulted, resisted, opposed, impeded, intimidated
17 or interfered with the officer in question;

18 Third, that the defendant willfully did the act
19 or acts charged, in other words, that he acted knowingly,
20 intentionally and voluntarily; and

21 Fourth, that, at the time, the officer in
22 question was engaged in the performance of his official
23 duties.

24 Now, as I have stated, the first element you must
25 find is that on or about March 4, 1993, the victim alleged

1 to have been assaulted was a federal law enforcement agent;
2 in Count Twenty, an agent of the United States Department of
3 the Treasury, Bureau of Alcohol, Tobacco and Firearms, and
4 in Count Twenty-one, a Special Deputy United States Marshal.
5 The government does not have to prove that the defendant
6 knew the identity of the victim, or that the defendant knew
7 the victim was a federal officer, or that the defendant knew
8 the victim was engaged in the performance of his official
9 duties.

10 The second element the government must prove is
11 that the defendant, Ibrahim El-Gabrownny, "forcibly
12 assaulted, resisted, opposed, impeded, intimidated, or
13 interfered with" the victim.

14 Although the indictment alleges that the
15 defendant did all of these things, I instruct you that it is
16 not necessary for the government to prove that the defendant
17 did all of those things. It is sufficient if the government
18 proves beyond a reasonable doubt that the defendant did any
19 one of these several alternative acts as charged. All of
20 the acts -- assault, resist, oppose, impede, intimidate and
21 interfere with -- are modified by the word "forcibly."
22 Thus, before you can find the defendant guilty, you must
23 find, beyond a reasonable doubt, that he acted forcibly.
24 Forcibly means by use of force. Physical force is one means
25 that satisfies this element. You may also find that a

1 person who has the present ability to inflict bodily harm
2 upon another and who willfully threatens or attempts to
3 inflict bodily harm upon such person, has acted forcibly.
4 In such a case, the threat must be a present one.

5 An "assault" is an unlawful attempt to use force
6 and violence to injure the person of another, which puts the
7 person against whom the attempt was made in fear of personal
8 violence. The word "resist" means opposing by physical
9 power, striving against, or exertion, to counteract, defeat
10 or frustrate. The word "oppose" means to resist by physical
11 means; "impede" means stop progress, obstructing or
12 hindering; "intimidate" means to make timid or fearful, to
13 inspire or affect with fear, to frighten, deter or overawe;
14 and "interfere with" means to come into collision with, to
15 intermeddle, to hinder or to intervene.

16 In order to convict the defendant, you must be
17 satisfied, beyond a reasonable doubt, that he committed the
18 acts charged in the indictment willfully. In other words,
19 you must be persuaded that the defendant acted knowingly,
20 intentionally and voluntarily, with a bad purpose, and not
21 by mistake or by accident.

22 The last element the government must prove beyond
23 a reasonable doubt is that, at the time of the alleged
24 assault, the officer in question was engaged in the
25 performance of his official duties. You may find that the

1 officer was so engaged if you find that, at the time of the
2 alleged assault, he was acting within the scope of what he
3 was employed to do. On the other hand, if you find that the
4 officer was involved in a personal venture of his own, you
5 must find that he was not engaged in the performance of his
6 official duties, and you must acquit the defendant of the
7 crime charged.

8 I remind you that you must consider each of these
9 counts separately, and return a separate verdict as to each.

10 Count Twenty-two of the indictment charges
11 defendant Ibrahim El-Gabrownny with striking law enforcement
12 officers Michael Burke and Thomas Corrigan on March 4, 1993,
13 while they were assisting in the execution of a search
14 warrant issued in conjunction with the investigation into
15 the bombing of the World Trade Center. That count appears
16 on page 44 of the indictment. The relevant statute, Section
17 2231(a) of the United States Code, Title 18, provides -- now
18 I am quoting from the law:

19 Whoever forcibly assaults, resists, opposes
20 prevents, impedes, intimidates or interferes
21 with any person authorized to serve or execute
22 search warrants or to make searches and seizures
23 while engaged in the performance of his duties
24 with regard thereto or on account of the
25 performance of such duties . . ."

1 shall be guilty of a crime.

2 In order to find the defendant Ibrahim
3 El-Gabrowny guilty of the crime charged, you must find the
4 following facts beyond a reasonable doubt:

5 First, that on or about March 4, 1993, the
6 officers, who were the alleged assault victims, were
7 authorized to serve or execute search warrants, or to make
8 searches and seizures;

9 Second, that on that same date, the defendant
10 Ibrahim El-Gabrowny forcibly assaulted, resisted, opposed,
11 prevented, impeded, intimidated or interfered with the
12 officers in question;

13 Third, that the defendant willfully did the act
14 or acts charged, in other words, that he acted knowingly,
15 intentionally and voluntarily; and

16 Fourth, that at the time, the law enforcement
17 officers were engaged in executing a search warrant.

18 If the government has proved all four of these
19 elements beyond a reasonable doubt, your verdict should be
20 guilty. If the government has failed to prove any one of
21 these elements beyond a reasonable doubt, your verdict
22 should be not guilty.

23 These elements are already familiar to you, as
24 they are essentially the same elements which comprised the
25 crime of assault on a federal officer charged in Counts

1 Twenty and Twenty-one. I therefore refer you to the
2 instructions found on pages 140 through 143, which you
3 should apply here as well. There are, however, some
4 differences, which I will now explain.

5 The first element you must find is that on or
6 about March 4, 1993, the officers said to have been
7 assaulted were authorized to serve or execute search
8 warrants, or to make searches and seizures. Search warrants
9 may be served or executed by an officer specifically named
10 in the warrant or by an officer authorized by law to carry
11 out such duties. I instruct you that law enforcement
12 personnel, including Michael Burke and Thomas Corrigan, were
13 authorized by law to serve or execute search warrants.

14 The second element the government must prove is
15 that the defendant Ibrahim El-Gabrownny forcibly assaulted,
16 resisted, opposed, prevented, impeded, intimidated or
17 interfered with the victims. All of these acts, with the
18 exception of "prevent," were defined for you in the
19 description of forcible conduct for Counts Twenty and
20 Twenty-one found on pages 140 through 141, and you should
21 apply those definitions here. The word "prevent" here means
22 to forcibly keep something from happening.

23 Count Twenty-three of the indictment charges
24 defendant Ibrahim El-Gabrownny with possessing five
25 fraudulent Nicaraguan passports, five fraudulent Nicaraguan

1 birth certificates, and two fraudulent Nicaraguan driver's
2 licenses, with the intent to transfer such documents. It
3 charges him also with aiding and abetting such possession.
4 Count Twenty-three appears on page 45 of the indictment.

5 The relevant statutes on this subject are Sections 1028 and
6 2 of the United States Code, Title 18. Section 1028 reads
7 in relevant part -- and now I am quoting from the law again:

8 "Whoever . . . knowingly possesses with intent
9 to use unlawfully or transfer unlawfully five or
10 more identification documents (other than those
11 issued lawfully for the use of the possessor) or
12 false identification documents . . ."

13 shall be guilty of a crime. To establish that this
14 section was violated, the government must show -- and
15 this is again from the statute:

16 "the production, transfer, or possession
17 prohibited by this section is in or affects
18 interstate or foreign commerce, or the
19 identification document, [or] false
20 identification document . . . is transported in
21 the mail in the course of the production
22 transfer, or possession prohibited by this
23 section."

24 Section 2 of Title 18, which I have read to you
25 before, provides:

1 "Whoever commits an offense against the United
2 states or aids, abets, counsels, commands
3 induces or procures its commission, is
4 punishable as a principal."

5 In order to prove the defendant Ibrahim
6 El-Gabrownny guilty of the crime charged in Count
7 Twenty-three, the government must establish beyond a
8 reasonable doubt that:

9 First, on or about March 4, 1993, the defendant
10 knowingly possessed, or aided and abetted others in
11 possessing five or more identification documents that were
12 not issued lawfully for his own use;

13 Second, the defendant possessed such documents
14 with the intent to use or transfer them unlawfully; and

15 Third, the defendant's transfer or possession of
16 false identification documents was in or affected interstate
17 commerce, or the documents were transported in the mail in
18 connection with his possession of these documents.

19 The first element that the government must prove
20 beyond a reasonable doubt is that Ibrahim El-Gabrownny
21 knowingly possessed five or more identification documents or
22 false identification documents.

23 The term "identification document" includes a
24 document made or issued by or under the authority of a
25 foreign government or a political subdivision of a foreign

1 government, which, when completed with information
2 concerning a particular person, is of a type intended or
3 commonly accepted for the purpose of identification of
4 persons.

5 A "false" identification document includes an
6 identification document that has been obtained by false
7 statements or fraud.

8 Possession of these items is done "knowingly" if
9 it is done voluntarily and intentionally, rather than by
10 mistake, accident or other innocent reason.

11 The second element that the government must prove
12 beyond a reasonable doubt is that Ibrahim El-Gabrownly
13 intended to use the false identification documents
14 unlawfully or to transfer them unlawfully.

15 To prove this element, the government must show
16 that Mr. El-Gabrownly did more than possess the false
17 identification documents. The government must show beyond a
18 reasonable doubt that he intended to use or transfer the
19 documents in such a way that would violate a federal, state
20 or local law, or be part of the making of a
21 misrepresentation that violates a law. I instruct you that
22 it is a federal crime to transfer identification documents
23 or false identification documents to another person knowing
24 that the documents were stolen or produced without lawful
25 authority. The government is not required to establish that

1 Mr. El-Gabrowny actually put the documents to a use that
2 violated a law; it must establish only that his intended use
3 would have violated a law. The question on which you should
4 focus when considering this second element is simply whether
5 Mr. El-Gabrowny intended to use the alleged false documents
6 unlawfully or to transfer them unlawfully.

7 If you find that Mr. El-Gabrowny possessed five
8 or more false identification documents, you may consider all
9 of the evidence and circumstances surrounding his possession
10 of those documents, in order to determine whether he
11 intended to use or transfer the documents in a way that
12 would violate a federal, state or local law.

13 I remind you you that the count also charges
14 Mr. El-Gabrowny with aiding and abetting in the unlawful
15 possession and use of the identification documents in
16 question. I have instructed you earlier, at pages 91
17 through 93, on the concept of aiding and abetting. You
18 should simply apply those instructions to the charge in this
19 count as well.

20 The final element that the government must prove
21 beyond a reasonable doubt is that the unlawful use or
22 transfer of the false identification documents intended by
23 Mr. El-Gabrowny was in, or would have affected, interstate
24 or foreign commerce.

25 I have already given you instructions about what

1 interstate and foreign commerce mean, at pages 77 and 78
2 above, and I will not repeat them here. I instruct you that
3 the use of false passports to travel from the United States
4 to another country is considered to be use "in" foreign
5 commerce. I further instruct you that the use of birth
6 certificates and drivers' licenses to assist in such travel
7 would affect foreign commerce.

8 Counts 24 through 28 appear at page 46 of the
9 indictment. They charge Ibrahim El-Gabrownny with knowingly
10 possessing, obtaining, accepting and receiving documents
11 prescribed by statute and regulation for entry into the
12 United States, with the knowledge that such documents were
13 forged, counterfeited, altered, or falsely made, or with the
14 knowledge that they were procured by means of false claim or
15 statement or otherwise procured by fraud or unlawfully
16 obtained, in violation of Title 18, United States Code,
17 section 1546A. This statute provides, in relevant part, as
18 follows -- and now I am quoting from the law:

19 "Whoever knowingly . . . uses, attempts to use
20 possesses, obtains, accepts, or receives any
21 [immigrant or non-immigrant] visa, permit
22 border crossing card, alien registration receipt
23 card, or other document prescribed by statute or
24 regulation for entry into or as evidence of
25 authorized stay or employment in the United

1 States, knowing it to be forged, counterfeited
2 altered, or falsely made, or to have been
3 procured by means of any false claim or
4 statement, or to have been otherwise procured by
5 fraud or unlawfully obtained . . ."

6 shall be guilty of a crime.

7 Each count charges possession of a different
8 false passport, as follows:

9 Count 24. Passport in the name of Victor Noel
10 Jafry.

11 Count 25. Passport in the name of Ninfa Safary
12 Calderon.

13 Count 26. Passport in the name of Maria Marcos
14 Safary.

15 Count 27. Passport in the name of Jaime Marcos
16 Safary.

17 Count 28. Passport in the name of Jorge Marcos
18 Safary.

19 In order to find Ibrahim El-Gabrownny guilty of
20 Counts Twenty-four through Twenty-eight, the government must
21 prove each of the following elements beyond a reasonable
22 doubt:

23 First, that on or about March 4, 1993, the
24 defendant knowingly used, attempted to use, possessed,
25 obtained, or accepted or received a document prescribed by

1 statute or regulation for entry into or as evidence of
2 authorized stay or employment in the United States; and

3 Second, that the defendant did so knowing that
4 such documents were forged, counterfeited, altered or
5 falsely made, or that they were procured by means of any
6 false claim or statement, or have been otherwise obtained by
7 fraud or unlawfully obtained.

8 The first element that the government must prove
9 beyond a reasonable doubt is that Ibrahim El-Gabrowny
10 knowingly possessed, obtained, accepted or received a
11 document prescribed by statute or regulation for entry into
12 or as evidence of authorized stay or employment in the
13 United States.

14 I have previously defined the term "knowingly."
15 An act is done knowingly if it is done voluntarily and
16 intentionally, rather than by mistake, accident or other
17 innocent reason.

18 Although these counts allege that Mr. El-Gabrowny
19 did "possess, obtain, accept, and receive" documents
20 prescribed by statute and regulation for entry into the
21 United States, I instruct you that it is not necessary for
22 the government to prove that Mr. El-Gabrowny did all of
23 those things, that is, possessed, obtained, accepted, and
24 received. It is sufficient if the government proves beyond
25 a reasonable doubt that the defendant did any one of these

1 several alternative acts as charged.

2 The terms "possess, obtain, accept, and receive"
3 have their ordinary, everyday meaning.

4 The term "other document prescribed by statute or
5 regulation for entry into or as evidence of authorized stay
6 or employment in the United States" refers to passports of a
7 kind actually issued by a foreign government and that fall
8 within that category of documents that are prescribed for
9 use in entry into or as evidence of authorized stay or
10 employment in the United States.

11 I further instruct you that the document need
12 only be one that can be used to enter the United States,
13 even though the intended use may have been something
14 different. Thus, if you find that the defendant intended,
15 for example, to use the passports to allow another person to
16 leave the United States, that does not prevent such
17 passports from being prescribed by statute or regulation for
18 entry into or as evidence of authorized stay or employment
19 in the United States.

20 The second element the government must prove
21 beyond a reasonable doubt is that the defendant
22 Mr. El-Gabrowny possessed, obtained, accepted, or received
23 the documents knowing that they were forged, counterfeited,
24 altered, or falsely made, or that they were procured by
25 means of any false claim or statement, or to have been

1 otherwise procured by fraud or unlawfully obtained.

2 A document procured by means of any false claim
3 or statement is one that was obtained by giving information
4 that was not true.

5 Ladies and gentlemen, I am going to stop here and
6 let you take a break, and then when we resume I will go
7 through the remaining portions of the charge, and then you
8 begin your deliberations. But please don't yet begin to
9 discuss the case. We will continue in a few minutes.

10 (Recess)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 (In open court; jury present)

2 THE COURT: We are at page 160 of the charge.

3 I have completed describing the charges in the
4 indictment and the elements of those charges. I will now
5 discuss the principles you must apply in deciding whether
6 the government has proved those charges beyond a reasonable
7 doubt.

8 Each of the defendants has pleaded not guilty to
9 the charges in the indictment. As a result of this plea of
10 not guilty, the burden is on the prosecution to prove guilt
11 beyond a reasonable doubt. This burden never shifts to a
12 defendant, for the simple reason that the law never imposes
13 upon a defendant in a criminal case the burden or duty of
14 testifying himself, or calling any witness, or locating or
15 producing any evidence.

16 The law presumes each defendant to be innocent of
17 all the charges against him. I therefore instruct you that
18 each defendant is to be presumed by you to be innocent of
19 each charge throughout your deliberations until such time,
20 if it comes, that you as a jury are satisfied that the
21 government has proved the defendant you are considering
22 guilty beyond a reasonable doubt of the charge you are
23 considering.

24 Each defendant began the trial here with a clean
25 slate. This presumption of innocence alone is sufficient to

1 acquit each defendant unless you as jurors are unanimously
2 convinced beyond a reasonable doubt of his guilt, after a
3 careful and impartial consideration of the evidence. If the
4 government fails to sustain its burden as to any charge
5 against any defendant, you must find that defendant not
6 guilty of that charge. This presumption was with each
7 defendant when the trial began and remains with him even now
8 as I speak to you, and will continue with him into your
9 deliberations, unless and until you are convinced that the
10 government has proved his guilt beyond a reasonable doubt.

11 The question that naturally arises is, what is a
12 reasonable doubt? What does that term mean? The words
13 almost define themselves. It is a doubt based in reason and
14 arising out of the evidence in the case, or the lack of
15 evidence. It is a doubt that a reasonable person has after
16 carefully weighing all of the evidence in the case.

17 Reasonable doubt is a doubt that appeals to your
18 reason, your judgment, your experience, and your common
19 sense. If, after a fair and impartial consideration of all
20 the evidence, you candidly and honestly believe that you are
21 not satisfied that the government has proved the guilt of a
22 defendant, that you do not have an abiding and firm belief
23 of a defendant's guilt, in other words, if you have such a
24 doubt as would reasonably cause a prudent person to hesitate
25 in acting in matters of importance in his or her own

1 affairs, then you have a reasonable doubt, and in that
2 circumstance it is your duty to acquit.

3 On the other hand, if, after a fair and impartial
4 consideration of all the evidence, you do have an abiding
5 belief that the government has proved a defendant's guilt,
6 such a belief as a prudent person would be willing to act
7 upon in important matters in the personal affairs of his or
8 her own life, then you have no reasonable doubt, and under
9 such circumstances it is your duty to convict that
10 defendant.

11 One final word on this subject: Reasonable doubt
12 is not whim, nor is it speculation about what may have
13 happened. It is not an excuse to avoid the performance of
14 an unpleasant duty. Nor is it sympathy for a defendant.
15 Beyond a reasonable doubt does not mean a positive certainty
16 or beyond all possible doubt. After all, it is virtually
17 impossible for a person to be absolutely and completely
18 convinced of any contested fact that by its nature is not
19 subject to mathematical proof and certainty. As a result,
20 the law in a criminal case is that it is sufficient if the
21 guilt of a defendant is established beyond a reasonable
22 doubt, not beyond all possible doubt.

23 The indictment in this case contains multiple
24 counts that will be submitted to you for decision. Each
25 count charges one or more of the defendants with a different

1 crime. There are ten defendants on trial before you. You
2 must consider each count of the indictment and each
3 defendant's involvement in that count separately, and you
4 must return a separate verdict as to each defendant for each
5 count in which he is charged.

6 In reaching your verdict, bear in mind that guilt
7 is individual. Your verdict of guilty or not guilty must be
8 based solely upon the evidence about each defendant. The
9 case against each defendant, on each count, stands or falls
10 upon the proof or lack of proof against that defendant, and
11 your verdict as to any defendant on any count should not
12 control your decision as to the other defendants or any
13 other count, except as you have been specifically instructed
14 as to particular counts which depend on proof of charges in
15 other counts.

