UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
a/k/a "John Medley,"
CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.
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January 30, 1995
10:05 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
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INTERPRETERS:

Arabic: Fouad Kheir
Haziz Ismail
Mohsen Shawarby

Spanish: Nancy Festinger
Mirta Hess
Denia McGuire
Candido Valderrama

(In open court)

(Case called; all sides ready)

THE COURT: Good morning. We have three additional jurors who I am happy showed up this morning, because although I said I thought it was unlikely on Thursday that you would be needed to replace somebody, you are in fact needed. So thank you for being here. I am going to ask each of you some questions and then we will complete seating the jury, after which we will begin.

BY THE COURT:

Q. Juror number 358, if you would take the microphone -- good -- it will be easier to hear your answers.

Are you employed?

A. Yes.

Q. What is it you do?

A. I work in payroll.

Q. How far did you go in school?

A. I am a college graduate.

Q. Are there any other adult members of your household?

A. No.

Q. Any children?

A. Yes.

Q. How old?

A. Twenty-one.
Q. Is that child employed?
A. No.
A. Have you ever served in the armed forces?
A. No.
Q. Would you pass the microphone.
MS. AMSTERDAM: Prior jury service?
Q. I am sorry. Have you had any prior jury service?
A. Yes.
Q. Civil case or criminal case?
A. Both.
Q. Have you ever served on a grand jury?
A. No.
Q. You served on both a civil jury and a criminal jury?
A. Yes.
Q. So you know about the different standard of proof in civil cases and criminal cases?
A. Yes.
Q. Without telling us what the verdicts were, did the juries on which you sat reach verdicts?
A. Yes.
Q. Is there anything about your experiences on either the civil case or the criminal case that would make it difficult for you to decide this case based only on the

evidence presented here?

A. No.

Q. Would you pass the microphone. Thank you very much.

Is it juror number 398?

A. No, 376.

Q. OK. Are you employed?

A. Yes, I am.

Q. What is it you do?

A. I am an office administrator.

Q. How far did you go in school?

A. College graduate.

Q. Are there any other adult members of your household?

A. Yes, three.

Q. Are any of them employed?

A. Yes, all of them.

Q. Can you tell us what they do.

A. Bus driver, assistant manager at a bank, and an accountant.

Q. Do you have any children?

A. Yes, two.

Q. How old?

A. Twenty-seven and 30.

Q. Is either of them employed?

A. Yes, the bank manager and the accountant.
Q. Have you ever served in the armed forces?
A. No.
Q. Have you had any prior service on a grand jury, grand jury only?
A. No.
Q. Have you had any prior service on a trial jury?
A. Yes, criminal.
Q. Criminal case?
A. Yes.
Q. Which court?
A. State.
Q. Without telling us what the verdict was, did the jury on which you sat reach a verdict?
A. Yes.
Q. Is there anything about that experience that you think would make it difficult for you to decide this case based only on the evidence presented here?
A. No.
Q. If you could pass the microphone.
This is juror 398?
A. Yes.
Q. Are you employed?
A. No, I am not.
Q. How far did you go in school?

A. I have a couple of degrees, one in sociology and one in occupational therapy, and I am a student every third weekend at the moment. And I have a daughter, 24, investment company and a portfolio assistant.

Q. Have you ever served in the armed forces?

A. No.

Q. Have you ever served on a grand jury?

A. No, I haven't.

Q. Ever served on a trial jury?

A. Just criminal --

Q. Which court was it in? State court or federal court?

A. State.

Q. Without telling us what the verdict was, did the jury on which you sat reach a verdict?

A. Yes, we did.

Q. Is there anything about that experience that would make it difficult for you to decide this case based only on the evidence presented here?

A. No.

Q. Now I am going to ask a question of all of you -- actually it is a question of each of you but I am going to ask it of all of you together. In the questionnaire and in the questioning over the past couple of weeks we have asked you certain questions to try and select a fair and impartial

jury, but obviously each of you knows yourself and only each of you knows if there is some question that I should have asked that difficult ask. I am going to ask you to do a little mental gymnastics, and that is to put yourselves in the place of the lawyers and the parties in this case, and ask yourselves, if a person such as you came into the jury box, is there any question that you would want to ask that person that I did not ask you or any reason that you would be hesitant to have that person sit to decide your case?

MS. AMSTERDAM: Your Honor, we need to step out for a moment, just counsel.

THE COURT: OK.

(Pause)

THE COURT: Juror number 358 will be alternate number 6. The other two jurors are excused. Thank you very much.

DEFENDANT ELHASSAN: Your Honor, I have a letter for you, Elhassan.

THE COURT: I will deal with that later.

(Jury entering courtroom)

THE COURT: I will ask everybody to please remain seated.

Good morning, ladies and gentlemen.

Miss Schwartz, will you please swear the jury.

(The jury of 12 and 6 alternates was duly sworn)

THE COURT: Ladies and gentlemen of the jury. I want to talk to you briefly about the schedule that we are going to be following, and also a little bit about your job as jurors, and then we will hear the opening statements on behalf of each of the parties to this case. I like to try to run what I hope is a civilized courtroom, with a schedule that will not put more pressure on you or on the lawyers than is reasonable, but also a schedule that lets us get done the work that we have to get done here.

We are going to try to start each morning at 9:30. There may be some mornings when I have matters to talk to the lawyers about that will delay that starting time, but we are going to try to keep those to a minimum. We will try to start each morning at 9:30. In general, we will try to be conscious of the fact that your time is valuable, and we will try not to keep you waiting.

We will take a midmorning break each morning for a few minutes at about 11:00 and we will break for lunch each day at about 12:30. We will resume most afternoons at 2:00. We will take a midafternoon break at about 3:00 and we will end the day at about 5:00.

During the first month or so of the trial, we will be ending somewhat earlier, between 4:00 and 4:30, but after that we are going to continue each day until about 5:00.

As I told you during jury selection, we will sit four days a week, at least in the beginning. I hope that it will not be necessary for us to sit on Friday, but if things are not proceeding quickly enough, it may be necessary at some point later in the trial to sit half days on Friday and if that should become necessary -- I hope it won't -- I will try to give you plenty of advance notice about that.

Now let's talk about the important subject of your job as jurors and also a little bit about my job. In the American system of justice, ladies and gentlemen, the judge and the jury have separate functions. My job is to rule on legal issues, having to do with what evidence can be received and whether or not certain questions that lawyers ask witnesses are proper or not. I will be doing that throughout the trial.

My job is also to instruct you on the law that defines the charges and the defenses in this case, and I may give you some of those instructions right after the opening statements by the lawyers. I will give you the main set of those instructions at the end, after all the evidence is in.

I have no responsibility, however, for deciding the facts. That is your job as jurors, based on the evidence that is presented during the trial. You are the only the triers of the facts and your decisions on the factual issues will decide the outcome of the case.

You should pay close attention to all the evidence that is presented. Evidence consists only of the testimony of witnesses, of documents and other objects and things that may be received in evidence, or stipulations or agreements between the lawyers, if there are any such agreements. Certain things are not evidence and must not be considered by you, and I will list them for you now.

First, statements, arguments and questions by lawyers are not evidence, nor are my statements to you. Second, objections to questions are not evidence. Lawyers have an obligation to their client to make an objection when they think that evidence is being offered that is improper under the rules, and you should not be influenced either by the objection or by my ruling on it. If an objection is sustained, then you should ignore both the question and any answer that may have been given in response. If an objection is overruled, then you treat the answer to that question just the same way that you would treat the answer to any other question.

If I instruct you that some item of evidence is to be received only for a limited purpose, then that is the only purpose for which you may consider it.

Third, testimony that I have excluded or told you to disregard, if there is any such testimony, is not evidence and must not be used by you to help decide the

case.

Finally, anything you may have seen or heard outside this courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

In deciding the facts of the case you will have to decide the credibility of the witnesses, that is, how truthful and believable they are. How do you decide what to believe and what not to believe? You will listen to the witnesses, watch them and then decide just as you would decide that question in your daily life. Did they know what they were talking about? Were they candid, honest, open and truthful? Or did they have a reason to falsify, to exaggerate, or distort their testimony?

Sometimes it is not what a witnesses says but how he or she says it that may give you a clue as to whether or not you can accept that witness's version of an incident -- I should also point out that one of the hazards of this building is the automated alarm system, which went off at least once during jury selection and may go off again during the trial. Unless there is some reason to pay attention to it, the best thing to do, in my experience, is not to pay attention to it. I am going to try very hard not to pay attention to it.

We were talking about credibility of witnesses.

Sometimes it is not what a witness says but how he or she says it that may give you a clue as to whether or not you can accept that witness's version of an incident or an event as credible or believable.

In short, the way a witness testifies may play an important part in your reaching a judgment as to whether or not you can accept the witness's testimony as reliable.

As the trial proceeds, you may develop impressions of a witness or of a subject but you should not allow those impressions to become fixed or harden, because if you do, in a sense you foreclose consideration of the testimony of other witnesses or other evidence that may be presented after the witness you heard. That is bound to be unfair to one side or the other.

As I am sure you realize, a case can be presented only step by step and witness by witness before all the evidence is in. We all know that frequently we will hear a person give his or her version of an event that sounds impressive, even compelling when you first hear it. Yet when you hear another person's version of the same event or you hear that person cross-examined about the event, what sounded very convincing and compelling at first may be completely weakened or dissipated. So what I am trying to say in simple terms is, remember there may be another side to any witness's story.

You should use your common sense and good judgment to evaluate testimony based on all the circumstances. I cannot emphasize too strongly that you should keep an open mind until the trial is over. You should not reach any conclusions until you have all the evidence before you.

In order to ensure that you decide the case based only on the evidence and that you are not influenced in any way about anything that might occur outside the courtroom in your presence, I want to give you a specific set of instructions.

First, do not discuss this case among yourselves or anyone else. You will have the opportunity, indeed the duty, to discuss the case among yourselves only after all the evidence is in and the case is given to you to discuss and decide in the jury room. This rule about not discussing the case with others includes discussions even with members of your family or your friends.

Next, as I have already told you, you should not read anything in the newspapers about this case, nor should you listen to any television report about it or any radio report about it.

Next, you should not allow anyone to speak to you about the case. If you are approached by anyone to speak about it, tell them that the judge has directed you not to

do so and report that incident promptly to me.

Also, be sure that I am informed if anyone you know comes into the courtroom. This is a public trial, so that could happen. But it is important that you not hear from them what might have happened outside the jury's presence. So if you should see a friend or relative come into the courtroom, just pass a note to me through Ms. Schwartz at the earliest opportunity.

The lawyers, the parties and the witnesses are not supposed to talk to the jury outside the courtroom even to offer a friendly greeting. So if by chance you should see any of them outside the courtroom, they will not and should not speak to you. Please don't take offense by that. They will only be acting properly in doing so.

Let me say a few things about trial procedure. First, the lawyers have the opportunity to make opening statements to you and they will begin to do that shortly. These statements are not evidence. The only purpose they serve is to give you an idea in advance of the evidence that the lawyers expect you to hear from the witnesses. These statements allow the lawyers to give you a preview of what the case is about. But again, the only evidence is what comes from the witnesses and from the exhibits.

These opening statements will take the remainder of today and into tomorrow, because, as you know, there are

13 parties to this case, the government and 12 individual defendants, and each of them has a right to present the case to you from his own standpoint.

After the opening statements, you will hear the testimony of the witnesses. The government's witnesses will go first. Each witness will first give direct testimony and then he or she may be cross-examined by the other side. Sometimes there is redirect testimony and recross-examination. Also, exhibits and agreements as to certain facts may be received in evidence.

After the government's case, each defendant may, if he chooses, present witnesses and other evidence. Those witnesses, if any defendant chooses to present witnesses, will be examined and cross-examined just the same way that the government's witnesses were. If any defendant does choose to present evidence, it is possible that the government might then be allowed to present some rebuttal to that evidence.

After all the evidence has been received, the lawyers will have an opportunity to sum up. They may review the evidence and make arguments to you as to what conclusions they think you should or should not draw from the evidence. Those arguments also are not in and of themselves evidence. They may be helpful to you as a outline in reviewing the evidence during your deliberations.

After these arguments or summations as they are called, I will give you detailed instructions as to the law that applies and controls in this case and you must follow those instructions. You will then go into the jury room to deliberate and discuss the evidence in order to decide the facts and render a verdict.

Before we begin the government's opening statement, I want to tell you that because there may be jurors who may wish to take notes I am going to make notebooks available to each of you in case you do want to take notes. Just a few words about taking notes before we give out the notebooks.

First, understand that I am not suggesting or recommending that you take notes. That's your decision. If you want to, fine. If you don't want to, that's fine, too. I'm simply making the notebooks available in case you wish to take notes.

If you do take notes, please understand that those notes are not a substitute for the record which is being taken down by the court reporter. The notes are only for the convenience of the juror who takes them to help that person remember the evidence. In other words, when it comes time to deliberate on a verdict if you should have any disagreement about what the evidence showed, it won't do for someone to say, well, it must be the way I remember it

because I've got it in my notes. The notes, again, are only for the convenience of the person who takes them.

Also, even if you do take notes, please remember that the trial is what goes on in the courtroom, not what goes on in your notebook. Please do not get so involved with taking notes that you don't see the trial. You know, there are some people who take cameras with them on vacation and they get so involved in taking pictures that they don't really see where they've been until the pictures come back. Don't take notes that way.

(Pause)

Finally, as to the note books, the note books are numbered with your juror number. They will be distributed in the morning. They'll remain in the courtroom during the breaks, and they will be collected each evening.

One last subject before we hear the government's opening. I referred several times today, and earlier, to all of those who are charged in this case collectively as the defendants, and it may be that I will use that word or that expression again during this trial. But from your standpoint as jurors, understand that there is no such thing as the defendants as a group. There are 12 individual people on trial here. They are being tried together because it is convenient to do it that way, but each of them, understand is entitled to separate consideration before you.

In essence, each of them is entitled to his own trial before you, so please give each of them your separate consideration.

We will now begin with the government's opening statement after Ms. Schwartz distributes the books.

(Pause)

I should tell that you on the inside cover of each of the notebooks is a seating chart for your convenience to help you locate where people are.

THE COURT: All right, we will now begin with the government's opening statement.

MR. KHUZAMI: Thank you, your Honor.

Ladies and gentlemen, this is a case about war. The enemy in this war was the United States of America. The battlefield in this war was the streets and the buildings and the tunnels of New York City. The weapons in this war were car bombs and terrorism and home made explosives. The soldiers who fought this war are seated before you in this courtroom. They called their war jihad.

One of the battles in this war occurred on November 5, 1990 where a man named Rabbi Kahane was giving a speech. The defendant El Sayyid Nosair walked into that hotel, walked up to the podium, pulled out a 357 magnum revolver and shot him dead in the head.

Another battle in this war occurred in the spring

of 1993. Soldiers in this Army huddled together in a rented garage in Queens. They mixed fuel oil and fertilizer into 55 gallon drums to make bombs. They had timers, they had fuses, and they had talk and battle plans that will make you shudder.

One of the plans involved driving car bombs into the Lincoln and Holland tunnels. The plan involved driving those cars, and then pretending that they had engine trouble, and abandoning them and then fleeing in a backup car, and as that abandoned car sat in the tunnel with traffic backing up behind it, the timer inside was going tick, tick, tick until the bomb is detonated five minutes apart, and the people trapped in their cars drowned as the tunnel crashed down around them.

Other targets in this war was the United Nations. The plan there was to drive car bombs into underground parking garages beneath the building, using diplomatic license plates so they could enter without suspicion. Another target was the FBI headquarters, 26 Federal Plaza. The plan there was to use an Uzi machine gun to kill guards posted outside, drive the cars into the underground garage, and then flee in a backup car. For both of those buildings, the hope for those soldiers was that they would collapse and fall down.

Who was this Army? Why were they fighting this

war? What is jihad?

I'd like to answer the first question first by introducing the soldiers to you right now.

The first one is this man, Sheik Omar Abdel Rahman. He is the leader of this Jihad Army, and even though he is blind, you will learn that he sees with a clearer vision than most people with perfect eyesight.

What he sees is an elimination of the State of Israel and the overthrow of the government of Egypt, and his return to Egypt as one of its primary leaders.

What he also sees in that vision is the United States as an obstacle to that dream because of this country's support for Egypt and its policies in the Middle East. So he used this group, this band of radical followers to conduct a war of terrorism against the United States so they could intimidate this country into changing its policy. As Sheik Omar Abdel Rahman will tell you himself in this very courtroom, "we are terrorists and we wear that title proudly."

Now, as the head of any criminal organization who controls and influences others, Sheik Omar Abdel Rahman did not fire a gun himself, did not build a bomb himself, did not drive a car into a tunnel himself, but what he did was far more dangerous. What he did was convince the group of followers, Christians, Jews and Americans, the State of

Israel were their enemies. You will learn that he used this band to conduct a war of terrorism, that he was consulted about which targets were permissible, and you will learn that he protected this organization from infiltration by the United States government, particularly the FBI.

This man is El Sayyid Nosair. You will learn that Mr. Nosair was capable of committing more violence and more terror than anyone you can imagine. You will learn that he recruited an Army to conduct bombings and assassinations. You will learn that he is a man who murdered Rabbi Kahane in that hotel room.

You will learn that he planned a string of 12 bombings across New York City, assassinations of Jewish leaders and of a judge.

He was helped in that effort by this man, Ibrahim El-Gabrowny, Mr. Nosair's, relative, his most trusted lieutenant and his eyes and ears on the outside. While Mr. Nosair was in prison Mr. El-Gabrowny agreed to get detonators and to get a safe house for the bombing plot and he agreed to assist Mr. Nosair in breaking out of prison. As you will learn that he was recovered with having passports in the name of Mr. Nosair and his family

This man Victor Alvarez. Mr. Alvarez contributed the Uzi machine gun to this terrorist Army to be used for its protection. He also assisted in trying to get cars to

carry the bombs. And you will see him on videotape in that safe house in Queens mixing up those chemicals.

This man is Clement Hampton-El. He was known as Dr. Rashid. He does work in a hospital and that's the reason he's known as Dr. Rashid. He was the supply man. He is the man who the group went to for detonators and explosive materials and for military training.

This man is Siddig Ibrahim Siddig Ali. Siddig Ali conducted military training. He helped one of the men who blew up the World Trade Center escape from this country, and he devised a scheme and a plan of unimaginable horror in the spring of 1993, the plot to blow up New York City bridges, tunnels and buildings.

You will hear in his own words the message he wanted to send to America with that plot. "We know where you are. We can get you any time."

This man is Mohammed Saleh. Mr. Saleh owned a gas station in Yonkers. He was the money man. The group went to him for financing, and he agreed to provide money for explosives and for weapons, and when agents busted down the door of that Queens safe house they found hundreds of gallons of fuel oil that he contributed, fuel that was used to make the bomb.

These four other defendants seated at the table are Fares Khallafalla, Faddle Abdelgani, Amir Abdelgani and

Tariq El-Hassan. They were the foot soldiers, the troops, the infantry in this Jihad Army. They got the supplies, they got the timers, and they mixed the explosives. On the day of terror it was these men who would be in the front line driving the cars into tunnels and the underground parking garages of this city.

This main is Wahid Saleh, Mr. Saleh joined the Jihad Army late, but when he joined he agreed to provide the thing they then needed the most, cars, cars to carry the bombs and cars that couldn't be traced back to the group.

This is the Jihad Army, ladies and gentlemen. They spoke of war, they had weapons like an Army, and they committed or planned to commit the kind of destruction and death that any Army would be proud of.

Before I continue, I'd like to just pause for a brief moment and introduce to you the people who you will see seated at the government table during this trial. Judge Mukasey has told you my name is Robert Khuzami, and I'm an Assistant United States Attorney. With me at the government table is Andy McCarthy and Pat Fitzgerald who are also government attorneys. The three of us together with our paralegal, Jane Chu, will have the privilege of presenting this case to you on behalf of the government.

Also seated at the our table today is Chris Voss, Special Agent with the FBI. Special Agent Voss will

occasionally be replaced with John Ligouri of the FBI or with Det. Tom Corrigan of the New York City Police Department.

In this opening I hope to just outline for you the government's case. The purpose of this is simply when each witness gets on the stand, and each piece of evidence comes in you'll have an idea of how it fits into the greater whole. I'd like to start to talk to you about how these men came to be in this courtroom today.

I refer to them as the Jihad Army or the Jihad Organization, although they didn't refer to themselves that way and they didn't wear uniforms that said that, but those labels are simply a shorthanded way of describing for you these individuals who shared a common interpretation and common belief under the Islamic concept of jihad that was advocated by Sheik Omar Abdel Rahman.

Jihad means struggle, but these defendants defined it in the extreme, not just a struggle to live a virtuous or disciplined life and to be a good Muslim, but a lifetime struggle to take up arms and confront and fight Jews and Christians, Americans, anybody they saw as the enemy of Islam. It was a perpetual state of war, and they saw the United States as an enemy of Islam because of its policies in the Middle East.

Sheik Rahman arrived in the United States in

1990, but even before that time, the Jihad Army was organized and trained in this country. Soldiers reported to him about their progress of military training camps and in firearms progress and practice and he in turn gave them guidance on how to resolve their disputes and how to organize their affairs.

Dr. Rashid was one of the persons who participated in that training, as well as El-Sayyid Nosair, and three others participated are not in this courtroom before you, but they will become well known to you as this trial goes forward. Those men are Mahmud Abouhalima, Nidal Ayyad, and Mohammed Salameh, three men who blew up the World Trade Center.

El Sayyid Nosair did more than just train in firearms as the world found out on November 5, 1990. On that night Rabbi Meir Kahane gave a lecture at the Marriott Hotel in midtown Manhattan. Kahane was a man known to advocate violence and racism and a good many people, including Mr. Nosair, not without good reason, hated him for it. But in this country, he was free to speak his mind.

Rabbi Kahane's lecture was open to the public and when it ended, most people left, but a couple stood around to ask a question of the Rabbi or to share a story with him.

El Sayyid Nosair was also at that lecture and he, too, walked up to that podium, and he, too, had something to

share with the Rabbi, but it wasn't a question and it wasn't a story, it was a bullet from a 357 magnum revolver and he shot him in the neck. The bullet penetrated his neck and exited his cheek. Rabbi Kahane collapsed next to his podium blood pouring from his mouth and his wound.

Rabbi Kahane would never say another word that Mr. Nosair hated, because he would never say another word, period.

That was not the end of Mr. Nosair's crimes that night. 73-year-old Irving Franklin sat in that lecture room. He was there with his wife and he just wanted to hear what the rabbi had to say. Mr. Nosair had never met him, never even said a word to him, but Irving Franklin had the misfortune of heading toward the exit door at the same time that Mr. Nosair was fleeing from that podium where he had just murdered the Rabbi, and when they met at that doorway and Mr. Franklin instinctively reached out and grabbed Nosair, Nosair showed his cowardice and his cruelty by shooting him right in front of his wife.

Mr. Franklin collapsed, screaming in pain, but he was a little luckier than Rabbi Kahane, because he survived Nosair's bullet, and because he survived that bullet, he will get on that witness stand and he will tell you the story of what happened that night.

But even shooting Mr. Franklin was not the end of

Nosair's bloody rampage. He ran out into the street and hijacked a cab at gun point a cab driven by Franklin Garcia, and when people spilled out on to the streets from the lecture looking for him, and they found him cowering under the back seat of that cab, he jumped out and ran across Lexington Avenue.

And as he jumped out and ran down that street and that sidewalk a little ways down was Postal Police Officer Carlos Acosta, another man Mr. Nosair had never met and never spoken a word to. Officer Acosta was simply waiting for his shift to end, and as he stepped out of that darkened doorway, Officer Acosta came face to face with terror, with jihad, as Nosair was bearing down on him from that sidewalk with a gun in his hand and a grin on his face, and he shot at Acosta right in the chest, and Acosta raised his firearm and fired back, hitting Nosair with a bullet in the neck, and he dropped to the sidewalk.

Fortunately for Carlos Acosta, he was wearing a bullet proof vest, and that bullet deflected off of his vest and into his shoulder, and because he, too, survived one of Nosair's bullets that night, he will get on that witness stand as well, and tell you about that night.

By the end of this case, ladies and gentlemen, you will know that Nosair murdered Rabbi Kahane, and that he attempted to murder Irving Franklin and postal Police

Officer Acosta, because they stood in the way of his escape. Those acts make up a number of the charges that will be presented to you for your determination.

The proof will show that Nosair trained for that murder, he did it, and perhaps most offensive of all, he bragged about it afterward.

You will also learn in this trial, ladies and gentlemen, that within the Jihad Organization murderers are heroes. They are people to be revered, and that's what happened to Mr. Nosair for the murder of Rabbi Kahane. After his arrest, members of the organization paid homage to him in his jail cell and Nosair basked in his new-found glory. But there was more going on than just paying homage to the new jihad hero, because in that jail cell this group was planning more and more acts of terrorism.

Nosair was no longer interested in just fighting one on one, with one gun to kill one man. Now he had a plan to fight the war on many fronts, 12 bombs exploding across New York City, a plot to assassinate the judge who presided over his trial, and a plot to assassinate Jewish leaders who had criticized him for his murder of Rabbi Kahane.

It was to be a full-scale war of urban terrorism against the United States. You will learn that Mr. Nosair was well prepared for such a war. There are items seized from his house after his arrest. There were bomb manuals,

and there was terrorist paraphernalia, and there was one document in particular that called upon the group to destroy the enemies of Allah by blowing up the pillars and the tourist places, and the statues and the buildings where people meet. And that's exactly what Nosair was planning to do from his jail cell two years later.

Nosair gave out the orders for this bombing plot. He ordered Mr. El-Gabrowny, his lieutenant, to get bomb detonators and to get a safe house. He instructed Dr. Rashid, his supplier of weapons, and asked for his advice on what type of explosives they might use. Nosair told them to contact Sheik Omar Abdel Rahman and get his blessing for this plot, because the group knew that the plans could not be carried out unless he approved them and that they were in conformity with their twisted interpretation of jihad.

Nosair also placed Mr. El-Gabrowny in charge of the plot to break him out of jail. It will be no surprise to you, ladies and gentlemen, nine months later on in February, 1993, a twelve hundred pound bomb ripped through the World Trade Center.

That crime was not a specific count in this indictment, but it is very much a part of the war against the United States that these defendants were a part of, because the men who mixed that bomb and drove that truck

were part of the same Army as the defendants who are seated before you.

You will learn that one of the men who blew up the World Trade Center, Mohammed Salameh, the man who rented the yellow Ryder van, traveled to Attica to visit Nosair just days before the bombing. He was arrested with a passport photo of Nosair, and that photo matched the photo that was on the phony passports that Mr. El-Gabrowny had when he was arrested days after the bombing. When he was arrested, he assaulted law enforcement agents in an effort to try and keep them from getting their hands on those passports.

Another World Trade Center bomber, Mahmud Abouhalima, brought a sample of his test bomb to this man, Siddig Ali. You will learn in Siddig Ali's own words how he hugged Mahmud Abouhalima after he found out that he had blown under the World Trade Center in which six innocent Americans were killed, and how Siddig Ali then wrote letters to his friends in the Sudan to give Abouhalima a place where he can hide.

Sheik Omar Abdel Rahman also did the things that you would expect the head of a criminal organization to do in the wake of the World Trade Center bombing. He lied to the world to protect himself, and to protect the soldiers in his Army. After they were arrested, he told the world on TV

that he didn't know Mahmud Abouhalima, even though he knew him very, very well. And he told the world that he didn't know the other members of the Jihad Army, and the proof in this trial will show that he knew them very, very well.

After the bombing, the Jihad Army also sent word to the world that this was just round one in the war against the United States. The New York Times received a letter from a man named Nidal Ayyad. Ayyad had trained with Nosair back in 1989 in firearms. He was a long-standing soldier in the Jihad Army.

He told the United States that the bombing was punishment for policies in the Middle East, and he warned that the calculations of this group in putting the bomb in the World Trade Center had not been very precise, but that the next time, the next time they would be much more careful, and, perhaps most ominously of all, in that letter he wrote that the Army had 150 suicidal soldiers ready to commit the next act of terrorism against the United States.

From his prison cell in Attica Nosair echoed the same theme. He told people there that this was only the beginning, that the devil leaders of the New York State were responsible for keeping the battle on, and that America would continue to suffer and pay, if he wasn't released from prison.

That was the state of affairs in the spring of

1993. Soldiers in the Jihad Army had blown up the World Trade Center and were publicly threatening further acts of terrorism. Nosair, the man who was murdered Rabbi Kahane was saying the same thing.

This case, ladies and gentlemen, is very much about how other soldiers in the Jihad Army, the men sitting before you, worked to make good on those threats and promises of more terrorist activity.

In particular, there is one man who worked to make good on those threats. He is Siddig Ali. Siddig Ali first set his sights on President Mubarak of Egypt. Within weeks after the World Trade Center bombing, three of those responsible had been arrested and one, Mahmud Abouhalima, had been ordered returned to the United States by President Mubarak where he would stand trial. Siddig Ali saw this as nothing less than treason. In his mind this man was a jihad hero to be revered, not a criminal to be brought back to stand trial.

So he decided to avenge that action by planning to assassinate President Mubarak in April, 1993, during a visit to New York City. He knew that he had Sheik Rahman's blessing to murder Mubarak; that is it was a permissible act of jihad, and warmed with that approval he came up with an assassination plan even cruder and more deadly than Mr. Nosair used in murdering Rabbi Kahane.

In one plan he and his assassination team would dress up as room service waiters, sneak into Mubarak's hotel room and spray that suite with automatic machine gun fire. In another plan, they would steal a UPS truck and drill a hole in the side while a sniper pointed his arrival out and murdered him as he walked into the hotel.

Ultimately, Siddig Ali was forced to abandon this plan when word leaked to the FBI. That conspiracy is one of the crimes that is charged in this case. The leak about the Mubarak assassination plan combined with the capture of Mahmud Abouhalima in Egypt, led the group to be very concerned that an informant had infiltrated their midst. Some of them even accused Siddig Ali of being that informant, because he was involved in both the Mubarak plot and he knew that Mahmud Abouhalima was in Egypt, and when the group became concerned that there was an informant, Sheik Omar Abdel Rahman went to work. As loud and as long as he denied in public that he knew these jihad soldiers you will learn that behind the scene he was doing something very, very different.

Behind the scene he did the real work of a criminal boss. He worked to protect the organization, his organization, from infiltration, and he ordered Siddig Ali and others to sit down in a mini-trial with him presiding as judge to find out who the informant was and try and protect

the organization.

But even after Mubarak plot had been thwarted, Siddig Ali was not finished. He came up with a battle plan for the Jihad Army that was so horrible, so monsterous, so vicious that if it had been successful the lives of every person in this city and in this nation would be changed forever. That was the day of terror, the bombing of the Lincoln Tunnel, the Holland Tunnel, the George Washington Bridge, the UN Headquarters and the FBI headquarters in New York City.

Siddig Ali had one problem, he had the plan but he didn't know how to build a bomb. So he approached the man named Emad Salem and asked him if he would build the bomb. Unknown to Siddig Ali, but fortunately for the rest of us, Emad Salem was an informant for the FBI. Siddig Ali and Salem agreed to rent a safe house in Queens which would be used to make the bomb. Also unknown to Siddig Ali, was that Emad Salem rented that garage with the FBI's assistance so that it was wired up for audio and video.

You will see those videotapes during this trial. We will take you inside that terrorist bomb factory. Siddig Ali had a second problem. He needed the boss' okay. He and Salem went to Sheik Omar Abdel Rahman. Salem told Sheik Rahman that they were planning a strike more devastating than the World Trade Center bombing, and when Salem told

Sheik Rahman about the United Nations, Sheik Rahman told him that the United Nations bombing was not against the rules, and you will learn that soldiers in this Jihad Army had to check with Sheik Rahman to make sure that a terrorist target was not forbidden.

In this case, you will learn that Sheik Rahman did not forbid the bombing of the United Nations, but recommended against it, not because he had any problem with terrorism, far from it. He just had a better idea. He told Salem to look for a plan to bomb the American military, to keep it in the Army.

After getting the boss' okay, the planning for the day of terror continued. In May and June of 1993, Siddig Ali introduced Salem, one by one, to the other members of the Jihad Army. Siddig Ali knew them long before he ever met Emad Salem. Four of these are the troops, soldiers I spoke of earlier who are sitting the at the far table. Tariq El-Hassan, Amir Abdelgani, Fadil Abdelgani and Fares Khallafalla. These four were Sudanese, like Siddig Ali, and they had trained with Siddig Ali months earlier at a military training camp located in a remote area near Harrisburg, Pennsylvania, a camp organized by Dr. Rashid.

Each of those four men were eager participants in this day of terror. Let me give you one example of each defendant's contribution.

Fares Khallafalla purchased timers for the bombs. Tariq El-Hassan consulted an engineer, a friend of his for advice on where to put the bomb, and the engineer friend told him bridges and tunnels have weak sides and strong sides. They'd wanted to use that information to put the bomb where it would create the most damage and the most destruction.

Amir and Fadil Abdelgani picked up fuel oil for the bomb and delivered it to the Queens safehouse, and Amir Abdelgani surveyed the tunnels himself to find out where best to place the bomb.

Each one of these defendants, ladies and gentlemen, thought that the plan that they were involved in might kill hundreds or thousands of New Yorkers and that's exactly why they wanted to be a part of it.

Another member of the Jihad Army was Mohammed Saleh, who is also seated at the rear table. He's the man who ran the gas station in Yonkers, and Siddig Ali and Salem drove up to see him to ask him for money, and when they told him that they wanted to blow up the United Nations and other structures he said, "I will squeeze my capability to provide money for you."

He later provided the fuel oil that was used to build the bomb. I told you about Dr. Rashid, the weapons supplier. Siddig Ali for his day of terror went to

Dr. Rashid as the person in the organization who would best be equipped to attempt to get the detonators and the explosives that they needed.

You will learn that Rashid had already sold the gun to the group in 1992, and you will learn that Siddig Ali went to Rashid to get weapons to be used in the plot to assassinate Mubarak. And when Siddig Ali told Rashid about the plan about wanting to blow up the UN and other targets, Rashid agreed to supply grenades, plastic explosives. He told him it was too dangerous to buy grenades and remove the detonators, and suggested they just get the detonators directly, and he also had some other interesting advice, he told them that they should deceive law enforcement, create confusion by making it look like the Jews did it.

Two other defendants also contributed. Victor Alvarez, seated here at the front table, is the one who contributed the Uzi semiautomatic machine gun. It was going to be used for protection for the Army and he and Wahid Saleh were the two who were going to get cars, cars to carry the car bombs, cars that couldn't be traced back to the group.

(Continued on next page)

MR. KHUZAMI: (Continued) And Wahid Saleh also had some advice for the group. When he was in the safe house the night before the arrests, he told them to clean it up, get rid of any traces or residues or chemicals, so no one could trace it.

Fortunately, ladies and gentlemen, the terrorist plans were never completed, because in the early morning hours of June 24, 1993, agents with the joint terrorist task force busted down the door of that Queens safe house. They arrested eight people that night, five inside the safe house. It took them another month to capture Wahid Saleh, who was hiding out to escape capture.

There are a number of charges in the indictment before you that arise out of this day of terror plot in the spring of 1993.

You may be asking yourselves, how does the government intend to prove these charges? You heard Judge Mukasey tell you that the government has the burden of proof beyond a reasonable doubt. The government had that burden of proof when you first walked in that door into this courtroom, and we will continue to have it until you walk out that door after having returned your verdict. It never shifts to the defendants, and it is a burden that we welcome.

The government is going to present a lot of

witnesses to you in this case and a lot of witness evidence. One witness that you are going to hear a lot about is a man named Mohammed Salem. Salem is the informant who infiltrated this conspiracy. The government first approached him to work on an intelligence investigation having nothing to do with this case. An intelligence investigation is different from a criminal case in that its primary function is to gather information. It is not always the intention in such cases to prosecute people in a court of law like this.

At the government's request, Salem began to infiltrate this conspiracy. It attended Nosair's state trial for the murder of Rabbi Kahane. He convinced Elgabrowny and others that he shared their extremist views and that with his military background and his weapons expertise he could be useful to them in their plans. He continued to gain their trust until finally Nosair from his prison cell asked him to participate in the plan to blow up 12 buildings or tourist locations in New York City, to assassinate the judge who presided over his trial, and to kill Jewish leaders.

But there was a problem. If the government wanted to prosecute these people they had to gather evidence, and Mr. Salem would have to take the stand and testify against them. So the government proposed to Salem

that he wear a tape recorder and that he take the stand if they were arrested. You will learn that Salem had no problem with tape recording but he had a big problem with being a witness. He had always drawn a line in the sand, that he didn't want to be an informant if that meant getting on the stand and testifying in court and subjecting his family to danger. In Salem's mind, the danger that would result from testifying was real, and he was concerned. This conflict was not resolved, so in 1992 Salem backed off from Nosair and his associates and their plan to blow up 12 buildings.

You will learn that the jihad army had plenty of people to replace Salem and the proof came nine months later when the World Trade Center blew up. That changed the way everybody thought.

If America didn't know it already, America was here to stay. It wasn't just Meir Kahane and it wasn't just the government of Egypt, and it wasn't just lower Manhattan. It was the United States. There was the message in that chilling letter that 150 suicidal soldiers were ready to do more acts of terrorism and it was the same message sent by Nosair from his prison cell that this was only the beginning.

Faced with those threats the government had to do something. They needed someone on the inside of this

terrorist ring to stop what they had already promised was going to happen. But you can't just click your heels and get in the inside of a terrorist ring. You need someone who speaks their language, not the language of Arabic but the language of hate that fuels them. It can be impossible to infiltrate such a group. You can't just send a reporter or Tom Brokaw in there and find out what is going on.

So the government responded the best way it could, and that is it went back to Emad Salem, who was already known and trusted by members of this organization, and Salem, after much wrangling, decided to cooperate, and he decided to wear a tape recorder and he decided to be a witness.

Salem did not come cheap. You will learn that he would be paid in excess of $1 million by the time his cooperation with the government is complete. Some of you will think that is a lot of money, and you will be right. Some of you may think that he sold himself too cheap and that it would take a lot more than that to do what he did.

And you will see his contract. You will see that some of that money is to replace lost income because he was working for the government, and some of it is just a flat-out reward. Forget the accounting, the bottom line is that it is a lot of money.

But the tragic question after the World Trade

Center bombing was whether or not the government could afford not to spend that money. That one incident alone cost half a billion dollars and, more precious than that, six innocent lives. It is still a lot of money that he was paid, though, and it is important that you know that.

There are other things that you need to know about Emad Salem. You will hear about it from the government and you will certainly hear about it from the defendants. Salem, for example, never completely cut his ties with Egypt. You will find out that, sometimes with the government's knowledge and sometimes without, he stayed in touch with his old friends in the Egyptian military, and he advised them about some of the things that were going on in this investigation, things like Sheik Omar Abdel Rahman's statement to him that he should assassinate President Mubarak of Egypt.

You will also learn in this case that Salem tape recorded a lot of people, not just the defendants planning their acts of terrorism but he recorded the defendants, family members, friends, his exwife, even the government agents who were handling him over a home telephone recording system that he had. He even recorded his calls to Paragon Cable when he ordered Pay Per View movies.

More important in all these things is honesty. You will learn that Salem has not always been truthful,

especially when talking about himself or his background. Although there are other examples, the most significant occurred when he appeared as a witness in a New York State trial. He took an oath to tell the truth, and he lied when he was asked questions about his background. He told that jury that he was part of an elite service unit back in Egypt and that he had been wounded when President Sadat was assassinated in 1981. Those things were not true and they were stupid things to lie about. The case he was testifying about was a car accident on the West Side Highway. It wasn't about political assassination in Egypt. But any time someone lies under oath it is important. It is important that you know that and it is important that you consider that.

What all this means is that you are going to hear a lot of things about Salem that you are not going to like, and it is important that you consider these things when you decide whether or not you believe him. It is also important that the defendants get a fair trial and that you be demanding when you listen to his testimony.

The government invites you to do exactly that. Listen to his testimony, and see how it stacks up against the other evidence in the case. That is, look for corroboration. Look for other evidence independent of what he testifies about that tells you whether or not he should

be believed, because by the end of this case you will learn, ladies and gentlemen, that every important thing he has to say about this case is corroborated, is backed up on an audiotape, a videotape or by another piece of evidence. Let me give you some examples.

He will tell you that Omar Ahmad Ali Abdel Rahman asked him to look for a plan to attack the American military and he will tell you that Sheik Rahman presided over a little mini-trial in an effort to find out who the informant was. Can that be true, can Sheik Rahman be ordering an attack on the American military? The answer is yes. You know that Salem can be believed when he tells you that, because it is on tape. These tapes are mostly in Arabic, so rather than hearing the tapes you will be given a document in English so you can see with your own eyes the words of Sheik Abdel Rahman telling Salem to look for a plan to attack the American military.

Salem will testify that Nosair and El-Gabrowny were planning in 1992 to blow up 12 buildings across New York City, to break Nosair out of jail, and that Nosair instructed El-Gabrowny to get stun guns as part of the plot. Is this true? The answer is yes. When the agents first found El-Gabrowny they found five fake passports, with pictures of Nosair, his wife, and the rest of his family, with fake names, to be used to allow them to flee the

country after the breakout. They found the negative of the photograph of Nosair in El-Gabrowny's house along with the stun guns. You will see those passports, you will see those stun guns, you will see the photographs. That is corroboration that tells you that Emad Salem can be believed.

Another example. Salem will tell you that he and Siddig Ali drove the Holland and Lincoln Tunnels to map out the best place to place the bombs. Did that really happen? It did, because you will see a videotape of that chilling ride, where they talk about where in the tunnel to put the car bomb and what will happen when it explodes. You will see this terrorist's home video, the video that Siddig Ali thought the world would never see. You will think a lot of things when you see that video, and one thing it will make you think is that Emad Salem can be believed.

Another example. Salem will tell you that Dr. Rashid offered to get detonators. You will hear his own words on tape, stating, I haven't been successful yet but I am going to keep on trying because it's my duty. The tape was made from Rashid's telephone, and when agents searched a building that he had rented, they found cannon fuses and military paraphernalia and other evidence, and it is with those telephone calls and that type of evidence that you will know that Salem can be believed.

More examples of corroboration. Salem will tell you about Fares Khallafalla and Tarig El-Hassan and Fadil and Amir Abdelgani. He will tell you that Fares Khallafalla bought the timers, that Tarig Elhassan consulted the engineers, and that Amir and Fadil Abdelgani got fuel oil and brought it to the safe house. Is that true? You will know it's true because you will see a tape of Fares Khallafalla purchasing the timers. You will see a tape and read the conversation of Tarig Elhassan talking about the engineering and the weak sides and the strong sides of the bridges and tunnels.

There are photos of Fadil Abdelgani and Amir Abdelgani purchasing the fuel oil. There is a videotape of them delivering it into the safe house. There are videotapes inside the safe house where these defendants and others are mixing the bomb and holding the Uzi and talking about battle plans and talking about jihad. That tells you that Emad Salem can be believed.

Another example. Salem will tell you that he met with Mohammed Saleh, the man who owned the Yonkers gas station, and that when they told him what they were planning on doing, they sketched out on a piece of paper what the targets were. Salem will tell you that he then ate the piece of paper to destroy the evidence. Did that happen? The answer is yes. You know that Salem can be believed when

he tells you that because you will see a translation of that conversation, and you will see where Siddig Ali orders Salem to eat the piece of paper.

A final example. Victor Alvarez and Wahid Saleh. Salem will tell you that they agreed to get cars to carry the car bombs, and he will tell you that Alvarez supplied the machine gun to be used by the jihad army for protection. Is that true? Yes. You will read the translations of the conversations where they agreed to get the cars, and you will see the machine gun and you will see it in this courtroom.

There are many other examples of how Emad Salem will be corroborated.

The bottom line is, while there are some things that won't paint a pretty picture, there is concrete corroboration of every important thing that he tells you, and you will know that these defendants were planning a day of terror the likes of which the world had never seen. In the end you will have witnesses and tape recordings and other evidence that will tell you that these defendants are guilty of the crimes that they are charged with.

You might be asking yourselves, what do you do when you are caught on a videotape building a bomb? What do you do when you are mixing explosives and plotting the death of many, many people? One thing you might think of doing,

especially if a government informant is involved, is to try and convince people that it is really the government that is responsible, that the government tricked you into committing these crimes. You may well hear claims like that in this case.

If someone suggests that to you, that they were tricked by the government into planning these terrorist acts, remember a few things. Remember that Judge Mukasey is going to instruct you on the law in this case. Listen carefully to those instructions because you are going to realize three things.

First, it is the defendants who came to Emad Salem with the idea to commit the crimes that are charged in this case. That will not surprise you, because you will learn that each one of them was involved in the jihad army long before they met Salem. As a matter of fact, you will learn that Siddig Ali went a long way toward not introducing Salem to these people until it was absolutely necessary. Second, you will know that every defendant in this courtroom was ready and willing to kill and to terrorize. None of them needed Emad Salem for that.

The third thing that you will know, and the third question that you should ask yourself, if anyone tries to tell you that they were entrapped, is this: What would it take to trick you into planning to murder thousands of

people? How much money would it take to do that? The men in this courtroom were ready to do it and they were ready to do it for nothing, and the evidence will show you that the reason is precisely because they were terrorists.

I want to thank you for your patience, and before I sit down I would like to just make one final point. I have told you what this case is about. I would like to tell you what the case is not about. It is not about the rightness or wrongness of anyone's religious beliefs. It doesn't matter what you believe in, Islam, Christianity, Judaism, other religions, no one's religion. It's nobody's business, as long as they don't murder anybody who believes differently than they do.

Another thing this case is not about, it is not about the great political and social issues of the day. People will try and tell you otherwise. It doesn't matter what anyone thinks about the great issues of the day, and no matter what anyone tells you, that is not what you are here to decide.

In the end, it is a simple case. As charged in the indictment, these defendants were planning a war of urban terrorism against the United States, and they sought to slaughter men and women of this city as they drove to and from New York and New Jersey or as they sat in office buildings with, almost literally, time bombs ticking in

their garages.

Thank you.

MR. STAVIS: Your Honor, I have an application. I don't know if your Honor wishes to have it at the side bar or holding to a convenient breaking point.

THE COURT: Why don't you hold it for a convenient breaking point.

Miss Stewart. May I see counsel at the side, Miss Stewart and government counsel only.

(At the side bar)

MS. STEWART: I am perfectly happy to start. I just hope they won't start looking at their watches at about 12:30, because I think I will go an hour probably. It may be a little less.

THE COURT: If you are a little less you should be all right.

Take a start?

MS. STEWART: Yes.

(In open court)

THE COURT: We will now hear an opening statement on behalf of Dr. Abdel Rahman. Miss Stewart.

MS. STEWART: Good people of the jury.

During the course of this trial, usually at the opening of the day, you will hear Miss Schwartz, who isn't here right now but whom you know, the court deputy, call

this case into the record. You will hear her say USA versus Abdel Rahman. Abdel Rahman translated to English means the servant of God. United States of America versus the servant of God.

And the evidence will show you that his case is before you not because of anything he did -- he is, after all, elderly, blind, diabetic, with a heart condition -- the evidence will show you that he is charged based solely on his words, words uttered as part of his duties as a Muslim cleric, words uttered as religious teachings, words protected under our Constitution. And he faces an ultimate judgment, a judgment by you on these terribly serious, fearful charges.

But before then there will be evidence, evidence to show that the government is attempting to place him in a frame. Why? Why, would you ask, would they do such a monstrous thing? Because he is an outspoken critic, and he has devoted his religious life to advocating for the suffering of his people at home, in Egypt. He has advocated by any means necessary, and that is not acceptable to this government.

During this trial you will learn who is this servant of God, Dr. Abdel Rahman. Why does the U.S. government want so badly to convict him? And what is the nature of their so-called case? Or, should I say, their

lack of a case, the lack of a case that you will ultimately hear.

First, who is Omar Ahmad Ali Abdel Rahman? He was born into poverty in the Nile delta in Egypt. He was blinded at the age of 10 months, and, as such, his boyhood as a blind child was spent in the mosque, where he became a prodigy, because by the age of 11 he had memorized the entire Koran, the holy book of Muslims, a book they believe contains the actual words of Allah, God.

This prodigy then went on to spend 25 years of his life in the universities of Egypt, ultimately receiving a Ph.D, a doctorate from Al-Azhar University in Cairo, in Islamic jurisprudence, systems of law under the Muslim faith. You will learn that Al-Azhar is like Oxford University. It is older. Indeed, it was in existence before the United States of America was even discovered. It was in existence before there were such things as European states.

The evidence will show you that Dr. Abdel Rahman, not content with the security of a career as a university professor guaranteed to him by the earning of this degree, began to preach in Egypt. He was both an imam, that is, a leader of prayer, and a sheik, an Islamic religious scholar. To serve the people in his congregation, he preached about what he believed was the complete failure of so-called

Muslim leaders in the Middle East to govern in accordance with God's law. He spoke out about corruption, the failure to serve people's needs and the fact that when so-called Muslim leaders are oppressors -- did I do that? -- that other Muslims who are true to their faith are entitled, are indeed required to revolt up and destroy the oppressor, the tyrant? This message was delivered in Egypt against Nasser, against Sadat, against Mubarak. He termed them Pharaohs, the Pharaohs, the unjust kings of Egypt.

Self-appointed for life, willing to give up Muslim lands, he told his people of the greed that lined Swiss bank accounts while the children of Egypt fed off the garbage in the dumps. You may imagine that this led him into some difficulties, and these difficulties meant for him prison, torture, trials. And although he has spent years of his life in Egyptian jails and under house arrest, he has never been convicted.

Then in 1990 he entered the United States -- with a valid visa. Came via Afghanistan, Saudi Arabia, the Sudan. Came to the United States not to study -- he already had a doctorate -- and not to enrich himself, as you will see. He could have been a professor at any university in the Middle East, a secure, respected position. No, he left his family, he left his children. He came here to escape persecution, to escape tyranny, just like our European

ancestors immigrated and just like the slaves escaped on the underground railroad. He came to speak, he came to explain his case. He came to this country he believed was in love with freedom, whose people protect those who have escaped from tyrants. He came here to be free of Egyptian intelligence, spying, following, arresting. Yet he is before you now, accused and indicted.

The evidence will show that he entered peacefully, that he never violated any laws, big or little. The evidence will show that he believed that that visa was a sacred contract between him as a Muslim and the United States of America for sanctuary.

And he spoke in the mosques and he led the prayers. He taught the children. He resolved disputes, thousands of disputes, between Muslims. He studied Islam and he taught Muslims. He taught women's groups. He taught African Americans. Most importantly, Dr. Abdel Rahman, the evidence will show, continued saying and doing what has been said and done by Muslim religious leaders for 1,400 years. Does he wish to return his people to the golden age, to umma when Muslim people lived as one under God's law? He does.

You will see through the long days and many months of this trial, a holy man from another religion, perhaps very different from what you know, from another world and indeed perhaps from another century, but a person

of absolute faith and absolute rectitude.

You are going to hear many videotapes. You are going to hear many audiotapes -- such as that one that beeps all the time -- of his preaching, of him answering questions, and of Emad Salem trying to lead him down a primrose path.

Some things he says will actually strike a responsive cord in some of you, I am sure, when he lectures about Muslim obligations to the poor, to the homeless. It's not that different from "Cast your bread upon the waters." And when he speaks of defending Muslims from losing life, land, homes, family, it's not so different from "Blessed are those that thirst after righteousness," or, "My rod and my staff they comfort me." But his faith does not believe, and he does not preach, "Render onto Caesar what is Caesar's and onto God what is God's." He believes there is a unit and he preaches that. And he believes that one must be engaged in jihad to be a Muslim, a devout, a proper Muslim. Not a jihad army. Jihad is an Arabic word for struggle, the struggle internally to look at oneself. It is not what the so-called scholars, the imams of the U.S. Attorneys tell you. It is simply the Muslim duty to struggle internally with self, and externally -- and if you are going to write anything down in your notebooks, write this down -- externally in defense of Islam. It has no element of the

agressions Mr. Khuzami spoke of. Indeed it is the noticeable partner of another Islamic duty: to speak the truth. And this is what the evidence will show placed the sheik here. He spoke the truth, and he is here to be judged by you.

The why of this case is also the how. How did he get here? The evidence will show that Dr. Abdel Rahman, after being here since 1990, preaching, traveling, talking, was the subject of deportation in early 1993. Then, in February 1993, two weeks before the World Trade Center bomb, the government put a wiretap on his phone, and they listened to everything, everything from February to June.

You must understand that for a blind man like Dr. Abdel Rahman, the telephone is like his window on the world. He talks on the phone 25 hours a day, talking to people about their personal problems, advising them, getting news from home, from Egypt, from family, friends, political allies, from a son fighting in Afghanistan, making arrangements, scheduling, calling the airlines.

And then the World Trade Center bombing takes place. Is it on the wiretap? No, and he publicly denounces it, publicly and often.

MR. McCARTHY: Objection.

THE COURT: Overruled. It is a statement of what the evidence will show. Go ahead.

MS. STEWART: And men were arrested for that and tried, but he was never charged. He continued to preach and minister to his people.

And then in June of '93, one night at midnight, the FBI, while he slept, broke down his door, and even though they found him alone they handcuffed him and searched his apartment in Jersey City for hours, and they seized and kept nothing but audiotapes, videotapes, personal papers, his books, and you will see from the photographs exactly how he was living.

And Dr. Abdel Rahman still continued his daily life. His religious duties -- he was not under arrest at that point. He didn't go to Newark Airport and get on a plane and leave. He kept on speaking the truth.

And then in July 1993, at a mosque in Brooklyn, after Friday prayers, he was taken into custody. Not on this case. No, still on the deportation matter. And he was in jail, and powerful people, U.S. senators who wanted him in jail were told by January net Reno, the Attorney General of the United States, the boss of these young men, that there was not enough evidence to charge him. Yet two months later, with nothing new developing, he is charged. He is indicted. And not merely charged, he is charged the leader, the head man, the person responsible for everything.

Why? He has no disagreement with the American

people. His struggle is away from the U.S., with the leader of his country, Mubarak, 18 years in power -- even F.D.R. only had four terms and then we rewrote the Constitution. But, you see, it's easier for Mubarak, because, you see, when he runs for office he is the only candidate. And he gets two billion a year in U.S. taxpayer money, more than any other country except Israel. And instead of democracy and freedom, he keeps the money and gives his people poverty. And to support this dictator in Egypt, the U.S. did him a favor. They put Dr. Abdel Rahman in this case. The strongest opposition: jail. Did he disagree with U.S. policy? He did. Did he conspire, seditiously or otherwise? He did not. And they hadn't finished yet. They waited till May of this past year, 1994, after he had been in jail for a year. They went to the home of a paralegal working on the case where he had stored his belongings after the search in Jersey City and after he finally is incarcerated. And they went to the home of this paralegal in Toms River, New Jersey, and once again searched through those same belongings. And this time they made no bones about it. They said what they were looking for -- if I can find it here -- they said they were looking for audiotapes, videotapes, writings, documents, transcripts, announcements, newspapers, magazines, press releases, books, news bulletins, letters, cards, passports, diaries, ledgers,

journals, receipts, checks, sermons, commentary, teachings of, interpretations by Omar Ahmad Ali Abdel Rahman and others. Were they looking for detonators? Were they looking for plans? They were not. They knew what they wanted. They wanted words, and words is what you will hear.

Is he a fundamentalist or is he a moderate, a middle of the road? The people who accuse him know only a smattering of Islam. They do not know the heart or the brain. And the evidence will show this. Jihad as a duty he explained over and over again on these videotapes, you will hear, as a duty, and he told his listeners, go to Bosnia, go to Afghanistan, go to Palestine, go to the Philippines. Out of here. Defend holy land, Muslim land. He never said go to the World Trade Center, go to the Holland Tunnel. This is why he is before you, labeled as a terrorist, because he urged people to act in their own defense. He is a leader, a leader of thousands, revered, respected, a man you will see does not change his mind every five minutes nor five miles away.

You must ask yourselves, is this the man, the evil criminal godfather the government has portrayed for you? Or is he the shepherd of a flock, a large flock who he protects and guides according to religious precepts? And most important, and maybe it's the crux of this case, could he be held responsible in a court of law for what others who

may have attended his mosque, his lectures, are alleged to be doing?

He is charged with seditious conspiracy, with conspiring to murder Mubarak, with the conspiracy to bomb the bridges, tunnels, the UN and other places, and solicitation. How do they think they can prove this? They are going to use the tapes. Mr. Khuzami told you that. Public and open most of them are, seized from his home and the home of his paralegal and other people. They are going to use the tapes made secretly by the informant. Listen very carefully to these. Mr. Khuzami has given you a preview. But you have to hear the tone of voice in the very few times on thousands and thousands of tapes.

And you have to consider Emad Salem. Never forget that Emad Salem was working with Egyptian intelligence and that he spied on the FBI while he was working for them. Who was using who? Million dollars. Dirty money deals and throw something into the sheik's house, he says to one of the handlers.

I could talk about Emad Salem for the whole time the judge has given me, but I am sure my cocounsel will take care of that as well. But remember, the evidence will show that this prosecution is rotten at its core, because it is the center furiously wheeling and dealing, or at least two informants, Emad Salem, and also a Mr. Haggag. These are

not the poor sad sacks desperate to get out of a terrible situation. These are complex, vicious liars whose loyalties are divided, confused, compromised, compromised by long-time grudges and by Egypt, for with both of them the iron fist of that oppressive regime, that Pharaoh criticized by Amnesty International will show up again through these two. And, most importantly, the moves that they made to ensnare the sheik, the lies they told to protect themselves.