16 The defendants Clement Hampton-El, Tarig
17 Elhassan, Fares Khallafalla, Amir Abdelgani, Fadil
18 Abdelgani, Mohammed Saleh and Victor Alvarez, among other
19 arguments and defenses they have asserted as to all the
20 counts in this indictment, have argued that they were the
21 victims of entrapment by an agent of the government. The
22 law permits government agents to trap an unwary
23 criminally-minded person, but the law does not permit
24 government agents to entrap an unwary innocent. Thus, a
25 defendant may not be convicted of a crime if it was the

1 government agent who gave the defendant the idea to commit
2 the crime, if it was the government agent who also persuaded
3 him to commit the crime, and he was not ready and willing to
4 commit the crime before the government agent spoke with him.

5 On the other hand, if the defendant was ready and
6 willing to violate the law and the government merely
7 presented him with an opportunity to do so, that would not
8 constitute entrapment.

9 Your inquiry on this issue should first be to
10 determine if there is any evidence that a government agent
11 took the first step that led to a crime charged in the
12 indictment, that he induced that criminal act. I want to
13 stress that the inducement must come from someone who was
14 then working as a government agent. The only such person in
15 this case is the informant Emad Salem. If a defendant was
16 induced by Siddig Ibrahim Siddig Ali, that is not inducement
17 by a government agent. Here, inducement means soliciting,
18 proposing, or suggesting that the defendant commit the crime
19 charged.

20 In this connection, you have seen and heard
21 evidence that the government informant, Emad Salem, placed
22 and set up items in the Queens garage, also referred to as a
23 safe house, and you saw a separate tape depicting that
24 conduct. You may consider that conduct, together with
25 whatever other conduct of Emad Salem you find relevant, in

1 determining whether Emad Salem induced a defendant who had
2 contact with those items to participate in criminal
3 activity, if you find that such conduct had the purpose of
4 inducing a defendant's participation. However, that conduct
5 by Emad Salem was not admitted to suggest that it is
6 improper for a government agent to provide the means for
7 another person to commit a crime, and that conduct by Emad
8 does not in any way diminish any defendant's responsibility
9 for his own conduct if you find beyond a reasonable doubt
10 that the defendant was ready and willing to engage in
11 criminal conduct, as I am about to instruct you. If you
12 find that there was no evidence that the defendant in
13 question was induced by a government agent, there can be no
14 entrapment and your inquiry on this defense should end
15 there.

16 If, on the other hand, you find some evidence
17 that a government agent induced the defendant you are
18 considering to commit the criminal acts charged in the
19 indictment, then you must decide if the government has
20 satisfied its burden to prove beyond a reasonable doubt that
21 the defendant you are considering was ready and willing
22 before the inducement to commit the crime. The defendant
23 need not prove his lack of predisposition; the government
24 must prove such predisposition beyond a reasonable doubt.
25 If you find beyond a reasonable doubt that the defendant was

1 predisposed, that is, ready and willing, to commit the
2 offenses charged in the indictment and merely was awaiting a
3 favorable opportunity to commit the offenses, then you
4 should find that the defendant was not the victim of
5 entrapment. On the other hand, if you have a reasonable
6 doubt that the defendant would have committed the offense
7 charged without the government agent's inducement, you must
8 acquit the defendant as to whom you make that finding.

9 With respect to the defense of entrapment, you
10 must consider each defendant and each count charged in the
11 indictment separately. Regardless of whether or not you
12 find that a defendant was entrapped into committing the
13 crime charged in any particular count, you must nevertheless
14 consider whether or not he was entrapped into committing the
15 crimes charged in the other counts.

16 The fact that a defendant was or was not
17 entrapped into committing the conduct charged in one count
18 does not necessarily mean that he was or was not entrapped
19 into committing the conduct charged in other counts.
20 Similarly, the fact that one defendant was or was not
21 entrapped into committing the conduct charged in one count
22 does not necessarily mean that another defendant charged in
23 the same count was or was not entrapped into committing the
24 same conduct charged in the same count.

25 There has been evidence introduced by the

1 defendant Victor Alvarez that he used cocaine at times
2 during the course of the events proved at trial. Whether to
3 credit that evidence, and how much weight, if any, to give
4 it, is up to you. I want to say a few things, however,
5 about voluntary intoxication.

6 Intoxication, or being high on cocaine, in itself
7 is not a legal defense to a criminal charge. However,
8 intoxication may, under some circumstances, negate the
9 existence of the defendant's intent to commit the crime that
10 the government must prove in order to establish guilt.

11 If you find that that defendant was intoxicated
12 throughout the entire course of his alleged participation in
13 the crimes charged, you may conclude that the defendant did
14 not have the required intent that I described earlier.
15 However, I remind you that in this case Victor Alvarez is
16 charged with three offenses -- seditious conspiracy, bombing
17 conspiracy, and attempted bombing -- that are charged to
18 have continued over a lengthy period of time, and
19 Mr. Alvarez's participation in those crimes is said to have
20 occurred over a course of several days. If you find that
21 Mr. Alvarez formed the intent required to establish guilt at
22 any time, the fact that he may at times have ingested
23 cocaine, if you find that he did, would not excuse his
24 conduct in any way. Also, even if you believe that the
25 defendant was intoxicated to some degree at some times, you

1 still may conclude that even at those times he was capable
2 of having the required intent.

3 After considering all of the evidence, if you
4 find that the government has established each of the
5 elements of the offenses beyond a reasonable doubt, then you
6 may find the defendant guilty. On the other hand, if you
7 find that the government has failed to meet this burden
8 beyond a reasonable doubt, you must find the defendant not
9 guilty.

10 I remind you also that Mr. Alvarez, through his
11 attorney, made other arguments to you about his capacity
12 based on the testimony of Dr. Aranda and of Mr. Alvarez, and
13 certain tapes, and you may give those arguments and that
14 evidence whatever weight you think they deserve.

15 There are two types of evidence that you may
16 properly use in reaching your verdict. One type of evidence
17 is direct evidence. One kind of direct evidence is a
18 witness's testimony about something that he or she knows by
19 virtue of his or her own senses, something that the witness
20 has seen, felt, touched or heard. Direct evidence may also
21 be in the form of an exhibit. The other type of evidence is
22 circumstantial evidence.

23 Circumstantial evidence is evidence that tends to
24 prove one fact by proof of other facts. There is a simple
25 example of circumstantial evidence that is often used in

1 this courthouse.

2 Assume that when you came into the courthouse
3 this morning the sun was shining and it was a nice day.
4 Assume that the courtroom blinds are drawn and you cannot
5 look outside. As you are sitting here, someone walks in
6 with an umbrella that is dripping wet. Somebody else then
7 walks in with a raincoat that is also dripping wet.

8 Now, you cannot look outside the courtroom and
9 you cannot see whether or not it is raining, so you have no
10 direct evidence of that fact. But on the combination of the
11 facts that I have asked you to assume, it would be
12 reasonable and logical for you to conclude that between the
13 time you arrived at the courthouse and the time these people
14 walked in, it had started to rain.

15 That is all there is to circumstantial evidence.
16 You infer, on the basis of reason and experience and common
17 sense, from an established fact the existence or the
18 nonexistence of some other fact.

19 Many facts, such as a person's state of mind, can
20 only rarely be proved by direct evidence.

21 Circumstantial evidence is of no less value than
22 direct evidence. It is a general rule that the law makes no
23 distinction between direct and circumstantial evidence, but
24 simply requires that before convicting each defendant you,
25 the jury, must be satisfied of the defendant's guilt beyond

1 a reasonable doubt from all the evidence in the case.

2 Now for the important subject of evaluating
3 testimony. How do you evaluate the credibility or
4 believability of the witnesses? The answer is that you use
5 your plain common sense. Common sense is your greatest
6 asset in the fulfillment of your obligation as a juror. You
7 should ask yourselves, did the witness appear to be honest,
8 open, and candid? Or did the witness appear evasive or as
9 though he or she were trying to hide something? How
10 responsive was the witness to the questions asked on direct
11 examination and on cross-examination?

12 There are several ways in which you may decide a
13 witness's testimony is not credible. First, the way a
14 witness testifies may persuade you that the witness is being
15 inaccurate or untruthful. Second, you may conclude that the
16 testimony of a witness fails to conform to the facts as
17 indicated by the other evidence you have seen -- including
18 the motivation of the witness to receive a benefit, or
19 testimony of other witnesses. Third, you may be persuaded
20 by the evidence you have heard regarding discrepancies
21 between the trial testimony of a witness and something done
22 or said at some earlier time by that witness.

23 You may reach any of these conclusions for any
24 number of reasons, for example, because a witness's
25 recollection is wrong, because a witness did not accurately

1 see or hear what he or she testified about, because a
2 witness was nervous or confused, or because he or she didn't
3 express him or herself clearly. Or, a witness may
4 intentionally be testifying falsely. If you find that a
5 witness is intentionally telling a falsehood, that is always
6 a matter of importance that you should weigh carefully.

7 However, few people recall every detail of every
8 event precisely the same way. A witness may be inaccurate,
9 contradictory, or even untruthful in some respects, and yet
10 entirely believable and truthful in other respects. It is
11 for you to determine whether such inconsistencies are
12 significant or inconsequential, and whether to accept or
13 reject all or to accept some and reject the balance of the
14 testimony of any witness.

15 You are not required to accept testimony even
16 though the testimony is uncontradicted and the witness's
17 testimony is not challenged. You may decide because of the
18 witness's bearing or demeanor, or because of the inherent
19 improbability of the testimony, or for other reasons
20 sufficient to yourselves that the testimony is not worthy of
21 belief. On the other hand, you may find, because of a
22 witness's bearing and demeanor, and based upon your
23 consideration of all the other evidence in the case, that
24 the witness is truthful.

25 Similarly, it is for you to decide whether a

1 prior statement was inconsistent and, if so, how much if any
2 wait to give to an inconsistent statement or a discrepancy
3 when determining whether to believe all or part of a
4 witness's testimony.

5 However, you may consider such evidence of a
6 witness's prior inconsistent statements only insofar as it
7 relates to that witness's credibility. Evidence of a prior
8 inconsistent statement must not be considered by you as
9 affirmative evidence in determining guilt or innocence,
10 except for statements that have been received in evidence.
11 Otherwise, evidence of a prior inconsistent statement was
12 placed before you for the more limited purpose of helping
13 you decide whether, and how much, to believe the trial
14 testimony of the witness who contradicted himself or
15 herself.

16 Thus, there is no magic formula by which you can
17 evaluate testimony. You bring to this courtroom all your
18 experience and all of the background that you have in your
19 everyday life. You determine for yourself in many
20 circumstances the reliability of statements that are made by
21 others to you and upon which you are asked to rely and act.
22 You may use the same tests here that you use in your
23 everyday life. You may consider the interest of any witness
24 in the outcome of this case and any bias or prejudice of any
25 such witness, and this is true regardless of who called or

1 questioned the witness.

2 Now, this is certainly not to suggest that any
3 witness with an interest in a case will necessarily testify
4 falsely. It is simply a matter for you to consider as you
5 review the credibility of witnesses.

6 Defendants Clement Hampton-El, Tarig Elhassan,
7 Fadil Abdelgani, and Victor Alvarez have taken the witness
8 stand. The law permits, but does not require, a defendant
9 to testify on his own behalf. Obviously, a defendant has a
10 keen personal interest in the outcome of his prosecution.
11 In appraising the defendant's credibility, you may take that
12 fact into consideration. However, I want to say to you with
13 equal force that simply because the defendant has an
14 interest in the outcome of the trial does not mean that he
15 has testified falsely. It is for you to decide to what
16 extent, if at all, the defendant's interest in the outcome
17 of this case has affected or colored his testimony.

18 The other defendants did not testify in this
19 case. Under our Constitution, a defendant has no obligation
20 to testify or to present any other evidence, because it is
21 the government's burden to prove the defendant guilty beyond
22 a reasonable doubt. That burden remains with the government
23 throughout the entire trial and never shifts to the
24 defendant. A defendant is never required to prove that he
25 is not guilty. You may not attach any significance to the

1 fact that a defendant did not testify. No adverse inference
2 against him may be drawn by you because he did not take the
3 witness stand. You may consider this in any way in your
4 deliberations in the jury room.

5 Defendants Omar Ahmed Ali Abdel Rahman, Clement
6 Hampton-El, and Tariq Elhassan have called witnesses who
7 have given their opinion of the defendants' good character.
8 This testimony is not to be taken by you as each witness's
9 opinion as to whether the defendant on whose behalf he has
10 testified is guilty or not guilty. That question is for you
11 alone to determine. You should, however, consider this
12 character evidence together with all the other facts and all
13 the other evidence in the case in determining whether the
14 defendant is guilty or not guilty of the charges. Evidence
15 of good character may create a reasonable doubt that a
16 person of good character would commit the offenses charged.
17 Accordingly, if after considering all the evidence,
18 including testimony about the defendant's good character,
19 you find that you have a reasonable doubt, you must acquit
20 him of all the charges. On the other hand, if after
21 considering all the evidence, including that of the
22 defendant's character, you are satisfied beyond a reasonable
23 doubt that the defendant is guilty, you should not acquit
24 the defendant merely because you believe him to be a person
25 of good character.

1 The government has presented to you testimony by
2 Emad Salem, a confidential informant. Informants frequently
3 are used by the government to obtain leads and to gain
4 introduction to persons suspected of violating the law.
5 There are certain types of crimes where without the use of
6 informants detection would be extremely difficult. There is
7 nothing improper or illegal in the government using an
8 informant, so long as the use of the informant does not
9 violate a defendant's rights. Whether or not you approve of
10 the use of informants in an effort to detect criminal
11 activity is not to enter into your deliberations.

12 You have also heard Mohammed Abdo Haggag testify
13 that he had some involvement in the acts charged in the
14 indictment. There has been a great deal said about this
15 so-called accomplice witness in the summations of counsel
16 and whether or not you should believe him. The government
17 argues, as it is permitted to do, that it must take the
18 witnesses as it finds them. It argues that frequently only
19 people who themselves take part in criminal activity have
20 the knowledge required to show criminal behavior by others.
21 For those reasons, the law allows the use of confidential
22 informant and accomplice testimony. Indeed, it is the law
23 in federal courts that the testimony of an informant or an
24 accomplice may be enough in itself for conviction, if the
25 jury finds that the testimony establishes guilt beyond a

1 reasonable doubt. However, it is also the case that
2 informant and accomplice testimony is of such a nature that
3 it must be scrutinized with great care and viewed with
4 particular caution when you decide how much of that
5 testimony to believe.

6 There has been evidence that Emad Salem, who
7 testified at this trial, lied under oath at another
8 proceeding. I must warn you that the testimony of a witness
9 who has previously lied under oath should be viewed
10 cautiously and weighed with great care. It is, however, for
11 you to decide whether to credit all of such a witness's
12 testimony, none of it, or whatever parts of it you determine
13 to be worthy of belief, after you have considered it in
14 relation to the other evidence in this case.

15 I have given you some general considerations on
16 credibility and I will not repeat them all here. Nor will I
17 repeat all of the arguments on both sides. However, let me
18 say a few things that you may want to consider during your
19 deliberations on the subject of informant and accomplice
20 witnesses.

21 You should ask yourselves whether the informant
22 or accomplice would benefit more by lying or by telling the
23 truth. Was his testimony made up in any way because he
24 believed or hoped that he would somehow receive favorable
25 treatment by testifying falsely? Or did he believe that his

1 interest would be best served by testifying truthfully? If
2 you believe that the witness was motivated by hopes of
3 personal gain, was the motivation one which would cause him
4 to lie or was it one which would cause him to tell the
5 truth? Did this motivation color his testimony? You should
6 look at all the evidence in deciding what credence and what
7 weight, if any, you will want to give to the testimony of an
8 informant or an accomplice witness.

9 You have heard what is called expert testimony
10 from various witnesses who testified about the Arabic
11 language, medicine, psychology, ballistics, explosives, and
12 tape recordings. An expert is allowed to express his
13 opinion on those matters about which he has special
14 knowledge and training. Expert testimony is presented to
15 you on the theory that someone who is experienced in the
16 field can assist you in understanding the evidence or in
17 reaching an independent decision on the facts.

18 In weighing the expert's testimony, you may
19 consider the expert's qualifications, his opinions, his
20 reasons for testifying, as well as all of the other
21 considerations that ordinarily apply when you are deciding
22 whether or not to believe a witness's testimony. You may
23 give the expert testimony whatever weight, if any, you find
24 it deserves in light of all the other evidence in this case.
25 You should not, however, accept a witness's testimony merely

1 because he is an expert. Nor should you substitute it for
2 your own reason, judgment, and common sense. The
3 determination of the facts in this case rests solely with
4 you.

5 In this case you have heard also the testimony of
6 law enforcement officers who did not testify as expert
7 witnesses. The fact that a witness may be employed as a law
8 enforcement official does not mean that his testimony is
9 necessarily deserving of more or less consideration or
10 greater or less weight than that of any other witness.

11 Both the government and the defendants have the
12 same power to subpoena witnesses to testify on their behalf
13 and evidence to be presented on their behalf. Indeed, some
14 defendants did subpoena witnesses and evidence.

15 If a potential witness could have been called by
16 the government or by a defendant and neither side called him
17 or her, then you may conclude that the testimony of the
18 absent witness might have been unfavorable either to the
19 government or to the defendant, or to both the government
20 and the defendant. On the other hand, it is equally within
21 your power, if you decide it is reasonable, to draw no
22 inference whatsoever from the failure of either side to call
23 a witness. Also, if the potential witness was unavailable
24 to both the prosecution and the defense, you may simply
25 disregard his or her possible testimony. You should

1 remember that there is no duty on either side to call a
2 witness whose testimony would be merely cumulative of
3 testimony already in evidence.

4 The inferences you draw or do not draw in this
5 situation, as in others, is entirely up to you, based on
6 your common sense and your experience. However, you should
7 remember that no defendant is obligated to call any witness
8 and each defendant is presumed to be innocent whether or not
9 he calls any witnesses.

10 If you conclude that other persons may have been
11 involved in criminal acts charged in the indictment, you may
12 not draw any inference, favorable or unfavorable, towards
13 either the defendants or the government from the fact that
14 those persons are not named as defendants in this indictment
15 or are not present at this trial.

16 The decision of whether charges shall be brought
17 against persons believed to have committed crimes is a
18 matter to be decided by a United States Attorney and a grand
19 jury, and the fact that a prosecution has not been brought
20 against other persons who may or may not be involved permits
21 no inference against anyone. It must play no part in your
22 deliberations. Guilt is personal. Whether each defendant
23 is guilty or not guilty of the offenses charged must be
24 determined by you solely on the evidence, or the lack of
25 evidence, presented against him.

1 Stipulations have also been entered into by
2 counsel and have been reported to you, relating to various
3 facts in this case. A stipulation is an agreement between
4 counsel as to what certain facts were or what the testimony
5 would be if certain people testified before you. These
6 stipulations are the same for your purposes as the
7 presentation of evidence or live testimony. You should
8 consider the weight to be given such evidence just as you
9 would any other evidence.

10 The question of possible punishment of each
11 defendant is of no concern to the jury and should not in any
12 sense enter into or influence your deliberations. The duty
13 of imposing sentence rests exclusively upon the court --
14 that is, upon me. Your function is to weigh the evidence in
15 the case and to determine whether or not each defendant is
16 guilty beyond a reasonable doubt, solely on the basis of
17 such evidence. Under your oath as jurors, you cannot allow
18 a consideration of the punishment that may be imposed upon a
19 defendant, if he is convicted, to influence your verdict in
20 any way or in any sense to enter into your deliberations.

21 There have been numerous tape recordings and
22 transcripts introduced into evidence, including tape
23 recordings of the defendants. Some of the tape recordings
24 were made without the knowledge of the defendants whose
25 voices were recorded but with the consent of another

1 participant in the conversations, principally Emad Salem.
2 These have been referred to sometimes as consensually
3 monitored conversations, or CM's. Other recordings of
4 telephone conversations were made without the consent of any
5 party to the call but with the permission of the court.
6 These have been referred to sometimes as wiretaps or FISA's.
7 There are other recordings of lectures or sermons by
8 Dr. Abdel Rahman that were secured pursuant to search
9 warrants. I instruct you that all of these procedures for
10 gathering evidence are entirely lawful and that the parties
11 are entitled to use such evidence in this case.

12 There have also been transcripts presented to you
13 and sometimes read in this case. These transcripts fall
14 into two separate categories, and I will instruct you as to
15 how to consider each. The first category consists of
16 transcripts of conversations that were recorded in English.
17 Those transcripts are for your use only as an aid in
18 following the recorded conversation on the tape. In other
19 words, it is the tape of the English conversations that is
20 the evidence, and the transcript is only for your
21 assistance. If in listening to the tape you hear something
22 different from what is on the transcript, it is what you
23 hear on the tape that is the evidence, not what you see on
24 the transcript.

25 The second category of transcripts is the English

1 translations of conversations that took place in Arabic.
2 Because you do not speak Arabic, it is the English
3 translations on the transcripts that are the evidence. In
4 evaluating these translations, you should consider the
5 credibility and the qualifications of the translator
6 witnesses who testified to the accuracy of each of the
7 transcripts because each of these translations is, in
8 effect, the testimony of the translator witness as to what
9 is on the tape and what the statements on the tape mean in
10 English. You have heard credibility testimony as to some of
11 these transcripts.

12 Within this second category of transcripts -- the
13 English transcripts of conversations in Arabic -- you may
14 recall that there are a few exceptions.

15 Actually, let me go back to the last paragraph.
16 At the end the last sentence it should read, you have heard
17 conflicting testimony as to some of these transcripts, not
18 credibility testimony. At the end of the last paragraph,
19 the sentence should read you have heard conflicting
20 testimony as to some of these transcripts.

21 Within this second category of transcripts -- the
22 English transcripts of conversations in Arabic -- you may
23 recall that there are a few exceptions. One is Exhibits 333
24 and 333T, relating to a meeting on June 4, 1993, among
25 defendant Mohammed Saleh, Siddig Ibrahim Siddig Ali and Emad

1 Salem at Mr. Saleh's house, as to which Emad Salem testified
2 that certain words in Arabic were present on the tape even
3 though the translator did not put them in the transcript,
4 and you listened to the tape along with Mr. Salem and saw
5 him raise his hand at the point in the tape where he said
6 those words appeared.

7 Let me explain briefly how that came about and
8 what your role is as to this specific issue. The transcript
9 was prepared with the assistance of interpreters, including
10 a government interpreter, who said he did not hear those
11 words on the tape. The witness, Mr. Salem, said he did hear
12 them. Although in other instances when we deal with foreign
13 language tapes it is the transcript rather than the tape
14 that is the evidence, in this instance it will be for you to
15 decide whether those words appear on the tape, based on
16 everything you have heard and seen, including the transcript
17 which does not have those words in it, the testimony of
18 Mr. Salem who says those words are on the tape, and the tape
19 itself which you heard as Mr. Salem was testifying. So you
20 will be the ones to resolve those issues based on that
21 evidence.

22 There are other tapes as well that you have been
23 asked to listen to in order to resolve issues about whether
24 certain Arabic words were used. These exhibits include 381B
25 and 381B-T, and Hampton-El Q50, and I should also point out

1 others in the Q series that were introduced. As to these
2 exhibits as well, you will resolve whatever issues you may
3 find it necessary to resolve with respect to disputed
4 language.

5 Finally, I should point out that you have also
6 listened to certain Arabic language tapes, both audio and
7 video, to help you assess the mood, tone, and state of mind
8 of the participants. You may consider that as well.

9 You have heard references in the arguments of
10 defense counsel in this case to the fact that certain
11 investigative techniques were not used by the government.
12 There is no legal requirement, however, that the government
13 prove its case through any particular means. Although you
14 are to consider carefully the evidence adduced by the
15 government, you are not to speculate about why they used the
16 techniques they did or why they did not use other
17 techniques. Your concern is whether or not, on the evidence
18 or lack of evidence, each defendant's guilt has been proved
19 beyond a reasonable doubt.

20 You are about to go into the jury room and begin
21 your deliberations. Each of you has a copy of this charge
22 and the documentary exhibits will be sent to you in the jury
23 room. If you wish to examine other evidence, including the
24 audio and videotapes, and including as well any weapons that
25 were seized, you may do so in the courtroom.

1 If you want any of the testimony during your
2 deliberations, that can also be done. But please remember
3 that although we have a transcript available, the lawyers
4 must agree on the proper segments that may be called for.
5 If they do not agree, I must resolve any disagreement. That
6 can be, and usually is, a lengthy and cumbersome process.
7 So please remember that it is not always easy to locate what
8 you might want, and be as specific as you possibly can in
9 requesting exhibits or portions of testimony that you may
10 want, if in fact you do want any.

11 Any request for testimony -- in fact, any
12 communication with the court -- should be made to me in
13 writing, signed by your foreperson, and given to one of the
14 marshals. I will respond to any questions or requests you
15 have as promptly as possible, either in writing or by having
16 you return to the courtroom so I can speak with you in
17 person. In any event, do not, in any note or otherwise,
18 tell me or anyone else how you or any group of you have
19 voted or propose to vote on any issue until a unanimous
20 verdict is reached. In other words, do not tell me or
21 anyone else what your numerical division is -- how many
22 think one way and how many think another -- if you are
23 divided at any point on how to decide the case.

24 I am also sending, as I have said, a copy of the
25 indictment into the jury room for you to have during your

1 deliberations. You will use it to read the crimes allegedly
2 committed by the defendants. You are reminded, however,
3 that an indictment is merely an accusation and is not to be
4 used by you as any proof of the conduct charged.

5 As I said before, each of you has a copy of my
6 charge. You have received also a verdict form on which to
7 record your verdict. Please do not draw any conclusions
8 from the verdict form or any question on it. That form is
9 intended only to record your verdict and is not part of my
10 charge.

11 The government has the obligation to prove the
12 essential elements beyond a reasonable doubt, as already
13 explained in these instructions. If it succeeds, your
14 verdict should be guilty; if it fails, it should be not
15 guilty.

16 To report a verdict, it must be unanimous. Your
17 verdict must represent the considered judgment of each
18 juror. Whether your verdict is guilty or not guilty, it
19 must be unanimous. Your function is to weigh the evidence
20 in the case and determine whether or not each defendant is
21 guilty, solely on the basis of such evidence.

22 Each juror is entitled to his or her own opinion.
23 Each should, however, exchange views with his or her fellow
24 jurors. That is the very purpose of jury deliberations, to
25 discuss and consider the evidence, to listen to the

1 arguments of fellow jurors, to present your individual
2 views, to consult with one another, and to reach an
3 agreement based solely and entirely on the evidence -- if
4 you can do so without violence to your own individual
5 judgment.

6 Each of you must decide the case for yourself
7 after consideration, with your fellow jurors, of the
8 evidence in the case. But you should not hesitate to change
9 an opinion that after discussion with your fellow jurors
10 appears incorrect. However, if, after carefully considering
11 the evidence and the arguments of your fellow jurors, you
12 hold a conscientious view that differs from the others, you
13 are not to change your position simply because you are
14 outnumbered. Your final vote must reflect your
15 conscientious belief as to how the issues should be decided.

16 I have virtually finished with this charge and my
17 instructions to you, and I thank you again for your patience
18 and attentiveness. Again, please remember that no single
19 part of this charge is to be considered in isolation. You
20 are not to consider any one aspect of this charge out of
21 context. The entire charge is to be considered as an
22 integrated statement and to be taken together.

23 Now, I say this not because I think it is
24 necessary but because it is the tradition of this court. I
25 advise the jurors to be polite and respectful to each other,

1 as I am sure you will be, in the course of your
2 deliberations so that each juror may have his or her
3 position made clear to all the others.

4 When you get into the jury room, before you begin
5 your deliberations you should select someone to be the
6 foreperson. The foreperson has no greater authority than
7 any other juror but will be responsible for signing all
8 communications to the court and for handing them to the
9 marshal during deliberations. Thereafter, the manner in
10 which you conduct your deliberations, of course, is
11 completely within your discretion. You may follow any
12 procedure that you choose, provided that each juror is
13 presented with ample opportunity to express his or her view.
14 That way, when you do reach a verdict you will know that it
15 is a just one, made with the full participation of all the
16 jurors, and that you have faithfully discharged your oath.
17 I remind you once again that your oath is without fear or
18 favor and that you must decide the issues on trial based
19 solely on the evidence and my instructions on the law.

20 Thank you.

21 I will ask you to remain in the jury box for a
22 few moments but not to discuss the case yet, while I confer
23 with counsel at the side bar. I will come back to you for
24 any final word, and then you will be able to begin your
25 deliberation.

1 (At the side bar)

2 THE COURT: I want objections other than those
3 previously stated.

4 MR. STAVIS: I just want to make sure for the
5 record that under Rule 30 all objections previously stated
6 at the charging conference are preserved.

7 THE COURT: Absolutely. I said that before in
8 the robing room and I will reiterate it here.

9 MS. AMSTERDAM: Your Honor, I apologize for not
10 picking this up earlier. In the section about the
11 particular investigative techniques, your Honor goes on to
12 say that you are not to speculate why certain techniques
13 were used or not used. Both Mr. Ricco and I argued, and the
14 government responded to our argument, that the introduction
15 of an undercover or the lack of introduction of an
16 undercover had certain ramifications. Mr. Ricco and I
17 argued that it was Salem's safe house scenario --

18 THE COURT: That is not speculation. It was the
19 subject of testimony. That has been argued to them and I
20 see no need to correct the charge in that respect.

21 Anyone else? Thank you.

22 MS. AMSTERDAM: Then I would just ask that your
23 Honor say that to the jury, that they are not to speculate
24 but they are to be mindful of the fact that there was
25 evidence adduced and that they can consider it the evidence.

1 THE COURT: That is an instruction of such
2 generality as to be useless and I am not going to give it.
3 Thank you.

4 (In open court)

5 THE COURT: Miss Schwartz, would you please swear
6 the marshal.

7 (Marshal sworn)

8 THE COURT: Ladies and gentlemen, before I ask
9 the first 12 of you to go with the marshal and begin your
10 deliberations, I should point out one thing, and that is
11 that at any time when all 12 of you are not in a room
12 together -- or put it a different way. You are not a jury
13 unless all 12 of you are in the room together. I gather
14 that some of you smoke. This is not the time for me to
15 deliver a lecture on the evils of smoking, but if anyone
16 steps outside or into the next room for a smoke, then the
17 people remaining are not a jury. You can talk at that time
18 about anything else that you want, the weather, whatever.
19 But please don't discuss the case unless all 12 of you are
20 in the room.

21 With that, I will ask the first 12 of you to go
22 with the marshal and begin your deliberations. This time
23 you should take your materials with you, including your
24 notebooks and the copies of the charge.

25 (At 4:10 p.m., the jury retired to deliberate

1 upon a verdict)

2 THE COURT: Jurors number 159 and 358, I have
3 spoken a lot of words today, but there are no words that I
4 am going to speak, today or on any other day, that are as
5 heart felt as the words of recognition that I want to speak
6 to you because of your jury service in this case. There was
7 a great judge of this court -- some people, I among them,
8 believe the greatest judge to sit on this court -- who used
9 to take the position that he would never thank jurors for
10 jury service because jury service is a public duty and you
11 are not supposed to thank people for doing their duty. He
12 also took the view that the sense of satisfaction that a
13 juror must feel at having done the most important public
14 duty that you can ever do in peacetime, and that is to sit
15 in judgment of a dispute between your government and one of
16 your fellow citizens, would provide the kind of satisfaction
17 that would make any thanks from him seem insignificant.

18 It is still a pretty severe view, so
19 notwithstanding his eminence and the respect that I have for
20 him, I am going to thank you. The service that you have
21 done here was outstanding. It was exemplary. I hope you
22 understand that, simply because you didn't get to decide the
23 case, what you did here was in no sense futile or a dry run.
24 As you saw, four of your colleagues, that is, four other
25 alternate jurors, had to be seated. If a trial proceeds

1 without alternate jurors and any juror becomes unable to
2 serve, if we didn't have alternate jurors, we would have to
3 start all over again, and that, as I am sure you can tell,
4 would be an enormous waste. So what you did here was
5 enormously important. Up until this morning it was not
6 entirely clear that the first 12 jurors would be able to
7 serve, and so your presence here was very, very important,
8 and I hope you understand that and I hope you understand how
9 much everybody appreciates that.

10 If you do understand the great importance of what
11 you have done, then, since I have already asked many favors
12 of you, I am going to ask another favor of you, and that is,
13 a month or two or six from now, when you are at some social
14 gathering and the subject of jury duty comes up, as it
15 sometimes does, and some clever person starts to talk about
16 what excuses you should use to get out of it, or what
17 excuses are effective to get out of it, I hope that you will
18 remember your service here and how important it was, and
19 when you remember that, I hope you will speak up for jury
20 service, because if the only people we get to serve on
21 juries are people who have either run out of excuses or
22 people who have nothing better to do with their time, then
23 the quality of justice suffers, and if that happens we all
24 suffer. We need people like you who are willing to make the
25 many sacrifices you have made, some of which I know about

1 and some of which I don't know about and will never know
2 about, in order to be here day after day to serve.

3 With that, I am going to discharge you from jury
4 service, as I am obligated to do, and I will ask you to wait
5 for a moment in the jury room, because I would like to see
6 you and talk to you a little bit privately.

7 Again, thank you.

8 (Alternate jurors excused)

9 THE COURT: I will ask the lawyers to remain here
10 until we get some indication from them as to when they want
11 to call it a day. I think I would like to see the lawyers
12 in the robing room in a couple of minutes after I have
13 talked to the alternates.

14 MR. WASSERMAN: Your Honor, as to tomorrow's
15 schedule, my client has requested that he remain at the MCC.

16 THE COURT: I am willing to do that if he
17 understands that if we get any communication that his
18 presence ordinarily would be required.

19 MR. WASSERMAN: He understands.

20 THE COURT: Mr. Hampton-El, you are waiving that?

21 DEFENDANT HAMPTON-EL: Yes, I am.

22 THE COURT: Thank you very much. You are
23 excused.

24 I am also going to find out from the marshals
25 what time it is likely that the deliberations would begin

1 tomorrow, because I believe the jurors will first attend
2 church and I need to find that out and let you know, if you
3 would wait for me for a minute.

4 (Pause)

5 THE COURT: What I am told is that they are going
6 to attend services tomorrow that will get them here to begin
7 their deliberations at about 11:30. So if the lawyers could
8 be here at 11:30, to await whatever communication we can get
9 from them, and I would ask you to wait now until we get a
10 note indicating that they want to break for the day, which I
11 expect they will.

12 Ms. Amsterdam.

13 MS. AMSTERDAM: Just for clarification, when you
14 say break for the day, is there a possibility that they may
15 have dinner and stay and deliberate past dinner tonight?

16 THE COURT: That is up to them. I don't think I
17 would bet the farm on it after what they have had to listen
18 to, but they are going to go decide that, and I think they
19 will let us know.

20 MS. AMSTERDAM: If we don't get any communication
21 at some point --

22 THE COURT: You want me to shake the tree?

23 MS. AMSTERDAM: I just want to make sure that
24 your Honor is coming back to us with some guidance or
25 something, so that we are not just sitting here.

1 THE COURT: I promise that you won't be sitting
2 here and I also promise that if I don't hear anything by
3 5:00, I will shake the tree to find out if they want to stay
4 longer, have dinner, not have dinner.

5 MR. PATEL: I was just concerned if they knew
6 that food was an option.

7 THE COURT: They are well aware that food is an
8 option. They are keenly aware that food is an option.

9 (Laughter)

10 THE COURT: Mr. Jacobs.

11 (Continued on next page)

12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 (In the robing room)

2 MR. JACOBS: Your Honor, I was going to ask
3 whether your Honor would consider lifting the gag order
4 against Miss Amsterdam and I at this point, since the jury
5 is sequestered.

6 THE COURT: I would consider it. The only
7 problem is the following. We have got one juror who has
8 this problem where he may have to be out of here on an
9 emergency basis, at which point I am going to lift the
10 sequestration for at least a day for two for everybody. I
11 don't want that blessed event to catch you with your mouth
12 open.

13 MR. JACOBS: This is not my get-out-of-jail-free
14 card, and I am not saying that you should impose it on other
15 counsel.

16 THE COURT: It was not a punitive order, it was a
17 prophylactic order, and since the reason for the prophylaxis
18 is now gone, I suppose I should lift it, and I do.

19 (Continued on next page)

20

21

22

23

24

25

1 THE COURT: Is everybody here? Yes, everybody is
2 here. Can I talk to you a little bit about a proposed
3 procedure, if it is not a complete act of hubris after what
4 occurred outside, about what would happen when we got a
5 verdict. I am suggesting the following procedure, if you
6 want to talk about it. I assume you want to talk about it.
7 It is a seven-page verdict form. What I would propose to do
8 is to get it myself from the marshal, take it in here and
9 copy it on that machine, which I have secured by measures
10 that I won't describe to you in detail, make 12 copies of it
11 for the jurors, put the original back in a sealed envelope
12 and give it back to them to be given to the foreperson, then
13 have it handed up in court, and I will do what I usually do,
14 which is for me to read the verdict rather than have a
15 member of the jury read it, because people get nervous at a
16 time like that, and if anybody makes a mistake I would
17 rather it be me rather than a lay juror. Each would have a
18 copy of the form so that when I poll them, as I will, they
19 can all answer truthfully that it is their verdict. Nobody
20 can memorize a seven-page form, and you have the distinct
21 possibility of mixed results. It is absurd to ask people to
22 memorize a form, and that way seems reasonable to me. I
23 don't expect an answer now, if you would think about it and
24 let me know, or if you have an alternative suggestion that
25 is fine.

1 Another use to which I intend to put the machine
2 is to copy jury notes, make multiple copies for you so that
3 you don't all have to crowd around or pass some ratty piece
4 of paper from hand to hand to figure out what if anything it
5 means. I assume that procedure is acceptable, too.

6 COUNSEL: Yes.

7 THE COURT: Thank you all. Does anybody have
8 anything else, other than you want the gag order lifted? It
9 is lifted.

10 (Discussion off the record)

11 MR. WASSERMAN: Mr. McCarthy asked me to put on
12 the record what my client's reasons were for not coming in
13 tomorrow. He is feeling some discomfort in his legs.

14 THE COURT: I hope he is feeling better.

15 (Recess)

16 (In open court; jury not present)

17 THE COURT: I don't know whether you have seen
18 them, but we have gotten two notes, one of which asks for a
19 notebook and the other of which tells us that they want to
20 break at 5:30. The principal disclosure in the notes is
21 that the foreperson is juror number 4.

22 So we will see you and them at 5:30 and excuse
23 them for the day.

24 MS. AMSTERDAM: Is it your intention to bring
25 them in before you discharge them?

1 THE COURT: Yes.

2 MS. AMSTERDAM: Does that mean the defendants
3 come in?

4 THE COURT: Yes. At the end of the day I do
5 that, tell them not to talk about it. See you at 5:30.

6 (Recess)

7 (Court Exhibit 1 reads as follows: "Juror number
8 125, instruction book in courtroom")

9 (Court Exhibit 2 reads as follows: "We would
10 like to break for the day at 5:30. Number 20.")