If you want to see leadership, leadership as the government mentioned, keep your eye on Emad Salem. And if you want to see hatred, watch Haggag.

But these charges are terribly serious, as I said to you earlier, seditious conspiracy. Dr. Abdel Rahman came here to preach, to have a pulpit, to speak freely and practice his religion without ending up in jail, and, guess what, he ended up in jail. He needed this place of safety, calm. The judges will tell you that in a conspiracy actions speak louder than words sometimes, and the evidence here will show, actions are different from any words, and the sheik never took any actions, and the sheik never spoke any words that directed the actions or approved the actions of others against the United States. What motivation could he possibly have had?

Next week President Clinton, who has been known to change his mind, might say that Egypt has gone too far

and declare them to be public enemy number one. The policy changes. The executive of the United States changes. What then of sedition? He is also charged with conspiracy to murder President Mubarak. The evidence will show that he has been calling for the death of Mubarak and a popular revolution, uprising in Egypt for the last 18 years. Nothing new here.

And in history, you must know people have always called for the death of the enemy, the unjust, the oppressive ruler, the tyrant. Kill Hitler, kill the Ayatollah, kill Saddam Hussein. We even yell kill the umpire. Do we mean it?

He is also charged with soliciting criminal acts. It isn't solicitation when the evidence shows that it's speech, only speech. The only solicitations you will hear in this case are those of Emad Salem as he goes about his dirty business.

He is also charged, Dr. Abdel Rahman, with a criminal agreement, conspiracy to bomb. Here the evidence will not show, because there is no evidence. It just isn't so. There is no common understanding. There is no knowing joining. There is not even mere association unless preaching before hundreds of people some of whom may contain a defendant or two is association. Not even knowledge without participation. Nothing, nada, no matter how hard

they try. We, Mr. Clark, Mr. Jabara and myself, we defend an innocent man wrongfully accused, and the evidence will prove it.

All of this brings me, and I am happy to tell you and I am sure you are happy, near the end of my opening statement. But I earnestly beg of you, I plead with you, don't make up your mind until you have heard it all. Suspend judgment. Start off with a clean slate. You were handed these notebooks. They were empty, clean, unwritten upon. You, too, should begin this way, open to hear it all weigh it all, decide it all, because the reality is that this is not really an opening statement. You have all been opened to for almost two years, every time you read a news report or turned on the TV with Dr. Abdel Rahman's picture in the red turban of his university, with those dark glasses.

Some of you have had some prior jury service and you know that when you walk into the courtroom you know nothing, you learn it all in the courtroom. That may not be so for you in this case, but I ask you, to the extent you can possibly do it, to wipe your mind free. Do that for all of these defendants. You swore you would.

And while I'm on it, please also remember that the defense, because the government has the burden of proof, always goes last. The government opens first, they put on

their case first. They will examine their witnesses and then we get to cross-examine. Suspend judgment -- and I realize that we are asking you to do that not just for a day sometimes or a week or a month, but it may be a whole season before you get to hear the defense case. But you must do it, you must, or it's not fair, and you swore to be fair.

Ultimately, this is what is at stake here, on trial, people different from you and yet the same. Expressions of religion and personal belief different from you, maybe distasteful to you, but you have been selected by all of us to well and truly try this case.

We will directly speak again many, many months from now. Keep an open mind. Listen fairly. Spend judgment. Only then can you do justice, and that is all we ask, because then you will find Dr. Abdel Rahman, the servant of God, not guilty.

Thank you.

THE COURT: Thank you, Miss Stewart.

Ladies and gentlemen, you have been sitting without interruption for quite sometime, so we are going to break early for lunch. Please leave your notebooks behind. Please don't discuss the case. We will resume this afternoon at 2:00. I ask everyone to remain seated until the jury leaves.

(Jury excused)

MR. STAVIS: I have an application, your Honor.

THE COURT: Go ahead.

MR. STAVIS: At this point I move for a mistrial based on the government's opening statement, and I have several different grounds to support my application, your Honor.

The first is, when Mr. Khuzami was describing this war against the United States of America which is contained in Count 1, the seditious conspiracy count, he said that the first battle in that war was Rabbi Meir Kahane. As your Honor knows, prior to trial I moved to have the overt act concerning Meir Kahane stricken from the seditious conspiracy count of the indictment because it did not relate to the crime of seditious conspiracy. The government has opened that the murder of Meir Kahane was the first battle in the war against the United States of America in the seditious conspiracy count.

THE COURT: Do you want to go through all the points or do you want to hear from the government?

MR. STAVIS: Whatever your Honor's preference is.

THE COURT: You can go through them all. Go ahead.

MR. STAVIS: At several junctures during the opening statement Mr. Khuzami grossly and prejudicially mischaracterized the evidence, and I wish to draw your

Honor's attention to where he referred to items seized from Mr. Nosair's home which concerned attacking the pillars of their society and the tourism industry. Mr. Khuzami referred to that in relation to Count 1, the seditious conspiracy count. In so doing, your Honor, he has mischaracterized the evidence, which refers to destruction of the pillars of society and tourism, quote, in the land of Abraham, close quote. It refers to destruction of pillars of society in order to take back Muslim holy places. And contrary to the picture that was painted for this jury in the opening statement, those remarks and that evidence refer to Palestine.

Your Honor, in the final portion of the opening statement, Mr. Khuzami said to the jury words to the effect of, what do you do when you are caught on videotape making bombs? What possible defense could you have when you are caught on videotape making bombs? And then he suggested some of the defenses that myself and my colleagues may be offering on that. And he said, you attack the government. Your Honor, clearly, by so doing, Mr. Khuzami and the government in this case shifted the burden of proof to the defense. That is the third ground for my mistrial motion.

MR. FELBER: Your Honor, I just had one additional point, and that is that in Mr. Khuzami's opening statement he misstated the law in connection with

entrapment. He stated to the jury, and I am paraphrasing, when you consider entrapment, you ask yourselves, what would it take you to do these acts? How much money would it take for you to do these acts? In so doing, your Honor, he gave the jury an objective test, that is, each one of them should consider --

THE COURT: You mean a subjective test?

MR. FELBER: It is a subjective test, what is in the reasonable mind of the defendant at the time of being entrapped. In so doing Mr. Khuzami gave the jury an inappropriate version of the law of entrapment.

I would join in the remarks made by Mr. Stavis.

MS. STEWART: As long as you are taking these seriatim, Judge, I would also object to Mr. Khuzami's characterization of when Mr. Salem would lie and when he would tell the truth. It seemed as if he was telling them the government has decided, your government, the U.S. government tells you he lied to you when he was on the stand in Queens but he is telling the truth now. That is for them to decide, not for the government to tell them how to decide.

THE COURT: May I hear from the government?

MR. McCARTHY: Yes, your Honor. With respect to the first argument, first of all, the court didn't rule that the Kahane evidence was out of Count 1. What your Honor

ruled was that the Kahane transaction could not be an overt act in furtherance of the seditious conspiracy. Your Honor outlines the number of ways it is admissible. I don't know whether it makes that much difference because what Mr. Khuzami was addressing at the time was jihad, not necessarily the war against the United States that is charged in Count 1. There wasn't anything inappropriate about that argument.

Mr. Stavis's second point simply mischaracterizes the seizure that is taken from Mr. Nosair's house, and indeed if he is correct about his description of it, that will be evident to the jury. But that is no reason to grant a mistrial.

The third point about the entrapment, number one, before the government undertook that argument, one of the defense lawyers at least committed in court that entrapment --

THE COURT: That wasn't his argument. His argument was that in stating -- go ahead.

MR. McCARTHY: There are two arguments, I think, your Honor, but I will try to address them at the same time. First of all, I don't think it was inappropriate at all to open on it since there was somebody committed that there would be a defense and asked your Honor to give an instruction following opening statements.

Secondly, Mr. Khuzami didn't instruct the jury on the law of entrapment. Mr. Khuzami said the court would be instructing the jury on entrapment and suggested a question that they should keep in mind when they consider the arguments that counsel make. It wasn't an effort in any way to instruct on the law. Indeed what Mr. Khuzami said was that the court would be giving the legal instructions on that point.

As far as shifting the burden of proof is concerned, I don't think anything in Mr. Khuzami's argument shifted the burden of proof, and I think on a number of occasions he explicitly explained to the jury that the government bears the burden of proof throughout the trial, and that of course is something your Honor, I think, has already explained to them and undoubtedly will tell them many times before we are done here.

Finally, with respect to Miss Stewart's argument, I don't think it is a fair characterization of what the government's opening remarks were with respect to Mr. Salem. I think what Mr. Khuzami did was explain to the jury that there were problems with Mr. Salem's credibility, and that as an informant in general his testimony ought to be carefully scrutinized. Indeed Mr. Khuzami told the jury that they should listen very carefully to everything he says and see where it is corroborated.

THE COURT: The motion is going to be denied. With respect to the Kahane murder as part of jihad, that is the government's view. It is not charged as part of seditious conspiracy. I don't think he open on it as part of seditious conspiracy. In any event, I am the one who charges on the law on seditious conspiracy and that, as I ruled before the trial, is not a seditious act. Mischaracterization of the evidence is something that you can argue to the jury either in your own opening or at the close of the trial.

The one thing that does give me pause is the "how much would it take to make you do it" argument, which I think was inappropriate, and I am simply in that respect going to instruct the jury when they come back and before they hear any further openings that insofar as the prosecutor or any other lawyer refers to a legal theory, they are to understand that I am the only source of their instructions on what is or is not a legal theory, and to the extent that either the prosecutor or anyone else says anything inconsistent with my instructions it is my instructions that they have to follow. I am going to single him out because he is the one who, I think, in that respect at least, misstated things. The notion that he was vouching -- I guess that's your argument -- when he simply anticipated the fact that there will be introduced evidence

of Salem's lies is simply a statement of what he predicts the evidence will show. Presumably your prediction was that it is going to be shown that he was lying far more than that. That is what the trial is about and that is what they are going to decide.

So the motions are denied. I will see you all at 2:00.

(Luncheon recess)

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

2:00 p.m.

(In open court; jury not present)

MR. MC CARTHY: Good afternoon, your Honor. Your Honor, the government has two applications with respect to Ms. Stewart's opening. First, with respect to her remarks about the First Amendment and solicitation, those remarks constituted improper and incorrect legal instructions to the jury, and we'd ask your Honor if you are going to correct legal instructions, to correct those as well.

THE COURT: I don't mean to interrupt you, but I have here a proposed instruction that I think is responsive to something that Mr. Stavis and Mr. Felber raised and may also be responsive to what you have raised. What I thought I would do is show it to all of you, and let you look at it and tell me whether this is what you had in mind.

(Pause)

THE COURT: Could we have just have the people who are immediately involved in this lawyering it. I think that will be quite enough.

DEFENDANT ElHASSAN: Judge.

THE COURT: I'll get to you in a minute. Your client in your absence waived a letter at me this morning. I said that I would take it at a later time. I suppose I'm going to take it now. Have you seen it?

MS. LONDON: No, I have not, your Honor.

THE COURT: Let's pass it up.

(Pause)

THE COURT: Does anybody want to be heard? Mr. Felber?

MR. FELBER: Yes, your Honor, while I believe that that instruction to the jury is helpful, and I endorse it, I don't believe it goes far enough to undo the harm that was done this morning when the government opened anticipating an entrapment defense, and giving the jury the incorrect legal standard, because the jury is now left with the impression that it is these jurors' state of mind that will determine whether or not defendants on trial have been entrapped or not should they choose to raise that defense. It's simply wrong.

THE COURT: I have to tell you I didn't hear it or take it that way when I heard it. What I understood that to mean was that, because it would take any reasonable person such as you, jurors, a great deal to make you do this, and because it didn't take anything to make them do it, that shows that they were, in the words of the defense, ready and willing to do what was being suggested. That's all I understood him to be arguing.

I don't think it was a particularly well-crafted argument. I think I made that clear this morning, but I did

not take that, and don't take it as an attempt to suggest that they should substitute their own views or their own internal standards for what it would take to make them do these acts for the standard of what it took to make these defendants do any acts that they find they did. You want me to give a specific instruction aimed at that?

MR. FELBER: Yes, I do, your Honor.

THE COURT: If you suggest one I would consider it.

MR. FELBER: Your Honor, I would suggest that the Court specifically highlight that part of the government's opening where the government stated, and I'm almost quoting this because I wrote it down as it was said. I may be paraphrasing it, but almost a quotation.

When you consider entrapment, ladies and gentlemen of the jury, you should consider what it would take for you to do these acts, and how much money it would take for you to commit these crimes. Or words to that effect. And that is simply a misstatement of the law of the entrapment. It is the defendant's state of mind that is the only issue as to whether or not he was entrapped or not. It is not the jurors' state of mind.

THE COURT: What is your proposed instruction?

MR. FELBER: My proposed instruction would be, is that when the government made that statement to you the

government was mistaken, and give them the subjective test of entrapment as set forth in the circuit, which is that only the defendant's personal, each defendant who raises this defense, it is that individual defendant's personal state of mind is at issue.

THE COURT: Mr. Stavis.

MR. STAVIS: Yes, your Honor. I would just like to make my record clear. I did object to Mr. Khuzami saying at that time that point he said, what do you do when you're on top? We believe we have no burden and the answer --

THE COURT: That is dealt with specifically in here. Other than what's in here is there anything you want me to say?

MR. STAVIS: No, your Honor, but I want my record to be clear that I move for a mistrial, and I do not believe that the giving of an instruction to the jury can cure the prejudice that was caused by Mr. Khuzami's opening.

THE COURT: As long as you want to make the record complete, there was no objection at that point during the opening, correct?

MR. STAVIS: Excuse me, your Honor?

THE COURT: There was no objection at that point during the opening. In other words, any objection was made to me at the end of the opening, not while it was going on.

MR. STAVIS: That's correct, your Honor, as soon

as he completed his remarks.

THE COURT: Indeed. All right. I just need two minutes to sit up here and write what I have to write and we'll bring the jury in, and I'll give them the instruction.

(Pause)

THE COURT: Mr. Felber, do you want me to read this off, or are you willing to take it on faith that I am going to do what you suggest?

MR. FELBER: Your Honor, I will take it on faith.

THE COURT: You would, but you would prefer to hear it, right?

MR. FELBER: Yes.

THE COURT: I thought that was the response.

What I intend to do is to add, after I've talked about the burden never shifting, to add this.

Also, to the extent the government suggested that you ask yourself what it would take for to you commit certain acts, I instruct you that that is not the standard. As you will hear, if I should explain the defense of entrapment, and I will try to do it as early as possible if it is appropriate, the standard is the state of mind of each defendant, not your state of mind.

MR. FELBER: Yes, your Honor, that is appropriate.

THE COURT: What else, Mr. McCarthy.

MR. MC CARTHY: Your Honor, Mr. Khuzami prefaced his remark by saying that the legal instructions in the case come from the law, come from the judge. Your Honor's instruction suggests to the jury that we intentionally tried to mislead them about what the legal standard is. We had two flat-out statements --

THE COURT: The word intentional doesn't appear in it.

MR. MC CARTHY: I am not worried about the words that appear, respectfully, your Honor. I'm worried about the impression that's left with the jury. We prefaced that remark by telling the jury that the legal instructions come from the judge. The question at the end was a rhetorical device to --

THE COURT: It was a rhetorical device that I think had an unfortunate tendency, and to the extent you tell them that the instructions come from me, but then go on to deliver a message that is inconsistent with that, and also inconsistent with the standard that I am ultimately going to deliver, it seems to me you have to bear the burden of whatever implicit criticism there is in here.

MR. MC CARTHY: I think that's fair enough. However, during Ms. Stewart's opening she flat out told the jury that if it's speech it can't be solicitation and she told the jury that Mr. Abdel Rahman's conduct was protected

by the First Amendment.

THE COURT: I think what she told them is that's what they will find, and, again, it's up to me to instruct them on that, and as you know I will.

MR. MC CARTHY: I would at least ask your Honor to consider when you give your opening instructions on the law to the jury, an instruction on solicitation, an instruction on the First Amendment. They were flat-out legally incorrect statements.

THE COURT: That is a day off at least, which relatively speaking is an eternity, because this is five minutes off. Is there anything else that you need for this?

MR. MC CARTHY: Yes, your Honor. Ms. Stewart also told the jury that her client had not been convicted. I don't want to have to be in a position to get up and object if that's going to be presented, but I'd ask your Honor to instruct counsel that that's not an appropriate argument and it shouldn't be made.

THE COURT: Fine. I'm sorry, who is next? Mr. Stavis, all right.

MR. JACOBS: Judge, what is your anticipated schedule today with breaking at what time?

THE COURT: We'll break for a short recess after Mr. Stavis's opening, and we'll then hear another opening.

MR. JACOBS: I'm sorry. About what time do you

think you are going to complete today, are you thinking about?

THE COURT: We'll be out of here by 5 o'clock. I'll guarantee you that.

MR. JACOBS: Okay.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

You heard two opening statements this morning and you are going to hear more this afternoon. The government in its opening anticipated that one or more defendants may argue a defense called entrapment. If any of them, if any defendant does present that defense I will instruct you on what that means at the appropriate time.

However, I want to stress to you that the government's anticipation in its opening was just that, an anticipation. No defendant has the burden of presenting or arguing any defense, because the burden is always on the government to prove guilt beyond a reasonable doubt. That burden never shifts.

Also, to the extent that anything in the government's opening in its discussion of entrapment could be read to suggest that you ask yourself what it would take for you to commit certain acts, I instruct you that that is not the standard. As you will hear, if I should explain entrapment to you, and I will try to explain it at the

earliest possible time if it becomes appropriate, the standard is the state of mind of each defendant, not your state of mind.

Also, if any prosecutor or any other lawyer in this case makes an argument to you based on a legal theory, remember that all instructions to you on the law come from the Court, that is, from me, and you are bound by those instructions.

If any prosecutor or any one else states to you any legal proposition that is different from any instruction that I give you, it is my instructions alone that that you must follow.

We will now hear an opening statement in behalf of Mr. Nosair from Mr. Stavis.

MR. STAVIS: Good afternoon. In this indictment, ladies and gentlemen, and in his opening statement this morning the United States government is accusing my client Sayyid Nosair of being a terrorist. They are accusing him of being a terrorist willing, ready, willing and able to slaughter thousands of innocent men, women and children, and they have charged him in this indictment with a seditious conspiracy.

What that means, ladies and gentlemen, is that the point of all that carnage, the point of all that destruction was no less than to bring the United States of

America to its knees.

Ladies and gentlemen, the evidence in this case will show that Sayyid Nosair is not now, nor has he ever been a terrorist. Terrorists take credit for things, ladies and gentlemen. I mean what's the point of being a terrorist if you can't take credit? Terrorism is killing people, killing innocent people to publicize your cause. So Mr. Khuzami told you that one of the people who was convicted of bombing the World Trade Center wrote a letter to the New York Times, because terrorists take credit for things. That's how they publicize their cause.

Sayyid Nosair takes credit for nothing. Sayyid Nosair says to each and every one of you, and every one seated out there, "I am innocent of these charges. I am not a terrorist." Not only is he not a terrorist, ladies and gentlemen of the jury, but he didn't want to bring the United States of America to its knees.

Several years ago on September 27, 1989, in a courtroom much like this one, Sayyid Nosair stood before a United States District Court judge much like this judge and he swore an oath, a solemn oath, and at that point he became a United States citizen. Mr. Nosair is a citizen of this great country, and he became a citizen at a time when the government is alleging he was waging his war of terrorism, his war of jihad. That's the time that Sayyid Nosair took

to become a citizen of the United States of America. And when you consider the charge of seditious conspiracy, the charge of bringing this country to its knees, remember, and you will here proof of this, this man was a citizen, and he became a citizen because he had no axe to grind with this country.

This country has been darn good to Sayyid Nosair. He came here from Egypt without two nickels to scrape together. He met his wife here. His wife is American. Children were born here, his children are American. He worked hard here, he raised his family here. And just down the street from here at the state courthouse is where Sayyid Nosair arch-terrorist worked, because Sayyid Nosair, arch-terrorist, was a civil servant working for the City of New York keeping the city courthouse air conditioning system going.

So when you think of what this indictment alleges, think and listen to the evidence of what this man is about, because the portrait that will be painted for you in this courtroom and on this witness stand is not, is not the portrait of a terrorist.

If Mr. Nosair is not a terrorist, what is he then? Mr. Nosair with every fiber of his being is a Muslim. He's a very, very religious Muslim. His religion is very deeply seated within him, and it is without question the

most important part of his life.

Now, there are a lot of Muslims in this country. Sayyid Nosair is one of them. In fact, there are mosques all over New York City, but a lot of us don't know a great deal about this religion of Islam. We don't know. We know that we see some things on the TV from time to time about Muslims and about Islam, and we know that the things that we see don't tend to put that great religion in a very good light.

Fear of the unknown is what causes people to strike out against Islam, ladies and gentlemen of the jury. The United States government is threatened by this great religion, and the way you know that, ladies and gentlemen, is by looking at the indictment where it says that the United States was regarded as an infidel because it was not governed in a manner consistent with the group's radical -- I underlined the radical -- radical interpretation of Islam.

The government is saying that the way Mr. Nosair practiced his religion is radical. The religion, the way he practiced it, it's radical, and it's called radical because it's different.

Radical is a label that we often like to put on things that we don't understand, and history is replete with people who at the time were called radical. Jesus Christ was a radical, ladies and gentlemen of the jury. Dr. Martin

Luther King, Junior was called a radical. The prophet Mohammed, the prophet of the religion of Islam, was called a radical. And now Sayyid Nosair and these men are called radical.

Their religion, the way they practice their religion is called radical. In America, a land founded on the principle of freedom of religion, the United States government should not call somebody's practice of their religion radical, not here in the United States. This is a free country. You can practice your religion, be it radical, not radical, orthodox, nonorthodox, fundamentalist, whatever you want to say, you can practice your religion here, and we all know that, and we all know that the United States of America in indicting this man, and these men cannot characterize the way they practice their religion as radical.

It is part of their religion, ladies and gentlemen, and you heard mention of it in the opening statements, there's the principle of jihad, which in Arabic means struggle. It's struggle for God, struggle will for a law. It is a requirement of all Muslims who are under attack when their religion is attacked they have to respond.

And you know, ladies and gentlemen, Muslims call themselves brothers and sisters, and that's very much a part of the religion, and you are going to hear testimony about

it. It doesn't matter what country you're in. It doesn't matter where you come from. It doesn't matter what color your skin is, if you're a Muslim, you're a brother or a sister. Muslims have to defend their brothers, even if it is on the other side of the world.

Now, the government has taken this principle of their religion, this principal of jihad, and they say, the government says in this indictment, that this is a jihad group from which they want you to believe that this is a terrorist group. In this indictment the government says and it's a simple formula, it's the way they would like you to think about this case, jihad equals terrorism.

MR. MC CARTHY: Objection.

THE COURT: Again, what the charge is it is. I will instruct the jury on what the charge is at the appropriate time. Go ahead.

MR. STAVIS: Ladies and gentlemen, jihad is part of their religion and it's not a dirty word. There is nothing evil about jihad. You are going to hear evidence, you are going to see evidence that there was a jihad office on Atlantic Avenue in Brooklyn which was incorporated as a notforprofit corporation by the State of New York, which had a jihad checking account, which had jihad stationery, which produced jihad books, jihad records, jihad tapes, jihad CD's, and yes, ladies and gentlemen, even jihad T-shirts.

So jihad does not mean terrorism. It's a part of Sayyid Nosair's religion. It's a part of Islam, and it is not something to fear. If it was meant terrorism, there wouldn't be a jihad office on Atlantic Avenue. This was out in the open. This was people practicing their religion.

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MR. STAVIS: (Continuing) And no one knows this better, ladies and gentlemen, than the United States government, and there is a simple reason for that: because the United States of America, the same government that has put these men on trial, participated in jihad. The United States of America was actively participating in jihad in the 1980's in a country on the other side of the world known as Afghanistan. And in 1980, this mighty Soviet army crossed its southern border into Afghanistan. Why? Afghanistan was, is and always will be a Muslim country. And the Soviet army in Afghanistan halfway around the world attacked the religion of Islam. The Soviet army killed Muslim men, women and children. The Soviet army desecrated Muslim mosques in Afghanistan. The Soviet army burned copies of the Koran, the holy book of this religion. That's what the Soviet army did.

The Muslims in Afghanistan fought back for their religion. They fought back with a fury unmatched in the history of modern warfare. They fought the mighty Soviet army, with all the arms and all the help that they could get their hands on. And the United States government was the ally of the mujahideen who were fighting the Soviets. The principle is, the enemy of my enemy is my friend, and if the Muslims are going to fight the Soviets and the United States is engaged in a 40-year cold war with the Soviets, well,

then, we are going to put our money on the mujahideen, we are going to put our money where our mouth is, we are going to support the mujahideen, the Muslim fighters in Afghanistan against the Soviet army.

The government in its opening said that America is their battlefield. The government in its opening said America is Sayyid Nosair's battleground. Ladies and gentlemen, the evidence will show, the evidence that is going to come from the jury box here, that is going to come from documents -- you can see it, you can feel it, you can taste it -- the evidence will show that Sayyid Nosair's battleground was not America. The evidence will show that Sayyid Nosair's battleground was Afghanistan. And I sat here through that opening statement and I never once heard the word Afghanistan uttered from the United States government.

And you will hear evidence in this case that the United States of America supported the Muslim fighters in Afghanistan with money and military equipment, including Stinger missles, which are missles that you can hold on your shoulder and shoot down Soviet aircraft. I didn't hear anything about that. I didn't hear anything about that jihad in the government's opening, but that was jihad.

And you know what, ladies and gentlemen. Mr. Nosair, Mr. El Sayyid Nosair was on Team America for that

jihad. They were in the same jihad. Sayyid Nosair helping his brothers, his Muslim brothers who were attacked, and the United States of America helping those same Muslim brothers.

I am the one to mention Afghanistan, ladies and gentlemen of the jury. I am the one that is going to present the evidence concerning Afghanistan. And I am going to repeat it, Afghanistan, Afghanistan, Afghanistan. So long as there is breath in my lungs throughout this trial, you are going to hear about Afghanistan, because when the United States of America says that Sayyid Nosair was trying to bring the United States of America to its knees -- and we know that Sayyid Nosair, and we will hear the evidence, was not bringing the United States of America to its knees, he was bringing the mighty Soviet army to its knees. He was fighting the same battle as the United States government, and that is what you are going to hear at this trial, ladies and gentlemen. This was not a seditious conspiracy.

Mr. Nosair's activities for jihad, for the same jihad that the United States of America was involved with, took place at an office in Brooklyn called the Jihad Office. It is also called in Arabic the Alkifah Office. Alkifah or jihad, and it is also called Afghan Relief Services or Afghan Refugee Services, was a voluntary organization which assisted Muslim brothers in Afghanistan who had to be resettled because their homes and their mosques and their

Koran were burned by the Soviet army. It is an organization that tried to educate Muslims and nonMuslims, in this country and in other countries, about the jihad that was going on in Afghanistan. It produced books, records, tapes, things like that. All of this happened in the Alkifa or the Afghan Relief Services office, and that was an office where Sayyid Nosair volunteered his time, and that is how he did his jihad for Afghanistan.

It was at that office, ladies and gentlemen, that Mr. Nosair met a man by the name of Ali A. Mohammed, and I ask you to remember that name, ladies and gentlemen. Of course, because you are going to hear a lot about that name. Ali Mohammed was a sergeant in the United States Army Special Forces. The United States Army Special Forces are also known as the Green Berets. Sergeant Ali Mohammed was assigned to the John F. Kennedy Special Warfare Center in Fort Bragg, North Carolina, which is also the home of the army's 18th Airborne Corps.

As part of the United States government participating in jihad in Afghanistan, Mr. Ali Mohammed would come to the Alkifa office, and he would help to train Muslims in this country so that they could go and assist with the jihad in Afghanistan.

At the trial you are going to see tapes, a tape of Ali Mohammed participating in a discussion concerning the

Middle East, and while I can't show you, you are going to see his photograph. It is opening statement and I am not permitted to show you items of evidence. I am just outlining the evidence for you.

Ali Mohammed would come up from North Carolina to train these Muslim brothers here in the New York area. He would come up, he would bring with him a satchel full of military manuals and documents. He would come up here, he would give lectures in weapons, tactics, reconnaissance, survival techniques. If you are going to Afghanistan, you can't just go and get off the bus, pick up a gun and go and fight. You have to train first.

And when the United States government, which well knew the training that was going on, tells you, presents to you on the witness stand that everything was for this war of terrorism to bring the United States of America to its knees, keep an open mind. Wait for the defense evidence. Wait to hear how the United States government helped to train these men. It was Ali Mohammed who taught the men how to engage in a guerrilla war.

When you are fighting the mighty Soviet army and you are just a ragtag bunch of very devout, devoted Muslims, you don't have tanks, you don't have airplanes. You did have Stinger missles, you did have what the U.S. government could give you, but they weren't giving away tanks and

airplanes. Ali Mohammed came and gave courses in how to make bombs, how to make guns, how to make Molotov cocktails.

And the government, to fit its theory, now calls all these things jihad materials. It says that Sayyid Nosair had jihad materials in his house. You bet he did, ladies and gentlemen. And it fills binders, binders of jihad materials that he had in his house. And when you see it, when I introduce it to you on the evidence, on my part of the evidence, and you see pictures in these manuals of little people, little mujahideen people dressed in traditional garb holding rocket launchers on their shoulders, you remember what the jihad is that these manuals relate to.

Of course Mr. Nosair had jihad materials, and those jihad materials came from the United States of America because they wanted Sayyid Nosair to do jihad. They loved the fact that Sayyid Nosair was doing jihad -- not Sayyid Nosair alone but with other Muslim brothers. They loved it, they encouraged it, they helped it, they nurtured it. But now they call it terrorism.

As far as Sayyid Nosair is concerned, ladies and gentlemen, there is no jihad in America. This country was damn good to Sayyid Nosair. I have already told you that you will hear evidence concerning his becoming a United States citizen. Met his wife here, raised his family here,

had a good paying civil service job at a courthouse right down the block from where we are today. He came here for a better life, and he found it. He can practice his religion in this country however he sees fit. He could walk into any mosque he wants to. No one is going to say you can't go to the mosque. That's because this is America.

You may not agree with all of his beliefs and opinions. You may not agree with all of his religious beliefs. But as an American he has every right to hold those beliefs.

Some of his beliefs may even disturb you. Sayyid Nosair is very interested in his brothers, in his Muslim brothers, in Palestine, or what is sometimes -- what is usually referred to as Israel. He views as an affront that the Israeli government controls some of the holiest shrines in Islam, and it does that in Israel.

Sayyid Nosair sees a jihad in Palestine. He sees Muslims under attack. He sees Muslims killed. He sees Muslims having their houses bulldozed, Muslims having to carry identification cards. But when you hear this evidence, ladies and gentlemen, remember that that jihad is on the other side of the world also.

Mr. Nosair spent countless hours reading about Palestine, discussing Palestine. He has all kinds of tapes about Palestine. The Arab-Israeli conflict is very much a

part of his being, and every opportunity he gets he talks about Israel, he talks about Palestine. And you are going to hear those tapes, and they may offend you. But when you listen to those tapes remember, he is talking about Palestine. He is not talking about seditious conspiracy in the United States of America. And when he says those things on those tapes he is usually appealing to his audience, and at the end of the tape he will usually ask for money because he is raising money for one cause or another. That's a lot of talk, ladies and gentlemen. He is entitled to his views on Palestine.

On November 5 of 1990, he attended a lecture at the Marriott Hotel. The lecture was given by Rabbi Meir Kahane, and, as the government alluded in its opening statement, Rabbi Kahane had certain views concerning the Arab-Israeli conflict. Rabbi Kahane thought that the Arab Israeli conflict could be solved easily. You pick up the Arabs, you take them out and you put them in somebody else's country. If an Israeli woman marries an Arab man, you pick her up, you take her away. These were his views. And unlike the government and this indictment, I am not going to say that those views were radical.

Rabbi Kahane, when he was in this country, had every right to have whatever religious view he wanted. And Sayyid Nosair, as an American, as a free person, had every

right to attend that lecture and to learn the way an Israeli like Rabbi Meir Kahane thinks about things. In this country that was OK.

As Rabbi Kahane finished with his lecture and took some questions, gunshots rang out. The time that the gunshots rang out, Sayyid Nosair was practically out the door, all the way in the back, while Meir Kahane was in the front. Rabbi Kahane lay mortally wounded, as the gunman made his way out of the ballroom of the Marriott Hotel, he got into a struggle with a man named Irving Franklin, and during the struggle Irving Franklin was shot in the leg. The government has alleged that as an attempted murder, and the government in its opening said Irving Franklin -- Meir Kahane didn't survive, Irving Franklin survived, he is going to get on the witness stand. Well, he sure is, ladies and gentlemen, and when you listen to the testimony of Irving Franklin, and when Irving Franklin tells you what happened to him that night, you know what Irving Franklin is not going to tell you? He is not going to tell you he ever saw the man who shot him. He is going to tell you he can't make an identification. That's what he is going to tell you. So he is telling a story, but it's not a story that points an accusing finger at Sayyid Nosair.

Sayyid Nosair, who was out of the ballroom at that time, heard them say "Get the Arab." It is an

occupational hazard to be an Arab at a meeting where a person like Meir Kahane is giving a lecture. People took off after Sayyid Nosair, "Get the Arab, get the Arab."

There was confusion in that room. There was chaos in that room. There was pandemonium in that room. People yelling, people screaming, people falling over one another. "Get the Arab" was a message that Sayyid Nosair heard loud and clear. He went out the hotel exit, one of several exits that they had in the hotel, got into a cab, and said take me to the police station, take me to safety. The crowd was following, get the Arab, get the Arab, get the Arab. They stopped the cab. He ran out of the cab and he ran toward what he thought was safety. He saw a man in a uniform, and in the frenzy, the chasing, the "Get the Arab," the crowd, that man, Carlos Acosta, shot Sayyid Nosair. Down he went on the sidewalk.

You are going to see evidence of a photograph of Sayyid Nosair laying on the sidewalk wounded, and when you see that photograph, ladies and gentlemen, you should think of something, because there is nobody around Sayyid Nosair. The person who took that photograph had a choice to make. The choice was, do I take a photograph or do I try to save a person's life? Do I take a photograph or do I start CPR, do I start first aid? That person went for the photograph. El Sayyid Nosair, the only Arab in the room, was the perfect

scapegoat for this crime. So perfect that there was no need even to do any investigation. We don't have to go outlooking for anybody. We got the Arab. He is on the sidewalk. You will hear that the crowd came and kicked him. We have our man, why should we do any investigation.

There was no autopsy of the body of Rabbi Meir Kahane, and when Mr. Khuzami was just discussing in his opening the shot that killed Meir Kahane, he pointed to his right, which is your left, sort of below the ear, and said that's where Meir Kahane was shot. Meir Kahane was shot on the left below the ear, not on the right. There is no autopsy. Without an autopsy we don't know the path of the bullet. There was evidence that was lost. The door from the post office which held the bullet, the carpets, the drapes, the window frame from the Marriott ballroom, the clothing of Meir Kahane.

There was a video taken of Meir Kahane's speech that night, a video that will be introduced into evidence. There are witnesses that show you where Meir Kahane was standing. We have a video. If we know where he is standing and we know with the path of the bullet and we are investigating a serious homicide, it gives us the clue to who was the shooter. But we don't need that, because we got the Arab laying on the sidewalk. All things that were not done in this case.

Ladies and gentlemen, it has been four years since the murder of Rabbi Meir Kahane, and I can't solve that for you. I cannot. I can't solve that murder for you. But you know what, ladies and gentlemen, it's not my job to solve that murder. That's not my job now four years later to solve that murder for you. But I will show, ladies and gentlemen, and the evidence will show that Sayyid Nosair was made a scapegoat for that murder, and I will prove to you through medical evidence, ladies and gentlemen, that Sayyid Nosair was physically incapable of shooting those people that he is accused of shooting, and I ask you to listen very carefully to that evidence. I will also prove that there were more guns in the Marriott ballroom during the Kahane speech. I will prove to you that the gun that the government is now going to say was the gun that Sayyid Nosair used had no fingerprints on it, ladies and gentlemen. I will prove to you that the people that were standing right next to Rabbi Meir Kahane at the time he was shot, every one of them saw something different. Of course they did. They weren't there expecting their leader to be shot. There was chaos in that room. We can't expect anything differently than that. No one saw the same thing and no one will come in and identify Mr. Nosair as involved with that case.

When the Arab who was laying on the sidewalk was taken to a hospital, he regained consciousness, and with

tubes protruding out of every orifice in his body, with a bullet lodged in the back of his neck, with drugs that were pumped into him and IV's, he wrote out on a sheet of paper, "I am innocent." The next thing he wrote was "Take off the breath mask." Remember, ladies and gentlemen, terrorists take credit for things, and from the earliest time, in this case or the Meir Kahane case, he said "I am innocent."

In 1991, in a courthouse right down the street from here, a jury in New York State court found Sayyid Nosair not guilty of the murder of Rabbi Meir Kahane. The state trial took place right down the street, over here right down Centre Street, and it was at this trial that Emad Salem entered the picture. You have heard already, I mean before the opening bell you heard a lot about Emad Salem. You heard about how much money he was going to make. You heard about how he lied under oath. The trial of Sayyid Nosair in the state court down the street energized the Muslim community like they had never been energized before. They were energized not because, and the evidence was going to show this, they were energized not because Sayyid Nosair was some kind of hero for killing Meir Kahane. They were energized and they all came together because they thought a a brother was being railroaded. There was a tremendous outpouring of support in the community, tremendous. People gave of their time, people gave of their effort, people gave

of their money. And nobody, but nobody gave more than Ibrahim El-Gabrowny. He devoted his life to the cause of this brother, his cousin.

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Raised money, held peaceful demonstrations. And when you hear the evidence on the witness stand about the peaceful demonstrations on behalf of Sayyid Nosair, think to yourself, peaceful demonstrations-terrorism, peaceful demonstrations-terrorism. They don't really go together. You think about that.

That man was the one who was organizing the peaceful demonstrations. Where other Muslim brothers saw adversity, Emad Salem saw opportunity. "I make a score, this is great." And, you know, Emad Salem, ladies and gentlemen, the evidence will show has a background from the Egyptian military. The government has said that he kept his ties to the Egyptian military. You are going to find that he kept his ties to the Egyptian CI A. You are going to hear evidence of that.

We found out in the opening statement and we are going to hear the testimony that Emad Salem made a million dollars from the US government. Even with the deficit and everything a million dollars is still a lot of money for the US government. Ask yourselves what he was paid by the Egyptian SIC? Ask yourself, if he's a man who could easily play both sides of the fence, make more money that way? He's a very sophisticated person, and in this case he acted as an agent provocateur. And he saw the outpouring from the Muslim community and he began working for the FBI. He

helped those dedicated brothers who were protesting, who were assisting the lawyers in that state case at which Mr. Nosair was acquitted of the murder of Meir Kahane, and began working for the FBI, and it was at that time, at that time you are going to see a pattern.

We're going to have witnesses for you, ladies and gentlemen, witnesses who will get on the witness stand right over here and tell you what Emad Salem was like when he started working for the FBI, how he dealt with people, and listen very, very carefully to that evidence, ladies and gentlemen, because you're going to see a distinct pattern in Emad Salem. You are going to see Emad Salem saying, "let's bomb things," and we're going to bring you people to testify on the witness stand who said, Emad Salem said, "let's bomb things." Emad Salem said, "let's break somebody out of prison."

And you're going to hear, you're going to hear the testimony of these people on the witness stand right over here, and they are going to tell you, "I said to Emad Salem, you get yourself somebody else." But that is a pattern that year going to see.

Sayyid Nosair was acquitted of the murder of Meir Kahane, but he was convicted on lesser charges not involving Meir Kahane. And you will see a video that the government will play for you of a tremendous celebration which is part

of this outpouring on behalf of Mr. Nosair, tremendous celebration concerning the victory in the state trial. It was after that state trial that Mr. Nosair was sent to Attica.

Mr. Nosair, Sayyid Nosair, has been in prison since he was laying on the sidewalk with a bullet in his neck on November 4, 1990. He is wearing a suit today and we'll wear a suit everyday at trial out of respect for these proceedings, but you should know where he lives. He's been in prison. He's been in prison, which is a place where you can't bomb, you can't hurt, you can't, as the government said in its opening, recruit an Army. You can't recruit an Army from your jail cell, ladies and gentlemen of the jury. You can't do it.

And that make sense. We call that an alibi, ladies and gentlemen of the jury. He wasn't out doing jihad. He was in jail. While it doesn't make sense to us, just like this, it's really not going to make sense once you hear the evidence from the witness stand, because when Sayyid Nosair was in prison he couldn't go to the bathroom without the Federal Bureau of Investigation knowing about it. Every single thing that he did was monitored by the Federal Bureau of Investigation. Every phone call that he made from Attica prison was tape recorded. Every single one, calls from Attica to his wife concerning the most

intimate matters of their marriage were recorded.

Every piece of mail was opened. His cell was searched constantly. Every step was monitored by the FBI. Every brother who came to visit this brother got another visit after that visit was over, and that other visit was a visit from the FBI, because if you visited brother Sayyid Nosair, if you visited your brother in trouble, the FBI knew about it and they went to see you afterwards. The visitors lists where people had to sign in at Attica, went right up to the FBI office in Buffalo.

Some of the visits, because they were tape recording every phone call, because they were opening every letter, the FBI knew about a lot of the visits before they even happened. And it was with this prison security that the government is saying Mr. Nosair recruited an Army. It doesn't make sense, ladies and gentlemen. He was under the security that was unprecedented.

In the indictment the government has alleged that there is a very, very important meeting that takes place. It takes place on May 21, 1993, and it takes place between Sayyid Nosair, Emad Salem, and the gentleman here, another brother who came to the aid of a brother, Siddig Ali.

Now, the visit is important, ladies and gentlemen, because after the World Trade Center was bombed this is the only contact that Sayyid Nosair has with Emad

Salem. This is it.

I got a videotape right here, ladies and gentlemen. The equipment was poor, so we don't have the audio portion of it, but we got the video. I'm the one who's going to play it for you. I'm the one. Because it's going to be played to show you that from your prison, from his prison cell in Attica he wasn't recruiting an Army of terrorists because he couldn't.

You're going to see in this visit that what Salem tells you, look at the tape, Salem is here, Nosair is here, over here is another prisoner, here is that prisoner's girlfriend, over here is another prisoner. Here's that prisoner's mother. And the government is going to try to tell you that that was where Nosair approved plans for a big terrorist plot.

You will hear evidence that Sayyid Nosair hardly knew Emad Salem. Emad Salem under the guise of being one of these brothers who visited their brother in trouble went to visit Mr. Nosair four times. Four times, that's it. Four visits, two telephone conversations. That's the extent to which Mr. Nosair and Emad Salem had contact. That's it.

The government will tell you that Mr. Nosair confided in Emad Salem, poured his heart out to Emad Salem. And when you hear that evidence, consider Sayyid Nosair did not know Emad Salem. Emad Salem was one of the brothers,

one of the many brothers who visited him in prison. The men have met only four times.

Now Mr. Khuzami said in his opening statement that Salem had no problem tape recording. That wasn't his problem. His problem was testifying. He had no problem tape recording. You will learn in this trial that there are no tape recordings of the meetings in Attica prison.

You will learn at this trial that even though the FBI knew these meetings were taking place there were no tape recordings. And you remember in the government's opening this morning where they said, Salem is going to be corroborated by tapes, by audiotapes, and videotapes. You ask for the corroboration of what Mr. Salem is going to say happened in Attica prison. You ask for it, ladies and gentlemen. It doesn't exist.

Oh, he had no problem taping and he knew a lot about tapes from his background, but when it comes to what he's going to say Mr. Nosair said to him in Attica, when it comes to what he is going to say about Mr. Nosair recruiting an Army of terrorists from his jail cell in Attica, you ask about that corroboration, ladies and gentlemen.

And the answer is that, you'll just have to trust Mr. Salem. You'll just have to trust him. And when you listen to Mr. Salem testify on that witness stand over there there's an old truth test that you should use. It goes

something like this. Would you buy a used car from this man? If you needed a car to get you to work on time, is this the guy that you would buy the car from? If you needed a car so that your family was safe, is this the guy that you would buy the car from?

The government says he's being paid a million dollars. That's just from this government. We don't know about the other government. We know that he lied under oath in something as small as a traffic case. If that's what he does in a traffic case, what do you think he does when the big bucks are at stake, ladies and gentlemen?

You judge his testimony. You will find him to be a vial, sleazy, disgusting human being. After a day of him on the witness stand right over here when you get home before you kiss the kids, take a shower.

The FBI threw him out. That's not something you heard about in the opening statement. Well, he really didn't, he didn't mind tapings, but, you know, he didn't want to testify. No, they threw him out. They knew he was a liar and they rejected him. He didn't withdraw.

It took the bombing of the World Trade Center to bring him back. When the FBI and the friends in a frenzy said, what will we do, what will we do? Well, this guy Salem, he's a liar, but he's our liar. Bring him back. Maybe he could help us out. Maybe he could do something.

He knew the people who bombed the World Trade Center. He knew those terrorists, those three terrorists that the government told you about, Mohammad Salameh, Mahmud Abouhalima, Nidal Ayyad. Salem knew them, because they were all people, brothers from the community who rallied around Sayyid Nosair, so he knew them.

So they figured they'd bring him back. And they brought him back, and when you think, and when you consider the testimony concerning what he did when the FBI brought him back, remember the testimony that we're going to show about how Emad Salem acted during Sayyid Nosair's state trial.

You're going to hear testimony, as I've already told you, from people, good brothers from this Muslim community, Nosair -- excuse me -- Salem saying to them, "let's break brother Nosair out of prison." And you're going to hear testimony from people who say, "hey, you got the wrong guy." Think about how he operates during Mr. Nosair's state trial when you think about how he operated after World Trade Center.

There's another thing that the government is going to tell you about. They are going to tell you that terrorists who bombed the World Trade Center went to visit Sayyid Nosair in prison, and they're going to pick out those three, Nidal Ayyad, Mahmud Abouhalima, and Mohammad Salameh.

As I've stated earlier, this was part of a tremendous outpouring by the community. You will hear testimony, ladies and gentlemen, that posters were put up at mosques all over New York City saying, visit your brother, Sayyid Nosair, visit your brother in trouble, visit your brother in prison, because that's what Muslims do. And at the Friday service, the Muslim Friday service, the juma, would be made, visit your brother, Sayyid Nosair. He needs to have visitors.

And the brothers responded. Husein Safan responded, Jamal Khashoggi responded, Tariq Kattaria responded, Mohammed Abdelk responded.

Abdel Hamed Mohamed responded, Kaled Ibrahim responded, Mohssen Amad, responded, Ahmed Faraq responded, Yousif Ayyad, Ahmed Abdel Sittar, Abdel Rezika, Hisham Mufad.

E. N. Elsayed, Hashem Ellawendy, M. Mousan, Christna Yousef, Shawkut Wehidy, Abdel Samy, Ahmed Hussein, Abdel Ramaz, Sayed Farid, Ali Ibrahim, Salam S. Ali, Attiad Mohamed, Medhat Abdelhalek.

Abdalhared Abdou, Nasser Ahmed, Moustafa El Nore, Ali El Shenawi, Hesham Eltagouri, Ziad Hassan, Alla Ibrahim, Sala S. Ibrahim, Abdel Mahroud, Massaud A. Salem, Nakeeb Shaeen, and many others whose signatures are difficult to read.

These brothers responded, but you're not going to hear about these brothers. You're going to hear about three brothers because those are the brothers who bombed the World Trade Center.

The government will pick them out because they visited Nosair in prison. You won't hear tapes of their visits. You won't hear any evidence about the visits. You'll just see the visiting lists. And because the World Trade Center bombing will be so vividly emblazoned in your mind the government will just ask you to think that they were up to something no good. But remember when you hear about them visiting Sayyid Nosair, that they were just three people out of an entire community that rallied to the support of this man.

But you'll hear about those three people, and we have a name for that. We have a history concerning that and it's called guilt by association.

Well, yeah, he knows these guys. These guys bomb the World Trade Center. These men prayed at the same mosque as Sayyid Nosair. These men visited Sayyid Nosair.

These men bombed the World Trade Center. He didn't. Nobody here did. That's put into the case to show guilt by association.

There are many reasons why people will visit somebody in prison, many different reasons. Remember that

when you evaluate that testimony.

Ladies and gentlemen, this is a very big case. We have reporters over there. Sitting in front of them you got the sketch artists. You got enough marshals to film a John Wayne movie. It's a big case and the challenge to you as jurors is to ignore all that, ignore the reporters, ignore the sketch artists, ignore the marshals, and stick to the evidence. That's what I'm asking you to do.

Try the case like any other. Focus on the evidence and focus on the lack of evidence and focus on the quality of the evidence. That is my challenge to you, ladies and gentlemen.

And that evidence will prove that Sayyid Nosair was not engaged in a war of terrorism to bring the United States to its knees. The evidence will show that Sayyid Nosair and the United States of America were on the same team, and that team was not for jihad here in America. That team was for jihad in Afghanistan.

When you stick to the evidence listen carefully to the evidence concerning the lack of eye witness testimony, the medical evidence, the physical incapability of Mr. Nosair killing Meir Kahane, his prior acquittal for the murder of Meir Kahane.

MR. MC CARTHY: Objection.

THE COURT: Sustained. That is not evidence. Go

ahead.

MR. STAVIS: When you stick to the evidence, stick to the evidence about the prison, the prison security, how Mr. Nosair was incapable of recruiting an Army which has been alleged, or as the indictment says, playing a key role.

Stick to the evidence in this case. And the evidence in this case, ladies and gentlemen, the evidence in this case is going to show you that this indictment is not worth the paper that it's printed on. Thank you very much.

THE COURT: All right. Ladies and gentlemen, we're going to take a short break. Please don't discuss the case. Leave your notebook behind. We'll resume in a few minutes.

(Jury not present)

THE COURT: The next two openings as I understand it are those in behalf of Mr. El-Gabrowny. Is that correct, Mr. Ricco

MR. RICCO: Yes.

THE COURT: And in behalf of Mr. Siddig Ali.

MR. TRITZ: Correct, your Honor.

THE COURT: We ought to be able to do those. So those you should be ready to go ahead.

Ms. London, did you review the letter that your client gave me and that I asked my clerk to give you?

MS. LONDON: Yes, I have, your Honor.

THE COURT: Is there anything that you think you need to tell me about that or about any other matter?

MS. LONDON: No, your Honor.

THE COURT: Have you sought to confer with your client?

MS. LONDON: Your Honor, it's my understanding that Mr. Elhassan does not wish to confer with me.

THE COURT: I understand, but have you sought to?

MS. LONDON: Some effort was made through people.

THE COURT: Fine. Thank you very much.

(Recess)

(Continued on next page)

(In open court; jury present)

THE COURT: Ladies and gentlemen, you will now hear an opening statement in behalf of Mr. El-Gabrowny, from Mr. Ricco.

MR. RICCO: Thank you, your Honor.

Good afternoon.

JURORS: Good afternoon.

MR. RICCO: I have waited a long time and I have thought a lot about what it is I was going to say to you. In a case like this where there are so many people involved, you sit here for hours and hours and hours. And I said to myself, I wonder how you feel as jurors. It is hard to have people talk at you, and you have been talked at now since around 11:00. I am going to be a lot less brief than the people who have preceded me, though I think what I have to say is equally important. But if I stay too long, juror 159, just give me the nod and I will stop.

This is an opportunity for me to tell you what I think the facts in this case are going to show. Naturally, it's different from what the government says. That's what the adversarial system is all about. It's the only opportunity that I'm going to have to speak to you for a long time. Judge Mukasey has said the case was going to take six maybe nine months, maybe even longer. Based on some of the things we have heard so far, we may be here

quite sometime.

So it's important that I at least tell you what I think is going to come and I want to ask you to think about what's going to be said to you in a certain kind of way.

You're all here in this case for the first time, and the difficulty about that is that with the different names and the faces and the El-Gabrowny and the Siddig Ali and the different names, it really doesn't come together, and I think it is going to take a week or two of sitting here before you are able to distinguish people, individuals.

I am speaking to you because I represent Ibrahim El-Gabrowny. Some of you can't see me sitting over in that corner. I know that because I can't see your face and your face, I can barely see you, I can't see anybody over there. So maybe you see the top of my head. But I'm here, and when I rise in the case it will be for the purpose of cross-examining witnesses and presenting evidence on behalf of Ibrahim El-Gabrowny.

There are going to be a lot of days in this case that are going to be long, just like this. You're going to be emotionally drained. During the trial, I guarantee every one of you that there are going to be times that you are going to be angry and bitter towards everyone seated at these tables, maybe both the government and the defense. The tragic loss of life at the World Trade Center and the

heroism that took place are going to leave an impression in your hearts and in your soul and in your mind that is going to stay with you forever. There is no denying that. It's going to happen.

But what I'm going to ask you to do is that you do not succumb to your emotional response to what is being presented and that you be guided by a larger, a greater spirit. And that spirit is something that was fleetingly talked about during jury selection. But the spirit is to see to it that you are all witnesses, to see to it that the truth is revealed about Ibrahim El-Gabrowny. That's what I am asking you to do, and it's a tall, tall order.

All of the different lawyers are going to come up and they are going to make different types of arguments to you. And after awhile you're going to say who's coming next, what's he going to say and what's this one's story, what's that one's story.

Listen, the government indicted all these men together. Nobody says they are together. So when I rise and I sound a little different from Mr. Stavis and I sound a lot different from Miss Stewart, it's only because we are different people representing different people, and it's very important that you have the type of perseverance that allows you to hang in there to hear what it is that comes from the fellow who the top of the head that you see.

Let me get to the point. I have to tell you about who Ibrahim El-Gabrowny is, because if I don't tell you about who Ibrahim El-Gabrowny is, when you hear testimony it just won't make sense. Now, a lot of lawyers have been on this case for a long time, so when they get up here, they start talking about things that you don't know what they're talking about. It's only because they have so much to say, you almost have to start somewhere. So you won't understand why Ibrahim El-Gabrowny was, as the government calls, Nosair's trusted lieutenant, unless you know who he is and where he came from. He had to do something before he came into this courtroom. So I am going to briefly tell you a little bit about him.

He grew up in a small town in Egypt called Port Said. Port Said is a port town. His father was a cabdriver. He had 10 children. Nine of those children survived. Every one of Mr. El-Gabrowny's children with the exception of one have college degrees. Engineering, science, medicine. One has a Ph.D in dentistry. This is Ibrahim El-Gabrowny's background. This is where he comes from. And his father is an old man still living in Egypt, as far as I know, still driving that cab. But he raised his boys and his daughters with education and hard work, something that we all are familiar with.

He has a distant cousin, and the distant cousin

is seated right there. His name is El Sayyid Nosair.

So when you start talking about trusted lieutenants, you need to know the little bit of background. You're going to find out that Ibrahim El-Gabrowny went to college in Egypt and that like many people escaping oppression in Egypt -- and I'm not going to go through all that because we got enough of that right here to understand what the point is trying to be made -- he came to the United States for the better life. He came here, he got married. He's got six children. They are seated here in the courtroom, or at least four of them. He worked, the whole nine yards. He has a cousin who came to the United States for the same reasons, but they took different paths when they came here.

Ibrahim tried to get into the engineering field, but like other people who come here, he finds that the opportunities that are promised for many are not necessarily open for everybody. So what did he do? He did his own thing. He started engineering on his own. He started a company to build buildings. And he worked as a carpenter. He tried to apply his trade and his skill as best he could.

You're going to hear a lot about a mosque, and the name of that mosque is called Abu Bakr Mosque. You are going to find that Mr. El-Gabrowny went to the Abu Bakr Mosque to pray, because praying is an important part of his

life -- you've heard a lot about that so far. And at this mosque he met a lot of people.

What you are going to find that the immigrant community is a small community. So that when people come from another country, if they're Puerto Rican they used to live in East Harlem, sometimes they live in the Bronx. If they from South Carolina, they live in a certain section of Harlem, if they from North Carolina, they live in another part of Harlem. The same is true from the Egyptian community. You will learn that the Egyptian community is a small community, and even though they practice Islam, they go to a particular mosque. It is out of this mosque, it is out of this relationship with his cousin El Sayyid Nosair that Mr. El-Gabrowny is seated in this courtroom today.

One of the things that the facts are going to tell you, no question about it, you are going to learn that he is a beautiful man. That's you're going to learn about him. You're going to learn that he never raised his hand to anybody, at any time, at any place. And it's almost a blessing that Emad Salem was involved in secret tape recordings, because in those secret tape recordings -- because if they didn't exist the only -- you would just have to believe me, which is -- but in his secret tape recordings you get to hear Ibrahim El-Gabrowny talking to Emad Salem, and Emad Salem is pushing his game with Ibrahim, and Ibrahim

is saying no, no, no, no, no.

So why is Ibrahim El-Gabrowny in the courtroom?

Well, in November 1990, Rabbi Kahane was shot. El Nosair was charged. In his wallet was an identification card with Ibrahim's address.

Ibrahim, as you will find from the witness stand, on the night that it happened Ibrahim and his wife and Nosair's wife happened to be on the telephone having a conversation about family affairs, when they heard, the wife saw something on TV. And she said I think something happened to Nosair, I think I saw something on television. She got off the telephone. They decided to watch the news and then call back to one another. Nosair's wife was hysterical. She didn't know what was going on. She didn't know how he got shot or what the problem was.