11 (At 5:30 p.m., jury present)

12 THE COURT: Ladies and gentlemen, we got your
13 note saying you wanted to leave at 5:30. It is now a bit
14 past that, but of course you are free to leave with the
15 marshals. You will go to your hotel. Tomorrow after
16 church, you will come to the courthouse and you can just
17 begin your deliberations. You don't need any send-off from
18 me. You will go to the deliberation room and begin. Please
19 don't discuss the case on the outside when you are not in
20 that room. Talk about anything else you like, relax, and we
21 will see you tomorrow. Obviously, we are here to provide
22 you with anything you need, and we will do that as soon as
23 you ask for it. Good night.

24 (Jury excused)

25 THE COURT: They should be here tomorrow sometime

1 between 11 and 11:30, so I think you are probably fairly
2 safe getting here around 11:15, 11:30. Good night.

3 (Proceedings adjourned until 11:00 a.m., Sunday,
4 September 24, 1995)

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

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

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

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

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

S5 93 Cr. 181 (MBM)

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

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

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

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

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

Defendants.

-----x

September 24, 1995
11:30 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

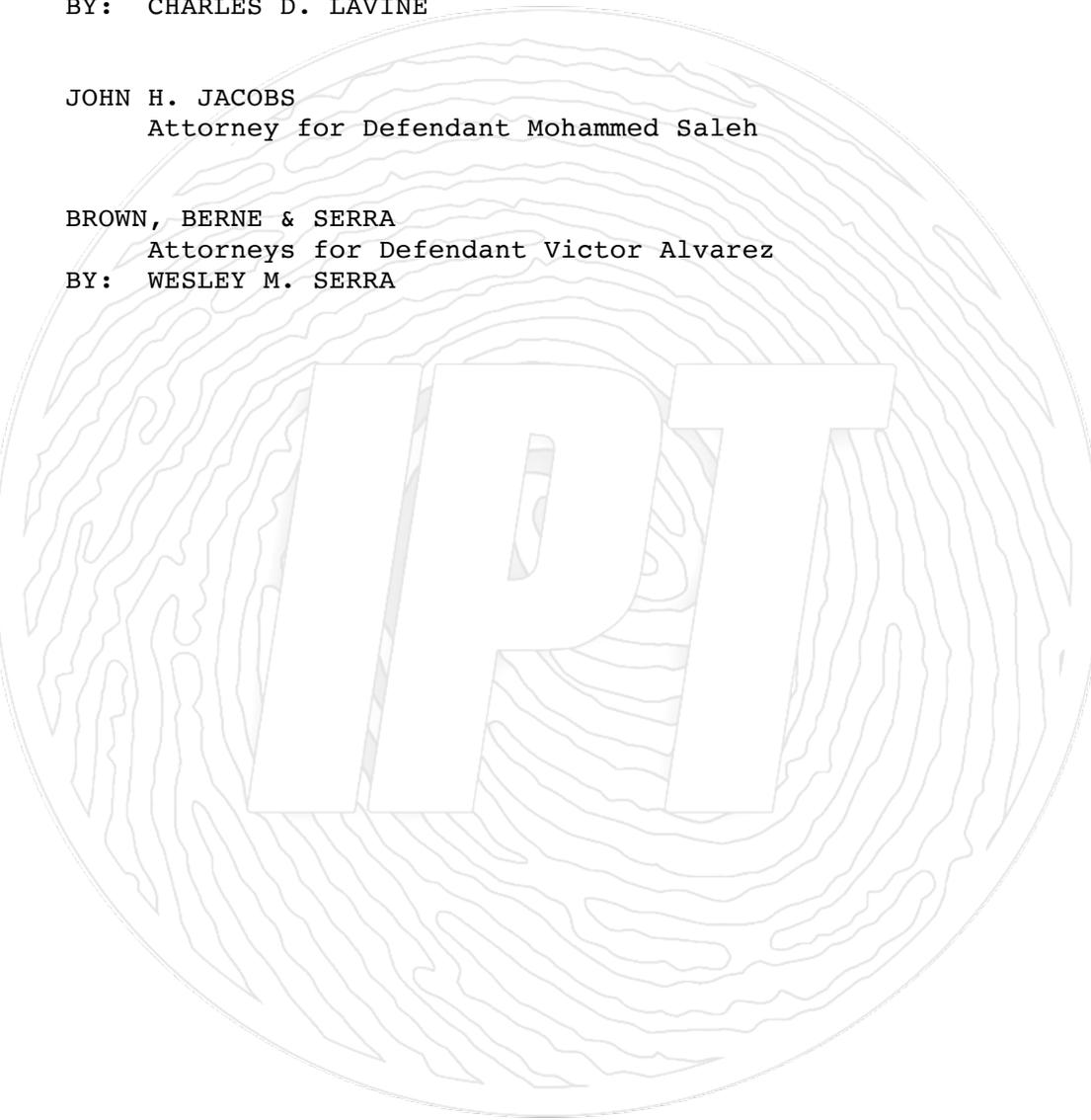
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Deliberations resumed)

2 (Court Exhibit 3 reads as follows: "We request
3 the following: D Corrigan's testimony on El-Gabrowny's
4 assault. Detective Burke's testimony on El-Gabrowny's
5 assault. Salem's testimony on El-Gabrowny's obtaining
6 detonators. Haggag's testimony on El-Gabrowny's obtaining
7 detonators. Salem's testimony on El-Gabrowny's bombing
8 synagogue. Salem's testimony on Nosair's jail break. Brian
9 Parr's testimony on his arrest of M. Saleh. Number 20.")

10 (Court Exhibit 4 reads as follows: "We would
11 like to know if we would be allowed to bring our own
12 notebooks back to our own rooms. We feel it would speed up
13 the process. Number 20.")

14 (Court Exhibit 5 reads as follows: We would like
15 to leave at 6:00 p.m. Number 20.")

16 (In open court; jury not present)

17 THE COURT: I gather you have all gotten copies
18 of the various notes we have received, is that right?

19 MR. McCARTHY: Yes, your Honor.

20 THE COURT: Good. As I understand it, the
21 testimony that was called for in what has become marked as
22 Court Exhibit 3, is in the process of being put together and
23 sent in.

24 MR. McCARTHY: Yes, your Honor. A good deal has
25 already been sent in, I think.

1 THE COURT: That microphone is a prop. It
2 doesn't work.

3 MR. McCARTHY: A lot has already been sent in.

4 THE COURT: And I think we are providing them
5 with three copies?

6 MR. McCARTHY: Yes, your Honor.

7 THE COURT: If they want more, they can ask for
8 it.

9 Let's talk about Court Exhibit 4, the one that
10 asks: "We will like to know if we would be allowed to bring
11 our own notebooks back to our own rooms. We feel it would
12 speed up the process."

13 MR. McCARTHY: Your Honor, after giving it some
14 thought, particularly in the last few minutes, we don't
15 think it is a good idea.

16 THE COURT: Why?

17 MR. McCARTHY: We don't find any case on point.

18 THE COURT: Neither do I. That is not a good
19 reason for not doing it.

20 MS. STEWART: We have a reason, Judge, a defense
21 reason.

22 THE COURT: Fine.

23 MS. STEWART: To us, it is the same as taking
24 anything that is part of the deliberative process, whether
25 it is notes taken during deliberation --

1 THE COURT: Did you read the note?

2 MS. STEWART: Our own books to our own rooms. To
3 do what with them?

4 THE COURT: Focus their thoughts for Wednesday.

5 MS. STEWART: What if they want to take a
6 transcript to focus their thoughts, exhibits to focus their
7 thoughts? It seems to me that it moves it from the jury
8 room to the hotel, and that is inappropriate.

9 THE COURT: What is the "it" -- no, no. What you
10 are telling me now is that the rule is that they are not
11 allowed to think about the case.

12 MS. STEWART: No, I am saying it is a
13 deliberative tool, something that they will bring back to
14 the jury room and use the next day.

15 THE COURT: What if one of them had a bright
16 thought in the middle of the night and wrote it down on a
17 scrap of paper?

18 MS. STEWART: That is fine. That is different.
19 This is something that was done nine months ago. They were
20 kept in the courthouse in the middle of the night, they
21 didn't take them home in the course of the trial. I am sure
22 if they did it there would have been some sort of grounds of
23 something or other.

24 THE COURT: That is because they didn't form
25 their views until all the evidence was in. It is now all

1 in.

2 MR. McCARTHY: Your Honor, I was in complete
3 agreement with the position your Honor is articulating until
4 we look at Federal Jury Practice, Devitt & Blackmar, a few
5 minutes ago.

6 THE COURT: What is in there that changes your
7 mind?

8 MR. McCARTHY: I am reading from Chapter 5,
9 Section 5.1. "Courts, particularly in complex cases, are
10 becoming increasingly receptive to allowing jurors to take
11 notes. There are safeguards and cautionary instructions to
12 make sure that notes are used appropriately, most commonly,
13 a requirement that jury notes remain in the jury room and
14 not be taken home."

15 With no citation.

16 THE COURT: And no explanation of a reason.

17 MR. McCARTHY: Correct.

18 THE COURT: And that is what changed your mind?

19 MR. McCARTHY: Correct.

20 THE COURT: I wouldn't want you next to me in a
21 foxhole, I really wouldn't.

22 MR. McCARTHY: The idea of being in a foxhole is
23 that we are there because we have to be there.

24 THE COURT: And we are here because we have to be
25 here. What you are telling me is, you have found someplace

1 written on a page that says that is a safeguard. It doesn't
2 say when it is a safeguard that is imposed and it doesn't
3 say why.

4 MR. McCARTHY: Your Honor, what I am telling you
5 is that this is something that has come up in the last
6 couple of hours. If it was something that I had a night to
7 take a look at and see what the cases say and try to get to
8 the bottom of it -- I am not comfortable with the idea of
9 advising you to do something that I find out tomorrow
10 morning is a mistake, and if it is a decision that I have to
11 make this minute on a record that I may have to defend some
12 day, I say it is not appropriate to do it.

13 THE COURT: Sir.

14 MR. LAVINE: Your Honor, those notes contain
15 references to evidence, bits and pieces of testimony that
16 was part of evidence that was offered during the trial.
17 They contain as well personal thoughts and individual notes.

18 THE COURT: Wait a second. How do you know what
19 is in those notebooks?

20 MR. LAVINE: I don't know, your Honor, what is in
21 those notebooks.

22 THE COURT: Right. They took voluminous notes to
23 help them think.

24 MR. LAVINE: Judge, I don't doubt that, but some
25 of those notes contain portions of what is evidence, and I

1 don't think that the jurors should be any more allowed to
2 take those notes which contain evidence into their rooms at
3 night than they would be allowed to take actual evidence
4 itself out of the jury room and into their rooms at night.

5 THE COURT: But if the notes simply reflect their
6 thoughts about the evidence and they are allowed to think
7 about the evidence anyplace they like --

8 MR. LAVINE: Mr. Jacobs, whom I agree with on
9 this score, just mentioned we don't know.

10 THE COURT: Jury deliberations consist basically
11 of two things. One is each individual juror making up his
12 or her own mind about how the case ought to be decided.
13 That is a process that is individual to each juror. You
14 can't say that that can only happen in a jury room because
15 in point of fact it happens all over. It happens in the
16 shower, wherever. The second part is the exchange of views.
17 That is not allowed to happen anyplace except in the jury
18 room when all of them are present and it is going on in
19 secret. But as to the first part, the thinking about the
20 case, that goes on anyplace, and if these notes are an aid
21 to somebody thinking about the case, all you do is assure
22 that whatever thinking they do, and they are going to think
23 about it, is less productive than it might otherwise be.

24 MR. LAVINE: Your Honor, I respect your analysis
25 and I know that in arguing this I have a hunch who is going

1 to win out in the argument.

2 THE COURT: You don't, because I have McCarthy
3 over here telling me that if he is asked to defend this in a
4 Court of Appeals, he is throwing to throw a faint.

5 MR. LAVINE: If that's the case, don't let him
6 take the stuff into the room.

7 MR. McCARTHY: That's not exactly what I am
8 saying.

9 THE COURT: It is close.

10 MR. McCARTHY: I don't want to find out tomorrow
11 morning that this was a problem. I really don't. I don't
12 want to find out that we decided --

13 THE COURT: When did you first find out about
14 this issue?

15 MR. McCARTHY: I guess earlier this afternoon.

16 THE COURT: Is there anybody available in your
17 office other than the three of you working on the case to
18 help look at it?

19 MR. McCARTHY: I suppose -- there hasn't been
20 this afternoon.

21 THE COURT: Too bad.

22 Mr. Jacobs.

23 MR. JACOBS: Your Honor, the jury is deliberating
24 at the close of the session and your Honor says cease
25 deliberations. It is not only notes taken during

1 proceedings, which is done in a lot of cases, but notes
2 taken while they are deliberating, which may be their --

3 THE COURT: Mr. Jacobs, you can't be heard. Step
4 to the podium.

5 MR. JACOBS: Notes that the jurors take while
6 they are deliberating may be in these books as well. They
7 may be scanning what they have written and shown to other
8 jurors. Other jurors may be writing in their books. It is
9 no different than the notes they take while they are
10 deliberating. It could be the ballots they are taking. It
11 could be a lot of things.

12 The point is, I have never seen a court, when
13 jurors recess for the evening, whether it be the hotel or
14 their home, ever give the jurors anything of their own notes
15 or anybody else's notes --

16 THE COURT: Actually, I have. I did it once, and
17 I am here to tell the tale. I don't know that anybody took
18 an appeal on it. I doubt that they did.

19 MR. JACOBS: I am not sure it is a question of
20 appeal, but I think your Honor is running a very dangerous
21 path in proceeding with this in a case like this where you
22 do have voluminous notes and we don't know what is written
23 in them, we don't know what they have exchanged in the jury
24 room, we don't know whether this contains other things as
25 well. If your Honor is saying cease deliberations, that

1 means cease deliberations.

2 THE COURT: Wait a second. It doesn't mean cease
3 thought, does it? Does it?

4 MR. JACOBS: You might as well give jurors trial
5 transcripts home at night and charges --

6 THE COURT: Mr. Jacobs, sufficient unto the day
7 is the evil thereof. They didn't ask for transcripts, they
8 asked for notes.

9 MR. JACOBS: It would be no different if they
10 asked for something as neutral as taking your Honor's charge
11 home because it is 200 pages and they would like the next
12 two days to read it. My feeling is that deliberations
13 cease, they cease. We have disagreed with the government on
14 a lot, but this is opening up for a lot of potential
15 problems here and it is unfortunate that the jurors can't
16 deliberate for the next two days --

17 THE COURT: Right, and the gentleman who is
18 principally responsible for the fact that it is only one day
19 of deliberations before the break and not two is on his
20 feet.

21 MR. STAVIS: I am not sure what it means.

22 THE COURT: What it means is that you said you
23 were going to sum up for one day and you summed up for two.

24 MR. STAVIS: Perhaps your Honor will allow me to
25 state something on the record that is on point with what we

1 are dealing with here.

2 First of all, obviously we have a uniform defense
3 position that we object to the taking of notes. The reason
4 we object to the taking of notes outside of the courtroom is
5 because it is part and parcel of the deliberative process.

6 THE COURT: That adds a lot.

7 MR. STAVIS: If you will allow me to finish.

8 THE COURT: I am not going to let you finish. I
9 am not going to let them take the notes. Let's get them out
10 here and send them home.

11 MR. BERNSTEIN: Your Honor, with the court's
12 permission, Mr. Abdelgani is prepared to have me leave. I
13 need to catch a bus --

14 THE COURT: You are excused.

15 MR. BERNSTEIN: Perhaps your Honor would like my
16 client to state for the record that it is all right.

17 THE COURT: Mr. Abdelgani, is that satisfactory
18 to you?

19 DEFENDANT AMIR ABDELGANI: Yes.

20 THE COURT: Thank you.

21 (Jury present)

22 THE COURT: Ladies and gentlemen, you have asked
23 to leave at 6, and to assure that you would be able to leave
24 at 6, we are having you here at 5 to 6 to talk to you before
25 you leave.

1 You sent in a note asking whether each of you
2 could take your notebooks back back to the hotel, those of
3 you who may want to, to look at them. The lawyers here are
4 unanimously of the view that we shouldn't do that, because
5 deliberations are supposed to stop when you leave the jury
6 room, and although if you examine them in your room you
7 would not be deliberating, it is felt that it would be
8 better that you not have the notebooks.

9 I am not entirely sure I agree with that, but on
10 the other hand I have all these lawyers telling me that they
11 do, and although my vote usually carries even if I am
12 outvoted, 14 or however many there are to 1, this time their
13 votes are going to carry.

14 So we will ask you to keep your notebooks here.
15 You will resume deliberations on Wednesday. Please don't
16 discuss or deliberate on the case anyplace other than in the
17 jury room. Have a pleasant two days with whatever
18 diversions the marshals have for you, and we will see you on
19 Wednesday.

20 Good night.

21 One more thing, and that is, one segment of
22 testimony that you asked for was whether there was any
23 testimony by Mr. Haggag about Mr. El-Gabrownny obtaining
24 detonators, and both sides agree that there is no testimony
25 by Mr. Haggag on that subject.

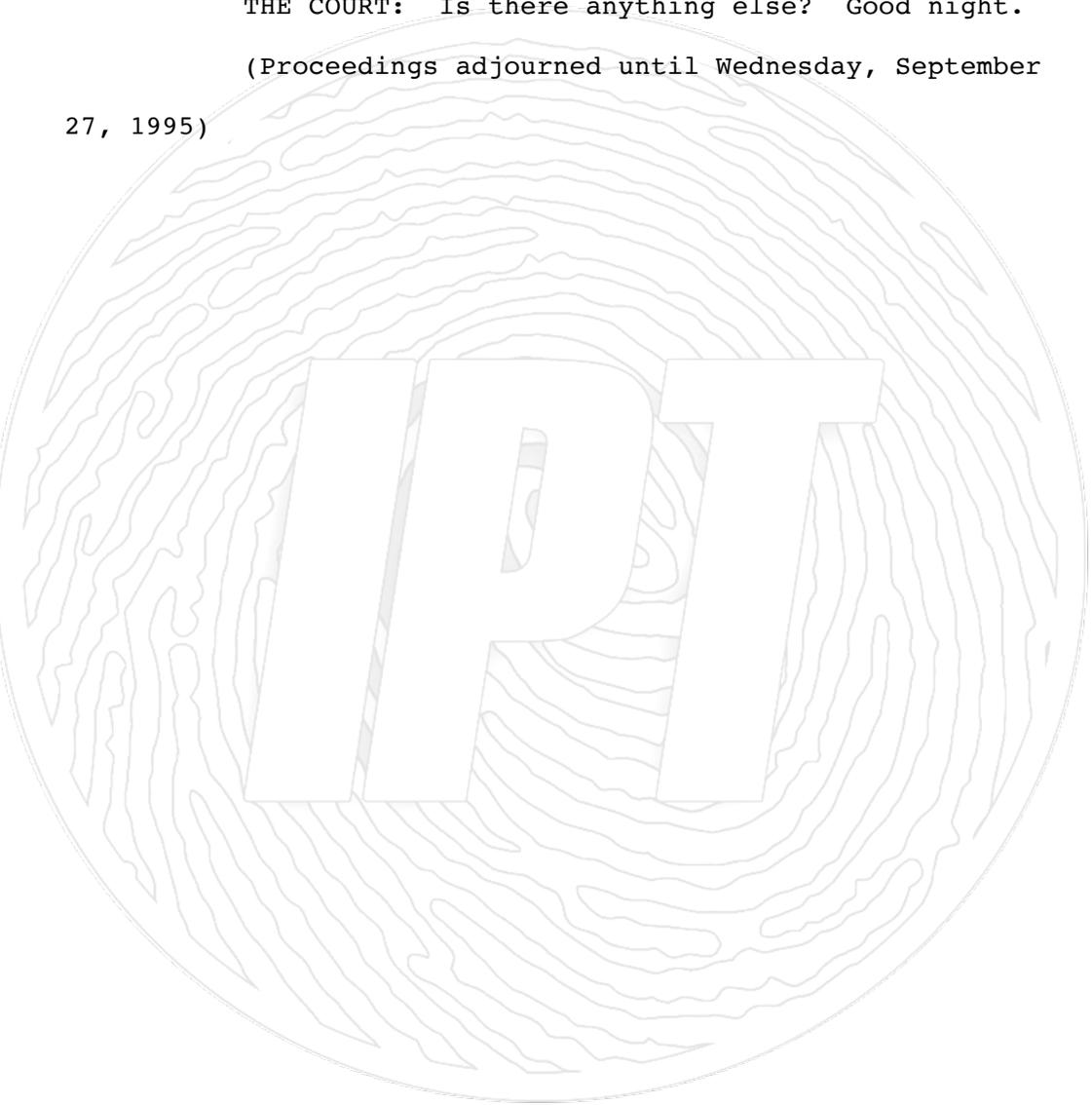
1 With that, I wish you good night, and we will see
2 you Wednesday.