Ibrahim decides, stay there in Jersey. He took his then four kids and his wife, put them in a car, and they drove over to New Jersey. They picked her up and brought her back to Manhattan. She was very afraid, she didn't know what was going on. When they got home, there were two New York City detectives at Ibrahim's house. They spoke to him for a few minutes and they asked him to go to the precinct, which he willingly did, along with his wife. When they got to the precinct they asked him a lot of questions about Nosair's background, who he is, do you know this, do you

know that. They told him whatever they could tell about Nosair and his background.

The next day they were allowed to see Nosair. Now the trouble starts.

Nosair is in the country, contrary to popular belief, does not know a lot of people. He has one relative other than his wife, that's him. He is from a background of strong families. He grew up in a place where family still means something, not like us here in New York where we go out on the subway and people get their brains knocked out next to us and we pretend like we don't see it. He is from a community where family still means something, and when his cousin was in trouble he said I'm going to have to get him some type of lawyer. Now, this well-heeled, well-organized, well this, well that organization which the government talked about, you going to find out Ibrahim El-Gabrowny didn't know any lawyers at all. And a person that he met named gas Jamal Kashoggi, said I know a lawyer, and they went to the lawyer in Brooklyn and they sat down in his office in Brooklyn, and the lawyer said if I represent Nosair it's going to cost you $50,000. Ibrahim El-Gabrowny said $50,000? The guy said 50,000, and if you bring me cash I might be able to work something out for you. OK?

This is what the evidence is going to show, and the evidence is going to show that Ibrahim El-Gabrowny had

no way possible of getting $50,000 in cash.

The lawyer agreed to take the case as long as they promised that they would pay the money, and on his way back to his work at the Alkifa office, also known as the Jihad Office, where Mr. El-Gabrowny was working putting up walls, dry wall, which is what he does, the brothers that were there working said here's $5, here's $10, I hope everything works out for your cousin. And from that came the Nosair Defense Committee, his involvement in Nosair's case.

So when people stood in front of you and said he was one of his conscientious followers, let's be clear what we are talking about here. He helped his cousin get a lawyer to fight the case.

Now you know in our society if you go to a person who is in trouble, troubles will come knocking at your door. If you go help somebody who is in trouble, you better have your house in order, because trouble is going to come knocking on your door. And trouble came knocking on Ibrahim El-Gabrowny.

The committee raised a lot of money for Nosair, because the issue became larger than Nosair's guilt or innocence. You're going to hear in this case that there was clashes out in front of the courthouse, Jewish groups on one side, Islamic brothers on the other side. Newspaper articles, documentaries, programs, everything. I mean I don't have to tell you how a case creates a side show. Look what's going on in California. These cases have a way of creating their own surface, and many, many, many people were interested in Nosair's case. And three of those people were Mahmud Abouhalima, Mohammed Salameh and Nidal Ayyad, all three convicted in the World Trade Center case.

The case of Nosair also attracted another person. That person is a man who is going to take the stand. His name is Emad Salem.

Now, by the time Emad Salem gets on the stand you're going to have heard so many bad things about him that he might look good, okay? I'm not going to talk too much about Emad Salem. People speak for themself. Let's hear

what he got to say when he get here. Plus, I think some of the other lawyers, they won't pass that up, they going to tell you a lot about Emad Salem. I'm not going to dwell on it too much, because to me this case is about what Ibrahim El-Gabrowny did, and he didn't do nothing, and I want to focus in on that.

Now, the government says, Mr. Khuzami says that Ibrahim was Nosair's trusted lieutenant and that Nosair put him in charge of the escape, and Mr. Khuzami said that they had plans that would make you shudder, and what I'm going to ask you to do is sit in here and listen to the evidence of the escape plan.

If you sit through this trial for the next six, nine, twelve or whatever it takes, listen and listen to the escape plan that's going to make you shudder.

There are certain pieces of evidence that the government is relying upon in the hopes that you will convict Ibrahim El-Gabrowny, and I want to focus you in on those. One is that when the World Trade Center was bombed a van went down in the basement, and the person that rented that van had a New York State driver's license, and on that driver's license is Ibrahim El-Gabrowny's address. So the government says, to you, if Ibrahim's address was on that license, he must have had something to do with it.

The government is going to tell you that Ibrahim

El-Gabrowny had passports on him the day he was arrested. And what Mr. Khuzami said was that he was fighting with the police to keep them from getting the passports from him.

If you taking notes, write that down so when those two cops come in here and testify about what they were doing with Mr. El-Gabrowny, ask yourself at what point was Mr. El-Gabrowny fighting with them to keep them getting passports, because they was too busy beating him down to the ground. Just ask yourself, what was he doing to keep somebody from getting these passports?

What the government wants you to believe is this, Mr. El-Gabrowny had passports in his pocket that were Nicaraguan and had he had Nosair's pictures on them and his family, so you know they were up to something. And the something that the government says that Mr. El-Gabrowny was up to was wage waging war against the United States, opposing the United States' authority and administration by force, and forcefully conspiring to hinder the execution of the laws of the United States.

The passports, the driver's license is what the government says establishes that Mr. El-Gabrowny is guilty of those charges. Now, I want to tell you something about what the evidence is going to show about the driver's license. I have a lot to say, little time to say it. It's simple.

A lot of people said when they heard about the World Trade Center, why did that person for lack of a different word go back to the leasing place to get his money that he left as the deposit? That question is still out there. Why did the guy go back to get his money? And the government is going to say to you how fortuitous it was that he did, because if he hadn't gone back, we would never have caught the guy. I'm glad he went back.

If the World Trade Center bombing was planned and planned well, you're going to find that the person who used that license with Mr. El-Gabrowny's address had many forms of identification in his home. Agents are going to tell you about that. They are going to tell you he had identification of a guy named George Azari. They are going to tell you he had the identification and papers, different variations of his name.

You'll also going to find that other people involved in the World Trade case had driver's license with their own address, but the person that was sent to get the van was selected. He was selected because his driver's license didn't come back to him. He didn't give them his true address. He gave them the address of a mosque and Mr. El-Gabrowny's address. The van was rented in Jersey. Mr. El-Gabrowny lived in Brooklyn. They rented it to him anyway.

Now, something happened when he rents the van. The guy brings the van back the next day and says, the mirror is broken. And he says, so why would the guy bring the van back when the mirror is broken? Now, we talking about the World Trade case.

He brings the van back because it's about detection. He gives a false address because it's about not being detected. It's like sending a letter to you from me but I use somebody else as a return address. The letter, if something goes wrong, is not going to come back to me. It's going to go somewhere else. And that was the whole purpose of the person who rented the van. The person put the blame on Mr. El-Gabrowny, a person in the community who knew nothing about it, a person who was respected in the community, not for his acumen in Islam, but for his givingness in the community, which is one of the things that you hear about him in the trial.

The person did that intentionally to give them enough time to make a move, and you're going to find from the government witnesses when that fellow was arrested he had his plane ticket already in his pocket. You're going to find that he did give his right address, but he gave his right address after he came back, after he decided to get his money, because at that point he thought he was over.

He didn't know that the police department took

that piece of the van out. He didn't know it, and that they had him. He thought he was over, because otherwise there is no reason to go back in a well planned, well financed, well motivated international organization. He went back because he thought he was over, and he didn't want the $200 or whatever it was in the van left to go to Mr. El-Gabrowny. He wanted it for himself.

Now, I mentioned that to you and that's out of the abstract, and I'm sorry it's out of the abstract, but I want you to think about it, because the government says that the license with the address shows that Mr. El-Gabrowny was involved, and it does not. It shows that he was set up. It's so simple, it's right there in front of your face.

The guy brings the van back to get the mirror on the van fixed. If he's going to blow the van to the high heavens, what difference does it make if the mirror is broken? The difference is he doesn't want to be driving through the tunnel and have a cop pull him over, and if a person is thinking like that, of course he's going to send him to somebody else. He's not going to send them back to himself and who's a better patsy? Mr. Ibrahim El-Gabrowny.

Now, you're going to find that he's well respected in the community. You're going to find that his respect comes from the fact that he prays every week at the mosque and that he gives to the mosque. You're going to

find that Mr. El-Gabrowny built an extension to the mosque. He's a contractor. You're going to find that his struggling business Ibrahim Construction Company, is little more than a lawyer who can't get a job somewhere else, decides, I'm going to go for it myself, and see what comes out.

You're going to find that the community respected Ibrahim, which is part of the reason why they gave. Now, I'm going to move away from that, try to keep going and try to keep you interested in these thoughts, because they are in the abstract. I want to talk about the passports.

It's not important what I go in my pocket. What's important is where it came from. And what you're going to find is that Emad Salem gave the passports to Mr. El-Gabrowny. Let him get up there and deny it. It doesn't matter. I don't care if he says he did or he didn't. It's going to be obvious to you that it won't matter if he comes up with one of his slick stories and he's got one for every occasion. Okay, listen, in this case early on Mr. Salem saw opportunity, what you're going to find is that Mr. Emad Salem was like an old slave catcher in the 1990's. I'm not just saying that for rhetoric.

You're going to hear it from his own tape recordings. He had a friend down in INS, and what Mr. Emad Salem was doing is he would make friends at a hotel where he was working, get to know about people and their background

and call his friend up at the INS to come get them. That's what he did. And he used to get paid for that.

He had connections with INS. The government says quote-unquote he kept his contacts with the Egyptian intelligence. Huh? What does that mean? That means he was still down. He's still had the ability to do what it is people like him do very well.

Now, I'm going to explain something to you. This is an important case, this is a historic case, and the one thing I don't want to happen in this case is that 25 years from now somebody watching a documentary and they say, "God, if I had known that back then I would have voted differently."

Because see, facts as the government talked about it, and as lawyers like to talk about facts, sometimes facts get in the way of the truth. Forget about the facts. Focus on what the truth is. Often times facts reveal the truth but often times they obscure and they hide the truth.

By what you going to find about this case, about these passports is that they were legitimately obtained Nicaraguan passports. But that they were obtained by fraud. So that means whoever got the passports had a connection down in Nicaragua, who can use their contacts or as the government calls, relationships, for the purposes of getting these passports. What were the passports for?

I'm way out of context, but try to stay with me. Emad sees Ibrahim and he sees money. He sees green. He's going to get at that trial, and he's going to make him some money off that trial. And he goes to Ibrahim and the way you get to a person like Ibrahim is you talk about Islam, you talk about your love of Islam, and Ibrahim will invite you to his house, open his door up to you. You'll hear Emad Salem tapes say that Ibrahim's fish is so good you could smell it over the phone. This is the type of person that Ibrahim El-Gabrowny is. You know everybody knows the type. They are in everybody's community.

And he figures that Ibrahim is dumb enough to get involved with him, and he tries to play Ibrahim. And it's interesting to me that the government says that Ibrahim was kind of waiting for him in the United States to change America's policy. It's interesting to me that the government says that, because when you listen to his secret tapes, Emad is saying, "let's go take over Senator DAmato's office and teach them a lesson," and you know what the terrorist says? You know what Mr. El-Gabrowny says? "No, brother, that's not how we do it in America. If the Muslims want to make a change they got to register to vote and vote Al DAmato out of office, and that's a good idea." That's what's being said, not by me, not by the government, but between Emad and Ibrahim on the telephone.

Emad is talking to El-Gabrowny about the trial. He's trying to get him going, and the way you get people from the Middle East talking is you want to get the Jews going talking about the Arabs, and if you want to get the Arabs going talk about the Jews. And so Ibrahim knows how to play that game well and he feeds, trying to feed Ibrahim by goading him on, talking about the Jews are going to get you, and what you're going to find in this case there were a lot of death threats to Ibrahim and his family and Nosair and his family.

And so he tries to rile Ibrahim up by saying they're going to get you, they're going to get you. You got to arm yourself, protect yourself, don't let yourself get caught with your pants down. And Ibrahim is on the tape saying, "no, brother I'm going to put it in God's hands."

And then he goes back, because a con man don't stop one time, no, one won't do. He goes back and he gives him the rhetoric about the Jews, and the this and the that, and the this and the that, you arm yourself. And Ibrahim El-Gabrowny says, "no, brother I'm going to leave this in God's hands."

That's the man that the government says is a ruthless soldier who wanted to slaughter people. I don't know where they get that from.

I'm very curious to sit here in this courtroom

like the rest of you and find out.

I just spoke about secretly recorded conversations. You're going to find in this case that Emad Salem was taping the FBI. For what purpose? Let him tell you what it was for. Any excuse, he gives you. But he's tapings the FBI. For what? I don't know. He's taping Ibrahim El-Gabrowny.

Now, you're going to find out something interesting about these tapes. You're not going to like the way the FBI is talking on these tapes, I'm telling you right now, because the FBI is telling Ibrahim to do things so that the lawyers will never find out.

They're going to tell Ibrahim, the FBI agents are saying that they spoke with AUSA Dennis Curran and AUSA Mark Matthews, and they told them to set this thing up a certain way so that certain information would never go to the lawyers, so it can never be presented in front of a jury. They called it a Chinese wall. Took me about a year to figure out what they meant by that. I didn't like it when I heard it because it sounded dirty to me. A Chinese wall.

And what they did was they said, we're going to set up this little procedure to let you get your information, you give it to one agent, and we'll pretend like we're getting it from that agent. Now, that's Anthony Ricco talking.

You're going to hear that yourself in this case. If they want to deny it, fine, but you're going to hear it yourself. Whether or not you believe it or not, that's up to you, but that's them saying, that's agent Antochef saying, that's not Anthony Ricco saying it. And from these secretly recorded conversations you see who he is because he is struggling with the man. Now the government says, well, he was in charge of the escape.

There's thousands of recorded conversations in this case. There are thousands of recorded conversations from Attica, and not one of them tapes is anybody talking about breaking Nosair out of a jail cell, not one of them.

When you hear El-Gabrowny on those tapes, he's talking about children, family, the lawyer, did you get your transcripts, this is what he's talking about on the tapes but somehow the government says that he's a radical follower, a soldier.

The witnesses are not going to describe Mr. El-Gabrowny as a soldier. They are going to say that he's a father, a husband, a respected community leader, a beautiful son, an educated man with a gigantic heart and when the witnesses testify watch how their faces light up when they talk about Mr. El-Gabrowny.

Now, I say trouble knocked on his door because that's why he's here. When the World Trade Center blowed

up, was blown up, excuse me, listen, you know you're going to have a problem if you knew these people. And Ibrahim El-Gabrowny did know Mohammed Salameh, did know Mahmud Abouhalima. Fortunately in our country the person is not convicted on basis of who you know. Fortunately.

You're going to find that he really got to know them after the trial of Nosair, because people went every single solitary day, and Ibrahim became a focal point of it. You're going to see a crazy press conference with people charging up at the podium, and you're going to see Mr. El-Gabrowny standing there with his hands up asking the people to stop and to calm down and to calm down.

It is so much about this case, it is so hard to take all of this and put it in something that will be beneficial for you. I guess, in short, what you have to say is don't rush to judgment with Mr. El-Gabrowny.

Some of the evidence that you're going to see in this case is going to knock your socks off. You're going to see some of these videotapes and say, okay, all right. There's not a shred -- for word a that's always used by lawyers -- of evidence that has ever shown that Mr. El-Gabrowny has ever done anything to hurt anybody.

The evidence is going to show that, yes, he went all around the country to raise money for his cousin's fund, that he even went to Saudi Arabia to try to get money for

his cousin's fund to pay them lawyers and he had them with him.

Now, one final, a couple of final minutes. Again I want to go back to this Chinese wall. In the tapes you're going to hear just something like this. You're going to here the agent say to Emad, did El-Gabrowny mention anything about explosives? And Emad response is going to be, not yet. They're busy demonstrating and with TV, you know peaceful things before the trial, but nothing about violence at all.

That's what you going to hear Emad and the agent talk about. And almost a year later you're going to hear the same agent and Emad in a conversation, and he's going to say, the agent is going to say to Emad, did you ever tape anything between you an El-Gabrowny talking about bombs or stuff like that? And Emad is going to say, you told me don't.

Now, that can infer that there was conversations that he didn't record. Don't get caught up in it. This guy recorded everything. And Mr. Khuzami is right. He even recorded his prayers on cable orders. He's in there catching people and that's what he does. He's trying to get him to talk about anything he can if it will work. It just didn't work with him.

Now, this. I'm going to tell you this about Emad

Salem and I'm going to sit down. Emad Salem is a hustler. He's a pimp. He's a player. Mr. Khuzami was being nice to Emad Salem when he said, well, he just lied about, you know, his background in that trial. He lied about everything in that trial.

There's one thing that you find out about people in life. There's one thing to lie about somebody else, right? It's another thing when you lie about yourself to other people, because a person who's lying about theirself and who they are is easy for them to lie about you. That's very easy. You're going to find in that trial that Emad Salem lied about many things. He lied about his job at the hotel.

He wanted the jury to believe that he was the chief engineer. You're going to hear his boss say he was its engineer's helper and in order to get money from a car accident he had to build up his medicals, you know, personal injury. You got to have these injuries. You go to see the lawyer they take care of you, and you get paid.

But Emad Salem forgot that he was going to have to deal with those things that he built up, so he testified in that trial, I suffered from amnesia, and that was the answer that he gave. That's funny. You know you are allowed to laugh in here, because some of it is funny and you are allowed to cry in here, too. I think you're going

to do some of that, too.

But that's the type of man Emad Salem is. You give him a tough question he says, I suffer from amnesia. I bet you dollars to donuts that when he's being questioned by even Mr. McCarthy, Mr. Fitzgerald, or Mr. Khuzami or anybody else from the government, he don't say nothing about having no amnesia about nothing that was going on about this case.

But this is the type of man that he is. You're going to find him on the telephone with his sister in Egypt saying, I'm going to marry this American woman so I can become a citizen. Got a name for that. And you not going to be surprised to find out on the tape that he dropped her quick as he could. And you're going to find out that he dropped her so quick he didn't even bother serving her with the divorce papers.

You know what he did? He went to the lawyers office, paid the lawyer to get the divorce papers, showed up with another lady, signed the papers pretending she was his wife, so she could get divorced.

Now, this is the type of man that's coming in here. I don't care about his international connections with the CIA and all the stuff which you could never prove. You going to get to see him about real life things that we could touch and know about.

Roger Stavis talked about used cars and what not.

You have to decide months and months from now who you going to believe and I think this. I think when the trial is all over, when it's all said and done, you going to have to decide, do you believe Emad Salem or do you believe Ibrahim El-Gabrowny. And I think that the evidence in this case is going to show that Emad Salem don't have a chance.

Now, that's it. I could go on and I won't. Because I hate to sit there when other people are going along, just kind of I don't have the personality to sit still. I never did.

I will say this to you in all seriousness. Every time a lawyer rises before you, a lawyer who forgets to say something that they thought they wanted to say before, right, and I'm sure I will do that, I've done it already, I know it, you're going to hear, for example, that Mr. El-Gabrowny succumbed to Emad's pressure for him to arm himself. Mr. Khuzami forgot to tell you that when the police went into his apartment they seized ad 9 millimeter pistol. I don't think he forgot to tell you that. He didn't want it tell you that, because you going to find that Ibrahim El-Gabrowny went down to Police Plaza and filled out an application for a gun permit, not pretending that he need it'd for his business like Emad Salem said he need it for.

He gave the police department a three-page letter explaining why he needed the gun, and he wrote in that

letter of all the threats against him and his family and he had to be fingerprinted. And they printed him. As far as we know they don't just give a gun to anybody. They're supposed to do an investigation.

And based on the letter that he sent them, that Mr. El-Gabrowny sent to the Police Department, which you'll see as evidence, I'm sure somebody investigated and you're going to find that the Police Department gave him a permit for the gun, and he went and bought one gun, suggested by you know who, Emad Salem, ran out to get the gun, and it stayed in the house. And what you going to find is that in the seven months that Mr. El-Gabrowny had that gun, the gun was never fired or loaded. And that tells you a lot about a person that's buying a gun.

Stun guns is what the government told you that Mr. El-Gabrowny had in his house. Aren't you curious to know that he had 9 mile merit pistol? Stun guns. If he is going to take over America with stun guns, we don't have much to worry about. Okay?

What the government didn't tell you is that what they have in their possession is a letter from some guy over in Saudi Arabia who asked Mr. El-Gabrowny to buy him some stun guns and send them overseas, and the evidence is going to show when he found out it was illegal he refused to do it. When they come in the evidence you touch it you see.

This is the type of man that we're talking about, we're talking about Mr. El-Gabrowny.

THE COURT: Mr. Ricco, you're way over.

MR. RICCO: I'm sorry, your Honor, forgive me.

THE COURT: Thank you.

MR. RICCO: I will end, I will sit down, I will take two seconds. The government introduced the people that work with them. I will say to you that working with me on this case has been Mr. Frank Gonzalez, Mr. Michael Houston, Mr. Gary Nuave and Mr. Ali Karim.

Now, one remark, Judge, and I will sit down and I apologize to the Court.

You going to find that Emad Salem didn't try to hustle these brothers from Egypt. You going to find that he tried to weasel his way into El Taqwa on Fulton Street and the mosque uptown in Harlem, and you are going to find that those brothers seen through him like a piece of glass.

One of those men are going to come in here and testify. He trains people on how to use arms and Emad Salem tried to hustle them to thinking to taking a gun across state lines, and you're going to find that brother is no, no, no, no means no, no. You're going to find that he was going to subpoena him as a witness in this case and I don't care who calls him.

You're going to find that after he was met by

myself and other lawyers the FBI went to meet him again and wanted to know what he we wanted. That man is going to take the stand in this case. You're going to find that he had a hard time trying to sell his story to the brothers in the mosque in Fulton Street, and to the brothers up at Malcolm Shabazz, because they saw through him. But for a man with a big heart he took him too far.

Fortunately for Mr. El-Gabrowny the evidence in this case will show that he never ever agreed with anybody to wage war on the United States government, that he never, ever agreed with anybody to forcibly oppose the administration of the laws of this country, and that he never, ever agreed with anybody to hinder the execution of the laws of the United States.

And I've gone way over the time that I promised Judge Mukasey that I would not take. I apologize of course to the Court, and most important for taxing your time. But all of what I said has been important, and I'm not going to get up and have an opportunity to talk to you again for a long time. And I want you to know that I'm over here and I'm going to be over here fighting for Mr. El-Gabrowny.

Thank you very much.

THE COURT: Thank you, Mr. Ricco. Ladies and gentlemen, we're going to break for the day. Please leave your notes and other materials behind. Please don't discuss

the case, don't even think about the case until we start again tomorrow hopefully around 9:30. I have to tell you before you leave, everybody in the back will please remain seated and quiet until the jury leaves. Before you leave, just looking ahead, February 13 and February 20 those are two Mondays are both court holidays. We will not be sitting those days. So if you want to make long weekend plans for those weekends, you can start planning now. Have a pleasant weekend. We'll see you tomorrow. Again, please don't watch or read anything about this case. Good night.

(Jury not present)

THE COURT: Let's try to come closer to the time estimates, folks. That's not precedent for anybody else. It was obvious fairly early on that he was going to go over and so he went over, but I expect other people to adhere to the times that we agreed on. Does anybody want to review what they are?

MR. JACOBS: I requested an hour, your Honor, and with all due respect, your Honor, set the time going to need an hour, I timed myself. I'm about an hour.

THE COURT: All right, you've got an hour. Anybody else?

MR. BERNSTEIN: Judge, I said 15 minutes.

THE COURT: You had ten, correct. That's a fifty percent increase.

MR. BERNSTEIN: It's 75 percent less than you thought I was going to ask for originally.

THE COURT: You can have your 15 minutes. Seriously let's try to keep it within the time. See you tomorrow. Good night.

(Adjourned to 9:30 a.m., Tuesday, January 31, 1995)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
a/k/a "John Medley,"
CLEMENT HAMPTON-EL,
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

S5 93 Cr. 181 (MBM)

----------x

January 31, 1995
9:30 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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(Pages 1711 through 1714 ordered sealed by the court)

(In open court; jury not present)

THE COURT: Good morning. Before we start, one lawyer yesterday addressed a particular juror directly. I don't permit that. I want that to be the last time it happens. Let's get the jury.

MR. STAVIS: Your Honor, I would like to place something on the record --

THE COURT: Not now. Is it something that affects the openings?

MR. STAVIS: No, your Honor.

MS. STEWART: Judge, I just want to make you aware that today is the first day of Ramadan.

THE COURT: I am aware of that and so we are on the schedule. But thank you for pointing it out.

(Jury present)

THE COURT: Good morning, ladies and gentlemen. We are going to resume opening statements. We will hear now an opening statement on behalf of Mr. Siddig Ali from Mr. Tritz.

MR. TRITZ: If it please the court, ladies and gentlemen of the jury, my colleagues at the prosecution and defense table. Allow me to begin my remarks this morning by first taking a moment to introduce my client Siddig Ibrahim

Siddig Ali. He is known to just about everyone as Siddig. I am Mr. Jerry Tritz, and along with my colleague Mr. Daniel Felber, we will be representing Mr. Siddig throughout this trial.

Although there are many defendants seated at the tables before you, as the judge already told you, each and every one is entitled to separate determination, individual consideration and, indeed, a separate verdict. It is as if each was having his own separate trial, all at the same time. Mr. Felber and I do not speak for anyone else in this case, nor does anyone else speak for Siddig. Our belief as to what the evidence will show is ours alone, and it is meant to reflect only on your determination as it relates to Siddig.

Many people think that an opening statement should be regarded as a road map which will guide you in finding an appropriate resolution, and I imagine that in some sense that is true. But to me it is more like a set of directions, directions that if followed carefully will aid you and lead you to a just result, a result that accurately reflects the conclusions which should rightfully be drawn from the evidence. But like all directions, many times directions can be too complicated to follow and only serve to confuse.

So bearing this in mind, it is my intent to limit

my remarks this morning and not tell you everything that the evidence will show. Rather, I hope merely to trumpet those significant aspects of our defense so that during the course of this lengthy trial, as you hear and see the evidence come in before you, you will be able to assess the evidence with the knowledge that there is a point of view different than that of the government's point of view. In this way you will be able to scrutinize the government's evidence as you hear and see it, with the advantage of knowing in advance how we view that evidence.

What will the evidence show? Without pulling any punches and jumping right into the middle of the fray, I suggest to you that the evidence will reveal that the crimes Siddig is charged with have all been masterminded by a foreign government and its agents, who targeted Siddig and other defendants in this case as enemies of that foreign government.

Further, the evidence will reveal that that foreign government is the government of Egypt and that its agent was a man known as Emad Salem. He insinuated himself as sort of a double agent within the FBI, for the express purpose of pursuing and punishing those who were perceived to be enemies of the Egyptian state. In particular, the sheik, who is an opponent of the Egyptian government, as well as other Sudanese nationals such as Siddig, whose

country, the Republic of the Sudan, is in a virtual state of war with the secular Egyptian government now in power. To prove that Emad Salem is an agent of the Egyptian government will be shown by tape recorded conversations recorded by none other than Emad Salem. You will hear him speak in his own words to his handlers in Egypt, in obvious coded language.

Siddig, I suggest the evidence will show, fits all of the criteria that will be appropriate to this man Emad Salem. Siddig is a Sudanese Muslim. He is a follower of the sheik and a strict practitioner of Islam who believes in the propriety of Islamic law. He sometimes acted as the sheik's translator and it was in this perfect position, as far as Emad Salem was concerned -- let me put it this way -- that he was in a perfect position as far as Emad Salem was concerned, because if Emad Salem could get close to Siddig, could the sheik get far behind? If he could entrap Siddig, could the sheik be far behind?

I can't tell you how many times I have gone over this summation -- I mean the opening -- waiting to give it to you. Yesterday I sat here thinking I was the last one to go at the end of the day and I went over it many, many times. Each time I reviewed it, I said to myself Jerry, you understand it, do you think they will?

I come away with not the most favorable answer.

I have thought about it a great deal and I think I have come to a conclusion why it is maybe difficult for you to understand everything that I want to say today. It is hard to understand our view of the evidence without understanding what our defense is.

So right here at the beginning of my remarks, let me tell you straight out: Siddig Ali's defense is that he was entrapped. What does that mean? The law in this country says that even if you have engaged in conduct which is condemned by statute you may not be guilty if you were in fact entrapped into doing it.

What that means is, if it was a government agent and he was the one who had the idea and he is the one who persuaded you and got you to do it, then you may not be guilty.

When we allege through the proof that we were entrapped, then it becomes incumbent upon the government to rebut that beyond a reasonable doubt, by proving that Siddig was in effect ready and willing to commit the crime, that he was, as we say, to use a legal word, predisposed. So that's what we are all about here. We are through the proof going to be alleging that we were entrapped, and the government will try to show through the proof that he was ready and willing to commit these crimes, that he was predisposed.

Having said that, and having talked a little bit

about what Emad Salem's motive is, that he was here engaging in this conduct as an agent of the Egyptian government, let me also say that Emad Salem had indeed additional motives, and one of those motives was that ugly yet driving motive of greed and self-interest. Indeed the evidence will show that Emad Salem made extortionate demands upon the FBI for large sums of money, totaling in the area of $1.5 million that he wanted in return for what he was going to do for them. This was the kind of money that he was demanding in return for the services that he said he could render. But like any good business, the FBI said that payment of this money would be contingent upon results, that you had to produce arrests before we are going to pay you anything. So Salem had first to convince the FBI that his targets were also the enemies of the American public, and then produce bodies suitable for arrest, before he could be considered to have earned any of his money.

Again, there are scores of tape recorded telephone conversations between Salem and members of the FBI wherein they make it clear to him, and I suggest it will be extremely clear to you, that Salem's compensation was directly tied to arrests made. No arrests, no money. It's against this background that Emad Salem set about his manipulating and entrapping of Siddig.

I don't mean to imply by what I have said about

the evidence thus far that you should believe that the government or the FBI had any great faith in Emad Salem themselves. To the contrary, the evidence will show that prior to the World Trade Center bombing, the FBI had its own questions about Salem, and in fact threw him out and refused to work with him, because they had determined that he was deceiving them and that he couldn't be trust trusted.

But this was all changed after the World Trade Center was bombed. After that event, the FBI was under great pressure to produce results, and despite the fact that Salem himself had been considered a suspect in that bombing, the FBI allowed themselves to be taken in, and took Salem in and allowed him to resume his dastardly work.

How will we prove this to you, the ladies and gentlemen of the jury? We will prove it to you by the audio, video and other physical evidence that were produced for the most part by the government themselves, the government and their agents. There was a lot of taping done in this case, some of it done at the request of the government and some of it done without the knowledge of the government. If the FBI didn't trust Salem, he didn't trust them either, and he tape recorded his conversations with members of the FBI, without their knowledge. This secret taping allowed Salem to use his conversations with the FBI as sort of a club to aid him in his extortionate demands.

But it also simultaneously provided him with the opportunity to better brief his spy handlers in Egypt to whom these tapes, these secret tapes were eventually sent. And you will see that in the evidence. As the trial progresses you will hear these tapes, and I suggest to you you will find them extremely informative. The secret tapes made by Salem contain conversations which FBI agents conducted themselves in less than exemplary fashion.

Other tapes demonstrate that Salem while working for the government transferred information to Egypt on a continuous basis. Indeed, the tapes demonstrate that Salem, while working for the United States, was conducting what might be considered operations on behalf of a foreign power right here on U.S. soil. Yet no action was taken against Salem. To the contrary, he is the government's star witness in their attempt to brand Siddig a treacherous criminal, and upon whose word the government would have you rely to convict this man.

But what will all these tapes not show, not show? They will not show the most crucial time in the relationship between Siddig and Emad Salem, the time when they first got to know each other and Salem's manipulation, provocation and inducement took place. During this period there were no tapes made or at least there are none available now for you to hear.

As to the most crucial period of time in the relationship between Emad Salem and Siddig, you will only have Emad Salem to rely on, and I suggest to you that he can not be relied upon. As the government felt compelled to tell you yesterday in their opening statement, he's a liar. If for no other reason, he lied in a civil accident case. If he would do that there, what is he capable of doing here?

I suggest these are all important factors that will come forward with the evidence, that you should give great consideration to. He and only he was in control of the taping during the entire time he taped Siddig. He had the ability to tape or not to tape, to turn the switch on or to turn the switch off, as he and only he deemed fit.

But for the most crucial period of time prior to the first government-sanctioned tape recording made by Salem, for that period prior to that tape, he claims there are no tapes, neither FBI nor his own. This is despite the fact that he had already set up an elaborate taping system in his own home. Indeed, some of the tapes that you will hear in this case predate, came before his relationship with Siddig. Yet even though he was engaged in taping prior to meeting with Siddig, during the first two or three months of their relationship, he will claim that he did not make a single solitary tape to support his position.

This is just unbelievable, I suggest, and so is

this that the government told you yesterday.

The government in their opening said that the proof will show that Salem was approached to make bond. What a coincidence. The man who I suggest the evidence will show was an Egyptian government agent, the man who has military training in just such areas, the man who has a real interest in doing this, he is the one that, coincidentally, is approached to make bombs. I suggest to you that that is just unbelievable. It is just too fortuitous. It is something that if the man who told you this had a pristine background you might be willing to accept it. But I suggest to you that the evidence will show that Emad Salem is anything but that kind of person, and he is not a person who you can accept this kind of coincidence from.

So it is after that point when Siddig is firmly on board as a member of what we suggest was Emad Salem's plot that for the first time you are going to hear Siddig on these tapes. But by the skillful manipulation of when and where to tape, Salem has eliminated any possible chance of you hearing, any hesitancy or refusal to participate on Siddig's part. But the government's own evidence will reveal that Salem pushed and pushed Siddig, by the use of insidious forms of manipulation, through each and every step of the crimes charged in this indictment.

I am going to go through a short list. The list

is much longer but I am, again, trying to keep my directions brief. I am only going to go over a few of them with you.

It was Salem, Emad Salem who continually urges Siddig to stop talking and commit to action. He relies on Siddig's strong religious background and constantly invokes the name of Allah to get Siddig to do Salem's bidding. It is Emad Salem who volunteers to construct the bomb. It is Emad Salem who volunteers to get the timer. It is Emad Salem who volunteers to get the detonator. And it is Emad Salem who finds, rents and virtually pays for this warehouse in Queens where he intends to construct the bomb. And it is Emad Salem who controls the access to this warehouse. He is the only one with the key. Salem instructs Siddig as to what bomb ingredients should be purchased. But when Siddig is unable to procure the ingredients, Salem himself obtains. Salem urges Siddig to involve others by constantly claiming that he needs more people to help and that Siddig should get more people to come on board. And it is Salem who urges Siddig to obtain a weapon. And the list goes on and on and on.

The government will spend many weeks over the next few months in an attempt to prove that Siddig did this and Siddig did that. Months will be spent proving what was done, when it was done, where it was done. But I suggest to you that the government will not be able to prove that

Siddig would have done these things without the intervention of Emad Salem.

What is important in this case is what I describe as the why, W-H-Y, the why. It is not the only case against Siddig, but it is absolutely critical that the government prove that the why in this case was not the action of their informant Emad Salem, and it is in this area, in this area exactly, that the government's case will fail. They will be unable to prove beyond a reasonable doubt that Siddig would have ever committed these crimes but for and without the pressure, manipulation and inducement of Emad Salem.

Now, the judge, after the conclusion of these opening statements, I believe, will inform you in a preliminary charge what the law is on this important issue in this case. It is an important issue, this issue of entrapment, certainly for Siddig. He will tell you that once an individual asserts through the proof that he was a victim of government entrapment, for example, that it was the government's idea to commit the crime, that it was the government who did the persuading to commit the crime -- when I say the government, I mean Emad Salem, who was the agent of the government. I don't mean to say that anybody sitting at the government table did that. But again, if it was Emad Salem that did the persuading to commit the crime, it is up to the government to prove beyond a reasonable

doubt that Siddig was ready, and willing to commit the crime before the inducement by Emad Salem.

Why did Siddig do these things? Did he do these things because he was ready and willing? Or was he persuaded by Emad Salem? Was it Emad Salem's idea or was it Siddig's idea? I submit to you that the proof why is the most important proof. Indeed it will be the most contested proof in the case against Siddig. Because from the very outset, and I think this is the very outset, we will not deny that the evidence will show that Siddig did engage in conduct which all of you will find terribly offensive. We will not deny that. The evidence will show this and neither Mr. Felber nor I can make it disappear. Things were said and things were done which cannot be eliminated. The clock cannot be turned back. As I have already indicated, Siddig must in the context of this case live with that which he has done. But the question that you must ask yourselves at the end of this trial is at whose bidding were these terribly offensive acts performed? Was it Siddig or was it Emad Salem? This, I suggest to you, is the heart of the matter.

The proof must show you more than just the fact that Siddig engaged in conduct condemned by statute. The proof must address the yes question of why this conduct was engaged in. This then becomes, I suggest, a monumental issue for you the jury to decide. If the proof shows that

it was the FBI and its informants who persuaded Siddig to violate the law, as we suggest it will, and that he was not ready and willing to commit these crimes, then you must acquit Siddig and find him not guilty, because he was entrapped.

(Continued on next page)

And this is exactly what we submit the evidence will show, Siddig was entrapped, he was the victim of government enticement, got inducement and government manipulation through its agent provocatuer, Emad Salem. Emad Salem is the why in this case.

Why would Siddig do the things he's alleged to have done, and why would Emad Salem persuade him? Well, the answer to the first lies in the proof of the second.

Siddig did these things because Emad Salem got him to do them. The proof will clearly show that Emad Salem was the driving force behind these crimes. He orchestrated and manufactured nearly all of the terrible things in this case for which Siddig is now being held accountable.

The evidence will show that these were things that Siddig was incapable of doing, had no idea of how to do, and without the expert assistance and financial support of the government's star witness in the form of Emad Salem, he would never have been able to do these things.

As you're sitting there I can almost hear you saying, well, this guy, you know, this Tritz fellow here, he's told you a lot about Emad Salem, but he hasn't told you very much about what Siddig did. And I admit that this is purposeful, and I have two reasons for doing it.

First, the proof of what Siddig did after meeting and being induced by Emad Salem, I suggest, is almost

unimportant, because it was the product of Emad Salem, the agent's, persuasion, and for this reason I submit that it would be a mistake to concentrate on this evidence.

Secondly, once entrapment is alleged the government must prove predisposition, or that Siddig was ready and willing to commit the crimes before Salem's inducement, and here is where I am going to take my own advice and try to keep any directions very short. Because there are many different ways that the government may try to prove predisposition, and I can't foresee all of them, so I just want to give you an example of one, sort of a guide, and then we'll deal with the rest as they come up during the trial.

But let me give you one example. And I suggest to you that the government, as they told you in their opening statement, will attempt to show that Siddig was ready and willing to commit these crimes by submitting to you proof of the fact that Siddig and others went to a camp in Pennsylvania where they trained for their war of urban terrorism. You remember, you were told about that yesterday. Well, while their facts are correct, their conclusions are wrong.

Sure, Siddig trained in Pennsylvania, but not to become an urban terrorist. He trained in the hope that one day he could go to Bosnia where he was willing to fight

alongside his Muslim brothers in the hope of stopping the raping of Muslim women and the killing of Muslim children that was being perpetrated by the Serbs.

Indeed, the facts of this explanation fit much better than that which the government would have you rely on. Imagine Siddig and others dressed in full battle fatigues and Army boots running through those beautiful green forests of Pennsylvania. How is this training for a war of urban terrorism? Where are the trees and hills around 26 Federal Plaza? Where are the rocks and boulders in the Holland and Lincoln Tunnel? Why would they train in the woods in the country when their intention was to drive a car with a bomb in it into the Holland Tunnel? What sense does that make?

But it does make a great deal of sense that they trained that way if it was their intention to go to Bosnia where that kind of training would be of some use. It just doesn't fit the government's theory, but I suggest to you it certainly fits what we're telling you.

Now, before Salem came on board it was Bosnia, but after Emad Salem it became the George Washington Bridge. And this is the reason that I say to you that the why is so important in the case, the why is the difference between criminal behavior and entrapment, the difference between predisposition and innocent behavior, and I ask you to wait

for the evidence in this area before you come to any conclusions.

Now, I'm right at the end of my remarks and I hope you listened and absorbed what I've told today. But if not, I hope you'll come away with one concept from this opening statement. The one thing that I think is important and I want you to understand, and that is how important it is to not come to any conclusions until after all the evidence is in and you have been given the case for your deliberation.

Clearly, hearing only one side of the evidence will not present a complete picture of the important why issues which I've tried to call your attention to today, but if you wait until all the evidence is presented, and all the whys are accounted for, I am confident that you will conclude that Siddig is not guilty because he was entrapped by Emad Salem.

Thank you for your time today.

THE COURT: Thank you. Mr. Tritz.

We will now hear an opening statement on behalf of Mr. Hampton-El, Mr. Wasserman.

MR. WASSERMAN: Thank you, your Honor.

MS. STEWART: Judge, I think there might be a failure of the Arabic translation at this point.

THE COURT: Well, I'm told that someone is

sitting next to your client who will pick up while they are fixing whatever glitch there is, so we are going to proceed. Go ahead.

MR. WASSERMAN: May it please the Court, ladies and gentlemen of the jury, welcome. I welcome you on behalf of my client with a great deal of respect and appreciation because you're the key to his walking out the door.

If I had to make a dying declaration in this case if I was going to be struck down in the next thirty seconds I would say to you, remember the following words, may God breathe light into his picture. May God breathe light into his picture. And I say to you those words because that is what Emad Salem would chant, not say, but chant numerous times during his conversations with Siddig Ali when they would talk about getting explosives, getting detonators from my client.

And Siddig Ali would tell him, don't depend on him. He's a headache. Don't depend on him. And Emad would chant, may God breathe life into his picture. And you would say, okay, fine, you're not dead. Now, would you please go a little bit further? What does that mean?

Well, the government translates it, or at least today has translated as, may God give him strength, but it's actually may God breathe life into his picture, and it comes from a verse in the Koran which I just want to read to you.

It's a verse that concerns Jesus and it goes as follows:

As a messenger to the children of Israel I have come to you with a sign from your Lord in that I make for you out of clay, as it were, the figure of a bird, and breathe into it, and it becomes a bird, but Allah's live and I heal those born blind and the lepers, and I quicken the dead.

Let me just go back to the most relevant portion of that. In that I make for you out of clay, as it were, the figure of a bird and breathe into it and it becomes a bird.

From that verse there arose the Egyptian proverb, may God breath life into your picture, and it captures the essence of transforming something that is in earth that is dead that is clay and making it into, as this verse describes, something living. And they never, ever, ever did that with my client. And I think when you hear the evidence you will find -- you heard the opening and certainly nothing was mentioned, my client gave nothing to what the government alleges. He gave no detonators, he gave no explosives. He never meant to.

They may try to show evidence that indicates he tried, is absolutely not true. He never meant to. And I will approach that from several different directions including from his heart who he is, but if you just remember

the proverb I think it captures everything in this case.

There is other stuff, too, that comes not from my mouth but from the mouths of the participants. I would like to add that I'm not just dumping on Emad Salem. It's a very easy task, and there is lots of stuff to tell you that you haven't been told. For example, he has told, including Siddig Ali and others, that he was an interrogator in a political prison in Egypt. That's a polite term for doing some terrible things. It's also an education in how to get what you want, not just from torture, how to manipulate people, how to get them to do what you want. After all you don't have to torture everybody. There is other ways of getting what you want.

In fact, Emad Salem is so proud of his past experience he has an album that he has shown to people containing photographs of torture victims. This isn't an album clipped from magazines. These are his home photos. And you'll hear evidence of that.

Think about Emad Salem, just to continue that vein of thought for a minute. He's embraced by the FBI, he's embraced by the government, and you find that Emad Salem is someone who cook the books, and you'll find that the government is aware of it, and the evidence will show you that.

Now, Emad Salem, yes, had his list. I think

there is an Egyptian list in this case. He comes, he's got to get The Sheik, he's got to get others, but my client comes in not from that. My client comes straight from the government. And it's a way of looking at this case in terms of it being made in the lab. And I think as you watch this case unfold before you, it's going to unravel, because the government has put things together that do not fit.

I was trying to think of an analogy that might bring it home and I was thinking of all the times that I have socks that don't match. But it's worse than that, and it's worse than what the government did yesterday in their opening talking about, well, look for corroboration of Emad Salem. Because he lies under oath, so you have to look for corroboration. Listen, folks, whenever you hear any informant, please look for corroboration. It's not just Emad Salem.

It happens that we're kind of fortunate in this case, there is so much about the man, because he lives his life demonstrating lies continuously. But it's that he was embraced by the government. And the case is put together by the government, not by Emad Salem. He's a major player, but it's the government.

And what's going on here? Why is this a historical trial? In a sense you are a historical jury -- not in a sense -- you are a historical jury. There are

historical themes that play in this case.

And if you could imagine this case being put together in the lab, and they had some ingredients and they're sitting around the table and deciding how to put it together, and they had some ingredients like the Trade Center. My client's not involved with the Trade Center. They had some ingredients like the murder of Rabbi Kahane. My client's not involved with the murder of Rabbi Kahane.

They talk about a war of urban terrorism. They say that my guy took part in training, in a training camp in Pennsylvania, and it was alluded to by counsel for Siddig Ali. Yes, Siddig Ali trained there. I believe Amir Abdelgani trained there. Weekend training I think consisted of about three or four weekends. Yes, firearms were used. Yes, exploding targets were used. They camped out I believe. And I think the evidence will show absolutely conclusively to you beyond any doubt that the camp was exactly as stated by counsel for Siddig Ali for Bosnia.

For those to whom Bosnia has kind of receded in the back pages, do you remember the stories about ethnic cleansing? Do you remember the villages emptied, the camps set up for the women to be raped? Do you remember the stories of how our President talked about intervening and bombing those Serbs if they didn't back off, only to retreat from that ultimatum, then make new ones and retreat? But it

was really in the news at the time that this camp was active which was in January and February of 1993.

The camp was used on the weekends. It was a perfectly legal operation owned by a man who worked for the Federal Park Service who happens to be Muslim and sympathetic to the aims of those who were training and I think the number of people who trained is eight or nine. And the training stopped early February of 1993.

Some equipment from that training made its way to a dojo on Rogers Avenue in Brooklyn, which the government alluded to yesterday as where material like the cannon fuse and exploding targets and electric matches were found.

What the government doesn't tell you that it was set up as a dojo, weapons on wall, knives, ceremonial swords, nunchuks, throwing knives, blow guns, crossbows and if that's the war on urban terrorism, you form your own judgment. But it was all on the wall, and there were no explosives found, a cannon fuse is used for a million different purposes, primarily for military field training. It's not a detonator fuse. There were no detonators. There were no explosives.

Yet the government tells you yesterday, look, you can look to what's found on Rogers Avenue as corroboration for Emad Salem. I don't quite follow that as corroboration. It doesn't fit. The government tells you yesterday, listen,

Emad Salem turned to Hampton-El to get detonators because he was the most suited for the purpose. He's the supplier.

You know, if he is the most suited, if he's the supplier to the terrorist organization, I don't know. They come to him on May 30th. There is a long, long conversation -- which I beg the pardon of the Court. I have to use the term. It's in the dictionary -- it's a bullshit session for about two and a half hours.

At some point late in the conversation it's very, very difficult to make out, there is some talk, and there is a mention about detonators. There is no talk my client says, yes, I'll get it, or anything like that, but it's quite clear from some followup on June 16th initiated by Emad Salem, not by my client, that what he is doing is trying to keep them off his back and saying, I'll look into it.

They come back to him between May 30th and June 16th, again, with all the admonitions by Siddig to Emad, listen, forget about him, don't depend on him, and Emad going through the chant, may God breathe life into his picture.

They come back to him on June 16th and meet up with him in the mosque and they say, listen, if you can't get detonators, get us something more. And again he says, all right, listen, I'll get back to you. A week later

after, you know, beeping him lots of times and trying to reach him lots of times, they call him and they have what the government refers to as another incriminating conversation where he says he has feelers out. We look into it. It's his duty. I just want to point out to you that Emad Salem on the other end of the line, and he's an expert at manipulating a conversation that he knows is being taped and the other person doesn't. And that what my client is saying is being not only manipulated for the purpose of simply getting it on the record, but that he has absolutely no intention of providing them with anything, and that's demonstrated by the very fact of his not having done so. And it also will be demonstrated by who he is.

Now, let me just take a moment and come back to that date of June 23rd, because it's that night as it goes into the morning, early morning hours of June 24th that the arrests are made initially in this case. And the arrests are primarily made at a safehouse in Queens. My client is arrested at 4 a.m. approximately as he's leaving the apartment for early morning prayer, a habit of his that was consistent through the years with respect to which he often called people and tell them the night before, remember get up for morning prayer. He was arrested as he approached his car sometime around 4:30, I guess, in the morning.

Let me just break for a moment. I just want to

clear up a couple of things. Your Honor, with the court's permission, Mr. Hampton-El, could you get up a minute.

(Defendant Hampton-El stood up)

Thank you. The outfit he's wearing is called a taquiyyah. Thank you. And that outfit is something that, according to Muslim tradition is worn or was worn by the Prophet Mohammed. It's a type of outfit that is in a sense religiously recommended because it is concealing of the body without being revealing, and he wears it because it's a traditional religious garb, and he's worn it for about twenty years, and he's worn it to his work at Long Island College Hospital. He's worked in the dialysis clinic there for almost thirty years. I don't know if you've ever been in the dialysis clinic, but it's a special kind of place because people don't have long to live who go there. Their life expectancy is somewhere around six or seven years. And he has a special reputation there, and you'll hear about it, someone who really cares. He's the kind of guy that it doesn't make any difference, because people get dehydrated when they're losing that 25 pounds of water, he goes out and gets them a soda with the sugar that they need.

Now, he wears that outfit to work, he wears it to play, and that's the story of the outfit. It's the same thing about the khufi, the hat that he is wearing. The beard is also something that is sanctioned and recommended

religiously by the Koran and by the traditions that surround it.

His name, Dr. Rashid, that the government referred to doctor yesterday as a doctor because he works in a hospital, it's a moniker that actually he has adopted, and is often used. It's not that he's passing himself off as a doctor, but over the years, both by working for EMS for about seven years before the hospital, and working at the hospital, he's acquired a lot of knowledge, first-aid-type of knowledge. And Rashid in Arabic means guide or teacher and so he uses that as his Arabic name and that's the combination that you'll often hear, and I often refer to him as Rashid.

That is a tradition, by the way, of his being a doctor falls into his going to Afghanistan in 1988. He had a vacation that of a month and he went over to Pakistan, with some assistance from the Alkifah office in Brooklyn. And he's one of the few people who actually crossed the border from Pakistan into Afghanistan to help the Mujahadeen.

Now, did he help them by operating a tank? No. By firing rockets? No. He was a medical, the same as he was in the sense here, and he brought some medicines with him, and his purpose there was to serve as a medic.

He didn't stay there very log. He was wounded

rather drastically within a week of his arrival, stepped on a mine and almost blew his leg off, and after months of hospitalization in Pakistan, he was brought back here, stayed in Long Island College Hospital for about three or four months, and then went back to work.

He also acted as something of a spokesman for the people in Afghanistan here in New York. He spoke at colleges, he made a tape extolling the virtues of being a Mujahadeen. When he speaks about jihad, he speaks about it in terms of fighting the Russians in Afghanistan, and it was essentially a religious experience for him, because he really felt that it was a battle of good versus evil. And as it turned out, whatever may turn out in Afghanistan, it was a harborer, a predictor, if you will, of the fall of the Soviets, because the Afghani people were right in getting rid of them, they were the oppressors, and that kind of tradition of fighting for the oppressed is what motivated him to get involved with the Pennsylvania camp for helping to finance it.

And he saw the stories in the papers and heard the reports about the ethnic cleansing, and he was violated by it. I mean he just was violated. The idea -- he doesn't have any children with his wife -- the idea of children being killed and of women being raped drove him crazy.

So he wanted to do something, the same as he did

in Afghanistan, but now he's older, he limps because of the wound, he has shrapnel in his arm. So he got involved in trying to train people to train people in Bosnia and it didn't work. I mean the bottom line is it didn't work.

In a sense, the bottom line in this case is that part of my client's image as a Mujahadeen is unreal. I mean he wasn't a fighter who was in Afghanistan for a period of time who had been fighting. He was there for a short period of time. He was there as a medic, but he came back with heroes image and that hero's image would give him a problem in the city, because I think it made him manipulatable by Emad and for other reasons that you'll come to learn, not so willing to say no when that would have been the easiest way to handle everything.

Now, I want to just go into a little bit more detail about what you'll hear about my client, and finish up with what I think his place in this case is. He served in the Army in the mid 50's. He protested the discrimination that existed in the Army at that time, alleged problem, problems took a long time to rectify in terms of his receiving a discharge under honorable conditions, but the important thing I think to note to you is that he's a guy from Brooklyn, born in Brooklyn, he went into the Army in the mid 50's, and I think there was discrimination at that time, and he didn't like it. He became marked as a result

of it.

And then as I told you, he's been working for the Long Island College Hospital dialysis clinic up to the date he was arrested in this case. He has a reputation as a neighborhood good guy. People will come forward to talk about him as not only a good neighbor and a solid citizen but someone who steered the kids right, and who is known as someone you can depend upon.

He's someone who could be sitting next to you in this jury. He's had three jury experiences, including a capital case, or a murder case, but for in a sense this incident with Emad, with the FBI, he could be a juror.

Why do I keep saying to you his position in this case, and I referred to earlier, to his case kind of being made in a lab, and it's going to unfold before your eyes? Individually it's composed of several components.

You're going to hear about people being arrested in a safehouse in Queens, and my client was never there never invited, there never knew about it. You're going to hear about the Trade Center. My client's not involved. You're going to hear about the murder of Kahane. My client's not involved.

But I think he has a great deal of danger in this case of guilt by association. Did he know Siddig Ali? The answer is yes. He met basically with reference to the

Bosnia matter. Did he know El Sayyid Nosair? The answer is yes, slightly. He had met him at the Alkifah office in Brooklyn. There are other people in this case, the majority of which though my client met for the first time after the arrest.

Now, what I think happened in this case is as follows: I think that there is an Egyptian list. And that this case was put together in the following way. You have the bombing conspiracy, the safehouse in Queens, and you add to it as it, as the government looked at it and they said you know we need something. It's not enough. We need to, we need to do something. That's just nothing happened in that case, and we got a little vulnerability because we have an informant who is somewhat dirty, if not worse. Let's add a murder. And I can hear the voice protesting and saying, well, wait a minute, wait a minute, wait a minute, you want to add Nosair. He was acquitted.

MR. MC CARTHY: Objection.

THE COURT: Sustained and stricken. I sustained an objection to that yesterday.

MR. WASSERMAN: I'm sorry.

THE COURT: Go on with your opening.

A. Let's add an Ayatollah. We don't have an Ayatollah available. So, all right, how about The Sheik? Okay, we'll add The Sheik.

And I just want to tell you as an aside historically, once before, and I think that this is what's going on, the Ayatollah Khomeni may be familiar in terms of Iran, and he sought refuge in France --

MR. MC CARTHY: Objection.

THE COURT: Why don't we open in this case, Mr. Wasserman?

MR. WASSERMAN: I'm sorry?

THE COURT: I said, let's open on this case, Mr. Wasserman.

MR. WASSERMAN: I think it leads, Judge.

THE COURT: Good.

MR. WASSERMAN: And my point is that the government at that time completely misread the situation in Iran, and I think it's an effort to, as counsel for Sheik Rahman pointed out, an effort to help the Egyptian regime that he's brought into this case.

Why is my client brought into this case? I think there is a heritage in this country of looking for the Black Panther, the Black Liberation Army. And in this situation you have someone who is black, you have someone who is Muslim, you have someone who went to Afghanistan, and he became a marked person.

He was under surveillance before the Trade Center ever happened. He's been under surveillance since. His

phone has been tapped, and I think what you find is he's fulfilled the missing ingredient in this case.

And if you ask yourself the question that we started with here, what did he do, and did he mean to do anything, you'll answer those questions, he didn't do anything, and he didn't mean to do anything.

I just want to take you to the last day in closing. The last day in this case for my client is June 23rd. He's arrested the early morning of June 24th but the night of June 23rd, Emad is having a conversation. He's having a conversation with one of the agents who is his handler. And in this conversation Emad tells the handler, the doctor has his own project, has nothing to do with us. You'll hear it on tape, okay?

The agent says to him, and this is a little harder because it's the agent talking over the phone. You may have to hear, wear earphones and listen to it a couple of times, but you will hear, got to get the doctor involved buying materials, buying ammunition, buying shit. You will hear it. This is June 23rd, the evening. He never does anything of the sort, and therefore he must be acquitted. I thank you very much.

THE COURT: Thank you Mr. Wasserman.

MR. WASSERMAN: Thank you, sir.

THE COURT: We'll now hear an opening in behalf

of Mohammed Saleh from Mr. Jacobs.

Ladies and gentlemen, we're going to take a morning break now before Mr. Jacobs starts, so if you leave your notebooks behind, please don't discuss the case. We'll resume in a few minutes. Thank you.

I'll ask everybody to remain seated until the jury leaves. Thank you.

(Jury not present)

MR. STAVIS: May I place something on the record if this is an opportune moment?

THE COURT: Sure.