3 (Jury excused)

4 THE COURT: Is there anything else? Good night.

5 (Proceedings adjourned until Wednesday, September
6 27, 1995)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



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,"

S5 93 Cr. 181 (MBM)

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

September 27, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

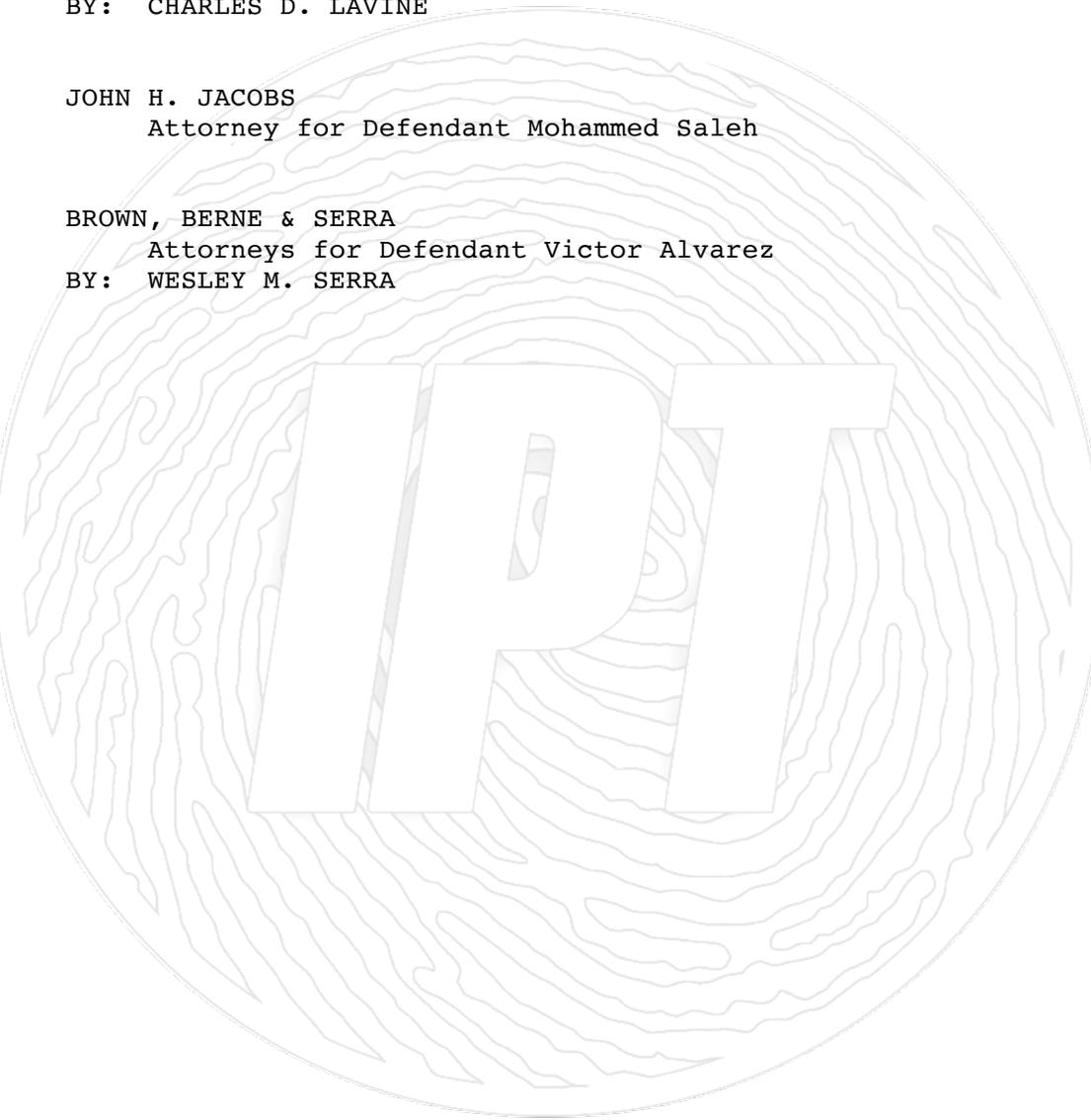
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Pages 20609-20610 sealed)

2 MR. WASSERMAN: Just concerning my client, your
3 Honor, the government has no objection, with the court's
4 permission, if I make a court exhibit of the digital
5 enhancement of Exhibit 62, which was the subject of a lot of
6 litigation in this case. So it would be there as part of
7 the court record.

8 THE COURT: I thought it was received.

9 MR. WASSERMAN: It is not. The transcript is not
10 in evidence but is part of the court file because it was
11 part of a motion.

12 THE COURT: 62 was which conversation?

13 MR. FITZGERALD: That is the famous Napoli --

14 THE COURT: The Napoli conversation, fine.

15 MR. WASSERMAN: The government has a copy and I
16 would put in a copy of the digital enhancement.

17 THE COURT: That is fine. I would make it a
18 lettered court exhibit because I am attaching numbers to the
19 jury notes.

20 (Recess)

21 (In open court; jury not present)

22 THE COURT: Mr. Wasserman.

23 MR. WASSERMAN: Yes, your Honor. Thank you. My
24 client would waive his appearance, with the court's
25 permission. He would like to go back to the MCC. He is

1 quite tired.

2 THE COURT: That is for the remainder of the day?

3 MR. WASSERMAN: Yes, it is.

4 THE COURT: Is that right, Mr. Hampton-El?

5 DEFENDANT HAMPTON-EL: Yes, it is.

6 THE COURT: Thank you very much. You are
7 excused. Anything else?

8 (Recess)

9 (Court Exhibit 6 reads as follows: "Page 5 of
10 the verdict sheet does not contain Count 11."

11 (Court Exhibit 7 reads as follows: "We request:
12 1. Salem's testimony on his visit to Attica. 5/20. 2.
13 Gottesmann's testimony. 3. Hoffman's testimony.")

14 (6:10 p.m., in open court, jury present)

15 THE COURT: Good afternoon, ladies and gentlemen.

16 JURORS: Good afternoon.

17 THE COURT: We heard that you wanted to break at
18 6, and here I am 10 minutes late, to let you break at 6, and
19 to ask you again please not to discuss the case on the
20 outside, and have a pleasant evening, and we will be here
21 tomorrow to respond as quickly as we can to whatever it is
22 you may want. Good night.

23 (Jury excused)

24 THE COURT: Yes.

25 MS. STEWART: Judge, my client is requesting that

1 he be permitted to waive his presence for whatever short
2 period tomorrow may be needed -- Friday, I am sorry, I
3 misspoke myself -- to accommodate an interview at the MCC.
4 He understands that he would waive his right to any
5 appearance that might be necessary at that time, excluding a
6 verdict, I guess.

7 THE COURT: We are talking about a note.

8 MS. STEWART: A note.

9 THE COURT: Is that correct, Dr. Abdel Rahman?

10 DEFENDANT ABDEL RAHMAN: Yes.

11 THE COURT: Can I make a suggestion, Ms. Stewart,
12 and I don't mean to mind your business, but there are notes
13 and there are notes. If it is a note that you think is of
14 particular significance, do you want to reserve the right to
15 try to get him back, assuming that time allows?

16 MS. STEWART: Yes, Judge, and I would ask that
17 the marshals bring him back as soon as that is concluded, if
18 possible.

19 THE COURT: If it is a note asking for other than
20 some segment of testimony and something that is particularly
21 important as to him, you may want to assert that right. But
22 otherwise you are willing to make a judgment that he need
23 not be here?

24 MS. STEWART: Exactly, Judge.

25 THE COURT: Objecting.

1 MS. STEWART: Thank you.

2 THE COURT: Anyone else?

3 MR. JACOBS: What time, your Honor?

4 THE COURT: Same time as today. I think they
5 start at 9. See you then. Good night.

6 (Proceedings adjourned until 9:00 a.m., Thursday,
7 September 28, 1995)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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,"

S5 93 Cr. 181 (MBM)

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

September 29, 1995
9:10 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

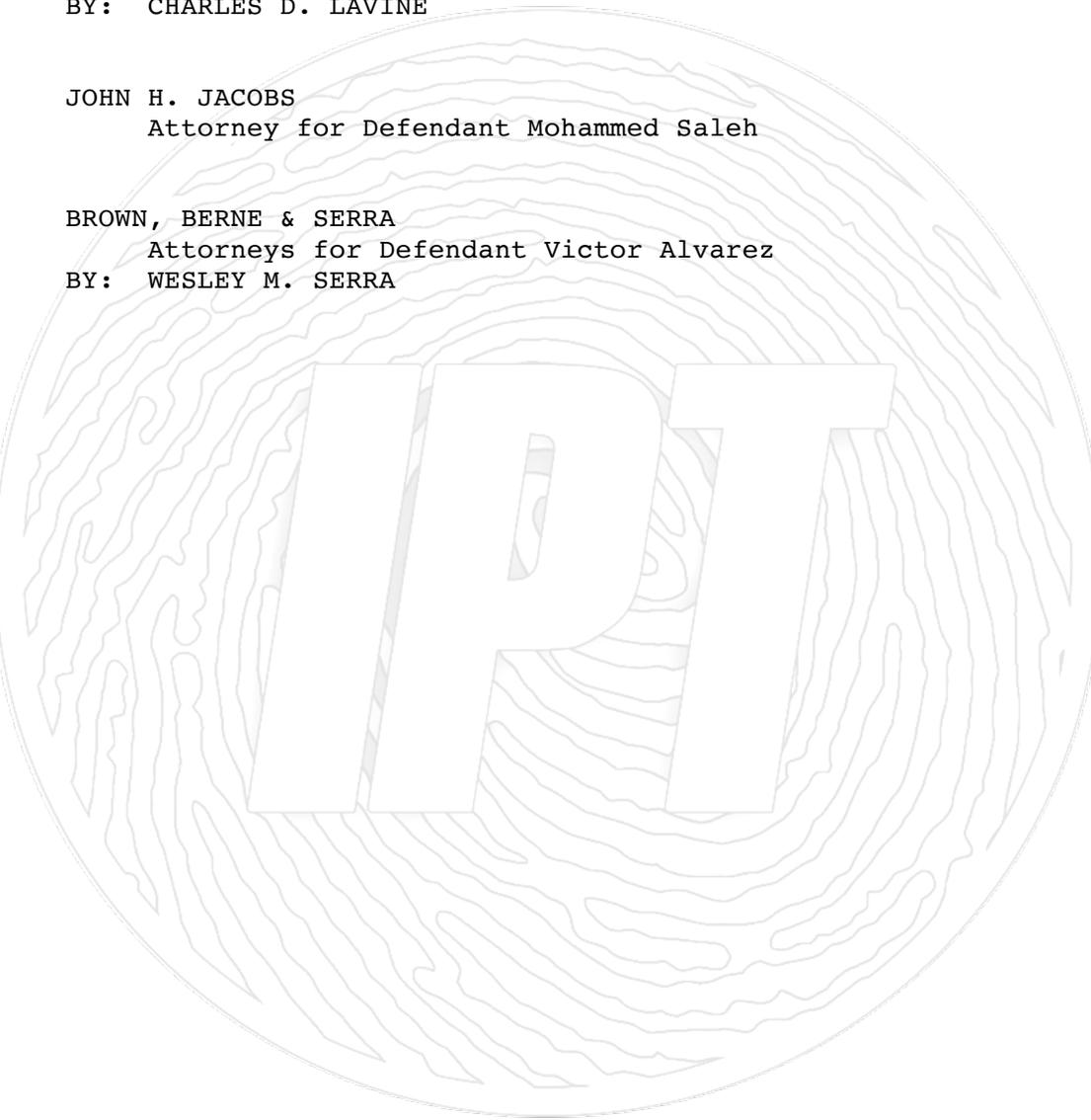
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Deliberations resumed)

2 (11:00 a.m., in open court, jury not present)

3 THE COURT: Obviously we will wait for your
4 client, Mr. Ricco, but they thought I was feeling slighted
5 because they didn't call for any notes that called for me to
6 do anything, so they finally sent a note that called for me
7 to do something.

8 Mr. Ricco, do you want to talk to your client for
9 a minute and tell him what we are doing?

10 MR. RICCO: Yes, Judge.

11 (Pause)

12 THE COURT: Ms. Stewart has asked that we have an
13 Arabic interpreter present before we proceed.

14 MR. RICCO: Your Honor, I have discussed it.

15 THE COURT: I am going to go ahead and they can
16 review the transcript and convey the substance, because this
17 note does not relate to Dr. Abdel Rahman, and he is the
18 person in whose behalf you are taping.

19 MR. McCARTHY: Judge, I didn't hear.

20 THE COURT: I said, I am going ahead in the
21 absence of the translator, because the purpose of taping the
22 translator is for Dr. Abdel Rahman, and this doesn't relate
23 to him.

24 What I have prepared in response is the
25 following: You have asked the following in your latest

1 note -- and then I would read the note back to them, and
2 then I would say the following: The search warrant that was
3 referred to in the charge was a warrant to search Mr.
4 El-Gabrowny's apartment, and the one issue you were asked to
5 decide was whether the law enforcement agents in question
6 were engaged in activity related to that warrant at the time
7 of the alleged assault. You should be aware that the search
8 of Mr. El-Gabrowny and the seizure of documents by him have
9 been found by the court to be lawful. You are not being
10 asked to decide that issue. The only issues you are being
11 asked to decide in connection with the encounter between Mr.
12 El-Gabrowny and law enforcement agents, insofar as those
13 issues relate to the search warrant, are the issues
14 described on pages 144 through 148 of my instructions. If
15 there is any further explanation you need, I will provide
16 it.

17 MR. RICCO: Your Honor, I would object to that
18 charge.

19 THE COURT: What is the objection?

20 MR. RICCO: I think that the court's instruction
21 goes way beyond the scope of what the jury is simply asking.
22 I don't know if this question has anything to do with the
23 agents, and I think the note can be answered very simply.

24 THE COURT: That is the only search warrant issue
25 mentioned in the entire charge.

1 MR. RICCO: I think that the question can be
2 answered very simply, and that is this: that there was no
3 warrant issued for the arrest or the search of Mr.
4 El-Gabrowny. The warrant was issued for the search of his
5 apartment. With respect to the second part of their
6 question, the lawfulness of the search is not your function.
7 I have previously advised you that all searches upon which
8 you have heard testimony are lawful.

9 MR. FITZGERALD: I would disagree with Mr. Ricco.
10 I agree with your Honor. It seems to me they are asking the
11 question for explanation, and one of the charges here is
12 whether or not he committed an assault during the execution
13 of a search warrant.

14 I think what your Honor makes clear is that as
15 far as the legality of the search for the passports, that is
16 not for them to pass upon but to explain to them that the
17 search warrant was issued for the apartment.

18 MR. RICCO: Your Honor, I disagree with that,
19 because this note doesn't say anything about an assault.
20 What the note simply says is, when you say search warrant,
21 does that include the person --

22 THE COURT: I have read the note. Understand
23 that this takes place in a setting. The only issue on
24 which -- Mr. Jacobs, I am not interested in your views.

25 MR. RICCO: I can't see him anyway.

1 THE COURT: I can, and it is just irritating.

2 MR. JACOBS: I am sorry.

3 THE COURT: The only issue, the only setting in
4 which search warrant comes up is the encounter with the
5 agents, who either were or weren't engaged in executing a
6 search warrant. It seems to me it would be blinking reality
7 to overlook that.

8 MR. RICCO: Judge, I don't know whether blinking
9 reality is or isn't relevant with respect to jury notes. I
10 think the best way to deal with them is simply to answer the
11 question, and this question has a simple answer, and the
12 answer is that there was no search warrant with respect to
13 Mr. El-Gabrownny.

14 THE COURT: If they are asking whether there was
15 a warrant for his person, that is a totally irrelevant
16 question and they should be told that.

17 MR. RICCO: I don't have a problem with your
18 telling the jury that is a totally irrelevant question if
19 that is what the court wants to say to the jury, but the
20 second part, could you please explain search and seizure, I
21 think the only way to answer that is to tell the jury that
22 the lawfulness is not your problem, period, and all of the
23 testimony they have heard with respect to searches have been
24 lawful. With respect to instructing them about the
25 encounter and the way in which your Honor has broadened

1 their inquiry, I would object to it because it is not
2 necessary to answer this question.

3 THE COURT: I don't think I have broadened it
4 impermissibly.

5 MR. RICCO: Then, your Honor, if the jury was
6 concerned about the encounter, they could always ask an
7 additional question, if they thought the simple answer was
8 insufficient. I have always felt that was the most prudent
9 way to proceed.

10 MR. FITZGERALD: For context, it says concerning
11 El-Gabrownny's arrest, talking about the encounter, and then
12 could you please explain search and seizure.

13 THE COURT: I am not going to sit here and
14 deliver some dissertation on the law of search and seizure.
15 We will be here forever.

16 MR. RICCO: I am sorry, your Honor. I can't hear
17 you. Mr. Jacobs was talking in my right ear.

18 THE COURT: Did you hear Mr. Fitzgerald?

19 MR. RICCO: I did, your Honor.

20 THE COURT: My response to him was that insofar
21 as the note asks for me to "explain search and seizure," I
22 am not going to sit here and deliver a lecture on search and
23 seizure. If the charge was boring, imagine that.

24 After having conferred with Mr. Jacobs, is there
25 anything else you want to tell me?

1 MR. RICCO: No.

2 THE COURT: Let's get them in.

3 MS. STEWART: Your Honor, is the jury coming in
4 without the clients being here?

5 THE COURT: Yes. I don't think every client has
6 to be there with respect to a jury note.

7 MS. STEWART: It is a conspiracy case, after all.
8 It is an overt act in the conspiracy along with being a
9 substantive act with respect to Mr. El-Gabrownny. I just
10 feel it inappropriate to be here without my client.

11 THE COURT: Yes.

12 MR. JACOBS: Your Honor, I didn't realize that
13 your Honor was bringing the jury out. Obviously we have no
14 problem waiving our clients' appearance with respect to
15 these legal discussions. I have no problem if your Honor
16 writes out the answer and and sends it in. But I do agree
17 with Miss Stewart that if one client is here, they should
18 all be here.

19 THE COURT: One second. What I am going to do
20 is, I think it is faster for me to go back to my keyboard
21 and do up the response -- that doesn't contemplate my
22 delivering it orally -- and simply send it in, so that you
23 don't have to be concerned about the absence of your
24 clients.