MR. STAVIS: Your Honor, yesterday last evening at 10:40 p.m. I received a fax from the United States Attorney's Office indicating that some 3500 material was available. The fax also indicated that available for pick up are recently made up dates of two audiotapes, numbered 42 and 44, which were recovered during the search of my client's home on November 6th of 1990.

Those two audiotapes represent conversations between my client and Sheik Abdel Rahman. The fax of last evening at 10:40 also made available a transcript of audiotape of a conversation taped on September 23, 1993 at 7:52 p.m. from Otisville.

It also included translations of audiotapes recovered during the May 2, 1994 execution of the search

warrant at 919 Somerset Drive, Toms River, New Jersey, and another tape recovered during the execution of the search warrant on June 24, 1993 at 115 Fairview Avenue.

Your Honor, I have complained for a long time concerning discovery in this case. We are now at the point where with our 3500 material we are continuing to receive Rule 16 discovery material. I submit to the Court that if this were a civil case, your Honor would have had us in for a conference, would have set a discovery cutoff date, a date for marked pleadings and proposed instructions and a date for trial.

I've already opened in this case, your Honor, and I am continuing to receive Rule 16 discovery material, and I ask your Honor that the discovery cutoff should be now, so that we can try this case and focus on the 3500 material which is the trial discovery material that we're to be provided with, without having to go and investigate and translate additional documents after we've already opened in this case.

One additional fact, your Honor, a fax your Honor that came last evening, this came at 6:13 p.m. It's a fax from Mr. Fitzgerald, and it make reference to telephone records of the pay telephones located in Uncle Charlie's Bar, and that these telephone records were being provided to us together with xerox copies of the photographs taken of

the bar after a pipe bomb was exploded in a garbage pail.

Your Honor, I had moved to have the 404(b) issues addressed prior to opening statements. The U.S. Attorneys in this case have indicated that they will be proceeding in sequence, in sequential manner. The Uncle Charlie's Bar incident occurred in April of 1990. Judging from the discovery that was made available last evening, your Honor, I will now have to have my investigators locate witnesses and do thing of that nature for a case that was separately investigated by the New York City Police Department so there are witnesses, there is additional discovery.

THE COURT: I am going to permit you to go on about this, but you want some friendly advice?

MR. STAVIS: I can always use some friendly advice, your Honor.

THE COURT: Just between us.

MR. STAVIS: That's what Connie Chung said, your Honor. We know what happened with her.

THE COURT: Well, if you won't tell anybody, I won't. Don't waste your time, or your investigators on following up that material until I issue a ruling that is other than what I've already suggested.

You want to be heard with respect to any of this, Mr. McCarthy?

MR. MC CARTHY: Your Honor, the record is already

replete with this. We have to put on translators to get these things in now. The translations of everything is going to be, the translations of everything will be reviewed before they get, before we put a translator on the stand to swear that it's true and accurate.

If counsel had stipulated as they led us to believe for over a year that they would, and we were not going to have translation issues in this case, it wouldn't have been a problem. Now it is.

They are not remotely prejudiced. They have the hard information. They have their own translators. They have the werewithal to make their own translations and if our translations misrepresent the facts, they are going to blow us out of the water on their own case.

MR. STAVIS: Perhaps we can focus on some of the new material then, your Honor, some of the new material that's been translated for the first time and provided by the government after this trial has commenced, and I would continue with my analogy--

THE COURT: Your analogy to a civil case?

MR. STAVIS: That's correct.

THE COURT: Your analogy to a civil case is a poor one for a variety of reasons, including the fact that you don't get civil-style-discovery in a criminal case as you know.

MR. STAVIS: But I do know there is a discovery cutoff in a civil case, your Honor, and I'm asking the Court to impose a cutoff here, and if I may, your Honor, when it comes to transcripts, some of the defendants in this case, their whole case surrounds transcripts, and concerns transcripts, your Honor, and they have opened, and will open concerning transcripts.

And in a civil case, your Honor, when depositions are read to a jury in a civil case that's because everybody knows what the evidence is. I won't belabor the record further because I have been arguing about this issue for well over a year, but I believe, your Honor, and I submit to the Court, that at this point in discovery, cutoff regarding new material is in order.

MR. MC CARTHY: I just want to point out that the lawyer who is making this point yesterday between mentioning Mr. Nosair's acquittal a few times, which we understood to be in contravention of a court order, from last week --

THE COURT: We are going to revisit that issue.

MR. MC CARTHY: Right. But in the middle of doing that, he testified, and that's what I think it was, to the jury, that we're going to hear some expert evidence about whether El Sayyid Nosair was capable of pulling a trigger.

THE COURT: Look, I don't want to get into that.

He is saying you did something. Now you say he did something else? I'm not going to hear that.

MR. MC CARTHY: My point is that discovery is a two-way street and it's been decidedly a one-way street in this case.

THE COURT: With regard to the material as to which translations are ongoing, as I understand it, both sides have had access to the same material. I've been signing vouchers for defense translators for a very long time for precisely that material. You've had two roads open to you. One is the road of conferring and stipulating and the other is the road of litigating. I can't force you to stipulate. You want to litigate, you litigate.

MR. STAVIS: The distinction, your Honor, is that the government has a burden of proof, and we on the defense team do not have the burden of proof.

THE COURT: I understand they have the burden of proof, and they have provided you with the discovery material.

We'll resume in hopefully less than ten minutes.

(Recess)

(Continued on next page)

(In open court; jury present)

THE COURT: We are now going to hear an opening statement in behalf of Mr. Mohammed Saleh from Mr. Jacobs.

MR. JACOBS: Ladies and gentlemen. This is going to be one long, tough trial. There have been estimates of six months, seven months, eight months. There are whispers of a year. We are going to all try to do the best that we can and bring this case to a rapid conclusion.

For the first few months of this case you are going to hear one side: The government. The United States Attorney's Office is going to present their side of the case. Many months from now you will hear the defense case, if some of the defendants choose to proceed with one, the defense interpretation of the facts. During all this time, through the winters and falls, springs and summers, we are going to all ask you to keep an open mind. We are going to all ask that you not make any judgments, decide this case till all the evidence is in. When is this case going to end?

Ladies and gentlemen, a famous ball player, Yogi Berra, was asked once when a particular baseball game was going to end. His reply has become a well known phrase. He said, "It ain't over until it's over."

There is a lot of common things that this trial may have with a baseball game. Actually, probably some that

aren't, since they aren't playing baseball now. But if we can think of the New York Yankees playing the Red Sox, halfway through in the ninth inning, we all know that the Yankees have one more turn at bat. We may get to the sixth month of trial, you will have heard the government present their case, put their witnesses on. Should you have an opinion? No. Should you have reached a verdict? No. It may look like it's over, but you will only have heard one side. So just as the Yankees can rally in the bottom of the ninth, this trial ain't over till it's over.

To put it another way for you opera fans, this trial is not going to be over till the fat lady sings. And we've got a fat lady in this case, a million dollars fat lady, Emad Salem.

Ladies and gentlemen, the crimes charged in this case are particularly horrendous. All of us agree, including the defense lawyers in this case, that these are some of the worst types of crimes ever charged in an American courtroom. But because of the terrible nature of the crimes charged in this indictment, it should only highlight to you 18 people, I think 18 people, the need to keep an open mind.

I promise you one thing in this case on behalf of my client Mohammed Saleh, that you will find a reasonable doubt in this case. You will find that the government has

not proven its case and that you cannot convict him. You will find him not guilty.

It is going to be a long and difficult trial, but hope and I expect that all of you will live up to your promises and give these 12 defendants a fair trial. That's what they are entitled to and that's what we expect.

Always remember that despite the horrible crimes that are charged here, these 12 men are presumed innocent, and only if the government, who sits at this table, can prove their guilt beyond a reasonable doubt are you entitled to convict.

My name is John Jacobs and I represent Mohammed Saleh. Mohammed. We are way in the back. We have got the rear tier back there, but we are here. You know, ladies and gentlemen, as an officer of this court it is my sacred and solemn responsibility to present the facts of this case as openly and as honestly as I can.

In the defense of Mr. Mohammed Saleh, that's what I am going to try to do. No tricks tricks, no games. In my opening when I refer to things, I am going to try to read to you from some of the tapes in this case, try to stay with the facts.

Our defense in this case is simple. First, the evidence will show that in the bombing of the World Trade Center there is no connection with the defendants in this

case. Second, the Queens safe house is an FBI-created script, written, funded and executed by agents of the government. And finally, even though Mohammed was approached by Emad Salem to be a part of the safe house script, he refused to join and he never gave a dollar to Emad Salem. The entire reason Mohammed is here today is because he serviced the needs of a customer who came to his gas station.

This case is not about a jihad organization, as the government claims. It is not even about terrorism coming to the United States. To put it simply, ladies and gentlemen, this case is about one of the biggest and most embarrassing moments in the history of the Federal Bureau of Investigation.

You will see and you will learn that the FBI knew someone was going to bomb the World Trade Center. The FBI ignored the warning. The FBI refused to investigate the possibility that something like this could happen, and in February of 1993, their arrogance and audacity blew up in their face. This case and the prosecution of these 12 defendants is based upon the FBI mistakes and embarrassment concerning the World Trade Center. It is an orchestrated attempt by the FBI to reestablish its reputation as a law enforcement agency. This case is about the FBI's obsession with correcting their mistakes.

Their first mistake, you will learn, was their failure to uncover the World Trade Center plot, and their second mistake was letting Emad Salem orchestrate and narrate the script that would become and will become this trial.

Before I talk about the specific charges in the indictment against my client, I would first like to give you a little background information about his life. I will then discuss the nature of his charges and give you an overview of the defense.

As I mentioned before, there are three parts to the defense in this case. The first is that there is no link between the World Trade Center bombing and this group of defendants. The second part is that the Queens safe house portion of the case is an FBI-created plot. And finally the third part of the defense is that my client Mohammed Saleh never became part of a safe house script and refused to donate so much as a dollar to Emad Salem's story.

Let me talk about his background for a minute. The evidence will show that Mohammed Saleh is 38 years old. He is married with five children. He was born in Jordan. He is the oldest of 11 children. When it came time for Mohammed to enter high school he earned a scholarship and attended technical high school in Kuwait. In 1976 he graduated. He worked in Kuwait for one year before he

decided to come to the United States to complete his education.

In 1982, you will learn, he earned a bachelor's degree in civil engineering from North Carolina State University. This degree was made possible through a scholarship Mohammed had received from the United Arab Emirates. Upon completion of his degree he moved to the United Arab Emirates and worked for the government as a civil engineer for eight years.

In 1991 Mohammed was approached by a former classmate with a business proposition. His classmate wanted Mohammed to come to the United States with him to start a business. Mohammed decided to join his friend, and he moved to New York. He and his friend formed a legal corporation which they named Ebru -- E-B-R-U -- Trading. The corporation obtained a franchise license and opened a gas station in Yonkers. Mohammed ran the gas station. He pumped gas, he did what he had to do to run the gas station.

That in a nutshell is his life. It is not particularly exciting. It in fact is very uneventful and commonplace. He is a man from a Middle Eastern country who came to the United States to get an education and to open a business and support his family. Thousands of other people have done it and continue to do the same thing. He went to work every day, he paid his taxes, he had a nice

relationship with his neighbors, he went to the parent-teacher conferences, he went to grocery store, he did the same things that all of us do. There was nothing unique about his life.

Well then, it's reasonable to ask, how did he wind up here, in jail on this case? The reason is simple. He is here in jail not because he wanted to blow up buildings or because he had a master plan to overthrow the United States government. He is here today because he sold gas. That's right. He is here today because he sold gas to a customer in a station and because Emad Salem was determined to get as many Muslims involved in the case as he could.

I went last night and got ahold of the government's opening that Mr. Khuzami gave yesterday. Let me read what he said about my client. He walked over -- I don't want to waste my precious time. He walked over and he said, this man is Mohammed Saleh. Mr. Saleh owned a gas station in Yonkers. He was the money man. That's the government's opening. That's what they are going to prove beyond a reasonable doubt, and that's what the government said yesterday. OK. He is the money man in this jihad conspiracy? Well, I tell you, ladies and gentlemen, that that statement by the government is false. It is wrong, and I will tell you how very simply.

This is what he gave to these people -- nothing. Not a single dollar, not a penny, zero. Nothing. Not a penny. I thank my five-year-old son for drawing that.

Not a penny, and it is probably the most important fact in this case for Mohammed. Not only did he not give a dollar to this so-called safe house, he hasn't given money to Bosnia, he hasn't given money to Afghanistan. He doesn't know Nosair. He didn't give money to his relief fund. He doesn't know most of the people in this case. He sells gas.

Am I making this up? You will learn that the prosecutors have his checkbooks, they have his bank books, they have his tax returns. They seized all his records at the gas station. The money man didn't give any money.

We know now, thanks to the government, where the money is in this case. You will see it on the witness stand when Emad testifies. That's where the money is in this case.

Let me talk about the jihad organization for a minute. We all know, ladies and gentlemen, that somebody walked into the Marriott Hotel and in cold blood murdered this rabbi. We also know that four people have been convicted for blowing up the World Trade Center. And you are going to learn that there is a fifth person involved in this World Trade Center, that wasn't mentioned by the

government. I am going to talk about him. His name is Ramzi Yousef. He is a fugitive. He remains at large. I will get to him in a minute.

You will learn that the FBI in the spring of 1993 was frantically looking to solve the World Trade Center case and created this safe house. There is going to be a lot of evidence presented by the government. I suppose they will have a piece of evidence to try to prove something.

But you know what? When you listen to all the tapes and you hear Emad and whatever the other government cooperators are who testify, there is going to be a void -- besides the money on my client. That void will be the proof that there is an organization of these 12 defendants in some jihad. That's going to be the void in proof.

What they have done, the government, and very cleverly, I give Mr. Khuzami and Mr. Fitzgerald and Mr. McCarthy a lot of credit -- they are experienced prosecutors. What they have done is, they have tried to equate these 12 people in this jihad family with what we call an organized crime family. We know that the United States Attorney's Office has been successful in the past in prosecuting the Mafia. Well, that's what they have done here. They have created the Gambino family of the jihad group, and instead of this jihad family being led by John Gotti, we now have Sheik Rahman. He is the John Gotti of

this trial, if you listen to the government -- except he is not John Gotti, and this is not the Mafia, and there is no group. He doesn't look like John Gotti, anyway.

You will learn that the Kahane murder, the World Trade Center and the safe house plot are not connected in any way. The government claims that this group is called the jihad organization or the jihad crime family, and they claim that they are all together. But you are not going to hear conversations like that. There is no boss and lieutenant and things like that.

Oh yes, there is no question that there is some common thread that these defendants have. It may be that some of them practice the same religion. And their views may be different than a lot of us here. But there is no group opposed or trying to overthrow the United States. Let me read to you, so that I am accurate, what the government talks about. This is from page 2 of the indictment in this case.

The jihad group. 1. At all relevant times described herein, there existed an international group opposed to nations, governments and institutions and individuals that did not share the group's particular radical interpretation of Islamic law.

Then at paragraph 3:

From at least 1989 up until the date of the

filing of this indictment, a jihad organization, hereafter referred to as "the jihad organization," arose in the United States.

Well, sounds good. And you in fact will learn that there are a lot of jihad organizations with similar names all around the world. That is what the evidence will show. There is a group in Lebanon that refers to themselves as Islamic Jihad, or the Party of God. There is a Lebanese group that call themselves Islamic Jihad of the Liberation of Palestine. Another group based in Israel, Jordan and Lebanon, calls itself Palestinian Islamic Jihad. Another group is called the PIJ, the Palestine Islamic Jihad. In fact, there is the same name, Islamic Jihad -- there are lots of groups all over the world. So it was very easy for Emad and the FBI to label everybody with the name.

We have groups like the PLO. They once funded terrorism. They once were opposed to the U.S. and Israel. Now the PLO is not considered a terrorist organization and their leader Yasi Arafat got the Nobel Prize.

The evidence will show that in almost every country in the Middle East, from Iraq to Libya to Jordan to Egypt, there are groups that oppose Israel and the United States. Countries, not groups, have funded terrorism here in the United States. So it is very easy for the FBI to take out the paint and brush everybody with the name jihad

organized crime family. But they've got to prove it.

We will show you why they have done it, and the reason is very simple. It is because the FBI wanted to wrap up open cases. The FBI had the Kahane murder, the FBI had the World Trade Center, and the FBI had big problems in the way they handled the information about the World Trade Center, and they needed to do something. So we get the jihad crime family led by the sheik.

You know, jihad is a complex term. I think Mr. Stavis and I know Lynne talked about it yesterday, and I am not going to repeat everything they said. But it means different things to different people. You know, when you hear the word Mafia, it only means one thing. It's people got together to commit crimes. And that's all it is. But jihad is not the same. To the people in Afghanistan, it is a physical fight with the Soviets, as we talked about. To a Muslim in Jordan, the jihad may mean striving to better oneself and build schools. It is not a word that has a simple meaning. It is a word that is used every day by people in the Muslim community. I think we talked about it the other day, about stores that have opened up. I haven't seen a Mafia store opened up on any street corner recently.

Let me talk about the defense in this case, and why there is no link to the World Trade Center with these defendants. The date of the World Trade Center bombing is

important, February 26, 1993. The FBI had realized they had made a major mistake. The mistake was that Emad is going to get on the stand and he is going to tell you, I warned the FBI. OK. He was on their payroll. He warned them. You know what the FBI response was? Hit the road, you're fired, you're full of baloney. They didn't even investigate what he was telling them.

You know, we are talking about the Federal Bureau of Investigation, not a little local police force. We are talking about the FBI with its unlimited budgets and its tremendous staff and the wiretapping and the surveillances and everything else.

The World Trade Center then was bombed. Four people were indicted and convicted -- I don't know if it was in this very courtroom, but they were indicted and tried in this building.

What I am going to do, ladies and gentlemen, is, when we get into the World Trade Center phase of this case, I am going to help the Assistant United States Attorneys. For argument's sake, I am going to become an Assistant United States Attorney and I am going to help them prosecute the World Trade Center case. I am going to show you how these four people were involved. We will get right into it. We will see who was involved.

But you are going to learn, because I got the

World Trade Center indictment right here -- it will come into evidence -- they didn't mention a fifth person. You see, a federal grand jury didn't just indict the four people who were tried and convicted. There was a fifth guy who was indicted. His name is Ramzi Ahmed Yousef, and he is a fugitive. And you will learn that he is a man with a lot of aliases, but you will learn the FBI has a name for him. He is called the mastermind. And you will learn that he was in fact the architect of the entire operation. He was a borrowed talent. He comes from overseas with contacts with lots of other countries. He was brought in from the Middle East to blow up the World Trade Center. But the only problem was, the FBI wasn't paying attention to things. Ramzi Yousef went to the airport, flew back to the Middle East. He is a fugitive and hasn't been found.

You are going to learn, as Miss Stewart told you yesterday, that the FBI has been looking at the sheik for a long time. They say he is the ringleader of all these plots. Well, you are going to find out, ladies and gentlemen, that the FBI wanted to find out whether the sheik knew Ramzi Yousef. They were smart enough to figure that one out. So they go to Emad and they say hey, Emad, you go talk to the sheik and see if he knows Ramzi Yousef, the mastermind of the World Trade Center. It comes out, the sheik never heard of him, doesn't know anything about him.

He is the mastermind, John Gotti. He doesn't know who did the bombing. Emad will testify to that.

Now let me talk about our future friend Emad Salem. There is so much, I will try to keep it in some context you might understand. You see, right before the World Trade Center bombing, Emad had problems with the bureau. They didn't know whether to believe him, to trust him. He is telling them all sorts of things, they throw him out. But then the bombing occurs. You could imagine the panic in the FBI. And well it should be. They are responsible for investigating the World Trade Center and they must have said to themselves, we blew it, get Emad back in here and let's see if he can help us now. They sure did that.

Emad, you will learn, walks into the FBI, and they've got a board up, a chart of the World Trade Center targets, the people they thought were responsible. His name, Emad, is on the top of the chart. He is dumbfounded. He tells -- by the way, he has handlers. Some of us referred to them as handlers. They are agents who work with informants. And he tells this Nancy Floyd. She is a female FBI agent, and she has this relationship with Emad that goes on that we are going to get into. And he tells Nancy Floyd the following, why they would put him up on the board. Because "I'm mad at the bureau and I'm a bomb expert, and

that's why I did it." He figures the bureau would think he is a suspect. So now we know about Emad, well, there is things he likes to do. He knows he's got a problem, so he is now going to work himself out of that problem, and he tries to make another deal with the government, which he does. Valerie Amsterdam, my friend, is going to cover some of the thing with Emad and why he was a possible suspect, and I will let her deal with that.

But what he does, Emad, is very simple. He creates the safe house plots. The evidence will show that the FBI is the primary law enforcement agency investigating terrorism. They knew they were in trouble. They made up this jihad crime family. They created the story of terrorism. They created the jihad organization.

But why? What would be the reason that the FBI would want to make this safe house up? It's simple: They could solve the new plot. They controlled the plot. It was their house, their videotapes, their informant, their so-called bombs. They could rush in and save the day, and all the newspapers that sit out here could print in the newspapers just as they did, FBI stops terrorist plot. That's the motivation, why they are here.

Did an agent of the FBI decide to do this? Well, we will find out. Did Emad decide to do it if? Definitely. By the way, I am not suggesting any Assistant U.S. Attorney

orchestrated something like that. That comes out of Emad and some FBI agents who were in trouble for not dealing with the World Trade Center. We will talk about them. We will talk about an agent by the name of John Anticev, an agent by the name of Nancy Floyd, some police officer named Louis Napoli. You will hear these names a lot over the next few months. They were taped by Emad -- the microphone -- they were taped by Emad. We are going to play the tapes. They put him back on the payroll -- best man in the world for the job. He was working so many ends he didn't know what he was doing.

OK. Salem gets his name off the FBI's most wanted list. He creates the story, he gets a million dollars, people are convicted, he will go on 60 Minutes, he will go on more shows, he will write had a book, he will have a movie, he will do a dance video. For years you are going to see Emad Salem on the talk show circuit, I am certain of. If he can get a million dollars from the government, I can't think what some other people on TV are going to pay for him. It will be a lot.

You know, the plot that is created is a serious one and I don't mean to make fun of the allegations here. They are very serious allegations. But the question is, are they real?

You will hear people talk about it. You will

hear some of these fellows talk about it. But is it Emad running the show? That's what entrapment is about. That's what outrageous government conduct is about. We will find out all about that in this case. We will find out about FBI incompetence.

You will hear how Emad is trying to grab as many Muslims as he possibly could. I don't know yet what he is going to say about this million bucks or two million bucks. Is it her defendant? Did he get $100,000 for Mohammed? Did he get 100,000 for Victor Alvarez? Did he get 100,000 for El-Gabrowny? Did he get 100,000 for Wahid? Is it a head? I don't know. We are going to find out. We will see his deal.

I suggest it is going to come out that he wanted to get as many people as possible. He was desperate to get Mohammed to go to the safe house. He wouldn't go. He may have lost money on that. May have got an extra bonus if they went to the safe house.

You know, there was a case out in Long Island, a nurse, the angel of mercy. You know, this nurse injected people with some terrible drug, and as the people were almost dying, the nurse would walk in and safer the people, and all the newspapers wrote about this nurse, saying look on this angel of mercy who has saved all these people from this terrible thing. But it was the nurse that did it. And

that's what we have here. Emad creates a plot. He and the FBI, they rush in and save her. FBI gets big headlines in the newspapers, Emad gets a million dollars -- and these guys do life in jail. That's what this case is about.

The nuts and bolts of how this happened we will get into, because we are going to call the FBI agents who handled Emad. You will see how they handled him and the conduct of the FBI in this case. Am I making it up?

Let me give you a little taste of how the FBI handled Emad. Listen to what John Anticev says to Emad about the taping process in this case, and I am going to quote from the transcript that you will get later on.

Anticev says to Emad, you have all your little gadgets over there to record things?

Salem: Definitely.

Anticev: This is not official me telling you this. I'm not allowed to.

Salem: I understand.

Anticev: But if you happen to turn on one of those little gadgets, we'll keep it on the side. It's not going to be entered into any kind of evidence.

That's an FBI agent. That's an FBI agent telling Emad to dump the tapes. I'm not making it up. You'll hear it. And if they don't call Anticev, we will, and we will ask him about it.

The FBI instigated the criminal conduct and the safe house in this case. They gave him everything, the place, the equipment, the supplies. He had the expertise. He gave them the money. I think there is a conversation that is going to come out that these defendants in the safe house -- I don't want to speak for everybody -- they had so little money, Siddig didn't have enough money to buy french fries at McDonald's.

What did they do? They sent Emad to the local mosques to recruit people. Why? It's a sad thing to say, but unfortunately some Muslims may be stereotyped, some people in our community may stereotype Muslims. It was easy for the FBI to do.

What happens here is that in the actual running of this safe house operation, you will see that the FBI lost total control of Emad. They lost total control of what he was doing, when he was doing it, how he was doing it. Am I making it up? Let me give you a little taste of what you are going to hear.

This FBI task force, Agent Napoli on how to run the investigation. Napoli says to Emad, quote, and you do whatever you want to do, whichever plan that you've got, you run through the scenarios and do what you want to do.

You know, FBI agents, you are going to learn, they are instructed on entrapment. There are rules and

regulations promulgated by the Attorney General of the United States and given to FBI agents, how to conduct these undercover operations, sting operations or whatever you call them. They write them. We are going to subpoena them and you will see them. You heard Mr. Tritz talk about entrapment and inducement. Let me give you a taste of entrapment and inducement.

Anticev is talking about one of the defendants in this case, I don't know who it is in the safe house but he is talking about somebody, and he tells Emad, quote, I would be pushing that person right now, and say look, we already got the timer, we're wasting goddam time, let's put this together. These are the instructions that Anticev is giving Emad Salem. Not to see if the defendants are going to do something on their own. He is running the case. He is running the investigation. He is telling the defendants what to do.

Is it entrapment? We will sure find out. And I am not going to tell you about it because Judge Mukasey will yell at me if I try and describe and tell you about the law on entrapment. But we will get the facts as we go along.

You are going to hear a lot of slurs, antisemitic statements during the course of this trial. Many of the ethnic and antisemitic statements in this case are done by Emad himself. I go pretty far in what my allegations are

about the FBI and I am not going to suggest that the FBI told him to spout hate. But let me give you a sample of the way Emad talks. They are talking in the safe house about stealing a car, and Emad says, let's steal a car from a Jew. Siddig Ali doesn't know what he's talking about. When he says, we buy from Jews? Salem says, they will be blamed for it at the end. Siddig Ali doesn't know what he's talking about, says what? Salem: They will be charged of it. Salem says, after all what they did. Is that the way an FBI informant is supposed to talk? Did somebody tell him to use those words, blame the Jews?

That's why hate is in this case. Blame the Jews, for an FBI informant. I said it before and I will say it again, they lost complete control of Salem. Otherwise, conversations like this should never have occurred. You will learn that the FBI broke their own rules and regulations. I told you that before. And if the government doesn't call the agents, we will. Obvious reason, I told you before, the FBI wanted to restore its reputation.

I am going to suggest that not only did the FBI have to restore its reputation, but I am going to suggest that the FBI was engaged in a coverup as well. And the coverup concerns, did the FBI know ahead of time, before February 1993, that the World Trade Center and possibly other buildings were going to be blown up. Because you will

learn, and the proof will show, that the FBI did. And you will learn that the head New York agent, an assistant director by the name of James Fox, was suspended several weeks before his retirement because he said Emad Salem never told us. Coverup? We will find out.

You will learn that Fox's statements were a lie, that Emad had told them things were going to happen. And you will learn that when Louis Freeh, the director of the FBI, heard what Fox did -- Judge Freeh was a judge here in this building, and an assistant United States attorney -- he suspended Fox for those comments, and I suggest he suspended him because the FBI was engaging in a coverup.

Recordings in this case. Well, Emad taped the agents. He taped the defendants, he taped everybody, girlfriends, wives. We will go into it, we will hear them. I have given you a little taste of some of these secret recordings and you are going to hear a lot of them. But you are going to learn, ladies and gentlemen, that he gave a bunch of tapes to the government -- not to these prosecutors. He gave them to the FBI agents. I think there are about 65 tapes that he recorded of the defendants that he gave to the agents. There was another 65 tapes he kept at home. Those tapes are with the agents -- I think some of them are actually with the defendants too, violating all the rules and regulations, but he kept them home. You will find

out, those 65 tapes, most of them are not originals. Most of them have been rerecorded over. Most of them have erasures. Most of them have no beginnings, no dates. We will find out all about that. He was taping Egyptian intelligence, he was taping the FBI, everybody.

The government stood up in their opening -- and correctly so, because they obviously can't rely on Emad Salem's testimony on its face -- and they said corroboration. To that extent I think they mean the recordings in this case. Well, I suggest to you that there is no integrity, there is no validation. These recordings are worthless. They will create more more than a reasonable doubt, because we are never going to know what he did tape and didn't tape. We will never know how many tapes of Siddig he threw away, how many tapes of some of these other defendants he threw away.

You are going to learn that he sent tapes overseas that these prosecutors have never seen or heard about. He even says that if anything happens to him they should see his sister or something, because they should be given to CNN. What's on those tapes? You are going to hear him on the tapes saying that his sister went to Egypt with tapes. I don't know who is on the tapes. The government doesn't know who is on the tapes.

Corroboration? Maybe we will all have to go fly

over to Egypt to hear them, and I don't think the judge is going to let us do that. I don't think they got them either.

You know, this is not a summation and I am not going to try to argue credibility and motivations of this guy, but I think in an opening I am allowed to suggest to you that the proof will show that Emad is motivated by so many things: loyalty to foreign governments, money, power, who knows what. The entire integrity of the main portion of this case is the so-called safe house, which my client never went to anyway, but I think it is important to talk about.

Let me talk about my client's involvement with Emad. You know, I told you before he never went to the safe house, he was up at his gas station, never gave a dollar. I think his one recording with he and Emad.

(Continued on next page)

MR. JACOBS: You'll hear a recording. Government says the word UN is on it. I say it's not on it. Government says that he's going to give money. He never gave money. We'll hear it. It doesn't prove anything.

You know, you'll learn that Emad has the same formula. I call it like a setup. See, he goes to these people in the Islamic community, and he starts off by saying all these nice things, you know, Brothers, we got problems in Bosnia, we got problems in Afghanistan, and you know the people are dying. You know, Brother Mohammed, don't you want to give money to Bosnia? Don't you want to help Bosnia? And then he alludes to other things that may be happening. It's a setup, it's an entrapment.

My client heard his spiel. You know what my client said? No. No. I'm not going to go through the chart again but he said, no, I'm not giving you any money. Don't bother me again. Leave me alone.

But the FBI, I don't know why they wanted him, they kept going back to him, phone calls, Mohammad, get money, get money, get money. No money, no money, no money. Finally, they say, the FBI and Emad, we need gas or fuel oil for our FBI bomb. Emad says, well, Mohammed don't want to give us any money. Let's go get fuel oil from him. Well, the only problem was nobody wanted to tell Mohammed what was going on.

You will hear tapes that are in this case where Emad says, let's go to Mohammed to get the fuel oil, and other people are saying, but don't tell him what's going on. And I'm not saying anything else happened, because it's all an FBI plot to begin with, but they didn't even want to tell him about it. So they went. He didn't give them a donation. He sold them some gas. He does it everyday. Now he's sitting in jail.

You know there once was a witness, an FBI informant that once took the stand in another case, and he was asked what motivated a defendant and he said, money talks and BS walks. I'll rest on that with my client.

Mr. Khuzami called him the money man. Let him live with that term. Let them prove that beyond a reasonable doubt in this case, because I'm telling you right now, ladies and gentlemen, if you find my client gave money to this safehouse, convict him. I'm telling you it never happened. And the government knows it.

Well, I've gone over the defense in this case, first the World Trade Center, nothing to do with these 12 men, The Sheik ain't John Gotti. The safehouse portion of the case is FBI plot. Mohammed Saleh is not the money man, didn't become part of the safe house, didn't give any money.

You know what it really comes down to is a lot of different conspiracies, multiple conspiracies. There is a

Kahane conspiracy that Mr. Stavis has got to deal with in his case. There is this World Trade Center conspiracy where four people have been convicted, and the main guy is out running around someplace overseas. The safehouse conspiracy. I suggest they've got nothing to do with each, even though they're all in the same seditious conspiracy count, all these things, multiple conspiracies.

But it comes down to it, the safehouse that Mohammed never went to, nothing happened, no bomb was created, nothing was detonated, nothing happened.

You know, if anybody ever saw David Copperfield on TV, he creates illusions. He has a bus and the next thing you know the bus has disappeared. Little kids can put nickels in their hands and make them disappear. Trick of the eye. Well, Emad Salem had a trick, too, creating the safehouse. It's an illusion of a jihad crime family that doesn't exist.

I said in my opening beginning, it ain't over till it's over. We got a long way to go. Hang in with us, we'll do the best that we can do to try to prove that these defendants are not guilty. I said what I had about my client, I have nothing more to say, thank you.

THE COURT: Thank you, Mr. Jacobs. We'll now hear an opening statement in behalf of Amir Abdelgani from Mr. Bernstein.

MR. BERNSTEIN: Your Honor, ladies and gentlemen of the jury, I'm sorry my throat is sore. Before we proceed let me assure you that I will be shorter than John Jacobs. I have promised the judge that I will be 15 minutes or less, and I intend to keep that promise. To the people out there with sketch pads, they'd better sketch quick if they're going to get me.

I represent Amir Abdelgani. He's been described by the government as one of the foot soldiers in the safehouse. Now, I ask Mr. Abdelgani to stand up.

(Defendant Abdelgani stood)

As you can see Amir is all the way in the corner. We sit back there, given the sight lines in this courtroom, you may not see him very well during the trial.

Thank you.

I'm going to tell you what I think the evidence will show in this case regarding my client, and generally the case. I'm going to thank several of my co-counsel who have already spoken, because they've given you a tremendous overview of the evidence in this case, and there is more to come.

I am going to restrict myself pretty much to Amir, and hope that you understand that arguments made by other counsel apply to him as well as you hear the evidence in this case.

Amir Abdelgani is 34 years old. He came to the United States in the mid 1980's. He had no trouble with the law while he was here up until the time of his arrest on June 24, 1993.

His life as an American immigrant coming from the Sudan is a basic common story of many immigrants. He arrived, he likes America, and America had opportunities and he wanted to stay in America. He got a job. He worked as a taxi driver. I'm sorry. He first started out working in a grocery store. He met a woman, he fell in love, he got married in the United States. During those years he switched to another job. He got a driver's license and he became a New York City tax driver. He did that for several years.

By 1987 he had applied for permanent resident status in the United States, and became a permanent resident in the United States. By 1992, he moved from New York City and into New Jersey because his cousins were working and running a livery service for medical delivery, driving people to and from the clinics and places like that, and he started to work for them. He moved to New Jersey in and around August of 1992, because it was easier to work in the same area that he resided.

He continued this work up until the day of his arrest. Although the marriage failed approximately four

years after it began, Amir chose to remain in America. He didn't just want to remain as a permanent resident, and he went to become a citizen by filing, I think in late 1992. About six or seven months before his arrest, he filed his application to become a citizen of the United States.

He followed up this application with the appropriate interview process in March, and the testing process in March of '93, and that you'll realize as the evidence comes in, some of the things you'll hear about, March of '93 is when the government alleges that he is in the midst of trying to bring down the United States. Yet, if that's what he's doing, at the same time he is going for his interviews, he goes to his interviews. He's informed he's passed, and he's told that in a short period of time he will be notified that he can come down to court and be sworn in as a United States citizen.

When you look at the overall complaint of Count One of this indictment, the one that talks about seditious conspiracy, the charge that says this is a man who wants to take down America, I want you to look at all the evidence and factor in whether or not someone in that position chooses to pursue each and every step right through that period, the steps to become a citizen, and remain in the United States.

Other lawyers have talked about it, but Bosnia is

a big factor in what's happened here, because as somebody has said, and I think it may have been Mr. Jacobs, it goes from Bosnia to the safehouse bomb. People are twisted from what they want to what they become with Emad Salem. During 1992 the world watched as we have all watched Serbian forces attack Bosnian Muslims with ferocity. It's ethnic cleansing as we know. It's continued to the present time. It was clear to all, particularly those of the mujahadeens here in the United States and elsewhere that although there would be much handwringing and there would be pronouncements to help the Bosnian people and the Muslims, much of the world would actually do nothing, and people like Amir and others came to believe this would be like Afghanistan again; muslims taking on the big enemy with no real help, except in the Afghan situation at least the United States helped through the back door.

Muslims here realized the United States would not engage in fighting on European soil. It was not something that would ever happen, despite the warning given by our government and other governments and the Muslims would have to once again defend themselves against aggression.

You'll learn through the evidence that Amir was an active Muslim. He was working all day, working all night, but going back and forth to the mosque to pray several times a day. And it's in that context that he and

others come into play with Siddig Ali.

Now, Siddig Ali was a charismatic figure in the mind of Amir and other people. He was an active part of this community. He was a leader in Amir's mind and Amir was attracted to that.

In fact, as you'll see through some of the evidence, Amir is kind of a quiet guy. Siddig is much more of a swashbuckling, forthright person. It was through Siddig that my client decided to risk himself by training and possibly going off to Bosnia to defend. And you'll find out that he, along with others, go to that camp in Pennsylvania in the late part of 1992, and maybe actually the beginning of 1993, to train, running up and down hills and doing those things that others have alluded to.

The evidence will show at sometime after going to that training camp on the weekends, they were actually being surveiled by members of the FBI. I think you'll see evidence in this case which the agents will bring in of photographs of these guys going to Pennsylvania and actually I think some aerial photographs of them training going up and down these hills. But ultimately, because of the intercession by the FBI, the person who's running that camp shuts down the camp, or at least the indication is that this training is withdrawn by Amir and others because the FBI is so to speak hounding them.

But his heart and the heart of some others was still desirous of fighting in Bosnia, and you'll find out, I think, through the evidence that training goes on and continues in public places like parks in New Jersey. So that as you go from the beginning of the winter into the spring of 1993, a couple of months before Amir Abdelgani is arrested in this safehouse, he is still trying to move himself to this position in Bosnia.

Ultimately what happens is Siddig Ali and Emad Salem join, call it forces, for lack of a better word, and Amir is caught up in this duality. What happens here of course is that, and you'll see it from the case, most of the evidence will come against my client from Emad Salem. Much has been said about it by the defense. The government has already told you that this is a man who will perjure himself for almost nothing, let alone for a million dollars. I won't belabor the points that others have made. I'll go on.

It suffices to say that he is a man who professes his allegiance to the United States, he professes his allegiance to Egypt, and to peace, but in reality he's a brilliant man of deceit, and he's a brilliant man of conceit who in the name of money, glory and self would say and do anything. However, keep note that one of his subplots borne out by some of the tapes, and I think it's in the tapes that he surreptitiously made to protect himself against all

comers, some of which we have, some of which we don't know where they are right now, the tapes will show that he particularly targeted people in the country of Sudan, which is where Amir Abdelgani and some other people in this case are from.

You may question, well, why the Sudanese? Why are the Sudanese one of his targets? Well, you'll find out through the course of the trial that the Sudan borders on Egypt. You'll also find out that given Mubarak's precarious position in Egypt one of the things that goes on in blaming the Sudanese Muslims for some of the difficulties in his country, and inveigling and embroiling the Sudanese is something that Emad and possibly his handlers in Egypt think would be a good thing, because if a plot comes through that involves the Sudanese it aids the Egyptians in seeking more money, more economic aid, more arms from the United States in their war against the Sudan.

So from an Egyptian standpoint, and never, never forget that despite who Emad is supposedly working for, we all know, and you'll see the proof of that, he's also working for the Egyptians, and they may have allied interests with the United States, but they have greater interests, Mubarak's regime has a much greater interest in what's important to him, his power, his country in the Middle East, and the Sudan is a problem.

It's important to note that despite everything you see and you hear in this case there will be important to be determined by each of you that this man Emad Salem entered my client's life.

As you sit here now I think you'll come to believe at the end of the case were it not for the entry of people like my relationship from my client to Siddig Ali, if his relationship with Emad Salem, he would still be working in a taxi right now. He'd be delivering people back and forth. He would be driving his livery vehicle and he would be going to the mosques. He wouldn't be out there bombing or doing anything like that on his own.

You'll come to see the evidence of the safehouse as Salem-inspired, created. You'll see that almost everything that comes out of that safehouse and what's going to happen during this trial is the government is going to come in with evidence from this government-run safehouse, they are going to bring those things in, they're going to put them on the table and one by one you're going to see that almost everything that comes out of that place was either brought in by Emad Salem or brought in because Emad Salem said, "Go get me this. What's it for? Just go get it for me," because he is running this operation.

You'll find that there is no proof at all that in 1993 during the time of this Amir Abdelgani had any, any

knowledge of how to build a bomb, what it needed, what happened to be constructed.

You'll hear, I think there is a conversation which he and some others may be talking about using cooking oil, same stuff you'd use in your kitchens, as a possible part of this bomb. When you listen to it, you'll realize these guys, particularly Amir, know nothing.

Emad Salem, you'll find, was the conductor of this railroad and he hitched up his engine to any loose caboose he could find in order to make enormous sums of money for himself. A million dollars is enough for any of us to retire on.

He used Siddig to provide the people and the two of them then engaged in a plot to keep Amir and others in the dark. You'll hear about that on some of the tapes. You'll hear on some of the tapes discussions about the fact that, the brothers don't know, don't really know what's going on at the beginning. This became what we may know commonly as a bait and switch game, that people got involved thinking originally they were dealing with training for Bosnia, an ultimately find themselves in a plot that looks like a simulation, looks like training, they believe it's training, but ultimately at the very, very end people like Amir come to understand or possibly believe that this is going to be real.

I'm sorry, I'm new with these reading glasses. Like they had played soldier by taking up these hills up in the mountains of Pennsylvania. They were going to simulate this bombing, they were going to simulate building these bombs in New York, they were going to learn how to use codes, they were going to be discreet, they were going do learn all kinds of tactics. You'll see some of it on the tapes they were going to do and act, and that's what Amir was instructed by Siddig, just do and act as if it's real.

Unfortunately, by the time Amir comes to believe that what they were engaging in was more real than imagined he was stuck. He was stuck because he was dealing with two people he couldn't really back away from. One was Siddig Ali, who he had come to trust and believed was a righteous leader for Muslims. The other was the much more shadowy figure, that was Emad Salem.

He had clearly shown that he had powerful connections in the military world of Egypt and to cross either or both of them would have been unthinkable. Something that I think you'll also see in this is that Amir and others really never believed this was going to happen, and you will see that although the government talks about this organized well-timed plot, Lincoln Tunnel, Holland Tunnel, five minutes apart, they didn't have the bodies, the cars, the parts, the drivers. It just couldn't have come

off.

And throughout all of this, there is a recognition and understanding, and that's why I think you'll find that some of these people knew this could never happen, is that throughout all of this the FBI was surveilling all that they did, and it was known to them. There will be evidence in this case that Amir Abdelgani knew that the FBI was following him, yet he did not stop because he didn't think it was real. He didn't think it was going to actually happen.

The evidence will demonstrate that Salem was a man who had been fishing for years. Tony Ricco spoke to you about some of his fishing early on in 1991. He had been throwing out these lines, trying to catch people for years, and his bait was being rejected by a lot of them. But if you go fishing everyday, somebody, some guppy will bite on the bait. The bait here was religion. This wasn't money. Amir Abdelgani didn't do this for money.

Whatever these people did they did because their hearts were ultimately to defend Muslims and they got dragged into things they shouldn't have gotten dragged into.

After all the evidence is presented on both sides of this case, I'm certain you will come to believe that the government's case rests on the images and the lies created by Emad Salem.

Mostly, I'm certain you'll reject the government's case, and you will bring back for us a verdict of not guilty. By doing that, you're going to be telling the U. S. Attorney's Office and particularly the FBI, that you can't fight terrorism to cover up your own mistakes by bribing a corrupt person with a million dollars and expect what he's going to do is bring you back sharks. He's not going to bring you back sharks.

He's going to create terrorists for you, because for a million dollars like a movie maker he's going to create what he has to do, and he's going to line his bank accounts with American dollars, and he's going to laugh all the way to the bank.

This is, as everyone has said, going to be a long trial. I ask you to keep your minds open. I ask you to relax and hear the evidence as it comes in. At the end of this case we will all stand before you.

I've been longer than I should have been. I'm sorry, your Honor. My summation in this case will be longer than my opening. I just ask you to bear with us as we go through the evidence. Thank you.

THE COURT: Thank you, Mr. Bernstein. Ladies and gentlemen, we're going to break for lunch. Please leave your notebook behind. Please don't discuss the case. Have a pleasant one, and we'll see you back again at 2 o'clock.

Everyone remain seated until the jury leaves, please.

(Luncheon recess)

(Continued on next page)

AFTERNOON SESSION

2:05 p.m.

(In open court; jury present)

THE COURT: Good afternoon, ladies and gentlemen. We are now going to hear an opening statement in behalf of far as Khallafalla, from Ms. Amsterdam.

MS. AMSTERDAM: You don't mind if I use this, do you? OK.

Good afternoon. I am going to say something right off that nobody else has said in this case, which is that I am really nervous, and I can't believe that nobody else has said that before this. Remember how you felt when you went across that hall yesterday or a couple weeks ago, and there were 50 people in the room and you had to talk? It was scary, and I feel like it's scary here. There are a lot of people, there has been a lot of press, there are a lot of marshals, and my family is here. It feels scary.

This afternoon I went upstairs to the cafeteria to have lunch, and there are these older men who are retired, who hang around the courthouse and come in to watch trials. I don't know them except to see them around the courthouse, and they were sitting at lunch together and I walked over, and I said how come you guys aren't downstairs watching my trial? One of them looked up and said, we already made up our minds three months ago. That feels

scary.

For me it feels especially frightening, because I feel like I have an awesome responsibility of representing an innocent man. This prosecution, you have heard, has everything. It has spies and greed and foreign intrigue and mystery, and by the end of this case it will even have a little sex in it. It has everything but what my mother used to call a good dose of a little common sense.

My name is Valerie Amsterdam and I represent Fares Khallafalla. We are in the low-rent district back here on the other side. This is Fares. I walk over here and I stand next to him to make a point, and it is a point that Miss Stewart said yesterday. This case is not about a number, it's not about a legal caption. It is not about United States versus Rahman et al. It's about a person, and in my case that person is Fares Khallafalla, a man who has family, has friends, has hopes, has dreams, and a man who has stood up in this very courtroom and, as loud as I am speaking here today, has said I am not guilty. He has said that to you.

And when I say that I am scared, and I tell you I am, it is because I know that my ability to speak or not speak may forever affect Fares's life. It's an awesome responsibility and it frightens me. It should.

But you know what comforts me, and I know it's

going to sound like a line but it's true. What comforts me is you. We have met with you. We have seen you. I have sat next to you across the hall. I believe that you share in some of the intensity of this moment. I believe that you realize that you too share in an awesome responsibility. You sit in judgment of a fellow human being's life.

And I am also comforted by the knowledge that in a selection process where we met with hundreds of jurors, that appeared at times to be absurd, boring, a waste of time, you had to wait in the hall, you had to wait to see us, you had to come see us, you had to come back again -- it wasn't a waste of time, it really wasn't. Because whatever it was about you that had you selected by both sides, each of you showed a very special quality, and to me that special quality was that you showed that you could be fair, that you could hear the word bomb and not close your notebooks, that you could hear the charge of waging war against your own country, and keep an open mind.

I don't know anyone's name here. I may never know your names. But I think that we glimpsed the fairness in your heart and the openness in your mind, and I thank you. I really sincerely thank you for that.

The prosecutors may bring this case in the name of the United States government, but you are the government. I am the government. We are the government. So don't be

confused when you hear Mr. McCarthy and Mr. Khuzami and Mr. Fitzgerald referred to as the government. They are lawyers, they are advocates, no more, no less, and they are human beings, and, as we all know, human beings make mistakes.

The prosecutors in this case made some mistakes and they jumped to some very wrong conclusions by focusing only on Fares's actions, without understanding the motives behind those actions. They did not have the opportunity, as have I and as will you, to examine his heart and his mind.

Tomorrow and again at the end of the trial, Judge Mukasey will tell you that any defendant charged with participating in a conspiracy must act voluntarily, must act willfully, and must act with a bad purpose, a bad purpose. You will be told -- in fact you are actually going to be given a handout of some preliminary instructions and you will read along, and it says that a person who acts out of mistake or by accident or for innocent reason is innocent. To be guilty you have to act with a bad purpose. If there is one thing I intend to prove, it is that Fares Khallafalla never, ever did anything with a bad purpose.

The prosecution would have you believe that this gentleman who sits beside me in this courtroom is your worst nightmare come true, a coldblooded terrorist killer. And they have spent much money, much time and much effort to demonize him and every other man that sits in this

courtroom. But I know this man and this --

THE COURT: Sustained. That is stricken.

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

THE COURT: Also, if you would turn the microphone slightly toward you, good. A little more. So that when you turn to the right side the microphone will pick it up --

MS. AMSTERDAM: I am so afraid that when I speak into the microphone -- I apologize, your Honor.

Fares Khallafalla, my client, is from Africa. He comes from the Sudan, which is a country which is next to Ethiopia and just north of Kenya. He is the oldest of seven children. His father was a train mechanic, called the cowboy by friends and neighbors, because he wore blue jeans, a big cowboy hat, and smoked a pipe. And he loved American western movies. Every Thursday night when he was a child, Fares's father took him to see an American western movie.

Fares was raised in a family that was not overly religious. Like many of us who only managed to go to church on Easter and Christmas and a few Sundays during the year, his family was called request Friday Muslims, meaning that they got all dressed up on Friday and went to church but they didn't go every day like a more religious family would have. Fares went to public schools which were attended by

Muslims and Christians. Easter and Christmas as well as Ramadan were school holidays. He played on his school soccer team, and perhaps not surprisingly given his height, he played on his basketball team. He was on his student council.

Upon graduation, he took a test to go to college. There are only, or there were only six or seven colleges in all the Sudan and only those people who scored the highest were accepted at college. Fares did not do that well. He could have attended like the equivalent of our junior college and he might have studied history or geography, but that would not have prepared him for much in the Sudan.

He had some friends, however, that had gone to college abroad, some of whom had even come to the United States, and they urged him to also go abroad.

Fares's mother, as mothers are, was very resistent. She was afraid. She had seen movies of the United States. She thought there would be violence and drugs and crime, and she didn't want him to leave Africa. But he persisted, because to Fares the United States was the top of the world, and it would give him the chance to become anything.

I ask you, are these the roots of a man who would embark upon a war against our country?

He went to the American center, to Khartoum in

the Sudan, and he looked at college brochures, and he chose one that looked nice in, of all places, Kansas. A strange place for somebody from the Sudan to pick to go to college. He sent in an application, he was accepted, he paid a $200 deposit, enrolled in an intensive program, and left for America.

Upon arriving, he was met by some distant relatives who took one look at this tall black African man who so few words of English and said to him, what are you crazy? You can't go to Kansas. The way that Dorothy would have said to Toto you're not in Kansas any longer, they turned to Fares and said you're not in the Sudan any longer, you're going to have to rethink your plan. So, he rethought his plan.

He went to work. He took a series of jobs. He worked in a deli. He worked as a taxicab driver. He worked as a messenger. He worked as a clerk. He decided that he would save his money and be able to go to college perhaps in an area like New York, where there was more of a religious mix, more of a racial mix, more of a mix in general in terms of the population.

This is nerves. I am sorry.

Eventually he got his own apartment in Jersey City and he shared that apartment with some roommates to save some expenses. He got a job driving a medical livery

company, meaning that he was driving a cab that drove sick people back and forth to the hospital or back and forth to their doctors' appointments. He became a permanent legal resident and took the first steps towards becoming an American citizen. He was beginning to live the American dream.

And this is the man who the government now portrays as a religious fanatic. This man was like any other young man that you know. He watched television. Sometimes he even snuck a look at his roommate's Playboy channel which the roommate had on subscription. He smoked cigarettes. He went to clubs at night. And he fell in love with an American Protestant woman, Diana.

Six months before his arrest Diana, the woman he loved, broke the engagement because her family disapproved because Fares was black. Her family was Spanish. It's sad but it's true. He was depressed, he was heartbroken, and he took stock of himself. Years had slipped by. He hadn't gone to college as he had planned. He was making good money but he wasn't saving any of it. He was out most nights going to clubs, and he was jeopardizing his job. And he realized that he was depressed and homesick. Fares Khallafalla decided to clean up his act. And you know how he decided to clean up his act?

He started going to the mosque more regularly.

He started attending church more regularly. This made him feel better. Instead of hanging out at clubs at night, he was keeping company with people who were hard working, religious, people that he regarded as good Muslims. He started going to evening prayers instead of going to dancing. He felt better about himself. He began sending home more money to his family, and he even took some of the steps necessary to set up his own medical transportation company. He had a chance of making something of himself. And again I ask you, is this the picture of a terrorist?

The mosque that Fares attended is not an African mosque. Indeed, there aren't all that many mosques to choose from and there is no mosque in this area which indicators to just people from Sudanese or African backgrounds. Fares did what many of us did when growing up. He chose the church closest to him. The mosque he attended was five blocks away from his home. It was predominantly Arab, especially Egyptian, but that was not relevant to Fares, because Fares was interested in prayer, not politics.

The judge will tell you tomorrow that the government doesn't have to prove motive in a criminal case. They don't have to prove what somebody's motive was in terms of doing a crime. However, his Honor Judge Mukasey will tell you that you can consider someone's lack of motive in deciding whether or not he is guilty or innocent.

Fares comes from an African country. His religion is Islam, but his racial and cultural identity are African and black. In many Arab countries he would suffer racial discrimination because of the color of his skin. He had no more personal interest than many of us do in the politics of Israel or the West Bank or the Arab world in general.

While he, like many of us, may have disapproved of the abuses of the Egyptian government under President Mubarak, Fares Khallafalla certainly had no personal interest in overthrowing that country. It is not his country, it is not his ethnic background, it is not his personal problem. He is and was not a political person, and he had no motive to wage a war against America, his adopted country.

Like the millions of other immigrants who came before him, his future lay in America. To him, America was the greatest country in the world, a place where through hard work he could struggle to become anything.

The only politics, the only world or news event that was of interest to Fares Khallafalla was Bosnia, and that is wholly understandable. The war in Bosnia has been the greatest of tragedies and it has affected many of us deeply. And Bosnia for any Muslim, be they black or white, be they religious or not religious, represents a holocaust.

Thousands of people are being killed. Many and children are being raped and slaughtered. An entire population has been left homeless and starving for one reason, because of their religion. Fares, like many of us, was sick at heart about that, and he was willing to help relief efforts. He donated money, he attended fundraisers, and when the hat was passed in the mosque he would put his hand in his pocket and put five dollars in the hat.

During 1992, Fares was befriended by Siddig Ali. This was not necessarily a friendship of equality, because Mr. Ali had a lot of stature in the mosque. He was often found to be translating some of Sheik Rahman's sermons into English. He was very respected and very admired. Mr. Ali was educated, totally fluent in English. He appeared to be very religious and totally committed to the Bosnian relief effort. Mr. Ali was married and his wife accepted donations of hundreds of pounds of clothes, which she herself mended, washed and packed for Bosnia.

Mr. Ali often spoke of the ultimate sacrifice, leaving his own family here and going to fight beside his Muslim brothers in Bosnia. To Fares, Siddig Ali had the noblest of intentions and the most unselfish of hearts.

Fares respected Siddig Ali very very much and he often volunteered his services to invite Siddig to visit sick members of the congregation or speak at fundraisers.

But when Fares would go pick up Siddig, he would be quick to stash his cigarettes under his seat, take a breath mint, and switch the FM rock to AM news. He believed Siddig Ali would keep him on the straight and narrow.

However, there was a break in the relationship. Just six months before the arrest in this case, on June 5, 1993, there was a celebration in Jersey City of the Sudanese Independence Day, the equivalent of our Fourth of July. There was to be a festival which Fares helped organize at the local YMCA. However, Mr. Ali learned that there was going to be singing and dancing at the celebration and he very harshly criticized the organizers. When Fares suggested that perhaps they could do the speeches first and Mr. Ali could leave before the singing and dancing, Siddig Ali left and told Fares he was a bad Muslim and walked away from the celebration. This embarrassed Mr. Khallafalla very much and hurt his feelings. He didn't see Siddig Ali at all during the winter months of 1993 and he didn't learn until April, two months before his arrest, that Siddig and others had gone to a training camp in Pennsylvania. When Fares did learn of the training he was very disappointed. Others had been invited to go to Pennsylvania to learn to fight in Bosnia, but he had been excluded, he thought, because they thought he was not a good Muslim.

Enter Emad Salem. Fares had seen Salem at the

mosque but of course they were not friends. For Fares, Salem seemed like a very important person in the Muslim community. He was seen at times in the company of Sheik Rahman and he translated some sermons for him. Emad appeared to be older, educated, experienced and financially quite successful. Fares was a cabdriver, a medical cabdriver but a cabdriver. He was a nobody to Emad Salem. However, the more Fares went to the mosque, the more often he would catch sight of Salem, who by this time was seen very often in the company of Siddig Ali. And they would greet Fares. Eventually Siddig Ali told Fares of the training in Pennsylvania and how he, Siddig Ali, was preparing to go fight in Bosnia. Thereafter, Salem and Siddig Ali came to Fares and they told him of their plan to continue, to continue the training for Bosnia, to continue the training that had started in Pennsylvania. They asked him would he like to join.