25 MR. RICCO: Your Honor, I don't have an objection

1 to the response going in. I would just ask the court to
2 keep the response to the bare minimums and not to speculate
3 at all as to what the jury is trying to connect this to.

4 THE COURT: I agree with you on the general
5 principle that I don't like speculating, but as was pointed
6 out, it says concerning Mr. El-Gabrownny's arrest. The only
7 setting in which this occurs is the charge of assault while
8 executing a search warrant, and while I don't like to read
9 more into jury notes than is there, I think it would be
10 avoiding reality not to put it into context. I will try to
11 keep it, as you say, to a bare minimum, but you have your
12 record as to the response you want. That response, I think,
13 is potentially misleading.

14 MR. RICCO: Your Honor, to be honest, I don't see
15 what is misleading to telling a jury that there was no
16 search warrant issued for his arrest or his person, that the
17 search warrant was for his apartment. I don't understand
18 what is misleading about that because that was the testimony
19 of Agent Burke and Agent Corrigan.

20 THE COURT: Which they have.

21 MR. RICCO: Which they have. And the second part
22 that I requested was that the jury be instructed that the
23 lawfulness of the search is not their function.

24 THE COURT: That does instruct them on that.

25 MR. RICCO: I don't understand what is misleading

1 about that.

2 THE COURT: It is misleading insofar as it
3 suggests that that question is at all relevant. It isn't.

4 MR. RICCO: Judge, I don't like to quibble with
5 the court.

6 THE COURT: Go ahead.

7 MR. RICCO: I don't understand how you can come
8 to the conclusion that it is misleading, if the relevance of
9 what their question is is ultimately a question to be
10 decided by a jury.

11 THE COURT: Not as a legal matter.

12 MR. RICCO: The legal matter is essentially tell
13 them that the lawfulness of the search is not for their
14 consideration, that you previously determined that the
15 searches in this case were legal. As a legal matter, I
16 don't see how the response that I am requesting is
17 misleading, because that is in fact what the law is.

18 MR. FITZGERALD: I think your Honor's instruction
19 takes care of the problem, that to simply tell them not to
20 consider the lawfulness of the search would be to overlook
21 one of the issues we were required to prove.

22 THE COURT: That is what they have to focus on,
23 and I don't think it is beyond the scope of their note to
24 point that out to them.

25 I am going to go upstairs, retype this, and send

1 it in to them. I will provide each of you with a text of
2 what it is that is going in, so that you have your record.

3 MR. RICCO: Will I have an opportunity to see it
4 before it goes in?

5 THE COURT: One more time?

6 MR. RICCO: Yes, please.

7 THE COURT: Understanding that the keyboard that
8 is producing this is up on the 30th floor. We are down on
9 3. So the likelihood of extensive amendment is somewhat
10 diminished. On the other hand, I have amended things
11 before. I amended the charge when I had to --

12 MR. RICCO: Your Honor, I don't have a problem
13 going up to the 30th floor and waiting outside chambers.

14 THE COURT: Fine, come up.

15 (Recess)

16 (3:25 p.m., in the robing room)

17 THE COURT: The record should reflect we are in
18 the robing room. Somebody wanted to be heard.

19 MR. McCARTHY: Your Honor, our interpretation of
20 the note and the sense of the way to proceed as far as we
21 are concerned is that the jury ought to be shown the last
22 part of the videotape, which was what the litigation about
23 the tape was primarily about. I understand Mr. Stavis has a
24 different position.

25 MR. STAVIS: My position is that the note does

1 not require any interpretation, your Honor. It asked for
2 the videotape to be played.

3 THE COURT: Your position is that we should play
4 the entirety of the videotape?

5 MR. STAVIS: Yes, your Honor.

6 THE COURT: I agree with the government. I will
7 play the last tape and I will tell them if there is any
8 other or different part that they want played, they should
9 specify so.

10 MR. STAVIS: There were at least two other
11 sections played during the course of the trial, one a
12 section during Ari Gottesmann's testimony where two people
13 who were standing behind Rabbi Kahane got up and moved, and
14 I played that during my cross-examination of air got.

15 THE COURT: Do you know where on the videotape
16 those are?

17 MR. STAVIS: Yes, we are cuing it up.

18 The other section was a section the government
19 played, I believe for purposes of introducing the exhibit
20 initially through Mr. Gottesmann, which concerned the
21 transferring of Arabs --

22 THE COURT: That will not be played.

23 MR. STAVIS: Consequently, I played that portion.

24 THE COURT: I understand your position. That
25 will not be played. The part of the people moving around

1 will be played and the part at the end of the tape which
2 also involves people moving around will also be played.

3 MR. STAVIS: Are we set up with the exact cuing?

4 MR. PATEL: Not quite.

5 MR. STAVIS: We need another couple of minutes,
6 your Honor.

7 THE COURT: Whatever you need.

8 (In open court; jury not present)

9 MR. STAVIS: Your Honor, before the jury comes
10 in, the latter segment of the videotape is very brief. I
11 don't know if the jury would want to see it more than once
12 or if your Honor would inquire of them or how your wishes to
13 handle that.

14 THE COURT: I would rather not inquire because
15 that starts a conversation that can get out of hand. What I
16 am going to tell them is that we are going to play two
17 segments and that if they want them repeated, just raise
18 their hands. If they want anything additional, they should
19 send us another note. Is that reasonable?

20 MR. STAVIS: Yes, your Honor.

21 MR. MCCARTHY: That is fine, your Honor.

22 THE COURT: There is one other alternative that I
23 can offer them in addition to this, and that is, I have a
24 tape player inside, as you have seen. I can offer to give
25 it to them if they want it. Do you want me to suggest that?

1 MR. PATEL: Sounds like a good idea.

2 MR. STAVIS: Yes, your Honor.

3 MR. McCARTHY: That is fine with us.

4 THE COURT: OK.

5 (Jury present)

6 THE COURT: Good afternoon, ladies and gentlemen.

7 JURORS: Good afternoon, your Honor.

8 THE COURT: We received your note asking for the
9 tape of November 5, 1990, in the Morgan D room. We are
10 going to play two segments of that tape that were played
11 most frequently during the trial by counsel. If you want
12 either of the segments repeated, if anyone wants either of
13 the segments repeated, just raise your hand. If you want a
14 different or additional part of the tape, we can do that,
15 but I would ask you to go back into the jury room and send
16 us a note.

17 There is another alternative also, and that is, I
18 have a tape player available for you to use in the jury room
19 if you want it back. So if you do want that, you can ask
20 for that in a note as well.

21 (Videotape played)

22 THE COURT: Ladies and gentlemen, I will ask you
23 to go back to the jury room to resume your deliberations.
24 Again, if there is anything else that you want including the
25 tape player, just let us know and we will be happy to

1 provide it.

2 (Jury excused)

3 THE COURT: I should tell you that I was given
4 another note that I assume they brought out with them, and
5 that is a note reporting that they want to leave at 6.

6 At this point I would like to see Ms. Stewart in
7 the robing room, after which I would like to see all other
8 counsel as well, but I want to see Miss Stewart initially.

9 (Pages 20631-20636 sealed)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 THE COURT: Do you want me to write on their note
2 or on a separate piece of paper, there are two separate
3 tapes that have been cued?

4 MR. PATEL: They will figure it out. They will
5 see one tape is in the middle, one is in the beginning --

6 MR. STAVIS: Why don't we give them a direction.

7 MR. PATEL: It is 5 and 5A, Judge.

8 MR. KHUZAMI: 5A is the end snippet.

9 MR. PATEL: Judge, Franci can just tell them.

10 (Pause)

11 THE COURT: How is this: It says "Jurors, you
12 are being provided with Exhibits 5 and 5A, which are cued to
13 the segments you saw. You may watch whatever portions of
14 these tapes you wish."

15 MR. KHUZAMI: I am sorry, your Honor. It is 5A
16 and 5B.

17 MS. SCHWARTZ: It is 5A and 5B.

18 THE COURT: It is 5A and 5B now.

19 MR. PATEL: 5B is our copy of 5.

20 (Discussion off the record)

21 MR. PATEL: 5B is a copy of 5. It is not in the
22 greatest shape and the jury may ask to see a better copy.

23 THE COURT: Let's send them this. If they
24 want -- Mr. Jacobs.

25 (Pages 20638-20639 sealed)

1 (Recess)

2 (6:00 p.m., in open court; jury present)

3 THE COURT: Hello again. We got your note before
4 indicating that you wanted to leave at 6, and we are doing a
5 little bit better than we did for you yesterday, and I am
6 here to give you my usual send-off and admonition, which is
7 please not to discuss the case outside the courthouse and to
8 tell you that we will be here tomorrow to provide you with
9 whatever you may need. Have a pleasant evening. Good
10 night.

11 (Jury excused)

12 (Proceedings until 9:00 a.m., Friday, September
13 29, 1995)

14

15

16

17

18

19

20

21

22

23

24

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

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

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

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

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

S5 93 Cr. 181 (MBM)

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

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

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

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

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

Defendants.

-----x

September 29, 1995
8:50 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

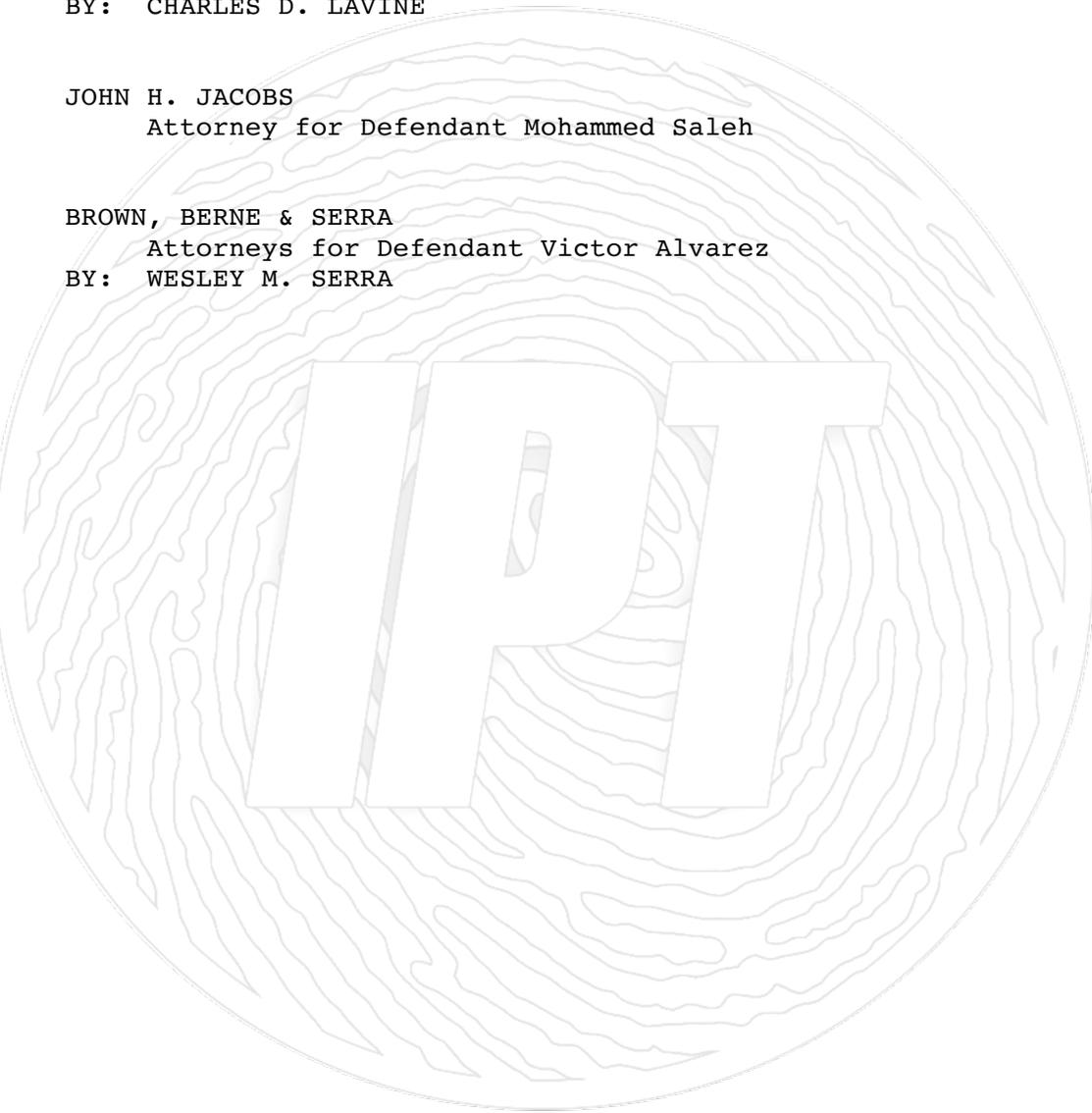
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Deliberations resumed)

2 (Pages 20644-20647 sealed)

3 (6:00 p.m., in open court, jury present)

4 THE COURT: Good afternoon, ladies and gentlemen.

5 JURORS: Good afternoon.

6 THE COURT: We received your note saying that you
7 wanted to break at 6. We are pretty well on time tonight.
8 We wish you a pleasant evening and we will be here tomorrow
9 to provide you with whatever you need. Have a pleasant
10 evening. Good night.

11 (Jury excused)

12 THE COURT: See you tomorrow.

13 (Proceedings adjourned until 9:00 a.m., Saturday,
14 September 30, 1995)

15

16

17

18

19

20

21

22

23

24

25

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,"

S5 93 Cr. 181 (MBM)

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

September 30, 1995
8:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

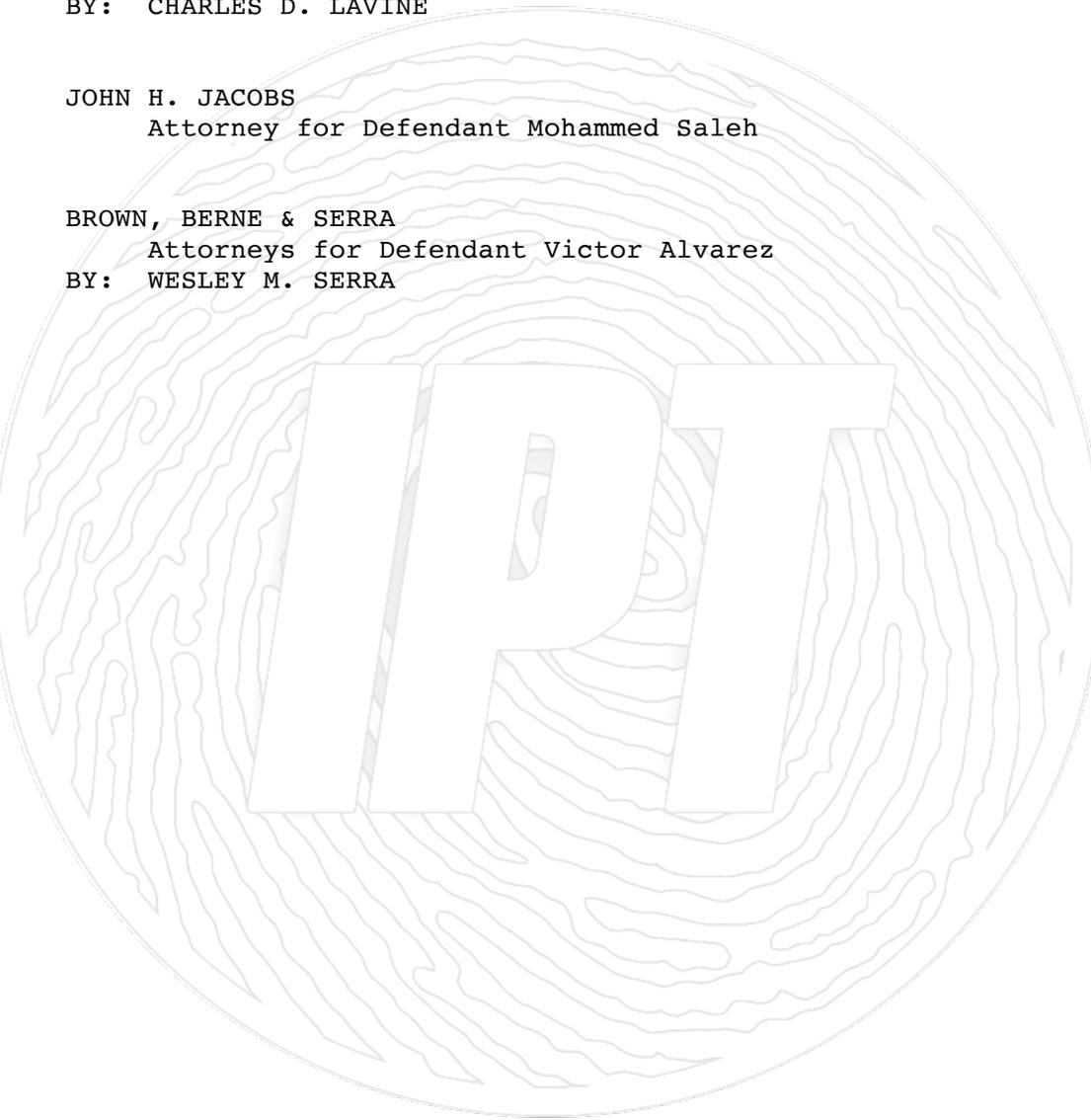
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (Deliberations resumed)

2 (Pages 20652-20654 sealed)

3 (3:05 p.m., in open court, jury not present)

4 THE COURT: As I mentioned, we received a note
5 that I am marking Court Exhibit number 18 as of this date,
6 that asks to leave at 3:00, apparently because juror number
7 6's foot is painful, and the others, out of conversation for
8 him, would like to break early. So we are going to do that
9 and have them in now.

10 (Jury present)

11 THE COURT: Good afternoon, ladies and gentlemen.
12 We received your note saying that we ought to break at at
13 3:00 today, and that is what we are going to do, or close to
14 it. I will wish you a pleasant rest of the day, and to
15 juror number 95 in particular I wish that you feel better.
16 We will start tomorrow as soon as you return from services.
17 Have a pleasant evening. Good night.

18 (Jury excused)

19 THE COURT: We will see you tomorrow. If the
20 lawyers could plan to be here at about 1:00.

21 (Proceedings adjourned until 1:00 p.m., Sunday,
22 October 1, 1995)

23

24

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

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

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

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

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

S5 93 Cr. 181 (MBM)

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

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

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

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

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

Defendants.

-----x

October 1, 1995
8:45 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

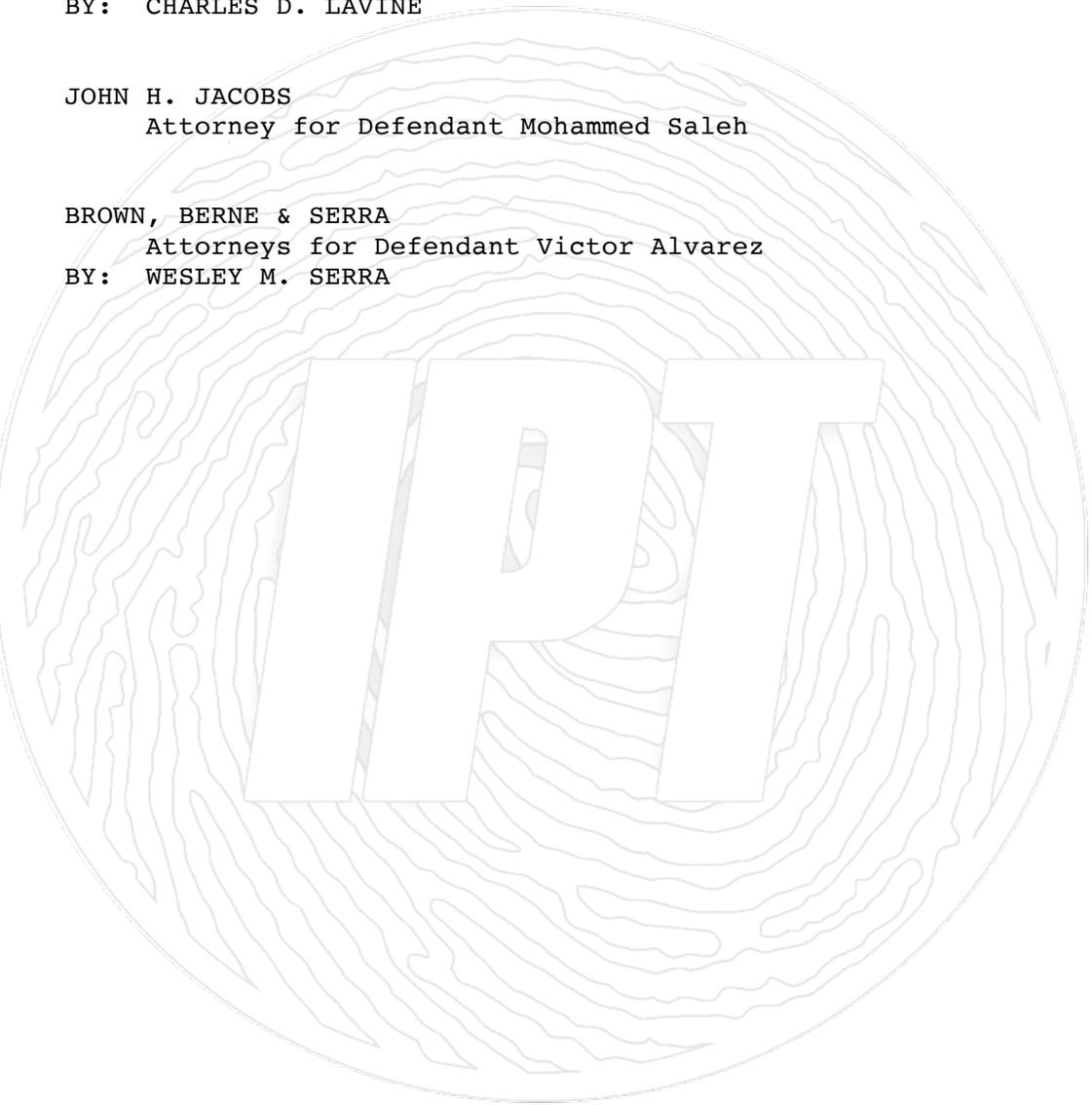
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



20659

1 (11:45 a.m., in open court, jury not present)

2 THE COURT: We received a note about an hour ago,
3 which I have marked as Court Exhibit number 19 as of this
4 date, that says "We have reached a verdict." So I am going
5 to bring the jurors in and they will announce it. The
6 jurors are going to come in. I will read the verdict and
7 poll them. After I do that, I am going to excuse the jurors
8 briefly and we will have some brief discussion here. I will
9 excuse the defendants if they wish to be excused. Then I
10 will bring the jurors back. I will have some words for
11 them, and then after they leave for the second time, the
12 courtroom will be open. Nobody should stand until after the
13 jurors leave for the second time.

14 Let's get the jury.

15 (Jury present)

16 THE COURT: Good morning, ladies and gentlemen.

17 JURORS: Good morning.

18 THE COURT: We received your note saying that you
19 have reached a verdict.

20 Ms. Schwartz, do you want to call the roll.

21 (Jury attendance taken; all present)

22 THE COURT: Each of you has received a copy of
23 the verdict form. I am going to ask the foreman to please
24 give the original to Ms. Schwartz, and I will ask each of
25 you to please open the envelope that you have that contains

1 a copy.

2 I am going to read the verdict into the record.
3 I will ask you to please pay close attention to me and to
4 follow, because I am going to ask each of you when I am done
5 whether this is your verdict.

6 As to Count One, seditious conspiracy. Question
7 A:

8 Do you find that the government has proved beyond
9 a reasonable doubt the existence of the conspiracy charged
10 in Count One? Your answer is yes.

11 As to question B, which contains two parts:

12 Did the conspiracy charged in Count One include
13 as one of the goals to wage a war of urban terrorism against
14 the United States? Your answer is yes.

15 Did it include the goal of opposing by force the
16 authority of the United States? Your answer is yes.

17 The individual verdicts as to each defendant on
18 Count 1 are follows:

19 Omar Ahmad Ali Abdel Rahman, guilty.

20 El Sayyid Nosair, guilty.

21 Ibrahim El-Gabrownny, guilty.

22 Clement Hampton-El, guilty.

23 Amir Abdelgani, guilty.

24 Fares Khallafalla, guilty.

25 Tarig Elhassan, guilty.

20661

1 Fadil Abdelgani, guilty.

2 Mohammed Saleh, guilty.

3 Victor Alvarez, guilty.

4 Count Two, solicitation to murder President Hosni
5 Mubarak of Egypt. Your verdict as to the one defendant on
6 that count, Omar Ahmad Ali Abdel Rahman, is guilty.

7 Count Three, conspiracy to murder President Hosni
8 Mubarak of Egypt. Your verdict as to the one defendant on
9 that count, Omar Ahmad Ali Abdel Rahman, is guilty.

10 Count Four, solicitation to attack a military
11 installation. Your verdict as to the one defendant, Omar
12 Ahmad Ali Abdel Rahman, is guilty.

13 Count Five, bombing conspiracy. Question A:
14 Do you find that the government has proved beyond
15 a reasonable doubt the existence of the conspiracy charged
16 in Count Five? Your answer is yes.

17 Question B, which has two parts involving the
18 goals of the conspiracy: Did the conspiracy charged in
19 Count Five include as one of the goals to damage and destroy
20 by fire and explosives, buildings, vehicles and real estate
21 used in interstate or foreign commerce or in activities
22 affecting interstate or foreign commerce? Your answer is
23 yes.

24 Second part of that question: Did the conspiracy
25 include as one of its goals to transport and ship in

1 interstate commerce explosive materials without being
2 licensed to do so? Your answer is yes.

3 The verdicts as to the individual defendants on
4 that count are as follows:

5 Omar Ahmad Ali Abdel Rahman, guilty.

6 El Sayyid Nosair, not guilty.

7 Ibrahim El-Gabrownny, not guilty.

8 Clement Hampton-El, guilty.

9 Amir Abdelgani, guilty.

10 Fares Khallafalla, guilty.

11 Tarig Elhassan, guilty.

12 Fadil Abdelgani, guilty.

13 Mohammed Saleh, guilty.

14 Victor Alvarez, guilty.

15 Count Six, attempted bombing. The individual
16 verdicts are as follows:

17 Clement Hampton-El, guilty.

18 Amir Abdelgani, guilty.

19 Fares Khallafalla, guilty.

20 Tarig Elhassan, guilty.

21 Fadil Abdelgani, guilty.

22 Mohammed Saleh, guilty.

23 Victor Alvarez, guilty.

24 Count Seven, murder of Meir Kahane in aid of
25 racketeering. Defendant El Sayyid Nosair, guilty.

1 Count Eight, assault of Irving Franklin.

2 Defendant El Sayyid Nosair, guilty.

3 Count Nine contains two charges. Attempted
4 murder of Carlos Acosta. El Sayyid Nosair is the defendant.
5 Your verdict is guilty. Second charge, assault of Carlos
6 Acosta. Again, defendant is El Sayyid Nosair. Your verdict
7 is guilty.

8 Count Ten, attempted murder of Postal Police
9 Officer Carlos Acosta. Defendant El Sayyid Nosair. Your
10 verdict is guilty.

11 Count Eleven, use of a firearm against Meir
12 Kahane. Defendant El Sayyid Nosair. Your verdict is
13 guilty.

14 Count Twelve, use of a firearm against Irving
15 Franklin. Defendant El Sayyid Nosair. Your verdict is
16 guilty.

17 Count Thirteen, use of a firearm against Carlos
18 Acosta. As to defendant El Sayyid Nosair, your verdict is
19 guilty.

20 Count Fourteen, possession of a firearm with an
21 obliterated or changed serial number. As to defendant El
22 Sayyid Nosair, your verdict is guilty.

23 Count Fifteen, interstate transportation of a
24 firearm. Defendant Victor Alvarez. Your verdict is guilty.

25 Count Sixteen, using and carrying a firearm.

1 Defendant Victor Alvarez. Your verdict is guilty.

2 Count Twenty, assault of Agent Michael Burke.

3 Defendant Ibrahim El-Gabrownny. Your verdict is guilty.

4 Count Twenty-one, assault of Special Deputy
5 United States Marshal Thomas Corrigan. Defendant Ibrahim
6 El-Gabrownny. Your verdict is guilty.

7 Count Twenty-two, resistance during execution of
8 a search warrant. Defendant Ibrahim El-Gabrownny. Your
9 verdict is guilty.

10 Count Twenty-three, possession of false
11 identification documents. Defendant Ibrahim El-Gabrownny.
12 Your verdict is guilty.

13 Counts Twenty-four through Twenty-eight,
14 possession of false passports as to each of those counts.
15 Defendant Ibrahim El-Gabrownny, your verdict is guilty.

16 (Each juror, upon being asked, "Is that your
17 verdict?", answered in the affirmative.)

18 THE COURT: Ladies and gentlemen, I am going to
19 excuse you for a couple of minutes. I need to talk to the
20 lawyers for just a moment. I want to ask you to wait in the
21 jury room just a few minutes and then I want you to come
22 back because there are a few things that I want to tell you.
23 Please go now to the jury room.

24 (Jury excused)

25 THE COURT: I had worked out with the Probation

1 Department the following dates with respect to presentence
2 reports and other dates that follow on that, and I will give
3 you the dates. They are as follows: December 5, 1995,
4 presentence reports will be prepared and will be disclosed
5 to counsel. December 19, 1995, objections are to be
6 submitted. January 12, 1996, I will meet with counsel to
7 discuss whether hearings are necessary in connection with
8 any objections to presentence reports. During the week of
9 January 15, I will have any hearings that may be necessary
10 in connection with presentence reports. Sentencing will
11 take place during the week of January 22 or January 29,
12 depending on what hearings have to be held.

13 Rule 29(c) motions are reserved to a date to be
14 specified at a meeting that will take place tomorrow with
15 counsel, tomorrow at 2:00, at which time we will also
16 discuss the outstanding motion that Mr. Lewis had submitted
17 and whether any more submissions are necessary in connection
18 with that motion.

19 I will tell each of the defendants that you will
20 have an opportunity to review the presentence report before
21 the date of sentence. I would urge you please to go over it
22 carefully and to make known any errors that you find in it
23 to your lawyer so that your lawyer can make it known to me,
24 because the presentence report plays a substantial part in
25 determining a sentence.

1 Any defendant who may wish to be excused at this
2 point may be excused.

3 DEFENDANT ALVAREZ: I excused.

4 THE COURT: Thank you. You are free. Go ahead,
5 Mr. Alvarez. You are excused.

6 (Defendant Alvarez excused)

7 THE COURT: I will tell anyone else that I plan
8 to ask the jurors to come out and to praise them, I guess is
9 the right word, for their service, not for their verdict.
10 If there is anybody who believes that he or she does not
11 want to listen to that -- it should take about three or four
12 minutes -- you are free to leave at this point. But if you
13 stay, then you will stay for the duration.

14 (Jury present)

15 THE COURT: Ladies and gentlemen, the last thing
16 in the world that I want to do now is to delay your
17 departure from here unduly. You have earned the right to do
18 the one thing that you have not been able to do for these
19 last eight or nine months, and that is to resume leading a
20 normal, private life. But I think it would be appropriate
21 to say a few words to you in the courtroom, and I promise
22 you that I am going to hold it to a few.

23 I told you many times during my instructions that
24 the verdict in this case was your concern, not mine. So I
25 should not say anything about the content of your verdict

1 and I won't. These comments have nothing to do with the
2 result; they were written before the result was announced.
3 But the way you went about reaching a result, and dealing
4 with your responsibilities in this case deserves
5 recognition. It deserves recognition at least in part
6 because you were selected without your names being known.
7 The lawyers who handled this case, the witnesses who
8 testified, even the judge who presided, have had whatever
9 satisfaction may come to people from having their names
10 mentioned and publicly associated with this case. As jurors
11 who have served anonymously, you have not had that
12 satisfaction, and assuming that you decide to preserve that
13 anonymity, you will not have it.

14 But you will have a satisfaction of a kind and to
15 a degree that no amount of explicit public recognition can
16 confer. Like other citizens who have served on other
17 juries, you were asked to put your private lives on hold to
18 do jury service, and to perform perhaps the most important
19 public duty that anyone can be called upon to perform in a
20 democracy, which is to decide a dispute between your
21 government and your fellow human beings.

22 The conditions under which you were asked to do
23 that were as difficult as any and possibly more difficult
24 than any that have been faced by any jury, not only in the
25 history of this courthouse but in the history of this

1 country. You have worked for more than eight months under
2 tight security and the close scrutiny of a good part of the
3 world.

4 Under those conditions you took an oath to decide
5 a long and difficult case on the law and the evidence, and
6 nothing else, and then you proceeded to live up to that
7 oath, day in and day out, over these many months. You
8 followed the testimony and the other evidence, including the
9 lengthy tape transcripts, closely, whether or not they were
10 fascinating, because you recognized that important doesn't
11 always mean fascinating. You followed the several hours of
12 my instructions on the law the same way and for the same
13 reason.

14 And then you deliberated -- diligently. In fact,
15 at one point you dismayed these lawyers with your diligence,
16 asking to take the notebooks back to your hotel so that you
17 could prepare over a two-day break for the next day of
18 deliberations. I still think we should have let you do
19 that. But in spite of that obstacle and others, you
20 continued and you did what you swore to do: render a true
21 verdict according to the law and the evidence. You did all
22 of that at great personal sacrifice, some of which I know
23 about, some of which I can only guess at, some of which I am
24 sure I will never know or even be able to imagine, including
25 not only missing work and missing personal appointments but

1 also your own illnesses, and illness and even death in your
2 own families. Throughout, you continued to be faithful to
3 the oath that you took on the first day of this trial.

4 In doing all of that, you did something else that
5 I think a great many of your fellow citizens are going to be
6 grateful for, completely without regard to the result that
7 you reached in this case. You showed that we still have in
8 this city and in this country something called civic virtue,
9 that all it takes is a need and a call for it, and citizens
10 are willing to respond. For having done that, you are not
11 so much an anonymous jury as you are a universal jury. You
12 have proved in the best way possible, which is by example,
13 the genius not only of the jury system but also of the
14 democratic system. You represent the very best of both.
15 The deep satisfaction and the quiet pride that come to a
16 person from doing that is something that very few people are
17 privileged to know.

18 There was a great judge of this court, some
19 people think the greatest judge ever to sit on this court
20 and perhaps the greatest trial judge of his time, a man
21 named Edward Weinfeld, who used to tell jurors that he would
22 not thank them for their jury service because jury service
23 is a public duty and you are not supposed to thank people
24 for doing their duty. Besides, he said, the feeling that
25 you have after fulfilling your duty is something that would

1 make any thanks from a judge seem insignificant. I never
2 fully understood what he meant until now. For fulfilling
3 your duty in the way that you did you are to be admired.
4 For that feeling that is now yours and yours alone, you are
5 to be envied. Please know that I both admire and envy you.

6 I will speak more with you in the jury room in a
7 couple of minutes. Your jury service is over now and you
8 are discharged. You may go with the marshals to the jury
9 room.

10 (Jury discharged)

11 THE COURT: We will stand adjourned. I will see
12 counsel at 2:00 tomorrow in this courtroom.

13 (Adjourned until 2:00 p.m., Monday, October 2,
14 1995)

15

16

17

18

19

20

21

22

23

24

25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,
4 v.

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

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

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

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

S5 93 Cr. 181 (MBM)

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

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

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

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

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

Defendants.

-----x

October 2, 1995
2:00 p.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

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

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

ROGER STAVIS and
ANDREW PATEL
Attorneys for Defendant El Sayyid Nosair

ANTHONY RICCO
Attorney for Defendant Ibrahim A. El-Gabrownny

KENNETH D. WASSERMAN
Attorney for Defendant Clement Hampton-El

STEVEN M. BERNSTEIN
Attorney for Defendant Amir Abdelgani

VALERIE C. AMSTERDAM
Attorney for Defendant Fares Khallafalla

JOYCE E. LONDON
Attorney for Defendant Tarig Elhassan

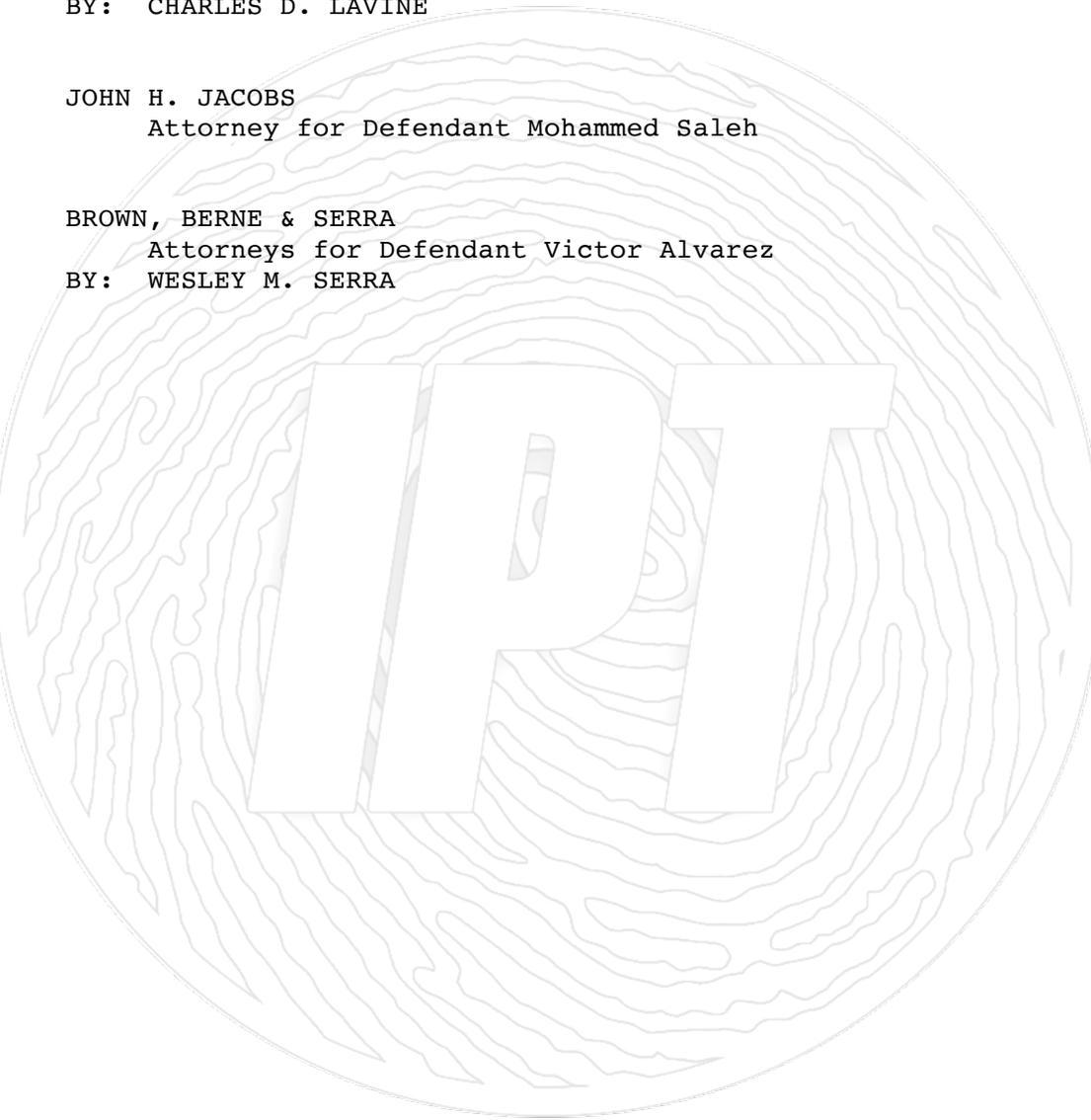
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

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

JOHN H. JACOBS
Attorney for Defendant Mohammed Saleh

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



1 (In the robing room)

2 MR. PATEL: Judge, it seems at this point in the
3 proceedings that once I finish packing up the record that
4 Mr. Stavis is going to need on the appeal, which Susan and I
5 will be doing tomorrow, that my services are probably no
6 longer really necessary at this point.