Fares explained that while he supported the Muslims in Bosnia, he, Fares, was not going to Bosnia to fight. It was not, he believed, his jihad -- and when people say jihad, it means many things to many people, but here, jihad to Fares meant it wasn't his personal struggle to become a better person. He thought his personal struggle to become a better person was to continue his education and to continue sending money back to his family in the Sudan.

So he told them, I'm not going to go fight in Bosnia. No problem, Salem said to him. You're a good Muslim brother, aren't you? You should always be prepared, even if you are not going to fight there. I am not going to fight, said Salem, but I'm going to training. And Salem reminded Fares of an Arabic proverb: teach your children swimming, archery and horseback riding. It will serve you well in peace and in war.

Salem pushed him further. Even if you yourself are not going to go to Bosnia, he said to Fares, you should come to training. You should lend support, both emotional and financial. You should stand beside the brothers who are going to go fight for all of us. How could Fares refuse?

Of course, he told Salem, if you think I can help I will help you. You can count on me. Excellent, said Salem. You will be rewarded by God for helping our brothers, and maybe you will even learn something.

I tell you now that this conversation is not recorded. Yes, Salem recorded conversations with his wife, with FBI agents, with Egyptian military agent, and even, as you have heard, his Pay Per View TV channel. Yes, Salem always seemed to record his telephone conversations. But when Salem went hunting for bounty, he very often and very deliberately chose not to record certain conversations. Why? Because if an informant, a bounty hunter, entraps

someone into doing wrong, a person cannot be found guilty. Judge Mukasey will tell you that tomorrow in his opening instructions. And Mr. Jacobs told you earlier that FBI agent, and, I submit, every informant, knows those rules. And if a person cannot be found guilty and you're an informant, you're not going to get paid.

On his own and often at the suggestion of FBI agents working with him, Salem dumped tapes. He got rid of tapes that didn't help his case, he started conversations in the middle, he ended conversations before they honestly came to an end.

And you know why he did this selective recording? Because he didn't want any evidence of his trickery, any evidence of his deceit, any evidence of his entrapment. He didn't want you the jury to know how he got Fares to go to training. He didn't want you the jury to know how he got people like Fares involved.

I want to stop here for a moment, briefly, to discuss Emad Salem. I am not going to go through what everyone else said. But I want to talk about him for a moment because he will be the government's main if not only witness against my client. I want you to ask yourselves, who is this man who would come into a house of God and prey upon the prayers?

Let me tell you what I intend to prove about Emad

Salem. Salem, as you have heard, worked with Egyptian intelligence. He had close ties to the military. He came to this country to freelance, to make money, to ply his dirty trade. Certainly he wanted to make money, but his ties to the Egyptian military speak of other motives as well.

He first went into the business of bounty hunting, by going to work at a hotel, the Woodward Hotel in Manhattan. He was a security guard. He befriended the residents. He bought their coffee. He gained their confidence. Then he went to the phone to phone the immigration authorities, always waiting to collect the award. By 1991 he had wormed his way into El Sayyid Nosair's defense fund. He had organized demonstrations. He even had the audacity to go and speak with Mr. Nosair's attorneys.

All the time he is selling information to the FBI, who, I assume, is saying keep up the good work. By late 1991 he really had the FBI's ear, and he kept predicting some major action, major violent action that was going to happen around the sentencing of El Sayyid Nosair. But unfortunately for Salem's checking account, nothing ever happened. Only peaceful demonstrations outside the courthouse.

1992 begins and Salem is again peddling

information to the FBI. This time he tells them something really, really big is going to happen. And indeed, who better to know? Salem, the ultimate agent provocateur. When Mr. Stavis used that word yesterday I went home and looked it up. I knew what he meant but I looked it up to see precisely what the definition is. Agent provocateur, a secret agent hired to incite people to do some illegal action that will make them liable for punishment. Perfect to describe Emad Salem. An agent provocateur, an instigator. He is not only good at figuring out who might be bitter or angry but he is even better at encouraging hostilities, pushing them along, riling them up, getting them going. If he sees some poor guy sitting on a park bench, muttering about the injustices in the world, he will hand him a gun, run off to the police, bring them back and have the guy arrested.

To give credit to Mr. Stavis, who said it best, where others saw adversity, Mr. Salem saw opportunity. He was no mere investigator. He was an instigator. He pushed the people that he chose as targets toward doing acts of violence, so that in the end he could turn them in, get the money, and be the savior.

Everything was fine until the late summer of 1992 when the FBI dropped Emad Salem. No more money. The FBI terminated its relationship with Mr. Salem because the

agents no longer trusted him. Not because, as Mr. Khuzami said, Mr. Salem didn't want to testify, but because they suspected correctly that he was actually working with a foreign government. They wouldn't, they couldn't and they shouldn't have trusted somebody who might have had a completely political agenda and whose motives were suspect.

There was only one problem. The people that Salem had started to rile up were now plotting to blow up the World Trade Center. But Salem was no longer on the payroll, so it wasn't his problem.

Then Salem figured out the ultimate angle. I intend to prove that Salem figured out a way to not only get back on the FBI payroll, but he figured out a way to become one of their highest paid informants ever. You know what he had to do? He had to sit back and watch the World Trade Center blow up. That's what he had to do.

I heard Mr. Jacobs say that the FBI lost control of Salem because they failed to heed his warning. But there are many, many recorded conversations between Salem and a number of agents where every one of those agents denies that Salem ever warned them about the Trade Center.

Perhaps this is not an issue which is black and white. Perhaps the truth lies somewhere in the middle. Maybe months earlier, in peddling his information, he had said that something big was going to happen. But in those

weeks, those days, those hours before the bomb went off, Salem never picked up a phone to call anyone. He just let it happen.

Could he have warned the police? That's for you to decide. But let me tell you this, he knew something was going to happen, and he knew who was doing it. Because within days of the bombing he is down in FBI headquarters and he is naming names and telling these guys who to arrest. How does he know who to arrest? Because he started the ball rolling. He set the whole thing in motion. Indeed, in a recorded conversation, a conversation with an agent, he gloats to the agent that if they had just stuck with him he would have been sitting there with those bombers, helping them mix the bomb. He knew who they were.

When Salem arrived at the FBI office, you heard whose picture was up on the wall as number one suspect: his picture. Even though the FBI had worked with them as an informant, he was their number one suspect in the World Trade Center bombing.

Later, in talking about that day, the day when he saw his picture up there, he said to an agent, and I quote, I'm not going to comment, that's your decision, but I didn't see the rest of those people had anything to do with this case. The agents ask him who do you think we should be looking for? And Salem gives them six names and picks out

photographs of four of them. Salem reported later to another agent that one of them, we have no pictures on him at all. The other one OK, I have a picture of him at home.

And in another recorded conversation he tells an agent, if I didn't come to your bureau, the FBI, last Friday and give you six names, you would be working in a completely different direction. And he goes on to say, and I quote, when I saw the people you were doing work on, they are not the people you should really be working on.

He knows who they are because he was there at the beginning. Emad Salem, agent provocateur. He stayed close enough to gather the information but not close enough to stop it. He did nothing to stop one of the greatest tragedies in this country.

The FBI took him back after the bombing but not with the financial welcome that Emad was expecting. They gave him $2,500 for returning and then they gave him several thousand more, none of the big money that you have heard about so far, not what Emad Salem was hoping for.

There are multiple recorded conversations where Emad complains bitterly about how much money he is getting. At one point he demands a $200,000 reward for telling the agents that one of the World Trade Center suspects is in Egypt. How does he know that? He has Egyptian ties. He wants $200,000 for telling the agent where the man is. The

agent laughs at him and Salem responds, again I quote, I need it, I'm not joking. You think I'm joking? I'm not. Did you deny that you didn't know who he was before I told you? And later he says to that agent, you would have been lost forever. You would have been. I will keep looking for him for the rest of your life. See how much that would have cost you.

He goes on to complain in other recorded conversations that they spent billions of dollars to repair the World Trade Center and he is only getting peanuts, his word, peanuts.

So ultimately Salem figures out what he must do. How do you cash in? He needs one more bombing conspiracy, one more that he can start, initiate, incite, control, stay with and cash in on.

This case here in this courtroom is Emad Salem's golden ticket. We will prove that he created the crime that is on trial here and then he stepped in to solve it -- for a reward, of course.

(Continued on next page)

You've already heard how much he's expecting, at least a million dollars, not from the government, from you and you and me, from the taxpayers. He's expecting a million dollars from us.

The agent who was to deliver Salem's demand to the FBI says to him, the agent says, listen, you want me to ask for a million five? And then if there is a negotiation, you can -- um, you can bring it down to what you're happy with. And Salem responds: No, there's no negotiation.

The million dollars plus award is not for the World Trade Center. It's for these men in this room. It's for this case. The World Trade Center case brought a Emad Salem only a couple of thousand dollars, but it left him in the most perfect position to instigate one last crime. I'll say it again, Emad Salem, agent provacateur.

This is the government's main witness against my client. And before I leave Emad Salem, I want you to think about this, and I want you to remind yourself to ask this question during the course of the trial. Where was Emad Salem when the World Trade Center blew up? I don't know.

But I'm going to produce evidence here in court that within a mere couple of hours of the bombing of the World Trade Center Salem was at St. Claire's Hospital in midtown Manhattan complaining of an injury to his inner ear. And I will produce a tape with Salem of a telephone

conversation he made to his wife, his ex- wife, Barbara Rogers. Barbara Rogers at the time was being represented by Bill Kunstler, an attorney as you know from the questionnaire, who was involved in this case. She had nothing to do with this case. She had an eviction proceeding, and Bill Kunstler was representing her.

In preparation for testifying at this trial, Emad Salem calls up his ex- wife, Ms. Rogers to figure out what's the worst thing that William Kunstler and Ron Kuby know about him. They're the lawyers in the case at that time. That's who he's expecting to cross-examine him.

So he calls up his ex-wife and says, what's the worst thing they know about me? Remember, as Mr. Khuzami told you, this is a man who doesn't like to testify. What does Ms. Rogers tell Salem that he should be worried about? She tells him that the worst thing that Mr. Kunstler knows about Salem is that he checked himself into a hospital --

MR. MC CARTHY: Objection.

THE COURT: Sustained.

MS. AMSTERDAM: Pardon, your Honor. I will introduce a tape in this case where Salem speaks to Ms. Rogers and in that tape Mr. Salem inquires as to what the worst thing is that Kunstler and Kuby know about him. And Salem learns that the worst thing --

MR. MC CARTHY: Objection.

THE COURT: Sustained. Move on to something else.

MS. AMSTERDAM: Just let me take a moment, all right, your Honor?

(Pause)

I want to make this point. I don't want to in any way not do it according to the rules. So just give me a second, if you don't mind.

THE COURT: May I see counsel? You want to come up to the side?

MS. AMSTERDAM: That's okay, just give me one second to collect my thoughts.

(Pause)

Let me put it to you this way. There is a conversation and he wants to know what the worst thing is that Kunstler and Kuby know about him. Putting that conversation aside, I will produce independent evidence that within days, immediately after the bombing of the World Trade Center, Emad Salem had checked himself into a hospital complaining about an inner ear problem.

Now, I'm not accusing Emad Salem of blowing up the World Trade Center, but I'm going to prove to you that this man stood by, maybe nearby, but he stood by and watched it happen. Emad Salem, the government's witness, is a man who let six Americans die in the bombing of the World Trade

Center, showed up immediately afterwards into FBI headquarters with his blood soaked hand, and asked for his reward. He asked for his reward for giving them the names of the people that blew up the Trade Center, and when did he give them those names? After it happened, not before. That should make you sick.

This is the man who ensnared my client, Fares Khallafalla into his trap. And like the images of those nets that commercial fishermen men throw out when they're going for tuna, and as they're dragging them in there are dolphins and porpoises that get trapped, people like Fares Khallafalla got trapped in that net, but a man like Emad Salem didn't care. He went into his mosque, he went into Fares's mosque, and carried him away from his church to go do training in Queens.

All Fares ever knew about Emad Salem was that Emad Salem was going to train people to fight in Bosnia. All Fares ever intended to show was support for his Muslim brothers, both emotionally and financially.

Remember this tomorrow when you hear the Court's instructions, Fares never acted with a bad purpose.

One month before his arrest on May 23, 1993, Siddig Ali called Fares Khallafalla, and told him to go pick up Amir Abdelgani and then to come pick up Siddig. Fares obeyed. As I said before, he was often in the habit of

driving Siddig places when Siddig asked. Siddig had no car. And Fares felt good that Siddig Ali was calling on him again.

They drove together to a mosque in lower Manhattan where they met with Emad Salem. Siddig spoke privately to Salem and returned to tell Fares and Mr. Abdelgani that Salem had rented a training site in Queens. In recorded conversations you will hear Salem conspire, plan to keep Fares and others in the dark. In a recorded conversation you will hear Salem say, there is no reason to tell them. There is no reason to talk about it. And you'll hear him say, they don't know about it at all.

Salem's own words prove that Fares Khallafalla had no knowledge of Salem's plans for a day of terror. And that he went to the garage in Queens that night believing it was for an innocent purpose, to train for Bosnia.

They went there that night to a place that the government calls a safehouse. It's not a house. It's a garage. And it was none too safe for people like my client. It was wired for sound. It was rented by the FBI. And there are videotapes about what happens there.

The first night they go there, you'll see a videotape in here. You'll see Fares walk around and look at the safehouse. He almost never speaks. Emad Salem is clearly in charge. In this video Emad is telling them how

they're going to learn to build explosives.

Emad does a simulation with a light bulb and a timer, and at first the light bulb goes on, and Mr. Khallafalla has no idea what that means, and then Emad Salem explains that this is a demonstration of an explosion, and they go, oh, that's great, that's terrific.

Because of course, I can't say this too many times, Fares thinks they're training to go to Bosnia, and if you are training to go to Bosnia, you have to learn about explosives training. You have to learn how to cut off the enemy supply line. Training about explosives is what you would expect to find in training for Bosnia.

Salem goes on and on, lectures in long confusing rambling sentences, not unlike me sometimes. And at one point during the night Mr. Amir Abdelgani actually lays down on the floor and goes to sleep. Eventually, the lecture is over. They get back in the car, they go home, and both Fares and Mr. Amir Abdelgani fall asleep in the back seat.

Over the next two weeks, including Memorial Day, to put it in context for you, this is three weeks before the arrest in this case, over the next two weeks, including Memorial Day weekend, Salem and Siddig Ali continue to meet.

Several times Salem says, where is Fares? I haven't seen Fares. What's Fares doing? And you know where Fares is? You know why Fares isn't at training? You will

learn that Fares does not come to training during those weeks, because he's home watching the Bulls and the Knicks play in the playoffs.

This time I'll answer my own question. This is not the portrait of a terrorist. Fares was really unhappy that the unexpected visit to Queens had cost him his chance to see the Knicks beat the Bulls in the second game of the series. So while Emad is scheming and manipulating and brain washing others into going along with this plan, Fares is simply making up excuses about that he's busy at work. When others are going out to Salem's training site, Fares is home watching Michael Jordan score 50 points against the Knicks.

I have a close friend and she says, when you hear the sound of hoof beats, think horses, not zebras. By that she means, think the obvious. If a man is sitting home missing training to watch a basketball game, think basketball fan, not religious fanatic. When you hear hoof beats think horses, not zebras.

The Knicks lost to Chicago in seven, and two weeks later Salem spots Fares at the mosque. You will learn that earlier that night Salem had a conversation with Siddig Ali, which is recorded, but 15 minutes later he's talking to Fares and for some inexplicable reason, there is no recording of that conversation, another example of Salem's

selective recording on-off, on-off, but we will show you at this trial what went on in that conversation.

Fares was talking to another person about going shopping the next day. His mother, Fares's mother, had asked him to buy some cotton sheets. Salem joins in in the conversation. He says go to Canal Street, they have cheap prices there. Salem says, come with me. I'm going there anyway and he says to Fares, we're going to need some things for the training exercises. We're going to need some timers, and after all, you promised to contribute money. Salem reminds Fares that it's for a worthy purpose. He reminds Fares that he, Salem, after all is contributing his time. The least Fares can do is contribute $20.

Without a second thought, Fares agrees to meet him. They meet on Canal Street the next day and Salem chooses the timers that he purchased. Fares pays for them. The government said to you that it will prove that my client bought the timers. I say right here, don't bother, don't bother proving it, we admit it.

But this is another example of the prosecutor's drawing the wrong conclusions by focusing only on actions without understanding Fares's motives or reasons. We will prove that Fares bought the timers believing they were for a training exercise, not for a war against America. He thought he was saving the lives of Muslim children in

Bosnia, not going off to fight a battle in the streets of the United States.

And Mr. Khuzami didn't tell you yesterday that was that the reason for buying those timers. The suggestion for buying those timers is Salem's. They're done at his suggestion and his direction for one purpose and one person alone, to make Fares look bad. This is what the lawyers mean when they say creating a crime.

These are timers that Salem didn't need and couldn't use. Not only had he already had timers, but the timers they bought on Canal Street are electric. You have to plug them in the wall, which means if you're making a bomb out of them you need a really huge extension cord.

Buying the timers was for the sole purposes of going, "gotcha" to Fares, crossing him off the list, not because Fares had done anything wrong, but because Salem had managed to put him in a situation which, even though it was innocent to Fares, looked damning to the agents who were writing the checks.

And, again, tomorrow you will hear his Honor say, that acts done by mistake or accident or for an innocent purpose, like training to go to Bosnia, are not criminal.

I have three more days very quickly, briefly to discuss. June 19, 20, and 21st. There are many recorded conversations. There are meetings held without Fares.

There are conversations that change abruptly when he comes in. There are conversations that go on after he leaves. All the time in these conversations Salem is saying, and we are showing the people we are doing God's work. Repeatedly Salem tells Fares and others that trusting his brother is the Islamic thing to do. It's the rule. He tells Fares that they have The Sheik's approval, not because he has The Sheik's approval, because in case Fares is getting suspicious, this will throw him off the track.

At some point, however, Fares realizes that Salem's definition of God's work is not his own. Finally, things come together, and Fares wants to leave. But it's easier said than done.

With Salem present, Fares is confronted and told that now is the time to speak up and pledge his support. Five times Fares is asked, are you with us? Five times he refuses to commit. Five times he struggles to get himself out of an embarrassing and possibly dangerous conversation by saying, I'll tell you tomorrow. You will hear in recorded conversations both on video and on audio, that Fares is asked, do you want to pull out now? And he says, I'll tell you my opinion tomorrow.

That's it. He's asked and again he says, I'll tell you my opinion tomorrow. And then to really intimidate him and embarrass and stick it to him, they say, say it in

English. And Fares says, annoyed, but determined, that's enough, brother, I'll tell you tomorrow. You can hear those words yourself. They're in English.

And Salem jumps in and says, is this, is this, he starts to demand, and before he can finish, Fares turns to him and says, you want to tell me to go? And he is told, this is not a joke. It's not a joke. This is serious, serious. And Fares does not say, I know.

What he says is, then God forgive me. Because up until that time he had not even allowed himself to consider the possibility that Salem would try to turn his good intentions into bad. He had not even let himself think that that was the possibility. Shame on you, shame on you, it goes on in the tape. He's taunted. And finally they turn to Fares and say, take a vacation, get out of here.

He stands there waiting for the meeting to break up because he has no way to get home from Queens, there is no car there. And as the conversation continues and people are talking about getting cars, Fares gets annoyed, and disgusted and he interrupts and says, I want to say something here. Let this guy, meaning Salem, let him go search for the cars. Let him get the cars.

And when Fares walks out of that room and out of Salem's clutches, Salem turns to Siddig Ali, and he says, Fares is not a Fares. Fares in Arabic means fighter. It

means a Knight. Fares he is not a Fares.

Both conversations are reported. If the government doesn't produce the transcripts I will, and the parts that are in English you'll hear yourself.

I'm almost done, your Honor.

I agree with Mr. Jacobs that there is no safehouse crime here. It was a crime committed totally by Emad Salem for the purpose of capturing Sheik Rahman, a million dollars, and maybe even medals from Egypt.

THE COURT: Ms. Amsterdam, draw to a close.

MS. AMSTERDAM: What?

THE COURT: Draw to a close.

MS. AMSTERDAM: Fares, he is not a Fares. That might be the only true thing that Salem ever said. And Fares's answer was clear that night. He left. He never returned.

Over the next two days when Salem gathers the oils, the barrels, the guns, Fares goes to work, he does his laundry, he goes out for Chinese food, and he plays some basketball. And three days later, he's home, and he's arrested by police, and you know what he's wearing? He's wearing an "I love New York" T-shirt. This is not the uniform of a terrorist. This is not the portrait of a terrorist. My client is not a terrorist.

I want to leave you with this one last message,

and I'm sorry for having gone over, your Honor.

I started off saying I was nervous, and it was clear through this whole thing that I was nervous. As I close I want to leave with you this remark, a friend of mine, a close friend of mine said to me once, after I had been robbed and I was really very nervous. He said to me, Valerie, the opposite of love is not hate. It's fear. Fear is worse than hate, because it shuts out all the light. It closes your heart. It closes your mind.

There are thirty marshals in this courtroom, there are barricades out front. There are situations like when that alarm went off where I bet every one of you were nervous. But I say to you, don't let the fear in this courtroom or the fear of these charges close your heart or your mind to justice.

Don't let the fear that you can feel sometimes in this courtroom prevent you from living up to your oath as jurors.

Fares Khallafalla is innocent. The day Emad asked him to go to training, he was innocent. The day they took him to Queens he was innocent. The day he was arrested. He is innocent as he sits here today. And at the end of this case, I will ask you to stand up and tell the world that.

Thank you.

THE COURT: Thank you. We are going to take a short break, ladies and gentlemen. Please leave your notebooks behind. Don't discuss the case.

(Recess)

(In open court; jury present)

THE COURT: I want to remind you, ladies and gentlemen, of something that I told you before we started yesterday, and that is that lawyers get an opportunity to make opening statements as in essence a statement to you of what they think the evidence will show, but lawyers opening statements, any statements by lawyers are not in an of themselves evidence.

You will now hear an opening statement in behalf of Tarig Elhassan from Ms. London.

MS. LONDON: May it please the Court, members of the prosecution, members of the defense, and Mr. Elhassan.

Ladies and gentlemen, as Judge Mukasey just told you I represent Tarig Elhassan, and first let me tell you, I am really glad you had a break, because you've sat there for a long time, and I was really wondering towards the end of Ms. Amsterdam's opening how I was going to come in and rally you again for another round of talking. But I have some good news for you, and I have some bad news for you, so I'll give you the bad news first.

The bad news is that most of what I'm going to

say I think that you've heard before. The good news is I am not going to speak to you for very long, but I will perhaps remind you that other counsel have told you things that I repeat, and will emphasize, but not in such length.

You've already been told it's a long trial and I can tell you right now that it may be a long time before you hear from me again or before you hear about Mr. Elhassan again. My expectation is that you may sit here for several months before you hear from us, although I will tell you right now something that Ms. Amsterdam has already told you, Mr. Elhassan has already spoken in this court and he has spoken the only words that need to be spoken by him, and he has stood up in this courtroom, and he has said to Judge Mukasey, not guilty, not guilty to the charges that the government has brought against him, and that is why you're here.

The chronology of events that the government has charged here, especially in the seditious conspiracy, go from around 1989 until the middle of 1993, and in all likelihood you will not hear very much about anything connected with, relating to Mr. Elhassan until June 19, 1993. That is a long span of time.

I will point out that Mr. Elhassan, Tarig is sitting over there. He is the very elegant gentleman in the white robe, the white galabria. Mr. Wasserman explained to

you what that significance of that robe.

And let me tell you now, you'll see videos later in this case, which Mr. Elhassan, in which Tarig is portrayed, and he is dressed the same way in those videos. This is the way he is always dressed, and this is the way he dresses now. And I think there is a point to be made from it.

You may hear from the way that I speak that I also speak with an accent. And when my children were very young and friends would come home from school, especially young friends, the first thing that would come out a friend's mouth within a couple of minutes of being in my house was, your mother speaks funny, or if they're a little bit more precocious they look right at me and say, you speak funny.

Well, the standard answer in my house was, and my kids learned it early, not funny, different. And very quickly their friends would realize that funny was not funny, different didn't mean anything, and I think as you sit here month after month, and while Mr. Elhassan may look different to you, or perhaps may look funny to you, that is going to melt, and you are going to see him as a person in the context of this case.

I'd like to tell you a little bit about him. He was born in the Sudan, as were a number of the other

defendants here. He came from a large and a close family. Has three brothers, and six sisters. He was born in the northern Sudan. He comes from a family north of Khartoum. He was born Muslim, brought up in the Muslim traditions, and he brought that tradition and those beliefs with him here to the United States. He continues in those beliefs. They are deeply felt, strongly held beliefs of his.

Tarig came to America in 1986 at the age of 30 seeking, as many people who come here before him, a better life for himself. And again, as many people who came here before him, opportunities didn't throw themselves at him, but he did the best he could. He worked at odd jobs. He worked in delis, he worked as a cabdriver. Before he had been here very long, he no longer worked at those jobs because there was something in America that bothered Tarig Elhassan, and that was the homeless on the street, the down and out that are all over the streets of New York, and Tarig Elhassan then went to work doing social work and charity work for a number of years, working at the St. Vincent Halfway House, helping feed the homeless, helping provide the assistance to the poor, and needy and working at the Catholic worker in Greenwich Village.

He met a young woman in this country, American girl. He fell in love with her, they fell in love, they married, and they have three children, age 5 and a half, 3

and a half, and age 2.

One of the other significant things you are going to hear about Mr. Elhassan is that he prayed regularly at a mosque, or to use the Arabic term a masjid, M-A-S-J-I-D on the lower east side near where his apartment is. The Masjid Medina it was called, and that's a significant location which I'll tell you soon.

He spent a good deal of time there. He prayed there. He studied the Koran there. He taught Arabic there. And he associated with fellow Muslims there.

But you will also learn that as a follower of Islam, Tarig did not just attend one mosque. You will learn in the course of this trial that he attended many mosques. He attended mosques in Manhattan, he prayed at mosques in New Jersey, he went to mosques in Queens, and he went to mosques in Brooklyn.

The government has argued to you and will continue to argue to you that Tarig Elhassan is a follower of Sheik Omar. I submit to you, ladies and gentlemen, there will be no evidence to substantiate that. The evidence will show in this case that Tarig Elhassan is a follower of Islam.

Now, I want to get right to the point and address directly why Tarig Elhassan is sitting here in this courtroom today fighting for his life. He is here for two

reasons.

He is here, number one, and you've heard this before, he is here because he is a Muslim, number one. He is here number two, and it's a combination of the two, that you've heard before, he is here because he is Sudanese. And you've also heard from a number of lawyers about in 1992 there was a war raging in Bosnia, a vial disgusting war, like all wars.

This is a particularly vial and nasty war, because its stated aim is to annihilate a group of people, the group of people to which Tarig Elhassan belongs and relates.

People all around the world have been disturbed and distraught about this, but put yourselves in the mind and in the hearts of a Muslim who attends a the mosque in this country and in 1992 you will hear evidence, and in all likelihood you will see a video, because in that time in the mosques and the masjids around this city, films were being shown, videos were being shown to Muslims. They were hearing lectures of the attrocities in Bosnia.

Maybe you can recall yourselves the images on TV, the photographs in the newspaper of the tortured starving emaciated figures behind barbed wires in concentration camps, the mutilated bodies lying on the ground, the women and the children who were raped, tortured, killed in front

of their husbands, raped in front of their families, disgusting, disgusting events. These were shown in the mosques and there was a call that went out for Muslims to rally for fellow Muslims.

Tarig Elhassan was one of the Muslims in mosques who heard that call, and he responded to that call. He didn't have the ability to respond by giving money. He is not a wealthy person. In fact, he lived basically at the poverty level in this country.

He responded to that call, ladies and gentlemen, by going to train for Bosnia in January, early February of 1993 at the military training camp that you've heard about that the government has told you about in Pennsylvania.

Well, let me tell you right away, ladies and gentlemen, it's not a crime to go to that camp. That camp was legal. It was not a camp that just Muslims went to. Anybody who wanted to go there to learn how to use a weapon could go there.

It is not in and of itself a crime, or the government would like you to believe it is, and they will undoubtedly portray it in a sinister light. You'll see photos of that training camp. If the government doesn't put them in evidence, we will.

But most importantly, the reason that Tarig Elhassan was at that camp is the same reason that other

defendants on trial here were at that camp. They believed they were getting training for Bosnia. Certainly if the government is going to argue to you that they are getting training in the use of automatic and semiautomatic weapons to wage a war, their war of urban terrorism against the United States, it doesn't relate to the subsequent bombing charges that are borne against them.

You'll also hear some evidence, ladies and gentlemen, that there was a map of Bosnia on the wall of that training camp. You will hear some evidence that there was talk that the land around that area was similar to the terrain, some of the terrain in Bosnia.

These events took place early 1993. February, 1993, the bombing of the World Trade Center. There will be nothing relating to that World Trade Center bombing that links Tarig Elhassan to the planning of it, to the carrying out of it, anything else to do with it.

When we get past the World Trade Center bombing, we come to a name that you could tell me about, the E S name, Emad Salem. I'm not going to belabor the point. I'm not going to review the history, but I will tell you that after the World Trade Center, Emad Salem entered his second marriage of convenience. Emad Salem, as you will learn, is a man of multiple marriages, not only with his wives, but multiple marriages with the FBI, and this in the tradition

of Salem was another marriage of convenience.

(Continued on next page)

MS. LONDON: (Continued) Mr. Jacobs told you plenty about the FBI trying to save face in the light of failing to intervene in the World Trade Center bombing. You have heard in detail about that, and I can only repeat to you that the plot and the planning that emerges after the World Trade Center bombing and in the spring of 1993 is a plot that is instigated by the FBI, by agents of this government. It is instigated by them. It is pushed through by Emad Salem. It is funded by the government through Emad Salem. The expertise is provided by the government. It is a government plot, and not a plot of these defendants.

And Emad Salem found, as you have heard, and I am not going to go into detail because you know the background, but he found his perfect dupe, and I apologize for using that word but he found his perfect dupe in Siddig Ali. Emad Salem and the FBI went out and rented the garage, the place that now is being called the safe house -- their words. It's a rinky dinky rundown garage in Queens. They located it, they rented it, they paid for it.

Admittedly you will hear a couple of tapes of Emad trying to get his brothers to kick in some money for it. There isn't any money. He may have gotten a minor contribution. But Emad gets around that, and you will hear him say on tape, you will hear him say on tape that the FBI is going to give him all the money he needs to carry out

their plan. Money wasn't a problem.

And one of the things you are going to hear in this case is that terrorist groups are well funded. This is a terrorist group that is funded by the FBI and staffed by the FBI. This is not the terrorist group. Tarig Elhassan is not a member of the terrorist group. FBI funded, FBI controlled, FBI instigated.

And the irony of it is, after all that planning, after all that funding, it is Tarig Elhassan who has to sit here month after month after month and face the charges.

Miss Amsterdam called Emad Salem a bounty hunter. We didn't confer. I had in my notes that Emad Salem is a bounty hunter. He is an Egyptian bounty hunter, and he works under orders from Egyptian intelligence. He works under orders from the FBI. And his orders are to bring in Muslims and bring in Sudanese, and if you get them both at once it's a double paycheck for the same head.

Much of the government's case against Mr. Elhassan is going to come in the form of tape recordings and through testimony from Emad Salem. The legality of the tape recordings is not an issue for you to decide on. You will hear -- the law on the tape recordings will be given to you by the judge. What you should know, however, and what I must emphasize to all of you is that Emad Salem had the tape recorder on his person. He controlled when it was turned

on, he controlled when it was turned off, he controlled when it was recording.

But even more importantly, because he is the recorder of the conversation and because he knows when he is going to record and because whoever he is speaking to has no idea there is a recording, there is a balance of power here that is so unequal. He has the ability and the intelligence and the authority to steer, to direct, to force and to lead conversations exactly where he wants them to go and where his FBI collaborators have told him to take them, and that's what you have to remember when you listen to those tape recordings. You don't speak Arabic. You will hear or read the transcripts in English of most of these tape recordings. You will miss a lot of the nuances of the spoken word.

The government-authorized tape recordings in this case -- because, as you know, Emad Salem recorded whatever -- started around May of 1993, and on these tape recordings you are going to hear in tape after tape after tape that Emad Salem encourages and demands that Siddig Ali bring other people in. He tells them he needs helpers, he needs workers. It is not the jihad army, it is Emad Salem's army that the FBI wants.

And you will hear repeatedly on these tapes that potential people to be used, to be targeted, don't know of anything, will be told nothing, are to be kept in the dark,

are to be led to believe that it's a continuation of the Bosnia training, time after time after time. Those various phrases are repeated and that theme comes through.

And then, you will hear, on a date in early June of 1993, Emad Salem goes with Siddig Ali to a mosque, to a mosque on the Lower East Side of Manhattan called the Masjid Medina, and Emad Salem times that visit to the mosque very, very carefully. He gets there at prayer time, he goes there to be introduced, to Tarig Elhassan. He gets there at prayer time and he prays with him. He literally goes into that mosque when this man, when Tarig Elhassan is praying, to target him, a clever, nasty, manipulative move. And to Tarig Elhassan he knows just how he is going to appear, to a poor Sudanese, to a poor, black Sudanese. He knows that he is going to appear aristocratic, important, rich -- with our money -- successful. And more importantly, he is a Muslim, and by going into that mosque to pray with a fellow Muslim, he knows that he will automatically have the trust of that Muslim. He also knows that he is going to appear to Tarig Elhassan as an Arab Muslim who has made it in America. He knows that he will be perceived as a magician, as a man who can create magic, create magic for Elhassan. And he targets Tarig Elhassan in that mosque.

What is he really doing? He is fulfilling his orders from the FBI. He is fulfilling his orders from

Egypt, and he is, as they say, just doing it for the money.

THE COURT: Ms. London, five minutes.

MS. LONDON: That should be just about right, your Honor.

You will see videotapes of the garage in Queens, the safe house, the garage. Elhassan's first visit to that safe house was on June 19 of 1993, four days before his arrest in the very early morning hours of June 24 of 1993. On every visit that Mr. Elhassan, that Tarig makes to that safe house, arrangements are made for him to be picked up, taken there, brought there, fed sometimes on the way there with a hamburger from McDonald's, because he has no money, and arrangements are made for him to be taken back home. And in fact on the very last night when Emad Salem knows that there are going to be some arrests, Tarig Elhassan does not show up and Emad Salem is very worried and very annoyed, and in fact after midnight, in the late hours of June 23 he sends a car to Manhattan to round him up and bring him there, to bring him there for the purpose of being arrested.

Watch carefully and watch critically at these videos. The only thing that is lacking on these videos is a credit with the property and the props and the furnishings provided courtesy of the FBI. That's what is missing on the video. As I have told you before, FBI funded, FBI instigated, FBI managed, FBI expertise. Sudanese Muslim

defendant to face the music that they created.

And my last topic that I want to talk to you about is a topic that you are going to hear about in this case, and it is the topic of bombs. You are going to learn, ladies and gentlemen, that there was used by Emad Salem and there was created a code word, an Arabic code word, and that word is haduta, H-A-D-U-T-A, haduta.

I don't know at this time if the government is going to translate that word for you into English in their transcripts. I don't think they want to. I think they want to leave it in the Arabic, because that way again, it sounds funny, it's different. So it's a little more sinister.

But let me tell you, ladies and gentlemen, the evidence is going to show that the English translation of haduta is fairy tale, unbelievable tale. And what we have here, ladies and gentlemen, is just that. This case is a haduta. It is a federal haduta, a federal fairy tale. The whole seditious conspiracy is a haduta.

You are not going to be asked to condone bombing, you are just going to be asked to look critically, very critically at the evidence, how it comes, where it comes from, where this case arose. You will be asked to be fair. You heard this before, you were chosen after a long process, questioning. We interviewed you and we have chosen you as jurors, because we believe and we hope that you can be fair.

You have taken an oath and we are going to ask you to live up to that oath, because as Mr. Elhassan sits here on trial over the last few months, he can only rely on the oath that you have taken that you are going to be fair. I believe that you will live up to that oath and that at the end of this trial, after you have viewed all the evidence and reviewed all the evidence, that you are going to find that Tarig Elhassan is not guilty of all the charges that this government has brought against him.

Thank you.

THE COURT: Thank you, Ms. London. We will now hear an opening statement on behalf of Fadil Abdelgani from Mr. Lavine.

MR. LAVINE: Thank you.

Good afternoon, folks. Yes, yes, it's another suit to stand up here and talk to you this afternoon. But I promise I may not be quite so bad as you might imagine right now.

Sometimes you get so close to the forest that you cannot see the trees. That's to say that you get too close to a situation. You can't take a step back, you can't see what the truth is. It's a human frailty and it is a frailty that even prosecutors suffer from sometimes, and this is one of those times. It is for that reason that my client Fadil Abdelgani finds himself sitting in this courtroom today.

Let me give you just a quick review. The prosecutors presented only a smattering of information about my client. Every time he was mentioned, he was lumped together with others. Some of the people are mentioned individually, Fadil never is. It is always Fadil and Amir, or Fadil sitting over there next to Tarig. Never alone. This was not by accident, this was by design.

One of the things that they told you about Fadil is that he is one of the army of 150 wild-eyed and bloodthirsty, suicidal thugs about to attack us from all directions. It almost conjures up images of Gunga Din, if you remember that movie, but these days Victor McLaughlin and Cary Grant are long gone and Douglas Fairbanks, Jr., is probably a bit old to protect us. So instead we rely today on a fellow named Emad Salem, about whom we have heard a great deal. Mentioning this movie this might be the very closest I come to practicing what is called entertainment law. But I want to make a point here with you.

By lumping my client Fadil Abdelgani in with other people, the prosecutors are relying on a device. When you lack individual specifics, what you do is you take the defendant and you throw him into a prosecutorial machine like a big blender, and you are left with the defendant and others, the defendant and others. It's an attempt to make him just part of the gang, and by doing so, by making him

part of a gang, they can make him more sinister to you.

What did they have to tell you about him, and I would be shocked if any of you can remember. But briefly it is this: Yes, he was in Pennsylvania. You will learn that the attendance at Pennsylvania on behalf of many of these men was a response, a very limited response but a response to genocide, and it was probably an honorable thing to do.

You will learn, and the prosecutors mentioned, that my client is seen at a gas station on the afternoon of June 23, at which time diesel fuel is loaded. He is also seen on videos at what the prosecutors like to call the safe house in Queens. You will see those videos, and on those videos you will see my client mixing fuel oil and dry fertilizer.

But wait. What else? What else are you going to learn about Fadil Abdelgani? You are going to learn that his appearance on July 23, which is the last day, because the arrests take place in the very early morning hours of the 24th -- this is the surprise. He was the mystery man. He was not expected there. Did that ever give the prosecutors cause for concern about whether he was involved or not? The answer is no. You will learn that the arrest at the so-called safe house was an orchestrated event. Armies of agents were present. The news media was even there -- surprise. It was orchestrated and it was designed

to send a message, and the message was that the FBI was back on top again, ladies and gentlemen.

You will learn that before the agents went out to arrest all these people, they had prepared paperwork, paperwork with the names of these people on them. The sheik's name is not on that list, by the way. But the names of almost everyone else who sits before you were on those pieces of paperwork. You will learn that the name Fadil Abdelgani was not, because they didn't know who he was. He was just there. Did that give them cause for concern? The answer is no.

You will learn that in the days before the arrest was made Mr. Salem tries desperately to speak to other people, and you will see those conversations. And he asks repeatedly, who is involved? Was this one involved? How many have we got? He speaks to Mr. Siddig and he says basically, how are we going to blow up four or five different facilities, and you are giving me an army with two or three different people. Salem is always trying to get Siddig to mention different names. You will learn that Fadil Abdelgani's name is not mentioned. Did that give the prosecutors cause for concern? The answer is no.

When you have the opportunity to look at the videos of the safe house you will see Fadil Abdelgani. But if you look closely at his face, you will see the face of a

man who is dumbfounded. You will see the face of a man, ladies and gentlemen, who is clueless as to what is going on there. Did that give them cause for concern? The answer is no.

You will learn that just literally minutes before the arrest Salem is speaking to other people, and you will see the translations. And Salem talks about Fadil Abdelgani, and Salem is told don't talk in front of him, he knows nothing of this, he knows nothing of this matter. Does this give the prosecution cause for concern? And the answer is no. Why? The logic is this, ladies and gentlemen. My client is an Arab, he is a Muslim, and he was present. He was just exactly what the prosecution wanted to be caught in that trap.

There is a problem for any of you who have ever hunted with traps or have any experience with traps, and it's this: that you don't always end up with, caught in your trap, exactly what you expect. Whatever finds its way into your trap gets caught, whether it's a rabbit, like Fadil Abdelgani, or whether it's a wild bear, like the thing that you are setting out to try to catch.

While we are on the subject of traps, let me just very very briefly mention just one thing. Without, without -- and this is what you will each learn as you listen to the evidence in this case -- without this fellow

Salem none of these people would ever be sitting in a court of law. Without Emad Salem there is no bomb. Without him there is no conspiracy. Salem was able to manipulate a fellow named Siddig Ali who sits here, within -- and I am sorry to be a little bit repetitious but this is just so telling. Within days of the arrest, the big arrest, Salem is telling Siddig, we need oil for a bomb. Now, the would-be world revolutionary, you know what he is looking for? Mazola Oil, cooking oil. It would be a little bit funny if it weren't quite so very, very tragic. But it is tragic.

Let me just take a couple of minutes to reintroduce myself and my client to you. I will try to keep my voice up. My name is Charles Lavine and my client is -- Judge, can he stand up? Thank you -- Fadil Abdelgani. Thank you, Fadil. Fadil is 32 years of age. He was born in a small town in the Sudan called Atbarah. Don't even try to write it down because I can't even come close to pronouncing it correctly. He is one of 12 children. Unlike some of the other people who are present in this courtroom today, he does not come from an impoverished background. He is one of a set of twins. His family is quite well-to-do by Sudanese standards.

When he was in his early teens, his family moved to the city of Khartoum, where they live in a suburb which I

understand is very similar to American suburbs, which I guess we are all very familiar with.

He is well educated, comes from a fine family. In 1989 he came to the United States, where he worked, and yes, yes, I plead guilty, he did work for awhile as a dreaded Middle Eastern cabdriver, but I will ask you not to hold that too much against him during the course of the trial -- afterwards is another story. He is the father of a young daughter, a beautiful young daughter whom he has never seen. And yes, he is indeed a human being, as is each of the men who sit before you today at the defense table.

I suppose by his account he would consider himself to be hard working, but that was not an opinion that squared with what his father-in-law thought, because on the afternoon -- I don't mean to be humorous because this sort of explains why he is here. On the afternoon of June 23 his father-in-law was bothering him about not working hard enough. His vehicle was being repaired. He needed to go from his home in Jersey City to pick up his car. He asked his cousin Amir to give him a ride. When he got to Jersey City, it turned out that his car was not ready. He did not want to go back to his father-in-law. He asked Amir if he could stay with Amir. And that's when trouble started. He and Amir went to Yonkers. They got fuel oil. They drove to Queens. They went into a garage in Queens which is off the

Van Wyck Expressway in the Jamaica section of Queens. This is there that Fadil Abdelgani joined with other people that he knew who were working in what he thought was honest work, for all appearance legal work, and he began to mix fuel oil with dry fertilizer.

That seems to be what it is that the prosecutors have most against him, because after all, wouldn't each and every one of you know that that's how you make a bomb? I kind of doubt it. I doubt it very much.

Other people have discussed your obligation with you, and let me just touch briefly, briefly, on something that I would ask you to consider. Mr. Khuzami in his opening remarks mentioned battlefield, and he mentioned certain locations. It is indeed true that where we are today is a battlefield. It actually was a battlefield because it is here that our own war of independence was fought, the revolutionary war, right here.

As a matter of fact, the next time you have a chance and you are perhaps out to lunch -- am I getting close?

THE COURT: Five.

MR. LAVINE: Five, thank you. We are home free, figuratively speaking.

The next time you are out to lunch and you go out in the food court, if you are able to, you will notice past

the food court, behind the courthouse, there is there are some big red disks. It's a statue. Maybe you have seen it. About 30 feet south of that statue is Gus's hot dog stand, which many people strongly recommend. More importantly, if you go another hundred feet south toward the Brooklyn Bridge -- yes, it will lead somewhere, you will see -- you will find what is left of a place that was once called the Sugar House. This is one of the smallest, most neglected, oldest and maybe most important monuments in the city. It was in the Sugar House, which stood just about here, that Americans were held and where Americans paid the supreme price for the jury system, for the right to come into court and say I'm not guilty.

You are the inheritors of the tradition of those people. You have inherited this system just as a child inherits from a parent, and that is how very, very important your job is.

If, if, ladies and gentlemen, Fadil Abdelgani was not Arab, if he was not Muslim, if he was from Poland or Ghana or Guam, then his presence there in that garage while people are mixing together diesel fuel and dry fertilizer is not proof of guilt, is it? It is not. Part of the sacrifice that was made by those who served their involuntary time in the place called the Sugar House was that you who sit on this jury are to treat my client and

everyone else in this courtroom fairly. I trust that you will, and I trust that when you weigh the evidence against him and you retire to deliberate, that you will do two things: You will find him not guilty, and you will do proud the memory of those who once served time in this very part of the city so long ago, and you will serve them very well.

I thank you very much for your time this afternoon.

THE COURT: Thank you, Mr. Lavine. Ladies and gentlemen, we are going to break for the day. Please leave your notebooks behind. Please don't read about the case, please don't hear about the case, please don't think about the case. We will see you tomorrow morning. Good night.

(Jury excused)

THE COURT: Mr. Serra -- two more to go, correct?

MR. SERRA: That is correct.

THE COURT: After which I am going to give preliminary instructions.

I said we were going to revisit a subject earlier, and that relates to the state court verdict in the Kahane case, which I had thought initially that I wasn't going to charge on, and apparently when I said that, two of you took it as a sign to pick up the ball and run with it. So I am going to charge on it, and I would like your proposed submissions by 6:00 this evening.

Is there anything else?

MS. STEWART: Judge, before we begin -- I assume we will be starting the taking of testimony either late tomorrow morning or early in the afternoon, is that fair to say?

THE COURT: Right, that is fair to say.

MS. STEWART: It affects my client directly, the beginning testimony that we will be taking, as I understand it from being with Mr. Fitzgerald over the weekend. I have a number of motions in limine that I want to try to make before that time. I also will be serving this evening, which we have been working on, a motion to renew and reargue on the Elmasry search. The time for that passed sometime ago. I suppose you can use your time any way you want.

MS. STEWART: Judge, there apparently was an error that we think was major error and that perhaps amounted to government misconduct in this. I can lay it out for you in one sentence if you would like me to. Apparently the government had conceded standing. Mr. Moore never raised it and your Honor decided that motion based on the fact that the sheik had no standing.

So that being the situation, we want to revisit it and see whether or not you should reach the merits on this issue.

THE COURT: Do you want to be heard?

MR. McCARTHY: Does your Honor want me to address the merits of it?

I really do think that the court has on any number of occasions when I have been here told Miss Stewart that the time for making motions is over. I suppose I could go back and take a careful look at the search and a careful look at the law in the middle of trying to get ready to put a day of witnesses on the stand.

THE COURT: No, we are not going to do that. That is just going to end. There was a motion made that was denied.

MS. STEWART: Judge, I will serve my motion. What the court does with it is up to the court of course. What I am saying is that this is of a constitutional dimension.

THE COURT: Just about everything that goes on here is of constitutional dimension, so let's not overstate it. The amendment that you are talking about is the fourth, which does not talk about no search and seizure but unreasonable search and seizure.

I will tell you right now that a paralegal is an entity that has absolutely no standing as a legal matter before this court, none, zero, nada.

MS. STEWART: I would ask if we review the papers, what you decide to do with them, I guess, is what

you get paid for.

THE COURT: That is right.

MS. STEWART: But we will be resubmitting that motion. I didn't want to do it do it without leaving you a heads up on it, as we have been saying all along.

THE COURT: I do appreciate that. And I am serious about it.

MS. STEWART: The in limine motions are not long and could be handled even at a side bar, I guess.

THE COURT: I can tell you that I have adjusted the charge somewhat after reviewing the papers that you did submit on that issue.

THE COURT: Mr. Stavis.

MR. STAVIS: Your Honor, when we discussed the matter of the partial conviction and partial acquittal in the Meir Kahane homicide case, page 1462 of the record, I ask your Honor for some clarification as to what I could and could not go into in my opening statement. Your Honor did not give me --

THE COURT: If you are telling me that I suggested to you in any way that you could do what you did here -- is that where this is going? Is that where this is going?

MR. STAVIS: Yes, your Honor.

THE COURT: Then I had better be very, very

careful when I talk to you in the future, because it is inconceivable to me that there is anything that I said that invited you to get up before that jury and tell them that the acquittal had evidentiary value.

MR. STAVIS: I did not do that, your Honor.

THE COURT: Yes, that is precisely what you did and I am going to charge on it.

MR. SERRA: Your Honor, I have conferred, perhaps impolitely, with some of the other defendants with respect to my client. It has to do with food for Ramadan. I believe your Honor discussed it with a couple of other attorneys; I don't think it was ever settled. I understand according to my client, yesterday they were informed at the MCC what they were going to get was what they were going to get, that that was not a concern for the MCC. Your Honor, there are Bureau of Prison obligations to respect not unreasonable religious requirements of the people that the Bureau of Prisons houses. I recognize that the courts don't normally get involved in this --

THE COURT: I did involve myself to the extent of having a meeting with the people at the MCC. I reported on that in very precise terms. I really doubt that they were told what you just said they were told, because that is not, as I understand it, the situation there. I would invite you to talk to the lawyers who were present at the meeting that

I had with them after I had the meeting at the MCC.

MR. SERRA: Your Honor, I will do that, and I didn't mean to take up the court's time.

THE COURT: It is not the time that I object to. I am supposed to spend time and I will spend as much time as I have to.

What I do object to is the distorted information. Talk to the lawyers who were there.

Anything else?

Thank you.

(Proceedings adjourned until 9:30 a.m., Wednesday, February 1, 1995)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
a/k/a "John Medley,"
CLEMENT HAMPTON-EL,
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.

S5 93 Cr. 181 (MBM)

----------x

February 2, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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(In open court; jury not present)

(Case called)

THE COURT: Good morning. Before the jury comes in, we seem to be losing 15 to 20 minutes a day on the starting time. The reason for that is that the defendants can't be brought in here till all the lawyers are here, and if the lawyers don't start coming into the courtroom until 9:30 or 9:35, the defendants don't come in until 9:45. I would like the lawyers to be here at 9:15.

DAVID FRASCA, resumed.

(Jury present)

THE COURT: Good morning, ladies and gentlemen.

JURORS: Good morning.

THE COURT: We are going to continue the examination of Agent Frasca.

Mr. Fitzgerald.

You are still under oath.

(Continued on next page)

DIRECT EXAMINATION continued

BY MR. FITZGERALD:

Q. Agent Frasca, when we left off yesterday, you indicated that some money had been found in Sheik Rahman's apartment. Do you recall the approximate amount of money that was found in the apartment?

A. It was $62,000.

Q. In what type of bills?

A. It was almost all one-hundred-dollar bills.

MS. STEWART: I didn't hear the answer, Judge.

THE COURT: He said it was almost all one-hundred-dollar bills.

MR. FITZGERALD: I have nothing further.

THE COURT: Cross.

CROSS-EXAMINATION

BY MS. STEWART:

Q. Agent Frasca, could you tell us where you found the money?

A. I did not find it. I saw the agent that did find it, and in speaking to him I know how much was found.

Q. Were you present when it was discovered?

A. Yes.

Q. Did someone point out to you where they had found it?

A. Yes.

Q. What was that place where it had been found?

A. It was in a suitcase in the bedroom.

Q. In plain view, is that right? The suitcase was right out there?

A. Correct.

Q. Agent, did you find in the course of your search any titles, car titles, to Mercedes Benz or Cadillacs?

A. I did not see any.

Q. Did you find any deeds to vacation homes in the Caribbean?

A. I did not see any.

Q. How about, did you find any fancy fur coats or clothing that was -- Armani suits, anything like that?

A. No, I did not.

Q. As a matter of fact, there were like three or four galabrias in a closet, is that correct?

A. I am sorry. Could you repeat that?

Q. There was one small clothes closet, is that right?

A. That is correct.

Q. And it had three or four long gray robes of the type my client is wearing today?

A. That is correct.

Q. Did you find any diamonds?

A. I did not.

Q. Rubies, sapphires?

A. No, I did not.

Q. Did you find large quantities of gold jewelry?

A. I did not.

Q. When you arrived at the apartment, were you admitted by servants?

A. No.

Q. There was no one in the apartment except Dr. Rahman, is that correct -- Abdel Rahman?

A. That's correct.

Q. As you sit there today, do you know -- strike that.

On the day in question, June 24, in the afternoon hours, this $60,000, was that returned to Dr. Abdel Rahman?

A. We did not take it that day. It was left at the apartment.

Q. It was handed back to him, in essence, right?

A. That is correct.

Q. And you don't know what happened to it after that, do you?

A. No, we do not.

Q. You don't know whether or not it was sent to Bosnia for the people who are suffering there, do you?

A. That's correct.

Q. You don't know if it was held by an imam because

he was resolving a dispute between his parishioners.

A. That is correct.

Q. You don't know whether or not it was held for widows and orphans in Egypt whose husbands and fathers were in jail or dead.

A. No.

MR. FITZGERALD: Objection, your Honor.

THE COURT: Sustained.

Q. When you went to apartment 48 -- 4B, rather, at 115 Fairview Avenue in Jersey City, you went for the purpose of finding material that belonged to Siddig Ali, the defendant here, is that right?

A. That was some of what we were looking for, correct.

Q. Well, the warrant for which you signed an affidavit contained a rider, is that right, which designated what you were to look for?

A. That is true.

Q. And that rider said "papers belonging to Siddig Ibrahim Siddig Ali, photographs, personal telephone directories, lists, diaries, blueprints, charts, maps, diagrams, ledgers, journals, receipts, checks, and other documents, as well as any computer, computer components, computer disks and hard drives, relating to selection and surveillance of targets for planned bombing."

All of that reflected back to Siddig Ali, is that correct?

A. That is correct.

Q. And you know, Agent, that a search warrant is an intrusion upon someone's privacy, isn't that correct?

A. It's a search that a judge authorizes us to conduct.

Q. But my client was not under arrest, is that right?

A. He was not.

Q. It was to search for materials belonging to Siddig Ali, isn't that correct?

A. That was some of what we were searching for.

Q. The remaining says -- strike that.

You are governed by what the judge tells you to search for, isn't that correct?

A. We are there to look for those items.

Q. I will go on reading.

"The procurement of materials used in the construction or manufacture of explosive devices, translations provided by Siddig Ibrahim Siddig Ali for Omar Ahmad Ali Abdel Rahman, a/k/a Sheik Omar, a/k/a the sheik, and audiotapes, videotapes and other matters pertaining to jihad."

Is that right?

A. That's correct.

Q. Those last things, audiotapes, videotapes, those could belong to the sheik, is that right?

A. They could.

Q. Was it your understanding that they had to be translations made by Siddig Ibrahim Siddig Ali in order for you to seize them?

A. That was not my understanding.

Q. In other words, you could seize anything with regard to jihad, is that right?

A. That is correct.

Q. And you brought along Agent Bell from the New York Terrorist Task Force to interpret the Arabic for you, is that correct?

A. He was there because he was an Arabic speaker, correct.

Q. A lot of the materials you were seizing or looking at were in Arabic, is that right?

A. To the best of my recollection, almost everything was in Arabic.

Q. Was it given to him to look at to determine whether or not it was jihad-related?

A. Some of the -- the things that I was responsible for seizing, the things that I took, that I found, I did not pass by Mr. Bell to look at.

Q. You did not -- you just seized because they were in Arabic and they were tapes, is that correct?

A. That is correct, but to look at the label, even to have him interpret them and put them into English does not necessarily reflect what is actually on that tape.

Q. So notwithstanding that you were told by the judge to seize audiotapes, videotapes and other matters pertaining to jihad, you just seized anything that was an audiotape or a videotape, to find out later on, maybe, whether it had to do with jihad, is that correct?

A. That's correct, based on time rerestraints.

Q. And among the things you seized, you particularly seized things in the bedroom, is that correct?

A. Correct.

Q. And among the things you seized, you seized 20 tapes of the Koran, of Sheik Rahman Sheik Omar reciting the Koran. You were not aware of this, I take it?

A. I was not. Again, it was written in Arabic.

Q. Going back to the money for a moment, have you ever studied Islam at all, Agent?

A. Based on my job, I have come up with somewhat of an understanding of it.

Q. Was it your understanding that a Muslim may not put money in a bank which pays interest on that money, that it is prohibited by Muslim law?

A. I was not aware of that.

Q. Were you the seizing agent here, in other words, in charge of all the other agents?

A. I was one of the Newark agents that went into the apartment. I did not have overall control of the search site.

Q. Who was in charge, if you remember?

A. We had a special, an assistant special agent in charge on the scene.

Q. Who was that?

A. That was Stanley Harris.

Q. If you could just describe how the search took place, what you exactly did, what was your method of operation as you observed it.

A. After we entered the apartment?

Q. Yes.

A. The agents on the scene would just at that moment divvy up the apartment and we would make a determination that this agent would search this part of the apartment, this agent would search the other. There is no exact plan going in, because you don't know the exact way of the apartment till you get inside.

Q. But after you were inside, in other words, the apartment was split into various areas and different agents searched in different areas, is that right?

A. That is correct, yes.

Q. Are you aware that the passports of my client Dr. Abdel Rahman were seized?

A. I think, I believe I heard that, correct.

Q. And that was no place in the warrant or the rider, is that right? They are not audiotapes or videotapes, are they?

A. I did not take those.

Q. Returning once again to material supposedly to be found that belonged to Siddig Ali, you yourself had information that that material would be found there, is that correct?

A. That is true.

Q. You actually swore to that in a warrant, is that right?

A. That is true.

Q. That you had received this information from a confidential informant, is that right?

A. I received that information through agents in the New York division.

Q. So it was hearsay to you then, is that right?

A. That is correct.

Q. You know, though, who the confidential informant was that they were getting their information from?

A. Yes, I do.

Q. Who was that?

A. That was Mr. Salem.

Q. Salem, is that Emad Salem?

A. Correct.

Q. And it was he that told you that Siddig Ali had told him that he sold many of his possessions in anticipation of his departure from the United States immediately following the planned bombings, and that he had given the sheik his papers as well as papers that Siddig was holding that belonged to the sheik. That is what you were told, right?

A. That is correct.

Q. That is what you swore to in an affidavit.

A. That is true.

Q. As you sit here today, were any of the papers, any of the four or five boxes that are sitting over there, does any paper belong to Siddig Ali?

A. I am not really sure. I can't answer that.

Q. Anything you picked up?

A. Again, it was all in Arabic. I couldn't tell.

Q. You didn't discuss this afterwards?

A. I am presently no longer in the Newark division. I have been transferred.

Q. Immediately on the day you were there, you go in to find Siddig Ali's papers.

A. Those papers would have gone to New York where the translators would have looked at them. There is a lot of investigation continuing. To be perfectly honest with you, I have never heard whether or not any of those papers belonged to him.

Q. In other words, it is not your job, is that right?

A. No. I am just saying that I did not hear that. I am not sure.

Q. But it is fair to say that nothing you seized had his name on it that you could recognize?

A. That I could recognize, correct.

Q. And nothing that you saw that day in English had anything to do with Siddig Ali?

A. That is correct.

Q. The sheik had been under surveillance for many months, is that right, surveillance outside his apartment?

A. That is true.

Q. And by that is meant that they were watching his coming -- the FBI was watching his comings and goings, is that correct?

A. That is correct.

Q. Do you know how long that surveillance was for?

MR. FITZGERALD: Objection to scope, Judge.

THE COURT: Sustained.

MS. STEWART: I didn't hear the nature of the objection.

MS. STEWART: Scope.

Q. During that afternoon, the sheik never had a lawyer present, is that right?

A. That is true.

Q. He just refused to speak to you at all about the money or anything else until a lawyer was present, isn't that right?

A. That is my understanding.

MS. STEWART: Thank you. Oh, one last thing.

Q. I don't have the pictures with me, but do you have any knowledge about a watermelon that was in the kitchen that was later missing in the later pictures? Did you see that at all?

A. I never saw a watermelon.

MS. STEWART: Thank you. Thank you, Judge.

MS. AMSTERDAM: One moment.

I have a few brief questions, your Honor.

CROSS-EXAMINATION

BY MS. AMSTERDAM:

Q. Agent, I believe you indicated yesterday that you do not speak Arabic, is that correct?

A. That is correct.

Q. And you went to this home to seize certain items

that were listed in a search warrant, correct?

A. Correct.

Q. And the search warrant limits the items that you can seize, correct?

A. It gives us a specified list of what we are there to look for.

Q. Specific list of things you are to take, correct?

A. That is correct.

Q. And you were told to take items --

THE COURT: This is duplicative.

MS. AMSTERDAM: No, it is not, your Honor.

THE COURT: It is.

MS. AMSTERDAM: The next question is not, your Honor. That was just background.

THE COURT: The next question, which is the last?

MS. AMSTERDAM: Three.

THE COURT: Go ahead.

Q. You were told that you were entitled to take items that pertained to jihad, right?

A. Correct.

Q. Whose definition of jihad was that, Officer?

A. Whose definition --

Q. Was it the judge's definition of jihad?

A. There was no definition in the warrant.

Q. There was no definition in the warrant. Is that

your testimony?

A. That is correct.

Q. So that is not the Koran's definition of jihad, is that correct?

MR. FITZGERALD: Objection, your Honor.

THE COURT: If you know.

A. That's correct, I am not sure of the Koran's definition -- well, to some degree I am.

Q. You went there and you were looking for things that pertained to jihad, correct?

A. That is correct.

Q. That is the FBI's definition of jihad, correct?

A. Well, it's our -- what we were looking for as jihad is, we related it to acts of terrorism.

Q. It is your definition of jihad, correct?

A. That is correct.

MS. AMSTERDAM: Thank you.

THE COURT: Redirect?

MR. FITZGERALD: Yes, Judge, briefly.

REDIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Agent Frasca, on the rider which is in evidence as Government's Exhibit 408, did it indicate that you could seize videotapes and other matters pertaining to "Jihad, which constitute evidence of conspiracy and of the attempted

use of the explosive device in violation of" certain laws?

A. That is the way the rider read.

Q. Did you seize all the tapes you saw in that apartment?

A. No, I did not.

Q. Approximately what percentage of the tapes did you seize, as best you can recall?

A. Probably 10 percent.

Q. How many hours were you in the apartments, total?

A. Approximately three hours.

Q. Do you know how long you would be there if you went through each tape of the apartment and had the label translated?

A. We would have been there for many, many more hours.

Q. Miss Stewart asked you whether or not you were advised by the New York agents.

Q. Miss Stewart asked you about whether or not you were informed by the New York agents that Emad Salem had indicated that Siddig Ali put his papers in Sheik Rahman's apartment. Do you recall that question?

A. Yes, I do.

Q. As you sit here today, are you aware of whether or not that conversation between Siddig Ali and Salem was recorded on tape?

A. Yes, my understanding is that it was recorded on tape.

Q. You were asked questions about bank accounts and whether or not Muslims may put their money in interest-bearing accounts. As you sit here today, do you from your own personal knowledge know whether or not Sheik Rahman had interest-bearing accounts at that time?

A. I don't.

MR. FITZGERALD: Nothing further.

THE COURT: Anything else? Miss Stewart?

MS. STEWART: No, I have nothing -- please, I do. I take it back. Can I do it from here? It is one question.

THE COURT: If it is one question.

RECROSS-EXAMINATION

BY MS. STEWART:

Q. Agent, you are saying you seized 10 percent of the tapes, is that right?

A. That is an approximate figure.

Q. Say 20 percent of the tapes?

A. Again, it wouldn't be any more than 20 percent. It would be somewhere in that 10 or 20 percent range.

Q. What was the basis -- you say you don't read Arabic, right? So what was the basis upon which you seized them?

A. There were several large boxes of tapes, and

within those large boxes there were small boxes, and I took two or three tapes out of each of the small boxes. There was probably 20 tapes in each small box.

MS. STEWART: So they were like duplicates of tapes?

A. No. In fact, from looking at the Arabic, even though I couldn't read it -- I don't understand it -- I could tell from the writing that they referred to different things.

Q. So if they were different, why didn't you take all the different tapes, if you were taking some of them?

A. Many of them were duplicates, and again, I was just looking for a representative sample that the translators could later look at.

Q. Is this what the judge authorized you to take, a representative sample?

A. That was the way I felt it was the most practical way to do that search.

MS. STEWART: Practical. Thank you.

MS. AMSTERDAM: Two questions, your Honor.

RECROSS-EXAMINATION

BY MS. AMSTERDAM:

Q. How can you take a representative sample if you can't read the labels, which are in Arabic?

A. Again, the way I did it was to take a couple out

of each small box. Many were duplicates, some were not, and what I would do is, if there were many duplicates I would take one out of maybe ten duplicates.

Q. So as a representative sample in that you took a few from each box, not that you took a few from each topic, correct?

A. It depended on each box. Maybe the entire box was one tape based on the way I looked at the writing on it, and in another box they might have been all mixed, and I wouldn't take them all so I would make a decision which to grab.

Q. But all the writing is in Arabic, correct?

A. That's correct but I could tell from looking at the writing whether it was all the same or whether it was different. Different boxes had different tapes on them based on the writing in Arabic.

Q. But there were tapes that were not duplicative that you chose not to take, correct?

A. In some cases that is true, yes.

Q. And you cannot tell us what was contained in those tapes as you sit here today, correct?

A. That's correct.

Q. You said there were time restraints, that you did it as a practical measure because it would have been very time consuming to have the labels translated as you sat

there, is that correct?

A. We probably would have been there a day or two.

Q. In the entire warrant or affidavit, were there any limits put on how long you could stay there?

A. No.

Q. Did the judge tell you you could only stay there a couple of hours?

A. No.

Q. So you could have had the labels translated with your Arabic expert there before you seized them, right?

A. If we wanted to stay there for one day or two days, that's correct.

MS. AMSTERDAM: Thank you.

THE COURT: Anything else?

MR. FITZGERALD: Nothing further.

THE COURT: You are excused. Thank you.

(Witness excused)

MR. FITZGERALD: The government calls Special Agent Andrew Vale, V-A-L-E.

THE COURT: Again, when somebody takes an oath, I don't want people walking around or talking. Thank you.

(Continued on next page)

ANDREW WAYNE VALE,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Mr. Vale, can you tell the jury how you are employed.

A. I am a special agent with the Federal Bureau of Investigation.

Q. How long have you been an agent for the FBI?

A. Approximately three years.

Q. What is your current assignment?

A. Newark Joint Terrorist Task Force.

Q. Let me direct your attention back to June 24 of 1993. Were you working that day?

A. Yes, I was.

Q. Did there come a time when you were assigned to participate in the execution of a search warrant?

A. Yes, I was.

Q. Where is that location?

A. 115 Fairview Avenue, Jersey City.

Q. Is that the residence of Sheik Rahman?

A. Yes, it was.

Q. Can you tell us if you had occasion during the execution of the search warrant to seize any items?

A. Yes, I did.

Q. Let me approach you with what has been premarked with items Government's Exhibit 404 marked only for identification, 405 marked only the for identification. If you could see look at the bag and tell me if you recognize what it is?

A. Yes, it is items that I seized from a hallway closet in Sheik Rahman's house, apartment.

MS. AMSTERDAM: I apologize, your Honor, but I can't hear.

THE COURT: Would you lean into the microphone.

THE WITNESS: Excuse me.

A. It is items that were seized from Sheik Rahman's apartment, from the hallway closet.

Q. Did you personally seize those items?

A. Yes, I did.

Q. There are two exhibits inside, 405 and 406 --

THE COURT: Is it 404 and 4 --

MR. FITZGERALD: Pardon me. 404 and 405.

A. Yes, it is.

Q. And those are the items that you seized that day from the closet in the hallway in the apartment?

A. Yes, it is.

MR. FITZGERALD: I have nothing further, Judge.

CROSS-EXAMINATION

BY MS. STEWART:

Q. Agent, could you just tell us where you found those in the apartment?

A. In the hallway closet as you enter the apartment.

Q. And there were many, many books, flyers, papers, etc., is that right?

A. That is correct.

Q. Before you seized them, did you ask Agent Bell to give you a translation of what those things were or did you just seize them because they were there?

A. No, we showed them to Harlen Bell and he took a look at it and made the decision whether or not we should seize it.

MS. STEWART: I have no further questions, Judge.

CROSS-EXAMINATION

BY MR. RICCO:

Q. Good morning, Agent Vale. How are you?

A. Good morning.

Q. During the course of the search of the apartment, you came across three passports, is that right?

A. The search team came across three passports. I did not.

Q. Did you have the opportunity to review those three passports?

A. I looked at them, yes.

Q. And those three passports were Egyptian passports, is that correct?

A. I believe they were.

Q. Can you tell us whether or not those passports were Nicaraguan passports?

A. No, they weren't Nicaraguan.

MR. RICCO: No further questions.

THE COURT: Anything else?

MR. FITZGERALD: No, Judge.

THE COURT: You are excused.

(Witness excused)

MR. FITZGERALD: The government calls Special Agent Rick McNally.

RICHARD McNALLY,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Mr. McNally, can you tell the jury where you work?

A. I am a special agent with the FBI, Newark, New Jersey division.

Q. How long have you been a special agent with the FBI?

A. Approximately two and a half years.

Q. What has your assignment been?

A. My primary area of investigation involves civil rights matters.

Q. Have you been assigned -- let me strike that.

Directing your attention to June 24, 1993, did you have occasion to participate in a search warrant?

A. Yes, sir, I did.

Q. Was that part of your assignment with the civil rights unit or just a temporary assignment?

A. It was a temporary assignment to the other squad.

Q. Can you tell us, did there come a time when you actually participated in a search of the residence being searched that day?

A. Yes, sir, I did.

Q. What was the address of that residence?

A. 115 Fairview Street, Jersey City, New Jersey, apartment 48.

Q. Did you understand that to be Sheik Rahman's apartment?

A. Yes, sir, I did.

Q. Did you have occasion to find any money in the apartment?

A. Yes, sir, I did. I searched a blue suitcase in the bedroom area of the apartment, and inside that suitcase,

in the outer pocket there was a small number of $50 bills. Inside the suitcase in a smaller pouch with a zipper on top -- I think it was blue also -- there were hundred-dollar bills. The total amount was approximately $62,000.

Q. Did you find any other papers in that suitcase?

A. Yes, sir, I did. I did find some other papers, names and addresses of people, telephone numbers, correspondence with other people, financial statements, some receipts of some kind.

Q. Did you take those with you?

A. Yes, sir, I did.

Q. Let me approach you with what has been premarked as Government's Exhibit 406 for identification and ask you to take a look at what has been marked Government's Exhibit 406, and tell me if you recognize what it is?

A. Yes, sir, these are the papers that I found in the suitcase with the money.

Q. Let me approach you with what have been offered in evidence as Government's Exhibits 401J, K, L, M, and N, if you can tell us what is depicted in 401J, K, L, M and N.

A. 401J, I believe it is the pouch and the money I found in the suitcase. It is depicted here with two other agents and the sheik. 401K is a picture of myself counting the money in the bedroom. 401L is another picture of myself counting the money. 401M is a closeup of the money as it

lay on the mattress in the bedroom. 401N is the same, another picture of the money as it was spread out on the mattress in the bedroom.

Q. What denomination were the bills, predominantly?

A. With the exception, I think, of a few hundred dollars, the rest was all in hundred-dollar bills.

Q. Once you counted the money, did you take the money with you that day?

A. No. Once we counted it, we placed it in a bag, and I guess we intended -- I say, we knew there was a possibility that the money would be seized under the warrant. In the end it was determined that the money would not be taken, and it was returned to the sheik.

Q. If you would turn to the papers in 406, you took those with you?

A. Yes, I did.

(Continued on next page)

MR. FITZGERALD: Your Honor, we offer 406.

MR. STAVIS: May I have an opportunity to review the exhibit, your Honor?

MS. STEWART: And may we approach, Judge, please?

THE COURT: Come on.

(At the side bar)

MS. STEWART: Judge, although we had an opportunity to look at these documents and indeed the court knows Sheik Rahman Abdel Rahman and his then legal adviser did go through these papers, this exhibit was placed on my desk as of this morning. There was no advance exhibit given to the defense whatsoever.

I think it would clearly be a Rule 16 violation not to have turned over financial records that they were intending to introduce to us.

THE COURT: They did turn them over. You said yourself they were made available.

MS. STEWART: They were available, Judge, but --

MR. STAVIS: Your Honor, the reason I asked to see the exhibit is because I am representing a codefendant in this conspiracy case that has never been provided a copy of this exhibit until this morning and have never compared the original to the copies that I was provided only this morning.

THE COURT: I am not going to sit here in a

courtroom and proofread xeroxed copies. If that is what you are telling me, that is denied.

MS. STEWART: What do you mean by proofread?

MR. STAVIS: I want to see the originals, Judge.

MR. FITZGERALD: They were available to counsel all along. I am not intending to display them to the jury now. If counsel want to review them afterwards --

THE COURT: There is an evidentiary basis for introducing them and they will be received.

MS. STEWART: Is this one of the items?

MR. FITZGERALD: Yes, there is an address on the back.

MR. STAVIS: Your Honor, under Rule 16, I think I am supposed to be given an opportunity to copy these exhibits prior to trial.

MR. FITZGERALD: That was 1993 and 1994 that the opportunity was there. Let's go.

(In open court)

THE COURT: 403 that was offered?

MR. FITZGERALD: I believe it is 406.

THE COURT: 406, sorry.

Miss Stewart, is there an objection?

MS. STEWART: Yes, Judge, to part of the material.

THE COURT: The objection is overruled. 406 is

received.

(Government's Exhibit 406 received in evidence)

(Continued on next page)

Q. During the course of your search, Agent McNally, did you find any electronic equipment?

A. Yes, sir, I did. I think, I think we found the that I found in a dresser inside the bedroom --

Q. I'm sorry, you have to speak up.

A. In the dresser in the bedroom we found two pieces of electronic equipment, one, a small black case, which from the directions inside, identified it as some sort of bug detector, and some sort of large microphone and earphones, I think that were connected together.

Q. Let me approach you with what has been premarked as Government Exhibit 407A, B and C. I ask you to take a look at those items and tell me if you recognize what they are?

A. Yes. This is the small piece of equipment in the black case I described. If I open it, yes, there is, it's a small black box of some kind, and antenna, and some sort of ear mic. That, again, when you look at it, I don't recognize what it is on the face of it, but if you look at the directions it's called a radio frequency transmitter bug detector.

Q. Can you just identify the exhibit number on that small black compartment?

A. That would be 407C.

Q. The other two items, would you describe them,

identify them so everyone in the room, plus the record will know which is which?

A. Government Exhibit 407B and 407A. These are the headphones and the microphone I just described and they are in fact connected together, and it has the label Bionic Ear on the microphone.

Q. Were those items recovered --

MR. PATEL: Objection, your Honor.

THE COURT: Sustained.

MR. FITZGERALD: Your Honor, I would offer Government Exhibit 407A, B and C.

MS. STEWART: No objection, Judge.

THE COURT: 407A, B, C received.

(Government Exhibits 407A, B and C received in evidence)

Q. Can you tell you what is written on 407A and B?

A. There is a label on side of the headphones. It's called the Bionic Ear made by Silver Creek Industries in Manitowoc, Wisconsin.

MS. STEWART: Can't hear him, Judge, sorry.

THE COURT: Would you repeat that please?

A. Yes, sir. The label on the side of the headphones calls this device a Bionic Ear. That's made by Silver Creek Industries in Manitowoc, Wisconsin.

THE COURT: You want to spell that for the

reporter?

THE WITNESS: M-A-N-I-T-O-W-O-C.

Q. When you were searching the apartment did you find any body armor?

A. Yes, sir, I did. There was a bulletproof vest in one of the closets inside.

Q. Can you describe what the bulletproof vest looked like?

A. It was light blue in color. It had a company insignia was a red bull's-eye symbol which had a large label on the vest.

Q. Did you seize the vest that day?

A. No, sir, we did not. We left it behind.

Q. Let me approach you with what has been premarked as Government Exhibit 452 for identification. I ask you to look at that item and only tell me whether or not you recognize it?

A. Yes, sir, it appears to be the same vest.

Q. How do you recognize it?

A. General appearance, the color, and the bull's-eye label I told you about.

MR. FITZGERALD: Your Honor, at this time I ask just to pass 407A, B and C, the electronics equipment, to the jury.

THE COURT: All right.

(Government Exhibits 407A, B and C passed to the jury)

(Pause)

MR. FITZGERALD: Your Honor, I have no more questions, but if your Honor will permit me, I wanted to pass three photographs to the jury at the same time.

THE COURT: Which three?

MR. FITZGERALD: 401E, F and M. I can have the agent describe what's in them.

THE COURT: They are already in?

MR. FITZGERALD: Yes.

THE COURT: All right.

Q. Agent McNally, Government Exhibit 401E, do you recognize any particular item in that picture?

A. It's the bulletproof vest in, I think it's the hallway closet is the best description.

Q. And Government Exhibit 401F, do you recognize what's in that picture?

A. Yes, that's the blue suitcase in which I found the money and the papers.

Q. And Government Exhibit 401M?

A. 401M is a picture of the money as it was spread out on the mattress in the bedroom to count.

MR. FITZGERALD: Thank you.

(Government Exhibits 401E, F and M passed to the

jury)

MR. FITZGERALD: I have nothing further, Judge.

MS. STEWART: May I see the originals of the exhibit 4066?

THE COURT: Yes.

(Pause)

THE COURT: Cross, Ms. Stewart?

MS. STEWART: Yes, Judge, thank you.

CROSS-EXAMINATION

BY MS. STEWART:

Q. With regard to the money that you found you told us that it was decided by someone who communicated it to you that the money should be returned to Sheik Abdel Rahman; is that right?

A. Correct.

Q. And you knew that you were there to search for any items in connection with jihad; is that correct, sir?

A. Yes, ma'am.

Q. So it would be fair to say that whoever decided to return that money made a decision that that money --

MR. FITZGERALD: Objection.

THE COURT: Sustained. There is no way to do it.

MS. STEWART: Pardon me?

THE COURT: I said there is no way to do it.

MS. STEWART: Thank, you, Judge.

Q. The little suitcase that you described that was in the Sheik's bedroom; is that right, within which you found the money and also a lot of personal papers that were entered as exhibit 406, was that in plain view right out there?

A. The suitcase?

Q. Yes.

A. Yes, ma'am, it was.

Q. It wasn't hidden or squirreled away someplace, right?

A. No, ma'am, it wasn't.

Q. And in that suitcase did you also find the receipts for paying the gas bill at PSE&G in New Jersey?

A. If it was in that bag, yes, I did. I remember receipts from various companies.

Q. And do you remember seeing the Sheik's Social Security card?

A. I believe a lot of his personal identification was in the bag with everything else.

Q. And also in there were copies of his resident alien card, his green card?

A. Yes, ma'am.

Q. And you knew that to be, to permit him to live and work here in this country; is that right?

A. Well, I knew it was his green card, yes, ma'am, I

knew that.

Q. And was there also contained in that bag and now in evidence an invitation from the president of Pakistan extended to the Sheik to attend a reception?

MR. FITZGERALD: Objection, your Honor. May I have a moment with Ms. Stewart?

THE COURT: Yes.

(Pause)

Q. Do you remember seeing that invitation?

A. Yes, ma'am, I do.

Q. From General Mohammed Zia, President of the Islamic Republic of Pakistan?

A. Yes, ma'am, I do.

Q. And there were also registration papers showing that The Sheik had in fact been in Pakistan at that time; is that right?

A. There was other correspondence inside that, inside the material I had, yes.

Q. And if you know, is Pakistan on the border of Afghanistan?

A. I'm not certain.

Q. Is it nearby?

A. Again, I'm not the best at geography, I'm not certain.

THE COURT: You want judicial notice on that?

MS. STEWART: Yes, Judge.

THE COURT: It's next door to Pakistan.

MS. STEWART: Thank you, Judge.

THE WITNESS: Thank you, Judge.

Q. Did you also find in this bag a letter inviting The Sheik as a guest speaker to Virginia to be in a program on the -- strictly educational -- as a scholar from al-Alzhar University in Virginia? I mean to be in the program in Virginia?

A. I don't remember that one specifically, but it could have been in there, also.

Q. All of these papers are basically in English; is that correct?

A. I believe they were. A lot of these papers were.

Q. And they were personal papers of the Sheik, is that correct?

A. Not every paper I took was marked as who it belonged to. There were several, again, several letters and correspondence in it that were specifically identified as being to the Sheik, yes.

Q. Well, it was his apartment, right?

A. Yes, it was.

Q. And you were searching his apartment, right?

A. Yes.

Q. And this was a bag in his apartment?

A. Yes, it was.
Q. And it had his green card in it?
A. Yes, it did.
Q. And had his Social Security in?
A. Yes, it did.
Q. So is it fair to say agent these were his personal papers?
A. Again, most of them I'd say, yes, because they were specifically identified as being his, but we had reason to believe based on conversations --
THE COURT: No, don't tell her what you had reasonable basis to believe. She's asking about papers. Tell her about the papers.
Q. Did your warrant authorize you to seize the personal papers of Sheik Abdel Rahman?
A. It authorizes to seize items related to the conspiracy matters related to the bombing and I guess the, I don't have the rider on me, but I believe it did.
Q. Did you check with a superior on that?
A. Yes, ma'am, I did.
Q. And it was decided to take these?
A. Yes, ma'am, it was.
Q. But not to take the money?
A. Correct.
Q. And they were in the same bag?

A. Yes, ma'am, they were.

Q. There was also a document that appears to be an investment made in the name of someone named Amed al-Shek. Is that a name that you know? Was that one of the AKA's for the Sheik?

A. Not that I knew. I didn't have knowledge of the other AKA's involved.

Q. Well, it's printed on the warrant, isn't that right?

A. Some of them were, yes.

Q. And there are banking cards also among these personal papers from, appears to be the Independent Dependent Savings Bank in Brooklyn for a nonprofit organization called the Islamic brotherhood, Inc., is that right?

A. Yes, ma'am.

Q. Located at 552-554 Atlantic Avenue; is that right?

A. Yes, ma'am.

Q. And this indicated that three signatures were needed, or two signatures were needed to withdraw money; is that right?

A. I'm going to say yes. I don't have the document in front of me. You have the document in front of you.

Q. Well, I'll read it to you.

A. I can't remember what it said.

Q. Since it's in evidence.

A. That would be fine.

Q. Signatures required to withdraw, two. Is that on this document as you recall seeing it earlier today?

A. Yes, ma'am.

Q. I'll show it to you. The Sheik's name is not any place on this document, is it, on this account, the Islamic Brotherhood.

MS. STEWART: May I approach the witness, Judge?

THE COURT: Yes, you may.

A. No, I doesn't see his name here on either one.

MS. STEWART: Thank you.

Q. Agent, do you know the difference between interest paid on money and profit made from a business enterprise?

A. Generally speaking, yes.

Q. In other words, interest is given when you place money in a bank or some security holding operation, and they pay you interest just for holding your money, is that right?

A. Correct.

Q. Whereas profit is when some people engage in business, and make a profit. Is that right?

A. Correct.

Q. Did you make any report in connection with your

work there at the Sheik's apartment that day?

A. No, ma'am, I did not.

Q. Also included here was some documents about the installation of a telephone in the apartment; is that right?

A. Yes, ma'am.

Q. Agent, I'd just like to show you what has been marked 400P, a photograph taken at the apartment and entered into evidence.

Do you observe a large green watermelon in that picture?

A. Yes, ma'am, I do.

Q. Do you know what became of that watermelon?

A. No, ma'am, I do not.

MS. STEWART: Thank you. No further questions, Judge.

THE COURT: Mr. Tritz. How long is it going to be?

MR. TRITZ: I'm only going to be one or two questions.

CROSS-EXAMINATION

BY MR. TRITZ:

Q. Good morning, Agent McNally. My name is Jerry Tritz, I represent Siddig Ali.

Mr. McNally, or Agent McNally, you told us about some electronic paraphernalia. Do you know where that came

from? I take that back. Withdrawn.

Do you know how that got into the Sheik's apartment?

A. No, sir, I do not.

Q. Well, did you ever listen to a tape recording in this case wherein Emad Salem --

MR. FITZGERALD: Objection, your Honor.

THE COURT: Sustained.

Q. Did you ever -- do you know if Emad Salem gave that to The Sheik?

A. No, I do not.

Q. The same thing for the bulletproof vest, do you know if Emad Salem gave that bulletproof vest to the Sheik?

A. No, sir, I do not.

Q. Have you listened any of the tapes in this case?

A. No, sir, I have not.

MR. TRITZ: Okay. Thank you. I have no further questions.

THE COURT: Mr. Jacobs.

CROSS-EXAMINATION

BY MR. JACOBS:

Q. Agent, did you seize the briefcase?

A. The entire suitcase?

Q. The suitcase, did you seize it?

A. No, sir, I did not.

Q. It was left with the Sheik?
A. Yes, sir, it was.
Q. When you entered the premises were you wearing gloves?
A. Yes, sir I was.
Q. Latex gloves?
A. Yes, sir, I was.
Q. Were fingerprints taken there from the suitcase?
A. I do not believe they were, no.
THE COURT: Mr. Jacobs, could you speak into the microphone please.
Q. I'm sorry. Were fingerprints taken of the suitcase?
A. No, sir.
Q. Do you recall whether fingerprints were taken at all in the house that day, if you know, if you remember?
A. I don't recall fingerprints being taken.
MR. JACOBS: Nothing further, thank you.
MS. STEWART: Judge, I forgot to ask one question if I may.
THE COURT: If you would go to the podium only because the microphone there makes it easier.
CROSS-EXAMINATION
BY MS. STEWART:
Q. To follow on Mr. Jacobs question, I take it you

never dusted the bug device or the microphone for fingerprints; is that right?

A. No, ma'am, I did not.

Q. And did anyone in your presence?

A. Not in my presence, no.

Q. So therefore if the fingerprints of Emad Salem were on there we would never know that. Is that right?

A. Well, I mean I didn't take any fingerprints, that's all I can tell you.

MS. STEWART: Okay.

Q. It was a bug detector, I think you told us. That means it was to check if there were wiretaps on the telephone; is that right?

A. I didn't say that. I said I just read the label and the directions. I didn't say how it worked or what its purpose was.

Q. It's fair to say that's what its purpose was, isn't that right?

A. I could assume it was to look for bugs as a bug detector.

Q. You know do you not, Agent, that there was a FISA wiretap on this phone for three or four months prior to your search?

A. I didn't know it was a wiretap or telephone tap before going to the search, I didn't know that.

Q. But you know it as you sit there now?

A. As I sit there now, yes.

Q. And with regard to the bulletproof vest, basically that's a protective device; is that right?

A. Yes, ma'am, it is.

Q. In and of itself it's not a crime to own a bulletproof vest?

A. No, ma'am, it's not.

Q. Is that right?

A. No, it's not.

Q. And indeed, someone whose life has been threatened by anyone could purchase a bulletproof vest and wear it; is that right?

A. Yes, ma'am.

Q. And certainly a public figure who is controversial might well want to have a bulletproof vest; is that right?

A. It would be up to them.

Q. If someone gave them a bulletproof vest they would probably keep it, isn't that right?

A. Again, that would be up to them.

MS. STEWART: Thank you.

MR. FITZGERALD: Nothing further, Judge.

THE COURT: You are excused, thank you.

(Witness excused)

MR. FITZGERALD: The government calls Special Agent Barry Bush, B-U-S-H.

BARRY L. BUSH, called as a witness by the government, having been duly sworn, testified as follows:

THE COURT: Please don't examine papers or shovel papers while a witness is being sworn. Thank you.

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Mr. Bush, can you tell the jury how you're employed?

A. Yes. I'm a Special Agent with the Federal Bureau of Investigation out of the Newark division.

Q. For how long have you been a Special Agent?

A. Approximately eight years.

Q. Let me direct your attention to May 2 of 1994. Were you working that day?

A. Yes, I was.

Q. And what was were your assignment?

A. I was assigned to be the team leader and to conduct a search at 919 Somerset Drive, Toms River, New Jersey.

Q. Did you understand that location to be a home?

A. Yes, I did.

Q. And whose home was that?

A. I found out at the time of the search that it

belonged to Nabil Elmasry.

Q. Would that be N-A-B-I-L for Nabil and E-L-M-A-S-R-Y for Elmasry?

A. I believe so.

Q. Now, prior to that day had you had any involvement in this case?

A. No, I did not.

Q. Who were the personnel, just describe generally involved in the search, had they been assigned to this case?

A. None of the people on the search team had any prior involvement in this investigation to the best of my knowledge.

Q. Did you understand Nabil Elmasry to have a relationship with Sheik Rahman?

A. I had been told that he was a paralegal to Sheik Rahman.

Q. Do you speak Arabic?

A. No, I do not.

Q. Did anyone who spoke Arabic come with the search team that day?

A. There was an Arabic translator that came with New York FBI agents, I believe specifically SA William Vanderland who I think was a PLA over in with the New York office.

THE COURT: What is PLA?

THE WITNESS: A legal adviser.

Q. The translator, do you know if the translator had worked on the case beforehand?

A. It was my understanding that he had not been involved in the investigation prior to that time.

Q. Can you tell the jury how the search was conducted briefly?

A. Sure. At approximately 7 a.m. myself and SA Vanderland and other members of my search team were admitted to 919 Somerset Drive by a white male occupant of the residence. SA Vanderland read the warrant, served the warrant to this person who identified himself as Nabil Elmasry, and myself and several other agents conducted a quick protective sweep of the residence.

Q. When you say SA Vanderland, you mean Special Agent Vanderland?

A. That's correct.

Q. Those are not his personal initials?

A. No, his first name is William I believe.

Q. After the protective sweep, what happened then?

A. At that time myself and SA Vanderland were accompanied by Mr. Elmasry throughout the house. I believe he took us into a small library in the western side of the house and pointed out a bookcase on one wall. He stated that a portion of that bookcase was reserved for books and

documents belonging to Sheik Rahman. He took --

Q. Let me stop you there.

A. Yes, sure.

Q. You said you had a warrant. Can you tell us what you recall the warrant horsed you to look for?

A. Yes, the rider on the warrant stated that we were too look for audiotapes, videotapes, books, diaries, documents, magazine and newspaper articles, passport documents, travel documents, photographs, personal telephone directories, any and all writings that were related to teaching, sermons, interpretations, statements made by Omar Rahman and his associates that pertained to the commission of terroristic acts, conspiracy to commit terroristic acts or the endorsement of terroristic acts by others that are in violation of the laws of the United States.

Q. Can you tell us what you then did in the apartment, where you went with Mr. Elmasry?

A. Yes, after we left the library he took us into a large recognize room area. He pointed out a rack of audio cassette tapes that he stated were interviews and speeches that The Sheik had made. They contained labeling with what appears to be foreign language written on those labels. He also showed us several video cassette tapes which were taped interviews and speeches that The Sheik had made.

After that I believe we went upstairs. There was

a second floor office study area that was to the left of the stairway. Elmasry stated that this was a area where there were defense-related materials.

Q. Before we get to that room, you were shown the other items, the papers and documents and tapes. Did you seize any of those?

A. This was initially he just walked us around, and showed us where various items were that we were interested in. As soon as we were done with that, that took maybe 10 or 15 minutes, then I instructed my people, my photographer to begin photographing the house. We did exterior shots. We started in the basement. He photographed that, and then we began the actual search of the house in a room-by-room fashion.

Q. And when you went into the rooms to room-by-room search, who went with you?

A. It was myself, SA Vanderland, Mr. Elmasry was with us almost the whole time, and he, and also the Arabic translator. The Arabic translator reviewed all items and told us whether or not it was material that was pertinent to the search warrant before those items were seized.

Q. Did you seize a number of tapes that day?

A. That's correct.

Q. How about documents?

A. Yes, we did.

Q. And did the Arabic translator who came with you that day see every document and every tape before it was seized?

A. Yes, he did.

Q. What Mr. Elmasry?

A. He reviewed most of those documents and tapes, also as we were going throughout the house. As I've said he pointed out tapes which he felt we would be interested in.

Q. Did there come a time when you reviewed them again that day?

A. Yes, when the search ended, I was doing an inventory sheet of all items seized, and at the very end I reviewed item by item the seized materials with Mr. Elmasry at his kitchen table, and he signed the inventory receipt form.

Q. Did there come a time when any items were taken out of bags in which they had been placed and given back to Mr. Elmasry?

A. Yes, at approximately 3 p.m. on that afternoon, we were finishing up in the second floor office area, some documents had been seized. I believe the Arabic translator had stated that they contained some type of propaganda and they are his words not mine. They were placed into an evidence bag by me, sealed, initialed and dated. And at that point Mr. Vanderland came into the room with

Mr. Elmasry. They had been there earlier, but for some reason they left.

They came back in, and Mr. Elmasry had made a statement to the effect that he hadn't been able to review those items. So SA Vanderland took the evidence bag from me, unsealed it, provided Mr. Elmasry with those documents. He reviewed them, made a statement to the effect that a portion of those items that had been placed in the bag were defense related. At that point SA Vanderland returned those particular documents to Mr. Elmasry. I resealed the bag. I believe it was item S5.

Q. Okay. All the items that you took with you at the end of the day and left and seized, did Mr. Elmasry have an opportunity to review all those items?

A. To the best of my knowledge he reviewed each item that was seized.

Q. Let me approach you with a number of exhibits which I'll identify. If I could show you Government Exhibit 453 and 454 and ask you to inspect them and tell us if you recognize them?

A. Yes, these appear to be documents that I seized from the residence on May 2, 1994, and both contain my initials and that date.

Q. If I could show you a series of audiotapes marked 459, 460 to 469 which is a box containing audio casettes,

and 470 to 475 and 478 to 490.

Have you seen those items? You can turn the microphone back toward you so we can hear you. Have you seen those items before coming to court today?

A. These appear to be tapes that were seized from Mr. Elmasry's residence on May 2, 1994.

Q. Were the those the only tapes you seized?

A. I believe we seized approximately 300 audio cassette tapes.

Q. Do they appear to be a subset of those audiotapes that you seized?

A. Yes, they do.

Q. Will you look at the three videotapes to your left.

THE COURT: Have you got exhibit numbers on those?

Q. If you read the exhibit numbers into the record?

A. Exhibit number 476, 477 and 451.

Q. Are those the only three casettes you seized that day?

A. I believe there were, I'd have to check the evidence log to be sure, but I thought there were some twenty to thirty videotapes that were seized. I could be mistaken on that, but it's on the evidence log.

Q. Prior to coming to court today, were those items

removed from boxes containing other video tapings and audiotapes?

A. That's correct. All of these items were placed in cardboard boxes at the scene and sealed.

Q. The items before you are a subset of the items you took that day?

A. They appear to be videotapes that were taken from the rec room area of Mr. Elmasry's house on that date.

Q. Did you seize any body armor that day?

A. Yes, in the second floor office area we found a bulletproof vest lying on the floor. You need an exhibit number on this?

Q. I think it's 452. If you can double check that?

A. That's correct, 452.

Q. Did you seize it that day?

A. We seized it, yes.

Q. And is Government Exhibit 452 the particular vest you seized?

A. This is the vest we seized from the office area that day.

MR. FITZGERALD: I would offer Government Exhibit 452 at this time Judge.

MS. STEWART: No objection, Judge.

THE COURT: 452 is received without objection.

(Government Exhibit 452 received in evidence)

Q. Have you had a chance to examine that vest?

A. Yes.

Q. Are you familiar with bulletproof vests?

A. Yes, I am. I was a police officer for eight years prior to becoming an agent.

Q. Can you describe the bulletproof vest anything that's different about it?

A. In addition to the normal Kevlar protection that you have with a bulletproof vest, this particular vest has a velcro insert with a steel plate insert. It's used in police work mainly to give extra protection for high velocity rifle type rounds.

MR. FITZGERALD: I have no further questions, Judge.

THE COURT: Why don't we wait until after the break?

MS. STEWART: Yes.

THE COURT: Ladies and gentlemen, we're going to take a short break. Please leave your notes behind. Please don't discuss the case. We'll resume in a few minutes.

(Jury not present)

THE COURT: You can step down.

THE WITNESS: Thank you.

MR. TRITZ: Your Honor, I just ask you very briefly to reconsider your policy on the sidebars. During

Officer McNally's testimony there was a sidebar and as I was approaching, you were telling other lawyers that this only involved Ms. Stewart and I think Mr. Stavis. My client was peripherally involved. I would have just like to have heard if there was anything relating to my client.

THE COURT: All right. What I don't want up there is a mob scene.

MR. TRITZ: Judge, it's very difficult to know what another lawyer who asked for a sidebar is talking about. If we conduct ourselves in a gentlemanly fashion could the Court extend itself and allow us to at least try to listen?

THE COURT: As I say, I don't want to wait up there until 16 lawyers come up and that's how many we've got.

MR. TRITZ: I'm sure the Court understands my problem.

THE COURT: I do. I am going to try to keep the sidebars to a minimum.

MR. TRITZ: I don't rise to encourage that, Judge. I think they're productive and necessary, but, all right.

THE COURT: All right.

(Recess)

(Continued on next page)

(In open court; jury present)

THE COURT: Cross, Miss Stewart?

MS. STEWART: Thank you, Judge.

CROSS-EXAMINATION

BY MS. STEWART:

Q. Good morning, Special Agent Bush.

A. Good morning.

Q. Could you tell us again what date this search occurred on?

A. May 2, 1994.

Q. If you know, had Sheik Abdel Rahman been incarcerated for approximately nine months prior to that search?

A. I don't recall when he was arrested, ma'am.

Q. If I were to tell you he was arrested in August, would that jibe with your recollection?

A. In August of?

Q. '93.

A. '93, I only recall what I read in the papers. I had no knowledge of this case whatsoever. I work drugs.

Q. OK. So basically you were handed a search warrant with a rider attached and told to go down to Toms River, New Jersey, and search, is that right?

A. That is correct.

Q. And I think the rider to this search warrant -- a

lot of paper -- told you to search for audiotapes, videotapes, writings, documents, transcripts, announcements, newspapers, magazines, press release, books, news bulletins, letters, cards, passports and travel-related documents, photographs, personal telephone directories, lists, diaries, ledgers, journals, receipts, checks, and other documents referring or relating to the opinions, statements, beliefs, commentary, sermons, teachings of and interpretation by Omar Ali amend Abdel Rahman. Is that part of what the search was supposed to cover?

MR. FITZGERALD: Objection to form, your Honor.

THE COURT: Was that not on the rider?

MR. FITZGERALD: It is half the sentence.

THE COURT: She said it is part.

MS. STEWART: Judge, I will offer the whole rider in evidence.

THE COURT: Do you have a number on it?

MS. STEWART: The rider to the search warrant, with regard to the search --

THE COURT: Is it part of a 3500 exhibit?

MS. STEWART: It is not, Judge.

MR. FITZGERALD: It is 3520A, page 2.

MS. AMSTERDAM: I am sorry. Would you say that again.

THE COURT: Page 2 of 3520A is in. Go ahead.

(Page 2 of Government Exhibit 3520A received in evidence)

Q. Were you in the company of Special Agent Vanderland as you traveled down to Toms River?

A. No, I was not.

Q. You were the team leader, though, I think you told us, is that right?

A. Of the search team, that is correct.

Q. Were you aware of a telephone call that was placed by Special Agent Vanderland to the residence of Mr. Elmasry?

A. I do not recall a telephone call.

Q. In any event, it was approximately 7:00 a.m. of a Sunday morning that you arrived at the front door of Mr. Elmasry, is that correct?

A. It was 7:00 a.m. on May 2. I don't recall the day of the week. I don't believe it was a Sunday, though.

Q. A weekend day?

A. I don't recall. I probably would have remembered if it was a weekend. But it was May 2.

Q. In any event, do you remember whether your weapons were drawn at the door as you entered the door?

A. I don't recall. I don't recall my weapon being drawn at that time.

Q. Were you the first one into the house?

A. Myself and SA Vanderland were the first ones in the house.

Q. Do you remember his weapon being drawn?

A. No, I don't.

Q. Not at all?

A. I don't recall his weapon being drawn.

Q. I would like to show you a series of photographs -- I didn't mark them, Judge, but I realize --

THE COURT: Do they have any designation on them at all?

MS. STEWART: They have not. I marked them during the break, Judge.

THE COURT: They are collectively --

MS. STEWART: Defendant Rahman A through --

THE COURT: A1 through whatever.

MS. STEWART: A1 through -- a series of photographs designated defendant Rahman A1 through 10.

Q. If you would if a a look at those.

A. Sure.

MS. STEWART: Judge, we will try to do better with the premarking.

THE COURT: Long as we call them something.

A. OK.

Q. Agent, having taken a look at those and having testified previously that photographs were taken at the

Elmasry residence, are those photographs that you were present while you were being taken?

A. This is the residence. I was in the residence while photographs were being taken. I am not sure I was with the photographer for each and every one of these photographs, but I recognize these as photographs of the residence.

Q. To the best of your recollection, though, they are fair and accurate representations of what you saw that day?

A. Yes, they are.

MS. STEWART: I wonder, Judge, if I could ask the witness to step down to identify what is in the photographs.

THE COURT: You can step down in front of the jury box, in the center.

MS. STEWART: Judge, I would like to offer them into evidence.

MR. FITZGERALD: Stipulated.

THE COURT: A1 through A10 are received.

(Defendant Rahman Exhibits A1 through 10 received in evidence)

Q. If you could look at the first one.

THE COURT: A1.

Q. Tell us what is depicted.

A. This, I believe, would be the eastern side of 919

Somerset Drive, Toms River, New Jersey.

Q. Is that the home of Mr. Elmasry and his wife Dr. Elmasry?

A. It was, on May 2, 1994.

Q. To the best of your knowledge, is Mrs. Elmasry, Dr. Elmasry a pediatrician in Toms River?

A. I believe she gave that information to Mr. Vanderland, that she was a pediatrician.

Q. Do you want to go to -- tell us what is depicted in --

A. This appears to be the book case that was in the library in the residence.

THE COURT: That is A2?

MS. STEWART: A2.

Q. And A3?

A. This appears to be a portion of the second floor office, study area, I believe.

Q. Would you go on to A4.

A. It appears to be a bedroom. It may be the master bedroom. I am not completely certain. There were, I believe, at least three, probably four bedrooms.

Q. I would ask you to look at the posters on the wall in that picture. Are they not hockey posters?

A. Yes. I don't know if I was actually in this room myself.

Q. Does it appear to be a child's bedroom, however?

A. It does.

Q. Could you look on the back and tell us what number we are up to.

A. F?

Q. No, that would be 6, I think. We are doing it different. A6.

A. OK.

Q. That is?

A. It appears to be a box of newspapers with foreign language of some type on at least a portion of them, and some envelopes. I believe this was in the garage, if I am not mistaken.

Q. And this would be A7.

A. These were videotapes. I believe they were in a corner of the rec room, behind the TV.

Q. Could you go back to that one minute?

A. Sure.

Q. The NFL Greatest Hits you did not seize, is that correct?

A. I don't see why we would. I don't particularly recall.

Q. This is 8.

A. Another box, cardboard box containing documents. I believe this was from also the office area upstairs.

MS. STEWART: Judge, maybe if I hold the pictures and show them as he speaks. Can we do that? I think we are not seeing --

THE COURT: Fine, fine.

MS. STEWART: Thank you.

Q. Just tell us what --

A. Again, it is a cardboard box containing some pamphlets and documents in a foreign language, and I believe that was the office area on the second floor.

Q. This would be A9.

A. That is a rack containing audio cassette tapes that was in the rec room area downstairs, first floor level.

Q. And 10?

A. That is the bulletproof vest that we entered into evidence. The bag in front of it, I am not exactly sure what that is, but that also is from the office area on the second floor.

Q. 11?

THE COURT: Miss Stewart, I think you skipped 5.

MS. STEWART: This isn't as easy as it looks, Judge.

THE COURT: I know, I know.

Q. Let us designate this as 5, Agent.

A. That is a book case area, also in the office on the second floor.

Q. Can you tell me, Agent, who was present while you searched?

A. The search team itself, in addition to myself?

Q. Yes, and the family members, if any, that were there.

A. You want both?

Q. Both.

A. The search team consisted of myself, SA Linda Traficanti, SA George Bauries, SA Timmy Sullivan, SSA -- which he is a supervisory special agent in the Red Bank area -- Edward Kahrer, K-A-H-R-E-R. They were all from the Newark division, and I may have missed one or two. If I could have my evidence log that would refresh my memory. To the best of my knowledge, that was the Newark division.

There were also New York FBI agents included in that team. They included SA William Vanderland, who I mentioned before, SA Douglas Lintner, L-I-N-T-N-E-R, SA Frank Cultrera, C-U-L-T-R-E-R-A. I believe there was a Thomas Weldon also there from New York. And the Arabic translator. I don't know if you want his name but it is on the evidence log.

People in the house other than Mr. Elmasry, his wife was there, and at some point during the search, and I believe that was maybe between 2 and 2:30, I believe a son came home and entered the residence at that time. All three

were there when we terminated the search and exited the residence.

Q. Can you tell us how many hours you spent there?

A. We entered at 7:00 a.m., and I believe my search log reflects that we left at approximately 3:45 p.m. So in excess of eight hours.

Q. When you entered the residence, had you been directed to any specific items -- strike that.

As you entered the residence, prepared to search, were you aware of where items particularly belonging to Sheik Abdel Rahman would be located?

A. I was not.

Q. You were not apprised that they would be in a bookcase or in the office of Mr. Elmasry? You had no idea?

A. I had no idea, going in, where anything would be located.

Q. And you were briefed before you left or you were given a copy of the search warrant and the affidavit for the search warrant?

A. That is correct.

Q. You were there specifically to search for material with regard to Sheik Abdel Rahman, is that right, things that belonged to him or pertained to him?

A. I think the warrant rider had mentioned the sheik and others, but yes, the sheik was the focus of the search,

to the best of my knowledge at the time.

Q. Mr. Elmasry was not one of the others, is that correct, as far as you knew?

A. It is my understanding that he wasn't. My understanding was that he was the paralegal involved, but I wasn't sure what his association was, other than his paralegal status. I had no other information at that time.

Q. Were you given any way to distinguish between materials that belonged to Mr. Elmasry as opposed to those that might belong to the sheik?

A. Mr. Elmasry told us what belonged to the sheik and what belonged to him and which items were defense-related. Mr. Elmasry was talking almost the whole time with SA Vanderland during the search itself.

Q. And when you seized items, you seized those items that you believed were covered by what the warrant authorized you to seize, is that correct?

A. That is correct.

Q. And did you -- let me just ask you a couple of things that you might have seized.

A. Sure.

Q. Let's me ask you, do you remember seizing, first of all, newspapers, which I don't think you mentioned earlier today?

A. I believe there were some newspapers in the

garage that were seized.

Q. Are those newspapers -- do you remember seeing the Star Ledger among them?

A. The newspapers I recall, I believe, had foreign writing on them, although there may have been some in amongst them that were English newspapers.

Q. Do you remember seizing any newspapers from any place else but the garage?

A. I don't specifically recall. There could have been some in the office area also.

Q. Do you remember seizing English language newspapers?

A. I don't recall seizing English language newspapers.

Q. What you basically remember seizing is video cassettes and audio cassettes, is that correct?

A. In addition to documents with foreign language writing on them.

Q. Did you prepare the inventory in this case or not?

A. I prepared the inventory receipt form, yes.

Q. In doing that, did you designate the house to be certain areas?

A. That is correct.

Q. Could you just tell us, in whatever way is

comfortable to you, how you went about doing that.

A. What I generally do at any crime scene --

Q. I am asking what you did specifically here.

A. It's the same.

Q. OK.

A. I will lay out each floor of the house -- in this case we started in the basement -- and I will give each room its own letter designation. I believe I did three sketches in this case, one of the basement, the first floor, and the second floor. Each room had a letter designation. Any item seized in any particular room -- say the basement, or the main room in the basement was room A. Any item seized in room A would then get the designation A1 for that particular item. If it is seized in room B, that would be B1. If there are 10 items seized in room B, they would be designated items B1 through B10. I tried to carry that through on the inventory receipt and on the evidence log also.

Q. In this particular case you designated, if you recall, the laundry room as B1, is that right?

A. I would have to see the sketch, ma'am. I don't recall. I have done a number of searches since that one.

Q. I show you what is designated as 3520D, and see if this will help refresh your recollection.

A. Sure. And you asked in regards to the laundry

room?

Q. Yes.

A. That was designated room B, that is correct.

Q. In fact, does B refer to the entire basement area?

A. No. In the basement there was a family room area -- and these were names that I give generally. But there were five rooms designated in the basement itself, room A through room E.

Q. And the cassette tapes that you have identified for us earlier, were they seized in that basement room?

A. I am not sure how the exhibits are numbered in regard to my particular evidence log. It is my understanding that these tapes, I believe, came from the rec room area.

Q. So the fact that they have a B1 designation does not have anything to do with your evidence log?

A. New York FBI, I believe, gave each box their own numbered designation, when it got to New York that day. That numbering system is different than the numbering designation I gave it at the scene.

Q. Could you just tell us how you are able to remember where you seized them from, given the fact that they are not designated themselves?

A. When the exhibit numbers were placed on these, I

believe Tuesday night, they were removed from a box that corresponded to the rec room box, the tapes that were removed from the rec room area.

Q. And that had your designation on it?

A. The box has my initials and date on it, that is correct.

Q. And the recreation room, where is that located in the house?

A. It was on the first floor, towards the back of the house.

Q. And it had a television -- typical southern New Jersey recreation room, is that right?

A. Yes, that is correct.

Q. When you were looking through that box, which I think was designated I4 -- is that correct?

A. I4 would have been my designation, that is correct.

Q. Do you also see an untitled video of a birthday party for Mohammed Ali?

A. I don't recall seeing that particular tape.

Q. How about a commercial video of Mohammed Ali's career?

A. I don't recall seeing that tape.

Q. Did you actually go through the box?

A. I didn't go through the box once it was packaged.

When we went through the reaction career, the Arabic translator designated tapes in that rack that he felt were pertinent to the case. They were the tapes that we seized, packaged and boxed. I didn't necessarily see every tape that was placed into the box.

Q. This is the same Arab translator who labeled things propaganda, is that right?

A. He didn't -- he stated that they were propaganda, yes.

Q. That was his word, I think you told us.

A. That was his word, yes. These items were in Arabic. The labels on the tapes were in Arabic. So I obviously couldn't read any of that material.

Q. But he saw fit to seize Nabeel's son, Mr. Elmasry's son playing soccer? Do you know if that was seized by him and you?

A. I didn't review any of the tapes, ma'am. I believe he reviewed the labeling that was on the tapes, and that is what we then seized as evidence.

Q. The labels were handwritten labels such as someone might write on the back of a video that was in anybody's recreation room, is that right, handwritten?

A. That is correct, but the ones I recall seeing were in Arabic or some foreign writing.

Q. So you relied on the translator, is that right?

A. That is correct.

Q. And he did not always share with you exactly what the title was of the thing you were seizing?

A. Of each specific tape?

Q. Yes.

A. If that was seized, then apparently he did not, because I don't recall having seized a tape about Mohammed Ali, for instance.

Q. Do you remember seizing a tape that had a label translated to you as celebrating the birth of a baby, in which Sheik Abdel Rahman was presiding?

A. No, I do not.

Q. How about ice skating in Rockefeller Center?

A. I don't recall having seen a tape of that type.

Q. And you don't recall the translator translating those titles or not translating those titles, do you?

A. That is correct.

Q. How about Muslims in America on the Companion's Road, a Convention?

A. No, no knowledge of that title.

Q. Or a Time/Life video, The Religious Quest, the Long Search?

A. No.

Q. How many boxes in all did you seize on this occasion?

A. I believe there were 12 cardboard boxes.

Q. I would like to show you something which we will designate -- A12?

THE COURT: No, 11. Is it part of the same series?

MS. STEWART: No, it is a document, Judge.

THE COURT: Do you want to call it B?

MS. STEWART: B.

Q. Do you remember seizing a document that was designated as Sheik or Dr. Abdel Rahman's will?

A. Not specifically, no.

Q. As you look at the document in your hand, does that refresh your recollection that you seized a document entitled --

A. No, it doesn't. I don't specifically recall this document.

(Continued on next page)

Q. You seized a great many documents that day, did you not, Agent?

A. There were a lot of documents in the house and we reviewed a lot of documents. I don't have a specific number as to those that were seized.

Q. Do you remember seizing an audiotape of Cat Stevens?

A. I do not.

Q. From the bedroom in English?

A. I don't recall seizing that tape.

MS. STEWART: Give me one minute, Judge.

(Pause)

MS. STEWART: I have nothing else, Judge.

THE COURT: Mr. Lavine.

CROSS-EXAMINATION

BY MR. LAVINE:

Q. Good afternoon, Mr. Bush. You mentioned that at some point during the search the word propaganda came up. Is that correct?

A. That's correct.

Q. And how many times did that word come up?

A. Maybe two or three times.

Q. And who was it who spoke that word?

A. It was the Arabic translator who was assigned to the search.

Q. Was he looking, as far as you knew, for propaganda?

A. He was looking for the same items that were named on the search warrant. I believe that's how he referred to items that he felt were pertinent to the search warrant. He would say, that's propaganda material, or a statement to that effect.

Q. When he mentioned that word, propaganda, or those words, propaganda material, to you, what did you take him or understand him to mean?

A. That they were --

MR. FITZGERALD: Objection, your Honor.

THE COURT: Sustained.

Q. What is your understanding of the word propaganda?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

MR. LAVINE: Nothing further. Thank you.

CROSS-EXAMINATION

BY MS. AMSTERDAM:

Q. Sir, what is the name of the Arabic translator who accompanied you?

A. Wilhelm Odisho. I believe it's O-D-I-S-H-O.

Q. Do you know his nationality?

MR. FITZGERALD: Objection, your Honor.

THE COURT: Sustained.

Q. Who paid for his services that day?

A. I don't know.

Q. Did the FBI pay for his services?

A. I didn't pay, I didn't pay him, ma'am, and I don't know who did.

Q. Who employed him that day?

A. He came with an agent from the FBI office in New York. That's all I know.

Q. Two quick questions, Agent, and that will be all.

In the rider to the search warrant it authorizes you to take teachings and interpretations by Sheik Rahman, and others pertaining to the propriety of committing acts of violence; is that correct?