7 THE COURT: I gather you concur in that.

8 MR. STAVIS: No, I don't concur. His services
9 are very much needed. But I will consent to your Honor
10 ruling as you see fit.

11 THE COURT: Obviously the principal reason Mr.
12 Nosair had two lawyers in the first place, of which you were
13 the second, was that his case was notably more complicated
14 than anybody else's, because there was the whole separate
15 act with which he was charged that was not charged with
16 respect to anybody else. But since we are now past the
17 trial stage, I think you are right, that two lawyers is
18 probably a little more than is necessary. Since you are the
19 last aboard, you will be the first off, and you are relieved
20 with the thanks of the court.

21 MR. PATEL: I spoke to Mr. Nosair about this
22 today, your Honor, and I would ask to be permitted to sit at
23 counsel table for the sentencing. He asked that I come to
24 that proceeding.

25 THE COURT: Fine.

1 MR. PATEL: Thank you.

2 THE COURT: Thank you very much.

3 (In open court)

4 THE COURT: Good afternoon. There are two things
5 that I wanted to talk about today. One was Rule 29 motions.
6 Is there any reason why we shouldn't simply deem renewed all
7 the motions that were made at the close of the government's
8 case and were ruled on? Which is another way of saying is
9 there anybody who has something to tell me that they didn't
10 tell me at that time, and are they also prepared to tell me
11 why they didn't tell it to me at that time?

12 I gather nobody does -- Mr. Wasserman.

13 MR. WASSERMAN: I would like to put mine in
14 writing, if your Honor would permit. I think the summations
15 were an aid in terms of focusing on a couple of the issues,
16 and I would like to simply write it out.

17 THE COURT: How about a a week from Friday?

18 MR. WASSERMAN: That is fine.

19 THE COURT: Response a week from then?

20 MR. MCCARTHY: Yes, your Honor.

21 THE COURT: The only other matter that is open is
22 a motion that was filed in behalf of Mohammed Mohammed
23 Abouhalima -- anybody remember him? -- before trial and
24 filed by Mr. Lewis. I read that over yesterday. It is a
25 motion to dismiss for governmental misconduct. There were

1 essentially two kinds of misconduct that were charged in
2 those papers. One was misconduct relating to Mr. Salem, in
3 essence in the nature of entrapment. That, of course, was
4 presented at trial. In fact, it was presented to the jury
5 as a defense.

6 Mr. Jacobs, you can go to the lectern, but
7 understand that now that a verdict is in, all of the facts
8 that are implicit in that verdict are to be treated as
9 established.

10 MR. JACOBS: Your Honor, I would like to call it,
11 rather than government misconduct, I would prefer to call it
12 due process violations.

13 THE COURT: Call it whatever you like, it smells
14 the same.

15 MR. JACOBS: Let me see if I can put this in
16 perspective, concerning the claims that were originally made
17 and obviously claims that we are entitled to make at this
18 point.

19 As I understand the case law, citing United
20 States against Myers, 692 F.2d 823, and United States
21 against Harrison Williams, 705 F.2d 603, a district court
22 judge post-conviction is entitled to review the conduct of
23 the investigation concerning whether there is any due
24 process violations. In the Abscam cases that the Second
25 Circuit refers to in the Harrison Williams case, Judge Pratt

1 conducted post-conviction hearings which required the
2 testimony of agents and U.S. Attorneys, on several issues
3 which I think are particularly relevant to this case. The
4 Second Circuit, in discussing the possible due process
5 violations, discussed entrapment as a matter of law, but
6 more important discussed, and I quote from Myers at page
7 14 --

8 THE COURT: Do you want to give me the cite on
9 both of those again.

10 MR. JACOBS: Sure. 692 F.2d 823 is the Myers
11 case. United States against Williams, 705 F.2d 603.

12 The Myers case, which is the first one decided,
13 basically on the same investigation, concerns the principles
14 of due process and fundamental fairness, when, quote, at
15 837, "when the government creates opportunities for criminal
16 conduct in order to apprehend those willing to commit
17 crimes."

18 What the Second Circuit goes on to state, and I
19 think it is particularly important in this case, is, quoted
20 from page 844, "Perhaps at some point deliberate
21 governmental efforts to render ambiguous events over which
22 agents can exercise considerable control would transgress
23 due process limits of fundamental fairness." Then the
24 Second Circuit goes on to quote, "Whatever those
25 requirements might be, they have not been crossed in those

1 cases."

2 In the Abscam cases, one of the central issues
3 was the taping process and how one defendant was monitored
4 or not monitored by Assistant U.S. Attorneys, what tapes he
5 made and what tapes he threw out in the process. One of the
6 issues that the Second Circuit determined and I quote -- I
7 think it is important, your Honor. In that case, the Abscam
8 cases, it was stated by the Second Circuit, "In no instance
9 can defendants point to any conversation or portion of a
10 conversation that would have added anything of significance
11 to their defenses," unlike in our case where Miss Amsterdam
12 and I can certainly point to instances which were unrecorded
13 and would have changed the equation in this case.

14 THE COURT: If I can just ask, I am not sure
15 exactly where you are going with this. This is really the
16 second category of conduct that was referred to which I
17 hadn't yet mentioned when you got up to talk. May I?

18 MR. JACOBS: Sorry.

19 THE COURT: Thank you. This was explored in
20 front of the jury, correct?

21 MR. JACOBS: Absolutely not. Your Honor
22 sustained objections to the question of why the U.S.
23 Attorney's Office didn't get a search warrant on June 29,
24 and pursuant to the agreement by both parties, we were not
25 given the opportunity -- obviously pursuant to an agreement

1 by all parties, at that time because your Honor had due
2 process pending to explore the role of the --

3 THE COURT: As I understand it, what you want a
4 hearing on is the United States Attorney's Office branch of
5 this, correct?

6 MR. JACOBS: And to whatever we haven't had as
7 far as the agents are concerned, that is correct.

8 THE COURT: As far as the agents are concerned,
9 you called certain witnesses and listed the subjects on
10 which you wanted to examine them, and you then examined them
11 on those subjects.

12 MR. JACOBS: Not so. Your Honor, and I think
13 properly in front of the jury, ruled that the questions of
14 the search warrant and the legal authority of the FBI was a
15 subject we could not explore and your Honor was a hundred
16 percent correct, before the jury, which was due process. To
17 the extent that we made it clear to the court that we were
18 abiding by your Honor's rulings at that time, we certainly
19 feel it was appropriate.

20 I use "due process" as opposed to "government
21 misconduct" because I am not prepared to state on the record
22 at this point that we can accuse the U.S. Attorney's Office
23 of misconduct. We think it is due process. We think, on
24 the basis of this record and the Second Circuit cases that I
25 have cited, that we have some grounds to have a hearing as

1 to that.

2 THE COURT: As you envision it, what would be the
3 scope of the hearing both as to who you would call, on what
4 you would examine them, and, of some concern to me, how long
5 it would take?

6 MR. JACOBS: Let's step back. I think the
7 hearing is an afternoon at best. We are probably talking
8 about two or three witnesses and relatively brief
9 examination concerning these claims.

10 THE COURT: We would then stop and you would go
11 back over the trial record as well, and the record of the
12 hearing, and submit something afterwards.

13 MR. JACOBS: That is correct.

14 THE COURT: Now I understand.

15 MR. JACOBS: I think, if I can recall Judge
16 Pratt's trial court decision in the Abscam case, that is
17 precisely what he did. Obviously questions that have been
18 explored with Salem have been explored with Salem, and to
19 the extent that we have gotten answers, that buttresses our
20 opinion. We think that the Second Circuit quite clearly
21 left open the question, and I think they stated in the
22 second case, Williams, as well, that where -- and let me
23 just focus because I think it is important for your Honor to
24 understand.

25 THE COURT: I am going to read both of those

1 cases. I don't recall whether either of them was cited in
2 Mr. Lewis's brief. Maybe they were.

3 MR. JACOBS: I think they were. As a matter of
4 fact, I know they were. Let me just quote one line here
5 because I think it is particularly important in this case.
6 Besides the disreputable reputation of Weinberg in the
7 Abscam cases, the issue was the failure to record every
8 conversation with the coconspirators. Parentheses. In
9 Abscam, although no claim is made of an exculpatory remark
10 made to a government agent that was not recorded, in Abscam,
11 the Second Circuit and Judge Pratt went very strong on that
12 point, that there was no claim any defendant made. In the
13 trial, in summations, that that was done. In this case,
14 win, lose or draw, we have certainly made that claim, that
15 there were unrecorded conversations that were exculpatory
16 that Salem did not record. Whether that was with the U.S.
17 Attorney's permission or whether they assisted in getting
18 rid of tapes, that is a matter for the hearing.

19 THE COURT: I am going to look at those cases
20 again. Some defendants testified in this case, others did
21 not. Your client chose not to, as he had a right to, as did
22 Ms. Amsterdam's client. It seems to me that it is one thing
23 to make a claim in a summation that a conversation might
24 well have been exculpatory, it is something else to have a
25 basis for making that claim. I don't know whether those

1 cases contemplate having a basis for making the claim or
2 not, but obviously if you need a basis for making the claim,
3 then you will have to establish one.

4 MR. JACOBS: Your Honor, I can make one very
5 simply. Mr. Salem testified that he had an unrecorded
6 conversation with my client on June 4 concerning his
7 membership in Hamas and night goggles. I have that on the
8 record already. So to the extent that I have established
9 that there is a conversation that exists concerning material
10 facts that was not recorded or thrown out by Mr. Salem, I
11 think I have established --

12 THE COURT: Is that exculpatory?

13 MR. JACOBS: It is my position, your Honor, that
14 it was an exculpatory conversation that he threw out.

15 THE COURT: I know it is your position, but what
16 is the basis for your position in the record, since the
17 record consists entirely of the witness's statement, that
18 the conversation was inculpatory?

19 MR. JACOBS: He didn't say it was inculpatory.
20 He didn't recall everything that was stated in the
21 conversation.

22 In addition, your Honor, we have on the record on
23 June 4 him talking to my client about Bosnia. If Bosnia was
24 referred to, which is exculpatory, at least in my opinion,
25 if there were additional Bosnia references on June 10, June

1 12, June 22, they certainly would have been exculpatory.

2 THE COURT: Ms. Amsterdam, did you want to add
3 something?

4 MS. AMSTERDAM: The only thing I wanted to add,
5 just factually, is that there is on the record a statement
6 by Mr. Salem that he had numerous conversations with my
7 client and other targets of the investigation, where he,
8 Mr. Salem, had discussed training the agents to go into
9 Bosnia. That is on the record.

10 THE COURT: Right. I recall your reading that
11 from the record.

12 MR. JACOBS: Your Honor, as I said, at least some
13 of the lawyers who are asking for these hearings don't think
14 we are fishing. We have clear on the record some of these
15 unrecorded conversations. And there is certainly more than
16 ample precedence from Judge Pratt to calling former
17 prosecutors on the stand. Fortunately or or unfortunately,
18 I was the prosecutor who had to testify on this particular
19 issue.

20 THE COURT: You certainly seem to have survived.

21 MR. JACOBS: I certainly think that we can have
22 this hearing conducted in an afternoon.

23 THE COURT: Why don't I hear from the government
24 about whether we are going to do this, and, if so, how long
25 we are going to spend on it.

1 MR. McCARTHY: Your Honor, we briefed this point
2 at phase three of the government's motion responses. It was
3 the first point in the brief.

4 THE COURT: Then shame on me for not reading it,
5 because I think I had decided not to do it before trial and
6 that is why I don't remember receiving it. But I will go
7 back through my papers and find it. If you could get me
8 another copy of that part of the brief, it might be helpful.

9 MR. McCARTHY: All right. Our position is that,
10 the evidence now having been completed, it is more clear
11 than it was prior to trial that there is no chance of
12 success on this motion. Our view is that your Honor should
13 require -- if your Honor is going to entertain this, your
14 Honor should require them to brief the issue, to proffer
15 exactly what issues they believe they can prevail on --

16 THE COURT: I think Mr. Jacobs was offering to do
17 that, at least the second part of it, that is, to make a
18 proffer on the issues they think they can prevail on.

19 MR. McCARTHY: I think there is a very serious
20 question on whether there is relief that can be had, and
21 that should be addressed first.

22 THE COURT: You mean whether I have the power as
23 a general matter to start crossing indictments out on
24 grounds that I perceive as government misconduct?

25 MR. McCARTHY: Yes, your Honor.

1 THE COURT: That is an open question.

2 MR. McCARTHY: I also think that the cases that
3 we cited -- we do discuss some of the cases that Mr. Jacobs
4 has been talking about at some length. But there is a trend
5 in the case law, particularly in view of the fact that the
6 outrageous government misconduct motion or application for
7 relief comes up in the context of entrapment cases, a
8 reminder from the circuit that the Supreme Court has pretty
9 consistently warned that its objective test of entrapment --

10 THE COURT: He was not talking principally, as I
11 heard him, about the entrapment aspect of this. There was
12 an entrapment aspect of the motion, and that, as far as I am
13 concerned, is gone.

14 MR. McCARTHY: All I am saying, your Honor, is
15 that it is a totality of the circumstances test, and one of
16 the circumstances that is an important one for the court to
17 consider is the readiness, willingness of the defendants to
18 commit the crimes that they were charged with.

19 THE COURT: He is not talking about that. What
20 he is talking about is the second variety of conduct that
21 was addressed in Mr. Lewis's papers, which was the handling
22 and mishandling of the taped evidence and the like.

23 MR. McCARTHY: I understand that he is parsing it
24 out. My read of Williams is that the conduct gets taken in
25 the aggregate --

1 THE COURT: You are saying Williams is a "one
2 ball of wax" test?

3 MR. McCARTHY: Right.

4 THE COURT: He is shaking his head. Obviously I
5 haven't looked at the case recently so I am not in a
6 position to rule. You say this is already in your papers?

7 MR. McCARTHY: Yes, your Honor. And just so your
8 Honor is aware, what we argued at the start was that whether
9 there ought to be a hearing on this or not ought to await
10 the development of the record at trial. We didn't urge your
11 Honor flatly to deny it although we thought there was enough
12 basis to deny it prior to trial. But I think if your Honor
13 looks at the cases and takes a hard look at the cases cited
14 by Mr. Lewis and also discussed in our brief, it will emerge
15 that cases that involved more outrageous conduct than
16 anything they can point to in this case have not been
17 reached for a successful motion.

18 THE COURT: I think what I would like to do is
19 ask Mr. Jacobs to do what he said he could do, which was to
20 give me an outline -- not orally now but in writing, which
21 is what I think you offered to do -- of what it is you had
22 proposed to prove and through whom. When can you get that
23 to me?

24 MR. JACOBS: Week from this Friday, your Honor?

25 THE COURT: Fine, Friday a week.

1 MR. JACOBS: Just so we are clear, the government
2 in their final paragraph at page 10 of their pretrial brief
3 basically stated, from page 10 of the government's brief,
4 quote, "In the extremely unlikely event any of the
5 defendants is able to establish a colorable due process
6 claim, there is no prejudice to withholding consideration of
7 that issue until after the trial."

8 I want to make it clear to your Honor, part of
9 what we did in this case was to defer witnesses, defer
10 examinations -- and I said, at your Honor's request -- until
11 post-trial. The search warrant is a perfect example of an
12 area that was sustained by this court, and I say quite
13 properly, before the jury because it was a law question for
14 your Honor.

15 As I said, we are not fishing here. The Second
16 Circuit is quite clear that missing tapes can be the grounds
17 for a due process argument. I am not saying it is going to
18 prevail and I am not suggesting that I -- all I am saying is
19 that the government in their brief candidly acknowledges and
20 the Second Circuit candidly acknowledges that the district
21 courts absolutely have the authority to deal with due
22 process violations. I am not saying they have ever done it
23 but there is no question that the Second Circuit repeatedly
24 in both opinions said that the courts do have the authority,
25 and that is the point, and the question is what record does

1 your Honor want to go to the Second Circuit on this issue.
2 We think a short hearing will supplement.

3 THE COURT: I understand that, and if you can get
4 me by a week from Friday --

5 MR. JACOBS: Absolutely.

6 THE COURT: -- the outline of what and through
7 whom --

8 MS. AMSTERDAM: Could I?

9 THE COURT: Yes.

10 MR. JACOBS: A week from this coming Monday.

11 THE COURT: You don't want to have papers due on
12 a Monday.

13 MS. AMSTERDAM: Two weeks from today.

14 THE COURT: Fine. No. Today is Monday, right?
15 Two weeks from tomorrow, because if you have papers due on a
16 Monday, you are going to work when? Sunday, right? You
17 don't want to do that. Two weeks from tomorrow. You don't
18 care because he is going to work Sunday, right?

19 MS. AMSTERDAM: Not at all. It is just that he
20 is starting a trial next week and I don't want a week from
21 Friday.

22 THE COURT: That makes it the 17th.

23 MS. AMSTERDAM: Thank you.

24 THE COURT: I want the government's response a
25 week later?

1 MR. McCARTHY: That is fine, your Honor. Thank
2 you.

3 THE COURT: I will then decide whether, A, we
4 will have a hearing, and, B, what it involves, and if we are
5 going to have a hearing, we will have one promptly after
6 that.

7 I discussed after the verdict a schedule for
8 presentencing reports and so forth. Do you want me to go
9 over the dates again? It is in the record. Anybody need
10 the dates again? Thank you all.

11 MR. WASSERMAN: Judge, are we going to assign a
12 court exhibit number to the digital CM 22? We discussed it
13 last week.

14 THE COURT: Court Exhibit A.

15 MR. WASSERMAN: Thank you.

16 MS. STEWART: Judge, we learned from the press at
17 about 11 this morning or 12, that our client is now in
18 Springfield, Missouri. We had hoped that he was going to
19 the Mayo Clinic in Rochester, Minnesota, if he had to be in
20 a medical facility. I don't know whether your Honor has any
21 power to do anything about that.

22 THE COURT: I do not.

23 MS. STEWART: It is a peculiarly inaccessible
24 part of the world, I know from experience, and not salutary
25 surroundings. But we will deal with it. I don't know

1 whether it will have any effect on your scheduling or not,
2 if a hearing is held, for example. I just wanted to bring
3 it to your attention that he is out there now.

4 THE COURT: If a hearing is held that he has to
5 be in attendance, he will be in attendance. I guess that is
6 at this point my problem, if he has to come back.

7 Thank you.

8 (Pages 20691-20694 sealed)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