A. That's correct.

Q. Did you seize Mr. Elmasry's Koran, his Bible or any Bible from that house?

A. There was back in the basement area, and I'm just going by recollection alone, and I'm not sure if it was a Koran. I know there were some names on the inside cover that the Arabic translator had noticed. That book I recall seizing. I don't recall what it was.

Q. That may have been a Koran?

A. It may have been. I don't recall.

Q. In interpreting this rider, would you have

thought it appropriate to seize a Koran as a writing which spoke to the propriety of committing acts of violence?

MR. FITZGERALD: Objection, your Honor.

A. If that's --

THE COURT: Sustained.

MS. AMSTERDAM: I have no further questions.

MS. STEWART: I have just one, Judge, I'm sorry.

THE COURT: Go ahead.

CROSS-EXAMINATION

BY MS. STEWART:

Q. Agent, while you were searching Mr. Elmasry's office area you observed his credit card and that of his wife, is that right?

A. There were some credit cards lying on one of the file cabinets in the office area.

Q. And you did not seize those credit cards; is that correct?

A. There were several credit cards there that we did not seize, that's correct.

Q. And that was because Mr. Elmasry and Dr. Elmasry were really not the targets of this search, is that correct?

A. I'm trying to recall the contents of the credit cards. Were they the ones that reflected in my 302? Is that what you're referring to?

Q. Yes.

A. I believe one was for Swiss bank account and the other I don't recall, and it was a decision made between the translator and SA Vanderland as to whether or not they would be seized, and I'm not certain as to what the rationale was. SA Vanderland asked me to record the information off those credit cards which I did, and I wrote it on the a 302, but I did not seize the credit cards.

Q. When you say a 302, you mean your typewritten report?

A. It's a report of investigation, yes.

Q. And if I could just restate, so the interpreter and Special Agent Vanderland decided not to take the cards but to take the numbers off the cards?

A. I believe it was, it was Mr. Vanderland's decision at that point. Yes. It was his decision that we weren't going to take the cards, and that I was to make a notation as to the information that was on them.

Q. You just said a moment ago the translator decided this, too,

A. I believe the translator was with Mr. Vanderland at that time. We were in the office area there together at that point in time.

Q. Did you need a translator to translate Chase Visa card?

A. I didn't recall that information. Thanks for

bringing that to my attention.

Q. Or Unione de Bank Suisse?

A. No.

Q. Did you need a translator for that?

A. No, we did not.

Q. So the translator didn't play a role in this then?

A. No, well, not at that point. That would have been Mr. Vanderland's decision, not to seize the cards.

Q. But nonetheless you seized the numbers off the cards for further investigation; is that right?

A. That's correct.

MS. STEWART: Nothing further.

MR. FITZGERALD: One question.

REDIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Agent Bush, you indicated that Mr. Elmasry told you which items belonged to him and which items belonged to Sheik Rahman?

A. That's correct.

Q. What did you do with the items that belonged to Mr. Elmasry?

A. I left them at the house.

Q. So, for example, the documents that are in front of you, those two written items, you understand those to

belong to Sheik Rahman when you took them?

A. That was my understanding. That's correct.

MR. FITZGERALD: Nothing further.

THE COURT: All right. You are excused.

THE WITNESS: Thank you.

(Witness excused)

MR. FITZGERALD: The next witness is Gamal Abdel-Hafiz, G-A-M-A-L next word A-B-D-E-L-H-A-F-I-Z.

GAMAL ABDEL-HAFIZ.

Called as a witness by the government, having.

Been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Mr. Abdel-Hafiz, can you tell the jury what you do for a living?

A. I am currently employed by the FBI.

Q. Can you tell the jury what you do for the FBI?

A. Language specialist.

Q. What languages do you speak?

A. Arabic an English.

Q. Where were you born?

A. Cairo, Egypt.

Q. And how long did you live in Egypt?

A. 24 years.

Q. Roughly what year did you leave Egypt?

A. It was 1984.

Q. Where did you go?

A. I came to the United States.

Q. How far did you go in school?

A. I finished college.

Q. Where did you go to school?

A. I went to college in Al-Azhar University in Cairo, Egypt.

Q. And what degree did you obtain from Al-Azhar University in Egypt?

A. Bachelor degree in language and translation.

Q. Prior -- when did you begin working for the FBI, approximately?

A. About 13 months ago.

Q. Prior to working as a language specialist for the FBI, had you ever worked as a translator or language specialist before?

A. Yes, I did.

Q. Can you briefly describe to the jury your prior experience?

A. I did work as a language, as a translator after I finished college for two and a half years for my oldest brother. He owns a import and export business. I was a translator, and I was a charge of public affairs for his firm. After that, I came to the United States. While I

lived in Texas I was doing some freelance translation work in courts and others.

After that, I went to Saudi, Arabia for a whole year. I work as a translator for the Air Defense Forces of the government of Saudi Arabia.

MS. AMSTERDAM: I'm sorry. I didn't hear the last answer.

Q. If you can just repeat the last part of your answer when you went to Saudi, Arabia?

A. I worked as a translator for the Air Defense Forces of the government of Saudi Arabia.

MS. AMSTERDAM: Thank you.

THE WITNESS: You're welcome.

Q. Have you had occasion to work with a number of translations involved in this case?

A. Yes, sir.

Q. Let me approach you with a number of items and a number of documents.

They will be Government Exhibits 451, 451T. I think we need have a sidebar, judge.

MS. STEWART: Judge, may we have a sidebar?

MR. FITZGERALD: I'll put the others on the record to help other counsel, also, 708, 708T, 801, 850, 851, and the corresponding transcripts which are 801T, 851T, and 850T.

(At the sidebar)

MS. STEWART: Judge, apparently exhibit 451 which has been identified and has been indeed not entered into evidence as of yet is entitled Sheik Omar Abdel Rahman and representatives of the Palestinian Hamas organization. Conference on solidarity with Bosnia Herzegovina in January 12. It's our understanding that this is a handwritten label in the back of a videotape found at Elmasry's house.

The videotape refers to a meeting that was held in a public school in Brooklyn to discuss, to raise money actually I think for Bosnia, Herzegovina.

The Hamas was not invited to this. They were not on hand billings for this. Because it happened to coincide with the date that the four hundred Palestinians were ejected from Israel, and they wished to speak on this. My understanding is the Sheik had departed before they ever even arrived. The videotape, as I understand it, did carry The Sheik's remarks, and the remarks of Hamas at the same time. It did have all of their remarks, then it originally --

MR. FITZGERALD: Which we stated at the end the Hamas remarks were not on there.

MS. STEWART: It is my request that anything referring to Hamas should be removed from the label as well.

MR. FITZGERALD: Judge, that's the label as the

government found it. It's not a label the government added. I think that what we ought to understand is the speech that Sheik Rahman gave regarding Bosnia included, if I could read two sentences, which were that we must be terrorists, we must raise the enemies of Islam.

THE COURT: That's fine. She's not objecting to that. Get Hamas off the label.

MR. FITZGERALD: Your Honor, could we talk about this at lunchtime? The reason is it then says, America is the enemy of Islam with regard to Bosnia. I think it's very important to understand that she opened that he is a religious teacher. We are proving that this --

THE COURT: I don't understand her objection to the tape or to the playing. What I understand her to be objecting to is the label that identifies it as Hamas, when facts and circumstances that she has just indicated, as I understand it, you don't dispute.

MR. FITZGERALD: I don't agree with her. That's something she represents a paralegal told her. All I know is the Sheik is saying to a room full of people giving the speech to terrorize America.

THE COURT: Where is the exhibit?

MR. FITZGERALD: Right here. That's just an introduction. I underlined the relevant portions of the Sheik's speech.

MS. STEWART: I'm not arguing with the speech or that he gave it, just the label.

MR. FITZGERALD: She is going to argue that kill the umpire may be a joke. We ought to know this was not a PTA meeting address.

THE COURT: Do you have an independent basis other than what was on the label for?

MR. FITZGERALD: The fact that Hamas was there.

THE COURT: While he was speaking?

MR. FITZGERALD: He went back into the audience and you can't see whether he left or not but Hamas spoke there.

THE COURT: I don't understand what the logistical problem is in simply blacking out with the magic marker that part.

MR. FITZGERALD: It's not a logistical problem, your Honor. I think it's a important part of our case to prove that he solicited people engaged in violence, not just a random speech to a crowd. If you are addressing an umpire-killing organization --

THE COURT: You are confusing two things. The substance of his remarks will come in. The label won't and insofar as it contains that legend, unless and until it's cleared up and established that those people heard his remarks as well, I don't know whether they were or not. I

don't know what she suggests is true or not, but the label is just a label. Now, let's get on with it. Is there anything else you want to do with it?

MR. FITZGERALD: All I want to point out is the label was written by someone with the Sheik at the time it was written when they had no motive to say Hamas wasn't there or not, they put that label on.

THE COURT: It's totally ambiguous. The two of them are on the tape.

MR. FITZGERALD: I think it says joint meeting of Sheik Rahman with representatives of Hamas.

THE COURT: It says and representatives, and it says, Conference on Solidarity with Bosnia, Herzegovina. We're spending time on as far as I'm concerned something picayune. Get it off.

MR. STAVIS: Your Honor, I have an objection with regard to 850T and 851T which have been marked for identification.

MS. STEWART: Are you going to play those today?

MR. STAVIS: Excuse me, Ms. Stewart.

MS. STEWART: I'm asking.

MR. FITZGERALD: Maybe later.

MR. STAVIS: I have an objection, your Honor. These are two transcripts of a conversation attributed to Sheik Rahman and a man who identifies himself as Abu

Abdullah without authentication of the tapes or foundation with regard to these tapes which I understand were seized, I understand from the government, were seized from my client's home on November 6th of 1990. I think it is also improper at this time for this witness to be shown transcripts of those tapes.

THE COURT: To be shown transcripts? He can be shown whatever you want to show him. Let's go.

(Continued on next page)

(In open court)

THE COURT: Before you start to examine. Ladies and gentlemen, I just want to point out something that you may probably already know, but when we go up to the side, whether it's at the request of defense counsel or at the request of government counsel, or at my request, the point of that is simply to make sure that the only evidence that is received here is evidence that's properly in evidence. Nobody is trying to keep anything secret or otherwise interfere with the process that you are engaged in.

We just want to make sure that that process includes only what it should include and not anything else. That's the only purpose of those meetings up at the side, that and occasionally to discuss whether we're getting out of here early. Let's go.

Q. Now Mr. Abdel-Hafiz, if you look at the four audio casettes in front of you to your left which are exhibits 708, 801, 850, and 851, have you had occasion to look at those and listen to those before coming to court?

A. Yes. Yes, I have.

Q. If you could pick up the videotape to your left marked as Government Exhibit 451 and just tell me, yes or no, have you had occasion to review that videotape and listen to what is said on the videotape prior to coming to court?

A. Yes, I have.

Q. Look at the transcripts to your left which are marked 451T, 708T, 801T, 850T, and 851T. Are you familiar with those transcripts?

A. Yes, I am.

Q. Are those transcripts translations of the tape recordings, the audiotapes and videotapes before you?

A. Yes, sir.

Q. Does 451T correspond to the tape known as 451?

A. Yes.

Q. And so on, 708 corresponds to 708T?

A. Yes.

Q. The original of the tapes, are they in the Arabic language?

A. Yes.

Q. Are Government Exhibits 451T, 708 it, 801T, 850T and 851T fair and accurate translations from Arabic into English of the items before you?

A. Yes, sir.

Q. To the extent that there are voice attributions on those transcripts, in other words, there is a name listed as a person speaking, are those voice attributions accurate?

A. Yes, sir.

MR. STAVIS: Objection, your Honor.

THE COURT: You can cross on it if you have to.

Objection is overruled.

Q. Are you familiar with the voice of Sheik Rahman?

A. Yes, sir.

Q. Are you familiar with the voice of El Sayyid Nosair?

A. Yes, sir.

MR. FITZGERALD: Your Honor, at this time I would just offer Government Exhibits 451 and 451T with the title appropriately changed.

MS. STEWART: May I have a voir dire?

THE COURT: As to that exhibit?

MS. STEWART: As to 451 only, Judge.

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MS. STEWART:

Q. You prepared 451T which is a translation of an videotape in Arabic; is that correct?

A. Yes, ma'am.

Q. In preparing that, I would just like to direct your attention to the fact that there are numerous quotations from the Koran?

A. Yes, ma'am.

MR. FITZGERALD: Objection.

THE COURT: Sustained.

MS. STEWART: It has to do, Judge, with the

translation.

THE COURT: Fine, go ahead.

Q. Did you translate those in accordance with the official translation of the Koran as approved by the Presidency of Islamic Research, The One True --

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. Sir, you're an expert in the field of translation; is that correct?

A. Yes, ma'am.

Q. In translating the videotape -- strike that.

That is in the field of Arabic translation; is that correct?

A. Yes, ma'am.

Q. You indicated that you are familiar with Sheik, Abdel Rahman's voice?

A. Yes, ma'am.

Q. And you have translated other things by him; is that correct?

A. Yes, ma'am.

MR. FITZGERALD: Objection, scope.

THE COURT: I'll allow this. Go ahead.

Q. It is true that he quotes from the Koran periodically when he speak, is that correct, and that is true in 451T as well?

A. Yes, ma'am.

Q. And did you designate those quotes from the Koran by any means in this translation?

A. They are in quotes, yes.

Q. They are in quotes, but there is no attribution to the Koran; is that correct?

A. No, because he did not say this attribution. I just quoted it because I know it's from the Koran.

Q. You quoted other things as well though; is that right, quotation marks also appear in this document at other places?

A. If it says, if it says that somebody said it, I quote it, somebody other than Sheik Rahman, and he's just repeating if. Otherwise, when he mentioned any versus from the Koran I put in quotes, because I know it's from the Koran.

Q. And knowing it's from the Koran you translate it as he speaks it; is that correct?

A. Yes, ma'am.

Q. You do not translate it by virtue of the official version of the English Koran; is that correct?

A. Not all of them.

Q. Well, --

A. Not all the quotes are translated this way.

Q. Well, can you tell me in this document which ones

are translated as the official translation, and which ones are translated just as he speaks them?

A. In this document almost all of them are translated as he speaks them.

Q. And there is no designation in your translation saying, Koran; is that correct?

A. No, ma'am.

Q. They're just set off by quotation marks; is that right?

A. By quotation marks, yes, ma'am.

Q. I'd like to direct your attention to page 3. The first full paragraph on the page, at the very bottom of that did you fail to put in the close quotation marks?

A. That was corrected this morning.

MS. STEWART: Thank you.

THE WITNESS: You're welcome.

Q. I direct you to page 4 in the paragraph at the very top of the page. In that paragraph you quote not from the Koran but from words the Prophet said. Is that correct?

A. Yes, ma'am.

Q. There is a difference, is there not?

A. Yes, there is a difference.

Q. The Koran is thought by Muslims, believed by them to be the actual word of God; is that correct?

A. Yes, ma'am, yes, ma'am.

Q. Whereas --

THE COURT: Ms. Stewart, this is voir dire?

MS. STEWART: Well, it is because of the attribution, Judge. I'm just --

THE COURT: There are no particular --

MS. STEWART: I'm directing him to the middle paragraph.

THE COURT: He pointed out there are no attributions distinguishing verses from the Koran from anything else.

MS. STEWART: He put something in quotes that is not from the Koran, and I just wanted to be clear through his testimony that that is from a different course but not the Koran.

THE COURT: That's not voir dire.

MS. STEWART: Let me move down to the bottom of the page then.

Q. The next to the last paragraph and the first two lines of the bottom paragraph beginning with "they have not weakened," and ending with, "the children."

A. I can not find that. Where is that exactly?

Q. On page 4, bottom of the page, the last full paragraph and the beginning --

A. Yes, I found it.

Q. Starting with "they have not weakened," and then

up until "children," is that not a quote from the Koran?

A. Not that I can know, I can tell.

Q. You don't know that that is?

A. I don't know if that is.

Q. Is it possible that it is?

A. Some of Dr. Rahman's sermons he quotes lots of the Koranic verses and sometimes he paraphrases some of the Koranic verses to use it in his sermons, so if there is one word or even one syllable in a sentence that is not from the Koran or mentioned in the Koran, I do not quote it as a Koran.

Q. And it is your position that this has a syllable missing or a word missing, this is a paraphrase?

A. At the time I heard it it did not strike me that this from the Koran.

Q. Turning to the next page, the very middle of the page, the short paragraph beginning with "what is wrong with you," the last sentence of that paragraph, is that from the Koran?

A. It is portion of the verse from the Koran, but he did not say it as a Koranic verses. It is known by Muslims that sometimes they say things that were mentioned in Koran but they say themselves, not as a, not to repeat the Koranic verse.

Q. He doesn't say any place, "this is from the

Koran." He just --

A. I understand.

Q. He speaks it, right?

A. I understand that. He's speaking it right there on this particular sentence he was not trying to quote the Koran. He was just repeating what he mentioned as Koranic verses before in his conversation.

Q. But these are the words as they appear in the Koran, "and why don't you fight for the sake of God and the weak men, women and children?"

A. Yes, it is very, it is very close to the Koran.

Q. And the quote at the very bottom of the page, not the very bottom, but the paragraph above which is in quotation marks, "those who pray," that is not from the Koran, that is in quotation marks because someone said it; is that correct?

A. That should be from the Koran.

Q. That is what you believe?

A. Yes, ma'am.

Q. On the very last page the first full paragraph on this page beginning with "he who lends God a good loan," up until "return back," is that from the Koran?

A. That should be from the Koran, yes.

Q. And that is not in quotes; is that right?

A. Not in quotes, yes.

Q. And at the bottom of the next to the last paragraph, "remember," is that a quote that starts and stops or, is it one complete quote from the Koran?

MR. FITZGERALD: Object to the form of the question.

MS. STEWART: If he understand what I'm --

THE COURT: Are you saying should it be interrupted or --

MS. STEWART: Yes.

THE COURT: In other words, should the quotation marks be interrupted at some point rather than continuing until the end of the sentence.

A. It is continuation.

Q. It is one complete quote from the Koran?

A. Yes, ma'am.

Q. Did you tell us whether or not you have studied the Koran as a student of the Koran?

MR. FITZGERALD: Objection to scope.

MS. STEWART: This is voir dire, I think.

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

A. When I studied the Koran in college I did not study it the same way that Sheik Rahman studied in college. Dr. Rahman studied the Koran in college as a full study. He knows the Koran by heart. The way I studied the Koran I studied the soul of the Koran. I studied some of the

Koranic ayats and verses.

Q. Isn't it incorrect to refer to him as Dr. Rahman?

A. What, ma'am?

Q. Isn't he known as Dr. Abdel Rahman?

A. Yes, ma'am.

Q. Isn't it incorrect to call him Dr. Rahman?

A. It is Islamically it's incorrect.

Q. Thank you.

A. You're welcome.

MR. FITZGERALD: Shall I continue or are we breaking for lunch?

MS. STEWART: With those understanding, Judge, I have no objection.

THE COURT: All right, 451 and 451T are received and we're going to break.

(Government Exhibits 451 and 451T received in evidence)

THE COURT: Ladies and gentlemen, please leave your notes behind. Please don't discuss the case. And we'll resume at 2 o'clock.

(Continued on next page)

(Jury not present)

THE COURT: You can step down.

(Witness temporarily excused)

MS. AMSTERDAM: I have a matter to bring to the Court's attention, please.

THE COURT: Yes.

MS. AMSTERDAM: Yes. Your Honor, during the last witness on the stand, the agent, there came a time at which I needed some information from Mr. Elmasry and I did not want to interfere with the court proceedings or interrupt the court proceedings or even to get back and talk to him and draw attention to the fact that I was speaking to Mr. Elmasry.

So I wrote a note on a piece of paper and I gave it to someone who is not Mr. Elmasry, so it wouldn't in any way direct the juror's attention away from the proceeding. That note was taken, and the man I gave it to was taken by the Marshals outside read, examined and kept by the Marshals. I'm a lawyer working in this court, trying to prepare for this case, and I have Marshals who are reading my work product, and I object most strenuously to that.

THE COURT: Part of the problem is you don't know what preceded it. What preceded it was a number of people who are or purport to be paralegals coming into the courtroom making signals in the general direction of the

defendants, and otherwise moving around in a disruptive way. The Marshals told them at the break that if they kept it up, they were going to be removed.

MS. AMSTERDAM: That has nothing to do with me, sir. With all due respect I didn't have anything to do with that.

THE COURT: That's what preceded your passing of the note. I'll talk to the marshals and find out.

MS. AMSTERDAM: Thank you.

THE COURT: Is there some particular relief that you want now?

MS. AMSTERDAM: Not at all. I just don't want it to happen again. I was unaware of that, but I certainly don't want someone else reading my notes in this case.

THE COURT: I'd like the lawyers back here at quarter of 2.

(Luncheon recess)

(Continued on next page)

AFTERNOON SESSION

2:00 p.m.

(In open court; jury not present)

MR. FITZGERALD: Would your Honor indulge me for 60 seconds? The indictment charges that Sheik Rahman --

THE COURT: What is this --

MR. FITZGERALD: About the Hamas videotape.

THE COURT: It's out. I will not indulge you for 60 seconds.

(Continued on next page)

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

MR. FITZGERALD: Thank you, Judge.

GAMAL ABDEL-HAFIZ, resumed.

DIRECT EXAMINATION continued

BY MR. FITZGERALD:

Q. Mr. Abdel-Hafiz, if you could look at Government's Exhibit 451T in evidence before you, the transcript, if you look throughout the transcript, the word "pause" appears a number of times in the transcript.

A. Yes.

Q. Could you explain to the jury what happened during the pause?

A. During the pause, that's when Dr. Abdel Rahman stops his speech and allows another person to translate what he said in English.

Q. Was it a verbatim translation by the person?

A. No, it was mostly a summary.

Q. So this transcript puts Sheik Rahman's words and when the summary is given, the summary is not included in the transcript and the word pause it put there?

MR. STAVIS: Objection as to form.

THE COURT: Overruled.

A. That's correct.

Q. I just have a few questions on particular words in Arabic. Are you familiar with the word haduta, H-A-D-U-T-A?

A. Yes, I am.

Q. Can you tell the jury what the word haduta means?

A. The word haduta means fiction, story, like a tale.

Q. Fairy tale?

A. Yes.

Q. Are you familiar with the word abu, A-B-U?

A. Yes.

Q. What does that mean in English?

A. It means the father of.

Q. Is it common practice for people in the Middle East to refer to their themselves as abu, in the name of?

A. Yes.

Q. So if a person had a son by the name of Mohammed, he may refer to himself as Abu Mohammed?

A. Yes.

Q. Finally, the English word the orient, O-R-I-E-N-T, as in Orient Express, do people in the Mideast consider the Mideast as part of the Orient?

A. Yes:

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

THE COURT: Cross, Miss Stewart?

CROSS-EXAMINATION

BY MS. STEWART:

Q. Sir, you are an Egyptian, is that correct, by birth?

A. Yes, ma'am.

Q. When you translated the translation of this videotape, you translated every Arabic word but one, is that correct?

A. I don't recall which one.

Q. How about the word jihad, was not translated?

A. Yes, it was not.

Q. Was that the because the U.S. Attorney's Office asked you not to translate that?

A. No, ma'am.

Q. It is not because it is an English word, though, is that true?

A. Because it is not an English word.

Q. So you translated everything Arabic except the word jihad?

A. That's correct.

MS. STEWART: I have nothing further, Judge.

THE COURT: Mr. Stavis?

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Mr. Hafiz, my name is Roger Stavis, and I represent Mr. El Sayyid Nosair here.

You became friends with Mr. Nosair while you were back in Egypt?

A. No, sir.

Q. Did you know him in Egypt?

A. No.

Q. You met him for the first time when you came to this country?

A. Today is the first time I saw him.

Q. Today?

A. Sayyid Nosair?

Q. Today is the first time you met him?

A. Yes.

Q. Never met him before?

A. I never met him before.

Q. Weren't friendly with him?

A. No.

Q. Didn't have multiple conversations with him?

A. No.

Q. You testified on direct examination that you were familiar with his voice.

A. That's true.

Q. But you never met him before.

A. I heard his voice before.

Q. Where did you hear his voice for the first time?

A. The first time when I start to familiarize myself with the voices, I heard the radio broadcast for Mr. Sayyid Nosair that was aired back on 11/19/91.

Q. But you know his voice?

A. I became familiar with his voice at that time.

Q. How long ago did you do that?

A. That was about seven months ago.

Q. Did you bring a copy of your resume to court with you today?

A. No.

Q. Do you have a copy of your resume?

A. No, I don't have it on me.

MR. FITZGERALD: Objection, your Honor. If I could have a moment with Mr. Stavis, I may clear something up.

(Pause)

Q. Do you have copies of your resume available?

A. Not on me.

Q. Is there a place where you could go to get a copy of your resume, to bring it here so that we could look at it and ask you questions about it?

A. I believe the prosecution, they have a copy of my resume.

Q. The prosecution?

A. Yes.

(Continued on next page)

MR. FITZGERALD: We handed out copies, your Honor, and gave more copies to Mr. Bernstein.

MR. STAVIS: Are you referring --

MR. FITZGERALD: Your Honor, could we approach the side bar for a second?

(At the side bar)

MR. FITZGERALD: If I can make plain what the document is, when Mr. Stavis demanded Rule 16 disclosure of experts, we had an agent go find out who was going to testify and describe them. He produced this document. It misspelled his name, because it is not an Arabic agent. That is the Rule 16 material as to his qualifications.

MR. FITZGERALD: I think it is confusing to say resume because the witness didn't write it. It is a description of his background.

THE COURT: Let's get on to something relevant.

(In open court)

(Continued on next page)

BY MR. STAVIS:

Q. When you applied to the FBI for a job, did you have to give a copy of your resume?

A. No, sir, I had to fill out on application.

Q. Did that application list all your qualifications as a language specialist in Arabic and English?

A. Yes, it did.

Q. You said a little while ago that you listened to a conversation -- you listened to a radio interview of some sort?

A. Radio broadcast.

Q. What language was that radio broadcast in?

A. In English.

Q. Drawing your attention to Exhibit 850 and 851T, what language are those conversations in?

A. Arabic.

Q. When did you familiarize yourself with Mr. Nosair's Arabic voice?

A. Around the same time that I familiarized myself with his English voice.

Q. What did you use for that?

A. It was one of the tapes of Mr. Sayyid Nosair.

Q. What kind of tapes of Mr. Sayyid Nosair?

A. One of the evidence.

Q. Which one? What was it?

A. It was a conversation between him and his wife.

Q. Between him and his wife?

A. Yes.

Q. When did this conversation between him and his wife take place?

A. I cannot recall now.

Q. Where did this conversation between him and his wife take place?

A. It was while he was detained.

Q. What were they talking about?

A. He talked about Koran, he talked about the kids.

Q. And from this conversation about the Koran and his kids that he had with his wife, you are an expert in the voice of this man here, Sayyid Nosair?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. And it is from that conversation between he and his wife about the Koran and his children that you are able to come here and testify today before this jury, that you are familiar with the voice of Sayyid Nosair?

A. Yes.

THE COURT: I will tell the jury that not only the questions of lawyers are not evidence, but also their facial expressions are not.

Q. Do you work full-time for the Federal Bureau of

Investigation?

A. Yes, sir.

Q. That is for the last 13 months?

A. Yes, sir.

Q. And you are an FBI language specialist?

A. Yes, sir.

Q. And you are employed by the United States government, is that correct?

A. And you have a GS level, is that correct?

A. Yes, sir.

Q. Explain to the jury what a GS level is.

A. That's the entry level or the level that you are hired to get paid according to.

Q. Get paid by?

A. Yes.

Q. Who is it that is paying you?

A. The government of the United States.

Q. Is there such a thing as an officially certified court interpreter?

A. Yes.

(Continued on next page)

Q. What is that?

THE COURT: May I see counsel at the side.

(At the side bar)

THE COURT: Before you get in over your head, Mr. Stavis, I should tell you that there is no certification in Arabic. The only languages in which there is certification are Spanish, Haitian French and -- there is one more that escapes me, but Arabic is not one of them.

(In open court)

MR. STAVIS: Was there an answer to that last question or did we have a side bar?

THE COURT: I think we had a side bar.

MR. FITZGERALD: I would object to the last question.

THE COURT: The objection is sustained.

(Continued on next page)

BY MR. STAVIS:

Q. Part of your translating experience consisted of working as an Arabic translator in private industry in Egypt, is that correct?

A. Yes, sir.

Q. How long did you do that?

A. About two and a half years.

Q. What exactly were you doing for that two and a half years?

A. I was translating letters for that business, translating when they have some businessmen coming from England or the United States to visit the business, and to make business deals with.

Q. That was your brother's business?

A. Yes, sir.

Q. Were you working exclusively for your brother at that time?

A. Yes.

Q. How often did your brother call upon you to do translation work for his business?

A. I was in the business six days a week.

Q. Every day that you were there you had to translate something or other?

A. Not every day, but most of the time.

Q. What did you do on the days that you weren't

translating things for your brother?

A. I was in charge of public affairs for the business.

Q. By the way, what kind of business is this?

A. Import and export.

Q. What did you import and export?

A. We were --

MR. FITZGERALD: Objection, your Honor. 403.

THE COURT: Sustained.

Q. When you came to this country in 1984, you say you did some freelance translating.

A. That's correct.

Q. Where did you do your freelance translating?

A. In the state of Texas.

Q. Where in the states of Texas? It's a big state.

A. It was in the metropolitan area of Dallas-Fort Worth area.

Q. What kind of translating did you do?

A. I did some translations, private translations for some students, Arabic students in college; I did some translations in courts, municipal courts; I did a translation in a criminal court.

Q. Were you working full-time as a translator at that point?

A. No.

Q. It was just a part-time job?

A. It was a part-time.

Q. When you were translating the exhibits which you referred to in your direct testimony, did you make any notes?

A. No, sir.

Q. No notes?

A. No notes.

Q. After you finished translating the items that you have referred to in your direct examination, did you fill out a report?

A. No, we don't fill out any reports.

Q. Is it you don't fill out any reports or you --

A. We do not --

Q. Please allow me to finish my question.

MR. FITZGERALD: Objection, your Honor.

THE COURT: Sustained.

Q. Is it you don't fill out any reports or you didn't fill out any reports?

A. I would we do not fill out any reports.

Q. When you say we, who are you referring to?

A. All the translators.

Q. Are you referring to all the translators for the Federal Bureau of Investigation?

A. Yes, sir.

Q. You have testified on direct examination that you looked at the original tapes in Arabic, you said, referring to the audiotapes. Do you recall that testimony?

A. Yes.

Q. Were you present when those original tapes were recovered?

A. No, I wasn't.

Q. Are Egyptian citizens required to do compulsory military service in that country?

MR. FITZGERALD: Objection, your Honor.

THE COURT: Sustained.

Q. Did you do compulsory military service in your country?

MR. FITZGERALD: Objection, your Honor.

THE COURT: That is overruled.

A. Yes, I did.

Q. What branch of the service were you in?

MR. FITZGERALD: Objection, your Honor.

THE COURT: I will allow that. Go ahead.

A. Heavy artillery.

Q. How long were you in heavy artillery?

A. Fifteen months.

Q. What rank were you in when you were in heavy artillery?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. Without telling us what rank you were, were you an officer or an enlisted person?

MR. FITZGERALD: Objection, 401.

THE COURT: I will allow it.

A. Enlisted.

Q. At the time that you were in Egypt, did you do any translation work for the military?

A. No, I did not.

Q. Did you work exclusively for your brother's company doing translation when you were in Egypt?

A. Yes, I did.

Q. What month did you go to -- what month and what year did you go to Saudi Arabia?

A. It was March of 1990.

Q. March of 1990?

A. Yes, sir.

Q. Did you go to Saudi Arabia as a United States citizen or as an Egyptian citizen?

A. As a United States citizen.

Q. When did you become a United States citizen?

A. In March of 1990.

Q. Did you have a passport at that time?

A. Yes, sir.

MR. FITZGERALD: Objection, your Honor.

THE COURT: Sustained.

Q. Please tell the ladies and gentlemen of the jury how you came to go to Saudi Arabia to work for the Saudi Arabian Air Defense Forces.

MR. FITZGERALD: Objection, your Honor.

THE COURT: Sustained.

Q. What did you do over at Saudi Arabia for the Saudi Arabian Air Defense Forces?

A. Translation.

Q. What kind of translation?

A. Oral and written.

Q. Oral and writing of what?

A. From Arabic into English and vice versa.

Q. Of what kinds of things?

A. It was kind -- sports reports.

Q. Sports reports?

A. Yes.

Q. What do you mean by sports reports?

A. I was working with a company who has a contract with the Air Defense Forces of Saudi Arabia. This company was in charge of the sports facilities of the Air Defense Forces.

Q. So you weren't actually working for the Saudi Arabian Air Defense Forces?

A. Indirectly, I was.

Q. But directly, you were not?

A. Directly, I was not.

Q. Did you ever tell anybody that you were serving as a translator for the Saudi Arabian Air Defense Forces?

A. Yes, because they are the one who has to approve my employment -- my company couldn't approve my employment -- with this company that is serving the Saudi Arabian government.

Q. When you told that person that you were serving as a translator for the Saudi Arabian Air Defense Forces, you were not in fact serving as a translator for the Saudi Arabian Air Defense Forces.

THE COURT: Sustained, sustained.

MR. FITZGERALD: Move to strike, Judge.

THE COURT: It is stricken, since questions aren't evidence. There is really no need to strike. Go ahead.

Q. Did you make a mistake when you said that you were working --

THE COURT: Sustained.

Q. Have you ever met a man by the name of Emad Salem?

A. No, sir, I haven't.

MR. STAVIS: I have no further questions of this witness, your Honor.

THE COURT: Ms. London?

MR. STAVIS: May I have just one moment, your Honor?

MS. LONDON: Miss Amsterdam is going to precede me.

MS. AMSTERDAM: May I have one moment, your Honor?

BY MR. STAVIS:

Q. Mr. Hafiz, which was the Arabic tape in which you listened to Mr. Nosair to familiarize yourself with his voice?

A. That was the radio broadcast on November 19, 1991.

Q. And which was the English?

A. That was the English.

Q. Which was the Arabic?

A. The Arabic was some of the conversation between him and his wife.

Q. So the conversation that you listened to between him and his wife was in Arabic?

A. Some of it was in Arabic. He quoted some of the Koran in Arabic and he said several sentences in Arabic.

Q. Do you know whether or not his wife, Karen Mills Nosair, speaks Arabic?

A. I believe she understands some Arabic words.

MR. STAVIS: No further questions, your Honor.

MS. AMSTERDAM: I will be here six months before I figure out the doors.

CROSS-EXAMINATION

BY MS. AMSTERDAM:

Q. Good afternoon, sir.

A. Good afternoon, ma'am.

Q. You said that your work is the Saudi Arabian Air Defense Force had to be approved by that organization, correct?

A. No, ma'am. What I said, in order for me to work for the company that was contracted with the Air Defense Forces of Saudi Arabia, they had to get approval from the Air Defense Forces of Saudi Arabia to hire me.

Q. Did they have to get a security clearance for you?

A. No, ma'am.

Q. Did they have to get approval from the military for you to work with their company?

A. They had to get from the Saudi military.

Q. They did have to get it?

A. Yes, ma'am.

Q. Do you have a security clearance with the FBI?

A. Yes, ma'am, I do.

Q. You indicated that you had worked first with your

brother. Is your brother still in Egypt?

MR. FITZGERALD: Objection, your Honor.

THE COURT: Sustained.

Q. Do you have family and friends who are still in Egypt?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. Do you have any connections or relationship to the Egyptian government?

A. No, I don't.

Q. Do any of your friends or family have connections or relationships to the Egyptian government?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

MS. AMSTERDAM: I have no further questions.

THE COURT: Miss London.

CROSS-EXAMINATION

BY MS. LONDON:

Q. Good afternoon.

A. Good afternoon.

Q. You have told us that you graduated from the Al-Azhar University?

A. Al-Azhar University.

Q. That is where you graduated?

A. Yes, ma'am.

Q. How long did you study there?

A. I studied there for five years.

Q. Did you study Arabic there?

A. Yes, ma'am.

Q. When did you first begin to learn English?

A. I was in the seventh grade.

Q. Did you also study English at this university?

A. Yes, ma'am. That was my major.

Q. What kind of English did you study there?

A. I don't understand the question.

Q. Did you study American English?

A. Yes, I studied American English and British literature.

Q. I am sorry.

A. The British English and the American English, both.

Q. Did you study the formal grammatical structure of those languages?

A. Yes, ma'am.

Q. And in Arabic, did you study more than one form of Arabic?

A. No, just one.

(Continued on next page)

Q. That would be Egyptian Arabic?

A. Egyptian Arabic.

Q. Are there dialects of Egyptian Arabic?

A. Yes, there is.

Q. So which dialect of Egyptian Arabic did you study?

A. I, my studies were in the Egyptian dialect but there is no dialect when you speak the formal Arabic. If you speak --

Q. You studied formal Arabic?

A. Formal Arabic which is the Koranic Arabic.

Q. And would it be fair to say that Syrian Arabic differs, spoken Syrian Arabic differs from Egyptian Arabic?

A. You mean the number three?

Q. I didn't hear you?

A. I can't hear you.

Q. Would it be fair to say that the spoken everyday colloquial Syrian Arabic differs from spoken colloquial Egyptian Arabic?

A. Yes, ma'am.

Q. And would it be fair to say that Lebanese colloquial Arabic differs from Egyptian Arabic?

A. Yes, ma'am.

Q. And the same would be true for Moroccan Arabic, right?

A. Yes, but it will be the same difference between a British person understanding an American and vice versa.

MR. BERNSTEIN: I'm sorry, Judge, I couldn't understand.

THE COURT: He said it's the same as a British person understanding an American and vice versa.

Q. How about an American person understanding a Gaelic person?

A. A what, ma'am?

Q. A Gaelic person? You're not familiar with the word Gaelic?

A. No.

Q. You've been a translator in this country for a good number of years, haven't you?

A. Yes, ma'am.

Q. And are you a member of the American Translators Association?

A. No, ma'am.

Q. Did you ever apply for membership?

A. No, I never did.

Q. Did you ever take any of their courses?

A. No, I haven't.

Q. Did you ever receive any of their literature?

A. I've been receiving some since I worked for the bureau.

Q. Since you worked for?

A. Since I worked for the FBI.

Q. So when you tell us that you're a translator you do use that term broadly. Is that correct?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. As a translator do you make a distinction between translation and interpretation?

A. Yes, ma'am.

Q. What is the distinction?

A. When you translate you just translate only words. When you interpret, you interpret meanings.

Q. So to you translation is translation of a written word and a spoken word?

A. Yes, ma'am.

Q. And when you worked as an interpreter you don't render what you hear literally into another language, you give it your meaning; is that correct?

A. No, ma'am. I give it the meaning that the word will say.

Q. To you what is the difference? If when you're interpreting you're giving the meaning that the word is saying and when you're translating you're giving the meaning that the word is saying, what's the difference?

A. It depends on knowing the speaker, be familiar

with the person who's speaking and be familiar with the subject. To try to neutralize yourself you have to translate, not interpret.

Q. Would you repeat that?

A. If you try to neutralize yourself to be unbiased you have to translate, you have to put exactly the words that were said, but not interpret any meanings according to your own discretion.

Q. In dealing with the documents that you've been dealing with here, have you been translating those documents?

A. Yes, ma'am, I have.

Q. And have you been doing interpretation of those documents?

A. No, I haven't.

Q. So it's your testimony that this is a strict translation?

A. This a strict translation.

Q. When you did your training at the University in Egypt did you do studies in colloquial -- did you do -- withdrawn?

Did you do any linguistics study?

A. Yes, ma'am, I did.

Q. What kind of linguistics did you study there?

A. Just English linguistics. I studied that for

four years along with my English studies.

Q. In other words, what do you understand by linguistics?

A. Linguistics is grammar and dialects.

Q. And?

A. Dialects.

Q. Phonics?

A. Phonetics.

Q. Did you do colloquial studies there?

A. No, I haven't.

Q. Are you familiar with the colloquial expressions of all of the Arab-speaking countries?

A. Not all of them.

Q. Which ones are you familiar with?

A. I'm familiar with the Egyptian, I'm familiar with the Sudanese, Saudis, Gulf, Syrian, Lebanese, Palestinian, Jordanian, Lybian.

Q. And which ones are you not familiar with?

A. The Tunisian, Algerian, and Moroccans, because their main education is French, and their Arabic it's berber Arabic.

Q. Have you been to Syria?

A. No, ma'am, I haven't.

Q. Where did you get your familiarity with colloquial Syrian expressions?

A. My dad has two partners in his business that were Syrians and were involved with their families.

Q. Is your father in this country?

A. No.

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. And where did you get your familiarity with Lebanese colloquial expressions?

A. I had Lebanese friends.

Q. And your familiarity with Sudanese expressions?

A. All the Sudanese I familiarized myself was it while I was in Saudi Arabia there is considerable amount of Sudanese population in Saudi Arabia and always in contact.

Q. And were, I'm sorry?

A. And were contacting with them at all the time.

Q. Do you have a copy of Government Exhibit 451T in front of you?

A. Yes, ma'am, I have.

Q. I would direct your attention to page 2 of this document and in the final full paragraph on page 2, the paragraph that begins, "when we abandoned," and the paragraph that ends, "the millions of the Muslims in Ethiopia." You see which paragraph I'm referring to?

A. Yes, ma'am.

Q. One, two, three, four, five lines up about from

the about the top of that paragraph, there is a sentence that starts, "this criminal Tito." Going to the next line there, in parenthesis, there is in square brackets, there is a statement that says, "free leaders in Yugoslavia India and Egypt." Do you see what I'm referring to?

A. Yes.

Q. Was that, those words, the free leaders in Yugoslavia, India and Egypt, were they in the text?

A. No, they were not mentioned at that time but they were mentioned a sentence before that.

Q. Were those words, free leaders in Yugoslavia India and Egypt, were they in the text on the tape at that point when you, to use your word, translated it?

A. No.

Q. So, in other words, those words there are your interpretation; is that right?

A. It's a part of the translation to let --

Q. I'm asking you a simple question.

MR. FITZGERALD: Objection, your Honor.

Q. Are those words your interpretation?

THE COURT: If you can answer it yes or no answer it yes or no.

THE WITNESS: Yes.

Q. You previously told us that this document is a translation, didn't you? Did you not?

A. Yes, I did.

MS. LONDON: One moment.

(Pause)

Q. I'll direct your attention again, page 2 of the same document. This time we will look at the third full paragraph, the paragraph that commences with the words, "we are defending ourselves," and ends with the word brackets, "because which you have explained to us." Do you see the paragraph I'm referring to?

A. Page 2?

Q. Page 2?

A. Which paragraph again?

Q. It is the third full paragraph commencing, starting with the words "we are defending ourselves."

A. Yes, ma'am.

Q. Directing your attention to the fourth line in that paragraph there is a word in square brackets the final word on the fourth line of that paragraph. You see that word?

A. Yes, ma'am.

Q. That word is terrorism; is that correct?

A. That's correct.

Q. Was that word in the text that you were translating? Was the word terrorism there at that point in the text as you translated it?

A. No, it wasn't.

Q. Are you a supporter of the Mubarak government?

MR. FITZGERALD: Objection, your Honor.

THE COURT: No, I'll allow it.

Do you consider yourself to be a supporter of Mubarak government?

THE WITNESS: No, I don't.

Q. You still retain your Egyptian citizenship?

A. Yes, I do.

Q. Are you eligible to vote in Egypt as well as a foreign national?

A. Yes, I am.

MS. LONDON: I have no other questions.

CROSS-EXAMINATION

BY MR. JACOBS:

Q. Do you have an office where you work out of?

A. Yes, sir.

Q. Is that at 26 Federal Plaza?

A. Yes, sir.

Q. Is that with the Joint Terrorist Task Force office?

A. Yes, sir.

Q. And your assignments of what you're to listen to and to make interpretations, those assignments given to you by FBI agents?

A. Yes, sir.

Q. Have you gotten any assignments from the prosecutors in this case or the agents alone?

A. Not from the prosecutors directly.

Q. And you came to work with the FBI in December of 1993?

A. January of 1994.

Q. January, 1994. How did you hear about the job opening?

A. After I came back from Saudi Arabia I decided that I would like to work as a translator full time, and I went for an employment office. At that time I was living in Texas, and the agent in the employment office.

Q. I'm sorry?

A. The agent of the employment office advised me that it would be very difficult for me to find a translating job in Dallas-Fort Worth area, so they advised me to look into the government agencies, and I applied in several of them, and I got accepted by the FBI.

Q. So you applied in several United States government agencies?

A. Yes, sir.

Q. Which ones did you apply?

A. I applied with the Drug Enforcement Agency, and there was a waiting period of three years. I applied with

the CIA and they were not in need at that time. And I applied with the FBI.

Q. And were you interviewed by Arabic-speaking agents before you got the job?

A. Excuse me, I would like to add one more thing?

Q. Sure, please?

A. I asked for the Custom and they were not hiring.

Q. United States Customs?

A. The United States Customs Office.

Q. And you interviewed for the FBI. Did you take a test?

A. Yes, sir, I did.

Q. Was it a civil service test that you took or some personal test that the FBI gave you, if you can recall?

A. I took about six or seven translating tests.

Q. And who administered those tests?

A. Some of, two of them were oral tests.

Q. I'm sorry?

A. Oral.

Q. Oral, I'm sorry.

A. Yes, two of them were oral tests, and the oral tests were conducted by phone. I'm not aware who conducted them by phone. One --

Q. By phone?

A. By phone.

Q. And was that, okay -- and after these you were hired by the FBI?

A. No, sir. No, sir. There is another test that was to an audiotape, audiotape that I had to translate. Then I had some written material after that, two or three after that.

Q. Now you said that you got security clearance from the FBI?

A. By the FBI.

Q. And when you -- with respect to that security clearance, did you fill out an application that enabled you to get the security clearance?

A. Yes, sir, I did.

Q. And did the agents tell you what you needed security clearance for?

A. Which agents?

Q. FBI agents. Did they tell you that you needed security clearance for any particular reason?

MR. FITZGERALD: Objection, your Honor, 403, 401.

THE COURT: Sustained.

Q. How long was the application that you filled out concerning security clearance?

MR. FITZGERALD: Same objection.

THE COURT: Sustained.

Q. With respect to your job with the FBI, have you

ever testified in any court proceedings?

A. No, I haven't.

Q. This your first time?

A. This my first time.

Q. How about before a grand jury?

A. No, I haven't.

Q. Have you signed or filled out any affidavits in connection with your work with the FBI?

THE COURT: You mean in this case or --

MR. JACOBS: Any case.

A. No, sir, I haven't.

Q. The assignments that you get with respect to your work, those are given to you by the FBI? In other words, they tell you, here's a particular tape, please make up a transcript? That fair to say?

A. That's fair.

Q. And when you do that work, do you work with any other translators in preparing the transcript?

A. Sometimes I do.

Q. Can you give the jury the name of the other translators that you work with in preparing the transcripts, the names?

MR. FITZGERALD: Objection, your Honor.

THE COURT: You are talking about a particular transcript?

MR. JACOBS: He said -- I don't want to argue in front of the jury -- he worked with other translators. I'd like the name of the other people he worked with.

THE COURT: Only with respect to the ones that have been offered here.

MR. JACOBS: That's correct.

THE COURT: Or identified here.

MR. JACOBS: Correct.

A. None for the ones that have been identified here.

MR. BERNSTEIN: I'm sorry, Judge.

THE COURT: None for the ones that have been identified here.

Q. So with respect to other transcripts in this investigation you worked with other translators, correct?

A. Sometimes.

Q. And your work with respect to those other transcripts, do you know which transcripts those are that you worked with another translator?

MR. FITZGERALD: Objection, scope.

THE COURT: Sustained.

Q. Do you keep any record or file concerning the amount of hours that you work on a particular transcript, any record of your day-to-day work that you maintain?

A. No, I don't.

MR. JACOBS: Nothing further.

CROSS-EXAMINATION

BY MR. LAVINE:

Q. Good afternoon, Mr. Abdel-Hafiz. How long were you in Saudi Arabia?

A. One year.

Q. Saudi Arabia is a monarchy, is it not?

A. It's what, sir?

Q. A monarchy. It has a king?

A. Yes, yes, sir.

Q. And you mentioned that you worked for the Saudi, you worked for the Saudi Arabian Air Defense Force or Forces. Is it not true that the Saudi Arabian Air Defense Forces are controlled by the Abdul --

THE COURT: Sustained.

Q. You mentioned that in order to do your translation you have to be free from bias. Is that correct?

A. That's correct.

Q. Is it your testimony that you have no bias against Dr. Abdel Rahman and his followers?

A. Yes.

MR. LAVINE: I have nothing further, thank you.

THE COURT: Any redirect?

MR. FITZGERALD: Yes, two questions.

REDIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Mr. Abdel-Hafiz.

A. Yes, sir.

Q. If you added anything to the transcript that weren't words spoken by Sheik Rahman, did you put it in brackets?

A. Yes, it was.

Q. And is your office in the Joint Terrorist Task Force or separate from the Joint Terrorist Tack Force?

A. It is a different floor.

MS. LONDON: I'm sorry, your Honor, I couldn't hear the question.

MR. FITZGERALD: I asked if his office was in the Joint Terrorist Task Force or separate from the Joint Terrorist Task Force, and I believe his answer was it was on a separate floor?

THE WITNESS: They are separate floors.

MR. FITZGERALD: Nothing further.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. When you added things and you put them in brackets, you weren't translating, were you?

THE COURT: Sustained. That was asked on cross before. Anything else?

MR. STAVIS: No, your Honor.

THE COURT: Take a seat.

You're excused.

(Witness excused)

MR. FITZGERALD: Your Honor, at this time the government would play Government Exhibit 451. It will take a while. I don't know if you want to change the break. We also need to do a little bit of set up.

THE COURT: How long a period of time is quote a little while?

MR. FITZGERALD: Close to an hour.

THE COURT: That's a long while. We are going to take a break now. Please leave your notebooks behind. Please don't discuss the case. We will resume in 15 minutes.

(Recess)

(Continued on next page)

(Jury not present)

MR. FITZGERALD: Your Honor, with Miss Schwartz's permission, I put copies of the redacted transcripts on the jurors' chairs.

THE COURT: Actually, that permission came from me. I hope that doesn't diminish the authority.

MR. FITZGERALD: No, Judge.

MR. BERNSTEIN: Your Honor, could we have clarity on what we are about to see in terms of the translation versus the actual tape? Are we getting English and --

MR. FITZGERALD: Your Honor, we will play the video to each pause. Then there was an English summary translation. We will skip past that, and read the English up to that pause.

MS. STEWART: Judge, would you consider just instructing the jury that at the point that there is a pause -- or Mr. Fitzgerald can do it, anyone can do it -- that there was an English translation provided to the people who were listening?

THE COURT: An English summary, fine.

MS. STEWART: Just to indicate the openness of the meeting, I think.

THE COURT: I don't know what it indicates about the meeting, but in any event, they will be told that that is what happens at the pause.

MS. STEWART: Thank you, Judge.

(Jury present)

MR. FITZGERALD: May we proceed, Judge?

THE COURT: Go ahead.

MR. FITZGERALD: Your Honor, we will be playing Government's Exhibit 451, following along with the transcript 451, which has been placed in the jurors' chairs. We will start with the video and then we will go to each pause where there was a summary given of what had been said, in English. We will stop the tape and then read the English transcript to that point.

THE COURT: Let me repeat again what he said. There is going to be a tape played that is the Arabic of the translation that you have in front of you as 451T, a tape of the speech. You will recall the witness testified, the witness who did the translation testified that at each point marked "Pause" on the transcript, at the meeting there was an English summary given of what had just been said. At the point in the tape where that summary would go, we are going to stop, and the Assistant U.S. Attorney will read the translation that appears on your transcript.

This is a speech by Dr. Abdel Rahman. Was there a date?

MR. FITZGERALD: Yes, your Honor. The title is "Al Sheik Omar Abdel Rahman. Conference on Solidarity with

Bosnia Herzegovina in January 16, 1993," as it appears on the transcript. And it continues, "on the inevitability of jihad for the solution of our problems, and for the frightening of the enemies of God."

The unknown male makes the introduction and then Sheik Rahman speaks.

THE COURT: All right, go ahead.

MR. FITZGERALD: The unknown male introduction.

"When a speaker introduces someone, he either speaks of the thought or the thinker. But I find myself now puzzled not knowing with what I should start, whether to start with the thought or the thinker or the thought and the thinker, and if I start with the thought and the thinker, will I give him his due place in his status, and give him what he deserves of respect and honor? He is the professor who does not need any words or expression, who is more famous to be introduced? The Professor Omar Abdel Rahman, would he please come here. And after him, by God's will, a respected brother will speak to us about the plight of the deported people from Palestine.

"Sheik Omar's words follow:

"Thanks are to God whom we thank and seek his help and forgiveness. We seek God's help against the wrong deeds of ourselves and the evil work of our deeds. He whom God guides, no one can mislead and he whom God misleads, no

one can guide. And I testify that there is no God but Allah, who is alone with no partners, and that Mohammed is his servant and messenger. May God's prayers and peace be upon our master Mohammed, as well as his family and apostles, and whoever is guided by his God till the doomsday.

"God of dignity who is blessed and lofty said, 'And why don't we fight for the sake of God and the weak men, women and children, who say God, please get us out of this village, whose people are unfair, and give us a guardian from your side, and make us victorious with your support.'

"O respected brothers, God has obliged us to perform jihad, with money and oneself. And he ordered us to be ready at any moment, and to stand up ready and alert and to be cautious, and to pay attention to our enemy. 'O you who have believed be precautious and take off in singles and in groups.'

The battalions of Islam and its divisions must be in a state of continuous readiness. And if it becomes necessary that they take off in battalions and divisions, then they must take off, and if it becomes necessary that all of them must take off, then and to stand up as if they were one single man in order to perform jihad for the sake of God, then they must hurry up for this purpose. Islam is

not a religion that is concerned with one field and leaving other fields, not with one thing and leaving the other things. But it sets its plan to defend the Muslims and to be in a state of continuous readiness. Then they must be cautious and to hit their enemies with strength and power ina way that when they hit the front lines, the rear lines will be dispersed and scattered. 'When you attack them at war then you try to disperse the rear lines so that they may take a lesson.'"

And now we pick up again.

(Videotape continued)

MR. FITZGERALD: Continuing:

"The Almighty God loves the fighters, so you should love the fighters as God loves them. Because it is our duty to love whomever God loves. 'God loves those who fight for his sake as if they are one row, like the solid building.' And why shouldn't we be among those whom God loves? Why shouldn't we be from those who perform jihad so that God will love us? And if God loves us then this will be the highest of the degrees and the most sublime of the positions that God loves us and that we reach there and that we will acquire the eternal bliss and to paradises where we will live forever. Why shouldn't we hurry our steps to something God loves? And why shouldn't we be with the persons who perform jihad?"

Continuing.

(Videotape continued)

MR. FITZGERALD: Continuing:

"The western mass media is accusing those who perform jihad for the sake of God of being terrorists. And when we defend ourselves saying 'No, we are not terrorists, we are far away from terrorism.' As if we are standing in the cage of the accused persons and our enemy is accusing us because we are trying to defend our religion. And we defend ourselves against what we are accused of. And this is a bad way that we are putting ourselves in the cage of the accused persons.

"We are defending ourselves and refuting the accusations. No, if those who have the right to have something are terrorists then we are terrorists. And we welcome being terrorists. And we do not deny this charge to ourselves. And the Koran makes it, terrorism, among the means to perform jihad in the sake of Allah, which is to terrorize the enemies of God and who are our enemies, too. And prepare for them whatever you can of horses and powers with which you frighten the enemy of God as well as your own enemy. Then we must be terrorists and we must terrorize the enemies of Islam and to frighten them and to disturb them and to shake the earth under their feet."

Continuing.

(Videotape continued)

MR. FITZGERALD: Continuing:

"When we abandoned the jihad for the sake of God and abandoned terrorism to the enemies of Islam, what has become of us? We saw that our enemies are surrounding us, in all the Muslim lands: In the Philippines, in the Kampuchea, in Kashmir, in India, in Afghanistan, in Palestine, in Yugoslavia, in the Sudan. They tried to terminate Islam. They even took many Muslim people and threw them in the seas. And there was those who were respected among the people and even among the Muslims, and they were and they used to receive them like heros. This criminal Tito, this Tito who was considered he and Nehro and Jamal, the three leaders in Yugoslavia, India and Egypt. This criminal trinity was exterminating the Muslims. Tito was able to terminate and destroy more than one million Muslims, while they were singing him and his heroism. Haile Selassie, who intimidated the millions of the Muslims in Ethiopia.

"Our enemy surrounded us in all the countries of the earth when we abandoned jihad. And we see those who are discouraging and dissuading people from performing jihad. They are telling them that this is not the time for jihad because we are not ready. Those discouragers and impeders we must watch out for their tactics and fight them

everywhere."

Continuing.

(Videotape continued)

MR. FITZGERALD: Continuing:

"Who is the one who is fighting the Muslims? And who is the one who wants to destroy them? There are two main enemies. The enemy who is at the foremost of the work against Islam are America and the allies. Who is assisting the Serbs? And who is providing them with weapons and food? Europe and behind it is America, who are providing them with weapons, money and food, in order to completely exterminate the Muslims, and because they declared that they do not want the establishment of an Islamic republic in Europe. But by God's grace an Islamic republic will be established. And republics, they will not be able to extinguish God's light by their mouths. This is God's promise. 'And God agrees to nothing less than the completion of his own light even if the nonbelievers hate it.'

"The Muslims do need very much to stand firm so that God's promise can be fulfilled and God, the almighty God, will never give our enemies the control of us. So the Muslims should be alert and to be attentive in their stand."

Continuing.

(Videotape continued)

MR. FITZGERALD: "Continuing:

"And the other enemies are the Muslim rulers, who do not view these cases in an Islamic manner, but they view them from a national point of view. And they do not help the Muslims and they do not provide them with money and weapons. For us there is the Egyptian regime, its president says 'We should not look at the problem of Bosnia as a Muslim problem but it is an internal problem among groups and factions in the same country,' and thus he looks at it in a bad manner, which is as far as it can possibly be from Islam.

"The ruler who gave the Soviet Union $10 billion, had he given Bosnia anything of this? Who gave the government of Algeria, the treacherous one which is beating the Muslim, has he provided some weapons to Bosnia and Herzegovina in order to achieve what they need? The Muslim rulers are a strong obstacle in the way of performing jihad for the sake of God."

Continuing.

(Videotape continued)

MR. FITZGERALD: Continuing:

"There is no solution for our problems except jihad for the sake of God. There's no solution, there's no treatment, there's no medicine, there's no cure except with what was brought by the Islamic method which is jihad for the sake of God. Our enemies want other solutions that will

distant us from this effective cure. They want conferences for yielding, intimidation, humiliation, and smallness. The peace conferences which they impose here and there are nothing but conferences for intimidation and humiliation. And from among the solutions that distance us from the Islamic solution are to make demonstrations to the United Nations, the enemy of God and the enemy of the Muslims we resort to it and we outcry in front of it and they do not pay attention to us.

"Even the western media didn't talk about those who demonstrated and those who out cried, and they do not pay attention to these matters. Also from among the bad solutions is to write to the Congress appealing and asking for help in humiliation and supplication to interfere in our problems and solve them. It is humiliating and intimidating that we write to the presidents in America or other countries. We belittle and humiliate ourselves in front of them and ask our enemies to interfere to solve our problems. We have distanced ourselves from the Islamic solution which is to shed our blood cheap for the sake of God and to perform jihad by the wealth and ourselves and to give the pledge of allegiance to our prophet Mohammed, may God's prayers and peace be upon him, as the early apostles had done. They are the ones who said that 'We have promised Mohammed to perform jihad as long as we are alive.' And Abd

Allah Ibn Ruwahah says O messenger of God 'tell us our obligation to God and our obligation to you.' So the messenger of God said 'your obligation to God is to worship him and not to worship anyone else beside him and your obligation towards me is to protect from whatever you protect yourselves and your children from. Then Abd Allah Ibn Ruwahah said, 'and if we do that, what will be?' The prophet told him 'you will have the paradise.' Then Abd Allah said the deal is a winning one, we will not rest until it is achieved. This is the greatest trade and the greatest deal. In it there is profit and in it is the win. And it is impossible that we will ever remove or resign from this deal. This is the solution and there is no solution in the peace conference and there is no solution in the demonstrations to the United Nations, there is no solution in writing to the Congress and to the presidents, those are our enemies and so we will never humiliate or berate ourselves in front of them."

Continuing.

(Videotape continued)

MR. FITZGERALD: Continuing:

"Koran urges us by different means and by many sentences in order to strengthen our zeal and to stimulate in us courage in order to perform jihad, and it tells us not to weaken in getting after the people, do not weaken in

persecuting your enemies. What will happen to you? Pain, wounds and sores? All this happens to them. 'If you feel pain they also feel pain.' But you have advantage over them and you are ahead of them, because you ask God what they do not ask, and you ask God and they don't ask God. Then why don't you perform jihad for the sake of God? Why are you weak and coward while you are of higher quality? You are in higher level in terms of the belief, the Islamic law, characters, program and of better imagination. Then why do you weaken and are cowards? How could you seek peace and call for it? They make fools of us and call it peace. What kind of peace is this? The cheap one we must not accept peace which means yielding. This cheap peace we will never accept it. And do not humiliate yourself and call for peace.

"While you are on a higher level and God is with you and he will not waste whatever you have done. You are on a higher level if you were believers. They have not weakened for what befell them for the sake of God. And they didn't weaken or sit still. And God loves those who are patient."

Continuing.

(Videotape continued)

MR. FITZGERALD: Continuing:

"Why don't you fight for the sake of God and

those who are weak among the men, the women and the children. Why? What is wrong with you? This is a reapproaching which is mixed with rebuking and chiding. What is wrong with you? What has happened to you? What has befell you? Why don't you fight for the sake of God? Why don't you defend the weak of the men, the women and the children? The weak among men are calling you. The elderly are urging you. Come to us because we are being mowed down with bullets after bullets. And we are collectively killed by cannons.

"The weak among men and the weak among women and the weak among children can't do anything and can't find a way. Those elderly people, how can they escape or run away? And how can they escape from the heavy shelling and the weak women who have been attacked and whose dignity and honor violated? Where's the dignity? Where's the magnanimity? Where's virtue? Where is loyalty which remained with the Muslims? While they are protecting the honor and the dignity and honor, they find the women as their honors were violated, and the Bosnian women ask in some conferences what do we do with our pregnancies what do we do? And what should we do? They ask while they are crying very bit material. Have the eyes cried? Have the tears shed? Have the hearts being broken? For what is happening to our sisters there? While their honors are violated and they

became pregnant out of wedlock no one lifts a finger. No one becomes angry for God's religion, and the weak children are taken and put in the cement, gigantic grinding machine so that the child enters from one end alive and comes out from the other end as dough. Where the blood and flesh and bones and veins are all mixed up with each other. Those will our children who are taken and put on the explosives and the dynamite so that they can explode in them instead of the animals. And whoever remains alive is taken to the Christians in Germany and other countries in order for him to disbelieve in God and in order to worship the cross instead of worshipping God alone.

"What is wrong with you? What is wrong with you? Why don't you fight for the rescue of those? Why have we abstained from jihad and responded to the ways of the discourager and the impeders? And God, the almighty God, has indicated the rewards of those who perform jihad as he warns from abandoning jihad. And why don't you fight for the sake of God and the weak men, women and children."

Continuing.

(Videotape continued)

MR. FITZGERALD: Continuing:

"Speaking for the sake of God is a necessity. And we must perform this duty. To send ourselves to the arena of jihad, and to go there we must spend whatever God

has given us of money. Many jurists have said, 'If a Muslim person is hungry, it is forbidden that another Muslim anywhere in the world saves food. And if a Muslim is in need, it is forbidden that any Muslim saves money anywhere in the world.' There are not only thousands, but millions of our brothers and sisters in Bosnia who are hungry and naked. Therefore, it is forbidden that Muslims save money and treasure it. We have to spend from what God has given us, as he said in the Koran, 'Those who pay and spend from what he blessed them with are the real believers. They have their high stand before God and they get his forgiveness and will get more of his bounties.'"

(Continued on next page)

MR. FITZGERALD: Continuing.

(Videotape continued)

MR. FITZGERALD: "God is the one who gives you the money. He will ask you for this money as a loan and if you lend a rich man you will be secure that He will return the loan God has the highest example and He is the one who is asking you to lend him a good loan. And when you give this money to those who are fighting for the sake of God and the weak man and women and children.

"A loan that God is asking you for it while he is the one who was the donor of this money He will borrow this money from you and asks for it as a loan. He who lends God a good loan, He will multiply it many folds and God holds and releases and to him you will return back. Who will lend God a good loan so that He will multiply it many folds before returning it to him and He will be generously rewarded.

The charitable men and women who lend God a good loan it will be multiplied to them and they will be generously rewarded. Lend God who has given you this money. Give it to the fighters God will return it to you as a good loan. Why don't you hurry to this magnificent reward? And this is a great repayment?"

Continuing.

(Videotape continued)

MR. FITZGERALD: "What a misfortune it is for the person who refuses to spend for the sake of God. And what a winner is the person who gives and spends all He owns for the sake of God. What you spend for the sake of God is your savings. The human keeps saying, "my money, money." Do you think that you own more than what you eat and the cloth you wear, or the money that you gave a needy person. And what is left will be for your inheritors.

"Remember what our Exalted mighty God said, "whatever good you do, you will find it saved for you with God. This is best and it will be better rewarded. And whatever you spend for His sake, He will return it to you in folds, and he is the best giver."

"That is all I have to say. I ask God's forgiveness for me and you, and ask for his prayers upon our prophet Mohammed and his family and his companions."

(Continued on next page)

(At the sidebar)

THE COURT: How long is whatever you have to do next?

MR. FITZGERALD: Relatively short direct. I have no idea of the length -- it's a witness putting in the FISA reels, just authenticating reels -- not knowing where the cross is going.

THE COURT: All right. We're going to break.

(Continued on next page)

(In open court)

THE COURT: All right. We are going to break for the day until Monday. So please leave your notebooks behind and your transcripts behind. Please don't discuss the case or read about the case or hear about the case. Have a pleasant weekend and we'll see you on Monday.

(Continued on next page)

(Jury not present)

MS. STEWART: Judge, I just wanted to ask if the government could, I know it's tremendous amount of material, it is for both sides. I echo Mr. Stavis at a sidebar earlier today to say that it is hard to keep up with them. The package of materials that was placed on my desk and allegedly coming from the Sheik's suitcase this morning was about five documents, when in reality there were twenty-five in the actual exhibit.

I don't fault, I know we had the obligation to look at it. I know we should have gone to see it. It would just be helpful in this day of copy machines if we could at least for those exhibits that are going to be introduced that we get them in advance, we could get a witness list a at least a day in advance, at least the night before tell us who is going to be called.

THE COURT: I want that done. I want them told at least twenty-four hours in advance who is up, and exhibits provided, copies of exhibits provided when they're not voluminous. If they are voluminous, I want them made available at that time for inspection. Are there Bates numbs on any of them?

MR. MC CARTHY: Your Honor, with some things there are. I hear what you are saying. And we've talked to counsel. We're going to try to do that. We are going to

take the weekend and get ahead.

THE COURT: Please. I understand your point but I understand theirs, too, and with exhibits that are not voluminous use whatever, just get whatever resources you can, but get it copied at least twenty-four hours in advance. That should not be insurmountable.

MR. MC CARTHY: Your Honor, so it is clear, counsel have known who the witnesses are who are coming up.

THE COURT: I understand that because I've gotten the 3500 material. I assume they have gotten it the same time.

MR. MC CARTHY: My point is, I told them the next thing that we're going to do is about five witnesses on surveillances in 1989, and then I believe we're into the Kahane proof. And I've told counsel during that period of time we'll try to give them a time line on what searches are coming in, so if they want to take a look at that stuff they can do that, too.

THE COURT: All right. Could I see you for a second at the side.

(Page 2215 sealed)

(Adjourned to Monday, February 6, 1995, 9:30 a.m.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,

v. SS 93 Cr. 181 (MBM)

SIDDIG IBRAHIM SIDDIG ALI,

Defendant.

----------x

February 6, 1995
8:15 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

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

DANIEL FELBER
JERRY TRITZ
Attorneys for Defendant

(In open court; jury not present)

THE CLERK: United States v. Siddig Ali.

Government ready?

MR. FITZGERALD: Yes, your Honor. Good morning.

THE COURT: Good morning, Mr. Tritz.

MR. TRITZ: Good morning, your Honor.

Your Honor, I am here this morning to make an application on behalf of my client, but prior to doing that I would just like to place very, very briefly on the record --

THE COURT: Before you do that, I am going to ask Mr. Adler to come forward and sit at counsel table, please.

(Mr. Adler sat at counsel table.)

THE COURT: Thank you.

MR. TRITZ: Sir, I just wanted to place briefly on the record what brought about this application, and that is that on January 23 of 1995, at approximately 7 p.m., I received a call in my office from David Kelley, Assistant United States Attorney, informing me that my client had reached out to the United States Attorney's Office and had offered or requested the opportunity to speak with them and they were willing to talk with him, and they wanted to do it the following morning. So on January 24 at 8 a.m. I appeared at this courthouse with my colleague, Mr. Felber. We spoke with our client and immediately realized that he

was interested in cooperating and that his cooperation might possibly reflect on his codefendants with whom we were on trial. We therefore thought it inappropriate for us to participate in those discussions, and requested the opportunity to appear before your Honor, wherein we requested that another attorney be assigned to represent Mr. Ali and thereby create a Chinese wall.

Approximately ten days later, on I think it was February 3, around again 7 p.m., at my home, I received a call from the Chinese wall counsel, who indicated to me that --

THE COURT: Isn't there a more elegant term we can use than that?

MR. TRITZ: Well, I could name the individual as Mr. Adler, who graciously, I might say, acceded to my request that he act in the capacity of Chinese wall counsel. And I thank him for taking on that responsibility.

In any event, I received a call from Mr. Adler on February 3 around 7 p.m., and he advised me that the government had offered a plea which involved cooperation, and my client, Mr. Ali, was prepared to accept that plea. He also advised me that he was not recommending that plea. We then spoke with our client, who advised us that he indeed was prepared to accept that plea.

Now, candidly, your Honor, Mr. Felber and I did

not think it was appropriate for us to appear here on this plea and we asked not to have to do that, and the Court indicated that it thought it appropriate for us to be here, and we are here.

We have received a copy of the cooperation agreement which we did not negotiate. We have signed it, but by our signatures we merely mean to reveal the fact that we reviewed it with our client and explained to him any questions he had about the wording in it, and we believe that he understands the document.

Again, neither Mr. Felber nor I recommend the plea. We would like to state on the record that, in our participation in this matter, we have not revealed anything about the defense strategies that we learned during our participation in the trial. We will not participate in any future cooperation which Mr. Ali may engage in, but we will appear pursuant to the Court's request at his sentence and advise the Court of matters that we are familiar with, which took place during our period of representing Mr. Ali and the knowledge that we gained about prior matters prior to appearing as his counsel.

Your Honor, that concludes my statement.

My client, Mr. Ali, has advised me that he wishes to withdraw any previously entered plea of not guilty and enter a plea of guilty to the indictment outstanding against

him under Indictment No. 93 Crim. 181.

THE COURT: Mr. Siddig Ali, I have been told that you want to withdraw your previously entered plea of not guilty and enter a plea of guilty to the charges in this indictment S5 93 Cr. 181 against you, which, as I reviewed it, are Counts 1, 3, 5, 6, 15, 16, and 17. Is that right?

DEFENDANT ALI: That is right, your Honor.

THE COURT: Before I accept your guilty plea, I am going to ask you certain questions so that I can establish to my satisfaction that you want to plead guilty because you are guilty and not for some other reason. If at any point you don't understand one or more of the questions that I ask you, or if you want to talk to any of your attorneys for any reason -- and by that I include Mr. Tritz, Mr. Felber and Mr. Adler -- just tell me and I will give you whatever time you need to talk to them.

DEFENDANT ALI: I will.

THE COURT: First, your native language is not English, is that correct?

DEFENDANT ALI: That's correct, your Honor.

THE COURT: But are you able to speak and understand English sufficiently well to proceed?

DEFENDANT ALI: I would like to believe that I am fluent in English, your Honor.

THE COURT: Well, this is not the first

conversation we have had, and my experience is that you are fluent in English. But I think we have to make a record on that.

Ms. Schwartz, would you please swear Mr. Siddig Ali.

(The defendant Siddig Ali was sworn.)

THE COURT: Mr. Siddig Ali, do you understand that, having been sworn, your answers to my questions will be subject to the penalties of perjury or of making a false statement if you do not answer truthfully?

DEFENDANT ALI: I do.

THE COURT: How old are you?

DEFENDANT ALI: I am 34 years old.

THE COURT: How far did you go in school?

DEFENDANT ALI: Three years in college.

THE COURT: Where was that?

DEFENDANT ALI: Part in Sudan and part in the United States.

THE COURT: Are you now or have you recently been under the care of a doctor or a psychiatrist?

DEFENDANT ALI: No, your Honor.

THE COURT: Have you ever been hospitalized or treated for narcotics addiction?

DEFENDANT ALI: No.

THE COURT: Have you ever been addicted to

narcotics?

DEFENDANT ALI: Never.

THE COURT: Have you taken any drugs, medicine or pills or drunk any alcoholic beverages within the last 24 hours?

DEFENDANT ALI: No, your Honor.

THE COURT: How do you feel today?

DEFENDANT ALI: Pretty good.

THE COURT: You understand what is happening today?

DEFENDANT ALI: Absolutely.

MR. FELBER: Your Honor, if I might, just to make the record clear: Although Mr. Siddig Ali is not under the care of a psychiatrist, it should be pointed out that he has been evaluated by psychiatrists and psychologists at the MCC and as well as by a psychiatrist appointed by the defense in this case.

DEFENDANT ALI: May I explain, your Honor?

THE COURT: Sure. Was that in aid of preparing your defense in this case?

MR. FELBER: Yes, your Honor.

THE COURT: Was that what you wanted to explain?

DEFENDANT ALI: That is correct.

THE COURT: Whatever it was that you consulted these doctors about, is it anything that interferes with

your ability to understand this proceeding or what I am saying?

DEFENDANT ALI: No, your Honor.

THE COURT: And, Mr. Felber, as far as you know, that is true, is it not?

MR. FELBER: That is correct.

THE COURT: Does any counsel, including Mr. Tritz, Mr. Felber, Mr. Adler and government counsel, have any doubt that Mr. Siddig Ali is competent to enter a plea?

MR. McCARTHY: No, your Honor, no doubt.

THE COURT: Mr. Tritz, do you have any doubt?

MR. TRITZ: No, your Honor.

THE COURT: Mr. Felber?

MR. FELBER: None.

THE COURT: Mr. Adler.

MR. ADLER: Based upon the limited conversations I have had, I have no doubt, limited as they are.

THE COURT: I find that Mr. Siddig Ali is competent to enter a plea.

Have you had enough of a chance to discuss this case with your attorneys, both your trial counsel and the lawyer who was appointed to handle the contact with the government, Mr. Adler?

DEFENDANT ALI: That is correct.

THE COURT: You have had enough time?

DEFENDANT ALI: Yes, I have had enough time.

THE COURT: And are you satisfied with their representation?

DEFENDANT ALI: No question about that. Very much satisfied.

THE COURT: I am now going to explain your constitutional rights. Under the Constitution and laws of the United States, you are entitled to a speedy and public trial by a jury on the charges that are contained in this indictment, which is number S5 93 Cr. 181. Do you understand that?

DEFENDANT ALI: That's correct.

THE COURT: At a trial you would be presumed to be innocent, and the government would be required to prove you guilty by competent evidence and beyond a reasonable doubt before you could be found guilty. A jury of twelve people would have to agree unanimously that you were guilty and you would not have to prove that you were innocent. Do you understand that?

DEFENDANT ALI: I do.

THE COURT: At a trial, and at every stage of your case, you would be entitled to be represented by a lawyer, and if you could not afford a lawyer, then a lawyer or more than one would be appointed to represent you. Do

you understand that?

DEFENDANT ALI: I do, sir.

THE COURT: During a trial the witnesses for the government would have to come to court and testify in your presence, your lawyer could object to evidence that the government offered, and could offer evidence and subpoena witnesses in your behalf. Do you understand that?

DEFENDANT ALI: I do, sir.

THE COURT: At a trial, although you would have the right to testify if you chose to do so, you would also have the right not to testify. If you decided not to testify, then nobody could draw any inference or suggestion of guilt from the fact that you did not testify, if that was what you decided to do. Do you understand that?

DEFENDANT ALI: Yes, sir.

THE COURT: If you were convicted at trial, you would have the right to appeal that verdict. Do you understand that?

DEFENDANT ALI: Yes, sir.

THE COURT: Even now, as you are entering this plea, you have the right to change your mind and decide to plead not guilty and go to trial on the charges in this indictment. Do you understand that?

DEFENDANT ALI: I do, sir.

THE COURT: If you plead guilty and if I accept

your plea, you will give up your right to a trial and the other rights that I have just mentioned, the trial that you are now participating in you will no longer participate in, and I will enter a judgment of guilty and sentence you on the basis of your plea after I have considered a presentence report and whatever submissions I receive from the government and from your counsel. Do you understand that?

DEFENDANT ALI: I do.

THE COURT: If you plead guilty, you will also have to give up your right not to incriminate yourself, because I am going to ask you questions about what you did, and you will have to acknowledge your guilt. Do you understand that?

DEFENDANT ALI: I do.

THE COURT: You have received a copy of the indictment containing these charges?

DEFENDANT ALI: Yes, I have.

THE COURT: And you have gone over it with your counsel?

DEFENDANT ALI: I did.

THE COURT: You understand that you are charged in Count 1 with conspiracy to wage a war of urban terrorism; that you are charged in Count 3 with conspiracy, which is simply an unlawful agreement, to murder President Hosni Mubarak of Egypt; that you are charged in Count 5 with

participating in a conspiracy to bomb buildings and other facilities used in commerce; that you are charged in Count 6 with an attempted bombing in the spring of 1993; that you are charged in Count 15 with transportation of an Uzi semiautomatic rifle in aid of the bombing conspiracy that was charged in Count 5; that you are charged in Count 16 with using and carrying that Uzi semiautomatic rifle in aid of that bombing conspiracy; and that you are charged in Count 17 with using and carrying a destructive device in aid of that bombing conspiracy. Those are the charges. Do you understand that?

DEFENDANT ALI: Yes, sir.

THE COURT: Do you understand that -- and I will go through the maximums on each one and tell you what the aggregate is -- with respect to Count 1, the maximum is 20 years' imprisonment, five years of supervised release, up to a $250,000 fine, and a $50 special assessment; with respect to Count 3, the charge of conspiracy to murder, that is up to life imprisonment, five years of supervised release, a $250,000 fine, and a $50 special assessment; Count 5, the bombing conspiracy, carries a maximum of five years' imprisonment, up to three years of supervised release, a $250,000 fine, and a $50 special assessment; Count 6, attempted bombing, carries up to ten years' imprisonment, three years supervised release, a $250,000 fine, and a $50

special assessment; Count 15, transportation of a firearm, carries up to ten years' imprisonment, three years supervised release, a $250,000 fine, and a $50 special assessment; Count 16, using and carrying a firearm, carries a mandatory five years' imprisonment that has to be imposed consecutive to any other term of imprisonment, including the one for the underlying offense, three years' supervised release, $250,000 fine, and $50 special assessment; and finally, Count 17 carries a mandatory 30 years' imprisonment, consecutive to any other term of imprisonment, including that imposed for the underlying offense charged in Count 5, up to five years of supervised release, and a $250,000 fine and a $50 special assessment.

In the aggregate, on all these charges, what you are looking at is the prospect of life imprisonment. The government says life plus 80 years, which, of course, is an impossibility. Unless a condition is met which I will discuss later on, you are looking at spending the rest of your natural life in prison, the possibility of having. $1.7 million in fines imposed on you, and, should you receive less than a life sentence, facing life supervised release. Do you understand that?

DEFENDANT ALI: Yes, sir.

THE COURT: You understand also that one of the features of supervised release is that if during any term of

supervised release you don't live up to the conditions of supervised release -- supervised release is release with certain conditions -- if you don't live up to one or more of those conditions, you can be put back in jail for the entire term of supervised release, which in this case would mean you could be put back to jail for life if the life term was not imposed initially. Do you understand that?

DEFENDANT ALI: I do, your Honor.

THE COURT: This case is governed by the Sentencing Guidelines, which means that when I get the presentence report I will also receive a recommended range of sentence, which in this case, absent any other factor, is likely to be, I think is certain to be, a term that will mean that you would spend the rest of your life in prison. The only way that that can be avoided is if I get a letter from the government saying that you have provided substantial cooperation to them. If I do, then I am free to impose any sentence I wish. Do you understand that?

DEFENDANT ALI: Yes.

THE COURT: However, do you understand also that the question of whether to send the letter or not is a matter within their discretion. That discretion cannot be overridden by me. Do you understand that?

DEFENDANT ALI: I do.

THE COURT: I can't second-guess them.

DEFENDANT ALI: I understand.

THE COURT: The only basis on which I could find that the letter should be sent that hasn't been sent is if they act in bad faith, which means for an improper reason. Do you understand that?

DEFENDANT ALI: I do.

THE COURT: For example, if they were to refuse to send a letter because of racial bias or something of that kind, then I could compel the letter to be sent. But absent an extreme circumstance like that, I cannot second-guess their judgment, even if, if I were in their place, I would have done differently. Do you understand that?

DEFENDANT ALI: Yes.

THE COURT: So you are relying on their judgment, not on mine.

DEFENDANT ALI: That is correct.

THE COURT: Has anyone threatened you or anyone else or forced you in any way to plead guilty?

DEFENDANT ALI: No.

THE COURT: I gather there is a plea agreement; is that correct?

MR. FITZGERALD: Yes, your Honor. I could hand up a signed original and mark it as Court Exhibit 1.

THE COURT: I have been given a five-page letter. Mr. Adler, did you review this letter?

MR. ADLER: I am sorry?

THE COURT: Did you review this letter?

MR. ADLER: No.

THE COURT: I have been given a five-page letter, counting the signature page, signed by Mr. Siddig Ali and, of course, by the government and by Messrs. Tritz and Felber, who have reviewed it.

Mr. Felber, are you satisfied that Mr. Siddig Ali understood the letter before he signed it?

MR. FELBER: Yes, your Honor.

THE COURT: Mr. Siddig Ali, you did sign this letter, did you not?

DEFENDANT ALI: Yes, I have.

THE COURT: Are you satisfied that you understood it before you signed it?

DEFENDANT ALI: Yes, I am satisfied.

THE COURT: Is there anything about this letter that you want me to explain?

DEFENDANT ALI: No, your Honor.

THE COURT: I am not going to go into the details of this letter, but does the letter contain the entire agreement between you and the government that in any way relates to this plea?

DEFENDANT ALI: That is correct.

THE COURT: Other than what is contained in this

letter, is there any other agreement that you are aware of, whether orally or in writing --

DEFENDANT ALI: No.

THE COURT: -- between you or your lawyers, on the one hand, and the government on the other, that in any way relates to this plea?

DEFENDANT ALI: None whatsoever.

THE COURT: Has anyone made any promise or inducement to you, other than what is contained in this letter, in order to get you to plead guilty?

DEFENDANT ALI: No.

THE COURT: In particular, has anyone made any promise to you as to what your sentence will be in this case?

DEFENDANT ALI: No, your Honor.

THE COURT: Can I get a brief proffer from the government as to what the evidence would be if the trial in this matter were to continue to verdict?

MR. FITZGERALD: Yes, Judge. If the evidence continued, there would be evidence from a witness as to conversations he had with Mr. Siddig Ali as well as tape recordings, search and seizure proof, which would indicate that Mr. Siddig Ali participated in a plan to bomb two tunnels, a bridge, the UN, the FBI building, and to murder President Hosni Mubarak and that, in doing so, he

transported an Uzi semiautomatic rifle from New Jersey into the State of New York, to Queens; that the weapon was used and carried in the Queens safe house, and that in that Queens safe house were materials which would have been used to construct a bomb to carry out these plans, and that the reason behind the various plans and activities was to engage in violent activity against the United States in retribution for the United States' foreign policy in the Mideast in particular, and also as retribution for the American arrests of co-conspirators.

THE COURT: Mr. Siddig Ali, would you tell me in your own words what it is that you did that makes you believe that you are guilty of the crimes to which you have offered to plead guilty?

DEFENDANT ALI: Yes, your Honor. I prepared a statement here.

THE COURT: You may read it if you wish.

DEFENDANT ALI: Your Honor, in late 1990, I met with Sheik Omar Abdel Rahman, Hampton-El, whom I knew as Rashid, Tarig El-Hassan, and Mahmud Abouhalima. As time passed, I became close to the sheik, acting as his bodyguard and later as his translator. I knew the sheik to be the head of the Al Gama Islamiya in Egypt.

During the state trial of Nosair, I came to know Nosair, El-Gabrowny, Salameh, and Nidal Ayyad.

During 1991 and 1992, I met Amir Abdelgani, Fares Khallafalla, Wahid Saleh, Fadil Abdelgani, Ramzi Yousef, and Emad Salem.

In 1993, I became acquainted with Victor Alvarez and Mohammad Saleh.

In 1992, I, along with others, engaged in firearms training at a mosque in Brooklyn. Some of those involved in the training, myself included, understood that the purpose of training was for the assassinations of American political officials who supported Israel. Those involved in the training who knew about the purpose of the training included Fadil Abdelgani, Amir Abdelgani, Fares Khallafalla, and Tarig El-Hassan.

In late 1992-93, training was conducted at a camp near Harrisburg, Pennsylvania, for operations and assassinations in the United States and overseas. The training was organized by Hampton-El, although he did not attend the training camp.

(continued on next page)

Those who also did attend including Ahmad Hajjaj or Haggag, Amir Abdelgani, Fadil Elhassan -- I'm sorry Fadil Abdelgani, Tarig Elhassan and myself, among others as well. The targets for this operation were Hosni Mubarak, American political officials who supported Israel, and various and unspecified Israeli officials.

In addition, I discussed the bombing of a bridge and tunnels with Tarig Elhassan, Amir Abdelgani, Fadil Abdelgani and others. In early 1993, during the time of Pennsylvania training I met with Mahmud Abouhalima who requested that I assist him in testing explosives. I in turn spoke with Hampton-El, among others. Hampton-El said that he could arrange for the testing of explosives.

At the later point, during the Pennsylvania training some of those present at the camp set off a test explosion. Although I knew there was to be a real explosion, I did not know what intended, what target was intended. After the World Trade Center explosion, Mahmud Abouhalima visited me with another person for the purpose of having have me write letters of introduction to foreign government officials to assist Mahmud Abouhalima in traveling overseas. Mahmud admitted to me that he and others had been involved in the World Trade Center bombing. At a later time I drove Mahmud Abouhalima and someone else to Newark Airport and part of the way to Kennedy Airport

from which Mahmud left the country.

In March of 1993, after I learned that Mahmud Abouhalima was arrested in Egypt I and others actively sought to carry out the assassination of Hosni Mubarak. The Sheik had previously given me a Fatwah or a verdict for a killing of Mubarak, and I discussed that assassination with others prior to Mahmud Abouhalima's arrest.

After Mahmud Abouhalima's's arrest, I discussed this operation with Hampton-El and another individual first, and then with Haggaj, Amir, Tarig, and Fadil. Amir and Tarig were very enthusiastic and interested in the plan, but Fadil was not enthusiastic about it, because he wanted to go to the Sudan: However, Fadil agreed that he could participate, if requested to do so. Hampton-El agreed to provide the firearms and grenades but said he needed a few days to acquire them. Hampton-El told us to prepare or to appear on a specific date to pick up the weapons.

It was at this time that Haggaj reported that the FBI was aware of the plan, and no weapons were therefore obtained from Hampton-El. Mubarak canceled his trip to New York, and the decision was made to postpone the plot. I later had a conversation with the Sheik, Haggaj, Salem and others in connection with the allegations made by Haggaj that I was an FBI informant because the Mubarak plot had been leaked and because Mahmud Abouhalima had been arrested

in Egypt.

It was our understanding that the killing of Mubarak would still be pursued in the future even though the prior plan had been foiled. After Mahmud Abouhalima was returned to the United States, I had a discussion with the Sheik regarding the bombing of military targets in the United States. The Sheik said that such bombings was permissible according to Islam. At this point, by this time I proposed to Salem that we do operations in the United States.

It was during this time that Salem told me that he has been building bombs with Ibrahim El-Gabrowny, among others. Salem has said that he had been making bombs or making these bombs at Nosair's request. Thereafter, I confirmed this information by speaking with these individuals, these other individuals at the Abu Bakr Mosque.

THE COURT: Which other individuals?

DEFENDANT ALI: The other individuals which Emad Salem told me he had discussed with them regarding building bombs, and those individuals were at Abu Bakr Mosque. I went there, I met with them, and I asked them about the information, that Salem related to me and they confirmed the information. Although, I have to mention also at that time Ibrahim El-Gabrowny was in jail during that time.

THE COURT: As was Mr. Nosair, correct?

DEFENDANT ALI: That is correct. Also in early 1993, I spoke with El-Gabrowny and another person regarding an escape plan to free Nosair from prison. In my discussions with Salem, I first proposed that we target military facilities, military facilities for our operations in the United States, but after hearing a sermon by the Sheik regarding the United Nations, I asked the Sheik for a Fatwah to attack the United Nations and I was told by the Sheik that it was permissible.

After this, I proposed to Salem that we change our target from armories to the United Nations. I later added to the list of targets 26 Federal Plaza, the Holland and the Lincoln Tunnels and the GW bridge.

Approximately in May of 1993, Emad Salem and I and others visited -- actually, and another individual visited Nosair in Attica. Salem spoke with Nosair privately as did I. In our private conversation we discussed the training in Pennsylvania, as well as Salem's reliability. Nosair advised me that he was a good man, but to be careful. I told Nosair about targeting the United Nations by placing a bomb in a car and driving it into the United Nations garage. Nosair said it was not a good plan because of the heightened security of the Trade Center bombing. He said to wait. He told me that instead I should consider kidnapping Mr. Nixon, an ex-President Nixon and Mr. Kissinger, the

architects of the United States foreign policy in the Balkans. He suggested that upon these kidnappings we should demand as ransom the freeing of Mahmud Abouhalima, Nosair, and others from prison, as well as a demand that the United Nations alter its foreign policy in Bosnia. At this time I and others surveiled the United Nations and the Holland Tunnel. Amir and Fares did a dry run through the Holland Tunnel by stopping their cars in the tunnel and switching vehicles.

In connection with the plan to attack the United Nations, I received assistance from a representative of a foreign government, representatives of a foreign government, in connection with the obtaining access to the United Nations garage, surveillance of the garage and the use of diplomatic license plates. One of the representatives introduced me to Mohammed Saleh as being a representative of the Hamas who was raising money through people in the Middle East.

In June of 1993, Salem and I met with Mohammed Saleh to request funding and provided to him a list of our targets in the United States. Saleh agreed to assist -- I should mention that is Mohammed Saleh -- agreed to assist with the financing of the operation. Later Saleh supplied the fuel oil necessary to constructing the bombs. Saleh provided the fuel oil free of charge which was picked up on

two occasions, once by Amir and myself, and a second time by Amir and Fadil Abdelgani. I discussed the bombing plan with Fares Khallafalla several times and Fares collected money to buy stolen cars for other, for our operations. Fares also paid for the first batch of fertilizer. Hampton-El, that's Dr. Rashid, agreed to provide the detonators. When told of the targets Hampton-El said, we should blame drug dealers or Jews and suggested -- that means after the bombs goes off -- and suggested that the bombs be set off in rapid succession.

Also during the time the bombs were being assembled I told the Sheik what we were doing. I told the Sheik what we were doing in the safehouse, and he told me to tell Salem to be cautious about what Salem spoke to the Sheik because Salem had spoken to the Sheik in the area of the Sheik's apartment which the Sheik thought was bugged.

Victor Alvarez was continually calling and begging me to do act of jihad. We agreed to involve him, told him that it was a life and death matter regarding targets in the United States, but did not reveal the specific targets to him. We told him that after this jihad acts we would all, we would all go to the Philippines. Alvarez offered to bring guns to protect the bombs and to neutralize the sentries at certain targets. He provided us with a semiautomatic rifle which Salem and I transported from New Jersey to the safehouse in Queens. Wahid, that's

Wahid Saleh, was told of the bombing plans in early spring of 1993, but thought we were not serious. Wahid discussed with me much earlier that if I agreed to carry out a religiously motivated assassination in New Jersey then he would supply me with weapons.

On other occasions Wahid discussed with me a plan to smuggle heavy weapons from Jordan into Egypt to be used for jihad operations in Egypt itself. We brought Wahid to a safehouse to show that we were serious, that we were working on bombing plans in the United States. The violence I agreed to engage in the United States in part is because of its foreign policy, I mean the government of the United States, its foreign policy in the Middle East, particularly in Egypt, Israel and other places. And in part because of the imprisonment of other members of our group.

I just may have miss mentioned something -- that on the way to the safehouse I took Wahid to the safehouse -- on the way to the safehouse Wahid asked me if I consulted the Sheik, if the Sheik has approved our plans, and I told Wahid advised him that the Sheik has approved it already.

Also, I have to mention that the materials that we possessed in the safehouse were intended to be used in the bombing plan.

Your Honor, I just wanted to say a few words in regard to the acts that I have participated and engaged in.

I would like to tell your Honor that I truly and deeply and sincerely regret all my acts, and I would like by coming here today, and I wanted earlier, to set a clear, or to send a clear message to all Muslims and non-Muslims all over the world that the acts that I personally was involved in with others does not represent Islam and does not reflect Islam at all, because God did not tell us to kill innocent people for his sake. He did not ask us to do that, and Islam does not teach that at all.

I admit to my guilt, and I wish that those who would listen to my plea today would understand the reason behind this, that I am doing it because I am convinced today that I was wrong, and that I ask God to forgive me for all my acts, your Honor. Thank you.

THE COURT: Mr. McCarthy, is there a sufficient factual predicate for the plea?

MR. MC CARTHY: Yes, your Honor.

THE COURT: Mr. Felber, Mr. Tritz?

MR. TRITZ: There appears to be sufficient factual basis based on that allocution, yes, sir.

THE COURT: Mr. Felber.

MR. FELBER: I agree with my colleague, your Honor.

THE COURT: Mr. Siddig Ali, since you have acknowledged that you are in fact guilty of the crimes to

which you offered to plead guilty; since you know of your right to a trial; you know what the maximum possible punishment is for these crimes, and you are aware of the other terms of possible sentence, I am going to accept your guilty plea and enter a judgment of guilty on that plea.

Is there any reason why we should not have a presentence report in this case?

MR. MC CARTHY: There is no reason why not.

THE COURT: I will direct the preparation of a presentence report, and I will also direct that counsel be present during any interview in connection with that report.

Mr. Siddig Ali, it's in your interest to cooperate with the people who prepare the presentence report because the only basis I have for determining the sentence in this case is what I've heard today, what I hear at the trial, what I receive in any submissions from your lawyers and from the government, and what I get in the report, so the report is a very important component. Tell them whatever your lawyers tell you to tell the people who are preparing the report, because if you don't tell them something that they ask you about then they will simply say that you were not candid. That's not helpful from your standpoint. I am not going to set a sentencing date now. I will set it at a later time. Mr. Siddig Ali will remain in custody until then. Is there anything else?

MR. ADLER: Yes, your Honor, I have one application. Your Honor, may it please the Court, I ask your Honor to consider two applications which have nothing to do with the entry of of the plea that has been in here and what is going to go forth, with one exception, and that is your Honor indicated that your Honor had directed counsel to attend these sessions. I ask your Honor to deeply consider with both foreign policy and international implications whether or not a direction from the Court is, under such circumstances, with such sensitive material that may well be disseminated through a variety of sources through this the United States Attorney's Office in this District to have others who may not necessarily have the need to know and whose knowledge of such events --

THE COURT: I think you heard something that I didn't say. What I directed was that counsel be present for interview by the Probation Department in connection with preparation of the presentence report.

MR. ADLER: Fine.

THE COURT: Period.

MR. ADLER: The other thing I would like to ask your Honor is to seal the minutes of the proceeding today until such time as Mr. Siddig Ali becomes a witness, if that day ever comes, and whether or not there is a constitutional reason that the defendants who will be going forward in this

trial, or in any other prosecution, to be brought in the future have a need under the Jencks Act under 18 USC 3500 to receive these minutes.

We are here today at an extraordinarily early hour in the day with extreme security. This plea was not taken in open court. It was not taken with the other defendants present.

THE COURT: It is taken in open court. This court is open, and we started early, but the record should reflect that it is now five minutes past 9 o'clock. Go ahead.

MR. ADLER: That's correct. And I make this application, one, because I believe that the Court has been provided with security. The Assistant United States Attorneys and law enforcement agents have security. The defendant and his family will have security. And defense counsel, in an incredibly difficult situation, have tremendous security concerns for themselves, and their families that I believe legitimately, with the events that will be coming from this day forth that far outweigh the public's right to immediately know by having direct access to the testimonial record of what transpired here today.

We do not have that protection. Our families do not have that protection. There are forces at work outside this courtroom that create tremendous danger, danger that

has been reacted to, and indeed, my role in this case was a product of a contact, because there was information that had been brought forth which indicated that the Court, members of the United States Attorney's Office, and others were the subjects of a plot to cause them serious physical injury or death, and it is under those circumstances that I --

MR. MC CARTHY: I am going to object to that. I also think, my understanding of that is that that is an inaccurate statement.

THE COURT: That's a surprise to me, too. Look, Mr. Adler, everybody here, you and everybody else, has performed under very difficult circumstances. I understand that. But I understand also that this plea is the product of the wish of one man and that is Mr. Siddig Ali --

MR. ADLER: Absolutely, it's his absolute right.

THE COURT: -- as he acknowledged. It is not the product of the negotiations or planning of counsel except in an incidental --

MR. ADLER: That's correct, but we're now talking about security, and it is for that reason, Judge that I ask your Honor to consider whether or not there is a statute or a constitutional imperative that these minutes be made available where there is clearly a clear and a present and articulable concern that counsel have about their safety and because of steps that have been taken to maintain the safety

of others.

I ask your Honor to consider that in determining whether or not there is a need to have these minutes available when the Court has the power to order their sealing and most respectfully to only permit these minutes to be unsealed on application to your Honor and with your Honor's express permission. That is what I'm asking your Honor to do, out of an abundance of concern and to show respect for the lawyers that have done the best that they can do in this case.

MR. MC CARTHY: Your Honor, the government's understanding is that that is an application by the lawyer, not by Mr. Siddig Ali. The fact is that there is on a daily basis a barrage of ex-parte misinformation about this case, about the trial, about the underlying investigation. There are undoubtedly steps short of impinging on the public record which can be taken to assuage counsel's security concerns, if there are any, but the government does not see a basis under these circumstances where the issue of Mr. Siddig Ali's cooperation and his flirtation, if you will, with that during the summer time has been publicly known for some period of time. We just don't see a basis to make an application to seal this record.

THE COURT: I'm not going to do it. It is not private business that we conduct here. It's the publc's

business, and although there are circumstances in which records have to be sealed, this isn't one of them.

MR. ADLER: Judge, I just want to take exception and I just want to indicate quite clearly that I have made that application in good faith on behalf of defense counsel, and I have humbly asked the Court for this protection. It has been denied. The United States Attorney's Office has denied that, and I hope that I have misperceived the situation for the sake of the conscience of all those who have heard what transpired today on behalf of myself, and my family, and the families of the lawyers that have done the best that they can do in fulfilling their Constitutional obligations.

There is a different thing between what has gone on outside in this courtroom in terms of gossip, press conferences and the like, and whether or not this proceeding at this time overcomes these needs and the Court's concern for it, and I must say I'm disturbed, and I'm troubled by what I believe to be a lack of concern for the safety and the well-being of these lawyers and these families.

That has nothing to do with Mr. Ali and what he does. What he has done, he has an absolute right to do, and I hope that it worked out to his best when he ultimately appears before you. But I think that our concern and our safety for ourselves and our families ought to be

considered, because otherwise we're nothing more than cannon fodder in this process, and I think that that is professionally inappropriate under the circumstances, Judge, and I ask you as a matter of conscience to consider whether this is appropriate, and how you would feel if you were standing in my position today in light of the concerns that are going through my mind at the moment. I ask you to consider that respectfully one professional to another, Judge.

THE COURT: Mr. Adler, one professional to another, I understand you are laboring under difficult circumstances. I'm laboring under difficult circumstances myself. I don't expect you to understand that, but I'm simply telling you that for your information. If there is any specific threat or any general threat, it seems to me that law enforcement authorities are capable of dealing with that. I know of no specific threat, and I would venture to say from the generality of your remarks, neither do you.

MR. ADLER: Judge, I'm not waiting for the time when my wife puts a key in the car to find out that there was something out there and I didn't get a fair warning. These people don't necessarily play by sporting rules.

MR. MC CARTHY: Your Honor, as I understand it, Mr. Adler has declined to execute the agreement that was entered in connection with Mr. Siddig Ali's plea today. The

government would have no objection if your Honor were to entertain an application to redact out his name from the record, the allusions in the record to it today, if that's an application he wishes to make.

I think in light of the serious nature of the misinformation that was imparted in his earlier statement that I objected to, it would be prudent if at least that portion of the record were sealed as well, but I don't think there is a basis to seal the rest of the record.

DEFENDANT ALI: Your Honor, can I say something?

THE COURT: Yes, sir.

DEFENDANT ALI: I just want to point out that I take complete, full responsibility in terms of my plea today. My counsel, Mr. Felber and Mr. Tritz, had nothing to do with my plea today, except --

THE COURT: That has been obvious in the timing.

DEFENDANT ALI: Prior to yesterday. I contacted Mr. Adler to execute or to seek my coming here today to plead, your Honor. He had indicated to me earlier that he does not feel necessarily comfortable as far as this process is concerned. I just want to take full responsibility that the gentlemen here had nothing to do with me coming forward to the government. I am the one who initiated it and I just want to make that clear.

THE COURT: I will consider redacting Mr. Adler's

name and simply referring to another lawyer. I will certainly consider redacting his remarks which were, to the extent they asserted facts, completely inaccurate. Other than that, the record is going to stay public.

MR. ADLER: Respectfully except.

THE COURT: Thank you.

(Recess)

(Continued on next page)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
a/k/a "John Medley,"
CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.
----------x

February 6, 1995
9:50 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

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

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Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER

INTERPRETERS:

Arabic: Fouad Kheir
Haziz Ismail
Mohsen Shawarby

Spanish: Nancy Festinger
Mirta Hess
Denia McGuire
Candido Valderrama

(Page 2256 was ordered sealed by the court)

(In open court; jury not present)

(Case called)

MR. SERRA: Your Honor, may I be heard?

THE COURT: Yes.

MR. SERRA: Good morning.

THE COURT: Good morning.

MR. SERRA: Your Honor, defense counsel had a brief opportunity to caucus this morning. The information was new to everyone as to the empty spaces at the end of the table, was new to everyone until half an hour ago. We have a brief application. All of us who have done multiple defendant cases have been involved a defendant will plead guilty in the course of a trial.

THE COURT: It happens.

MR. SERRA: That is, personally, I think none of us has been involved in a situation where a prosecutor said as long as he was working the case this defendant would never cooperate.

Second, none of us have had the experience of having a defendant plead where the contacts that that defendant had with both the government and the court preceded opening statements, and opening statements proceeded after those contacts, and where none of the lawyers had knowledge of this before opening statements. By

the letter I have had for five minutes, it appears as though Mr. Siddig Ali's contacts with the government began, their phrasing was, a week before January 23, meaning the week of January 16 or two weeks before opening statements. It is my understanding -- it is implicit in their letter and it is my understanding that Mr. Siddig Ali has had contacts with the court as well, both on public records and on sealed records.

Your Honor, there are several applications which could be made at this point, but I believe, and we all believe, that making any particular application would be shooting from the hip without knowing what happened in court.

So, your Honor, our application is this: As I understand it, over the last two days, this morning and yesterday, there were two proceedings before the court on public records and there are other proceedings, which we don't know how many, on sealed records. Our application is to obtain the transcripts of those conferences, to discuss them with each other and with our clients, and for the court to unseal those proceedings involving Mr. Siddig Ali which are presently sealed and provide us access to those transcripts as well.

It is our anticipation that those conversations among us and between us and our clients will likely take the day.

In any event, your Honor, we would surely meet with the court this afternoon after at least the lawyers have had the opportunity to review those transcripts. But I would submit to the court that there are possible applications which I don't want to make now because I don't know what is on the record. But there are several possible applications which might be made.

We would ask the court to make transcripts available and allow us to meet with the court is this afternoon to tell the court our position.

MR. McCARTHY: Your Honor, I don't think that a reasonable period of time for them to convene with each other and put their heads together is unreasonable.

I would like to say for the record, first of all, that the statement that Mr. Serra attributed to a prosecutor in this case simply never happened. It is just not so.

THE COURT: I don't care whether it is so or not so. If he is telling me that he relied on some report of a statement that was made someplace, and I don't think that is what he is telling me, that is not anything legally cognizable. Nobody in this case has any protectable legal interest in the plea of any other defendant in this case. That is simply the law. And the notion that somebody relied on somebody's continuation at trial, I think, simply doesn't state any legally protectable interest.

MR. McCARTHY: I think the record also will make clear what I have already represented to the court, which is that the prosecutors in this case have not been privy to any defense strategy or defense conversations, through Mr. Siddig Ali or through his counsel or through anyone else. I have, obviously, no objection to counsel reviewing the public record in this case, and at this point perhaps things that were not in the public record ought to be in the public record.

THE COURT: Do you have any objection to unsealing Mr. Siddig Ali's initial approach to the court?

MR. McCARTHY: I have no objection to unsealing the portion of the record where Mr. Siddig Ali indicated to the court that he wanted to communicate with the government and what your Honor's direction was in that regard. I have no objection to the court unsealing the portion of the record where Mr. Siddig Ali's counsel sought the appointment of independent counsel for the purpose. There is a portion of the record that I am not familiar with where Mr. Siddig Ali may or may not have, to my knowledge, gone into the substance of something that he wanted to communicate. I am not certain that it is appropriate that that be unsealed.

THE COURT: I don't recall any such portion but if there is another portion that is not the two that you enumerated, that will not be unsealed.

MR. McCARTHY: Other than that, no, we have no objection.

THE COURT: The two portions of the record that you referred to will be unsealed, and obviously this morning's proceeding will be made available.

I think you can safely assume that Mr. Siddig Ali's plea implicated in essence everybody else in this case, and proceed from there.

MR. JACOBS: Your Honor, the government indicates that the first contact, if I read it correctly, is through some intermediary who is not of counsel, either Mr. Felber or Mr. Tritz, and that person communicated something to the government prosecutors. Can we identify that person?

THE COURT: I can identify the person generically.

MR. McCARTHY: I won't identify the intermediary. I will say that the intermediary contacted the government, which for those purposes was Mr. Kelley, not Mr. Khuzami, Mr. Fitzgerald or myself.

THE COURT: That is actually, I think, referred to in the record of the first appearance.

MR. McCARTHY: Your Honor, generically we describe the person as an inmate. I would rather not go further than that.

MR. JACOBS: Your Honor, obviously, one of the

things counsel has to determine is whether we are going to seek some sort of hearing to determine whether defense strategy was --

THE COURT: No, we not.

MR. JACOBS: Your Honor, I say an application. Your Honor will rule. Your Honor obviously will rule whether that is appropriate or not, but in light of the fact that the United States Attorney's Office knew beforehand, before the opening statements of this case, that the witness Siddig Ali was going to cooperate, certainly we are entitled to pursue it.

THE COURT: That, I think, overstates the matter substantially. But go ahead.

MR. JACOBS: Somebody in the United States Attorney's Office knew.

THE COURT: No. What they knew before openings was that he was seeking to make certain information available, period.

Just so that you can consult in an intelligent fashion, or in an informed fashion anyway, I have here and I will distribute a proposed instruction to the jury with respect to Mr. Siddig Ali's plea and his absence from the trial. I believe it is in accordance with governing law, but I will take your suggestions on that as well.

MS. AMSTERDAM: Your Honor, if I may, I also

think that we need to meet with the clients today, and in terms of expediency one of the things that occurs to me is that if the clients could be held here, counsel would agree to meet in the holding cell behind the court and be locked in so that we could have a conversation without being overheard back there.

I see assent.

THE COURT: That is fine. I prefer to do this sooner rather than later.

We have a jury sitting back there. Do you have any proposal as to what if anything to tell them?

MR. PATEL: Your Honor, may I suggest, and I am just trying to be realistic, that we tell them that a legal matter has come up and ask them to return tomorrow morning?

THE COURT: You are telling me you want to take a pass on the whole day?

MS. AMSTERDAM: Yes.

MR. PATEL: Your Honor, it is hardly a pass. We don't even know when the minutes of this morning will be available. That is our beginning point. We can't even begin to discuss this intelligently among ourselves until we have those minutes. That is why I am asking for the day. If we want to do some research and submit some papers to your Honor -- I am just trying to be realistic.

THE COURT: I want anything you are going to

submit by 7:00 this morning, and I will hear you on whatever applications you want to make at 9:00 tomorrow morning. I think you should be prepared to proceed tomorrow regardless of the disposition of those applications. Is that understood?

MR. PATEL: Yes, your Honor.

MR. SERRA: Your Honor, may we know from the court how many sealed proceedings there were that involved Mr. Siddig Ali? We know of the two public proceedings. I heard in the colloquy between the court and Mr. McCarthy -- am I correct -- that there were two sealed proceedings.

THE COURT: Yes. There was at least one proceeding involving only Mr. Siddig Ali and his attorneys that I am not going to open because it has nothing to do directly with this.

MR. SERRA: The only reason I ask is that we have to get the transcripts from the reporters. Will the court be in direct contact with the reporters?

THE COURT: I will. You should expect to see three proceedings, correct?

MR. McCARTHY: I think three, your Honor, but I will make sure we have identified them.

THE COURT: I also suggest that -- I will take your suggestion on this, but what I was going to suggest was that I be the one to tell the jury that there has been a

legal problem that has arisen, that I tell them that in the jury room rather than here, since if they come out they will see the empty spaces.

MR. PATEL: Thank you, your Honor.

THE COURT: And also that I admonish them particularly strongly that the instruction on not reading about or hearing about this case be applied in the coming days and that they perhaps simply not listen to any news reports at all. Does anybody have any view on that?

MS. AMSTERDAM: That is acceptable, your Honor.

Can defense counsel send -- do you want to send one of your number to make sure that I do it right? Obviously there will be a reporter there. Mr. Jacobs is shaking his head but --

MR. JACOBS: It is not necessary.

THE COURT: In that event, I will go in there and do it myself.

If you want to see me any earlier -- and I would, frankly, appreciate if we could get it done earlier -- I will see you earlier. Obviously I am going to be here and I would rather do this sooner than later. So if you are prepared to see me earlier, please let me know.

MR. SERRA: Your Honor, there is a matter that is personal to Mr. Alvarez about his conditions of confinement, basically. I can be heard now, or, if the court wishes, we

can do it at some more convenient time when we are not holding up everyone.

THE COURT: I would suggest that I go in there and talk to them, and then you can see me with Mr. Alvarez in the robing room.

MR. SERRA: That is fine.

(In the jury room)

THE COURT: I am sorry to interrupt. There has been a legal problem that has come up in the case that I have to talk to the lawyers about, and rather than having you have to sit in here and wait, we thought the best thing to do was simply to break for the day and resume tomorrow.

JURORS: Yeah, yeah. Thank you.

THE COURT: So you will be taken back by the marshals to your drop-off points. Every day when we break I give you an instruction about not reading about the case, not hearing or seeing anything about the case and I want to reinforce that today. Please make a particular effort not to have anybody show you anything and not to listen to any news report. It might be best just for the next couple of days not to listen to any news report reports at all, lest you hear something inadvertently.

I want to reiterate that even if anybody hears anything inadvertently, the only evidence is the evidence in the courtroom, it is not news reports. In any event, please

don't listen or see them. Have a pleasant rest of the day.

A JUROR: Your Honor, is this going to affect Friday?

THE COURT: We are still off Friday.

THE CLERK: They want to be assured about Friday March 10, Good Friday.

THE COURT: I told you during the initial instructions that if it became necessary we would sit on Fridays. I guarantee you will have at least three weeks' notice of that -- make it two weeks. Secondly, March 10 is off regardless of what we feel we have to do, and this Friday, of course, is off.

A JUROR: And the 13th and the 20?

THE COURT: The 13th and the 20th.

(Recess)

(Pages 2268 through 2273 were ordered sealed by the court)

Adjourned until 9:30 a.m. Tuesday, February 7, 1995)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
a/k/a "John Medley,"
CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.
----------x

February 7, 1995
9:25 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

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

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

INTERPRETERS:

Arabic: Fouad Kheir
Haziz Ismail
Mohsen Shawarby

Spanish: Nancy Festinger
Mirta Hess
Denia McGuire
Candido Valderrama

(Trial resumed)

(Case called)

THE COURT: I have a set of papers, some of which arrived last night, others of which arrived this morning. Have you seen those?

MR. McCARTHY: Yes, your Honor.

THE COURT: Did you want to file anything or do anything in response?

MR. McCARTHY: I am prepared to address it if your Honor wants to address it here in court, or we could have papers filed this evening if that is what your Honor wishes.

THE COURT: If you are prepared to address it now, you might as well address it now.

MR. McCARTHY: Your Honor, I want to leave aside for a moment the factual rendition that is contained in Mr. Clark's affidavit, which is just simply rife in inaccuracy, and get to the point, which I think is the most important point, and that is that defense counsel do not have a cognizable interest in a set of assumptions about the ultimate disposition of the case of codefendants on trial in a joint trial. They simply don't have a right to be apprised of the status of plea negotiations, settlement discussions, cooperation discussions. Indeed, if they did, the chances are this trial could never proceed, because we

would be in a constant state of alert and a constant state of advising counsel.

What they do have a right to and a protected interest in, I think, is at least the suggestion in the case law of a due process right not to have the government pursue their defense strategy in the course of its trial preparation. Everything that was done in connection with Siddig Ali in the last two to three weeks was designed to protect that interest, which is the only cognizable interest that the government believes they have under these circumstances. It is simply not true as a matter of fact, that the government had full-blown plea negotiations or a deal wrapped up with Siddig Ali, as seems to be suggested in the defense papers, as early as, I think, January 16, 1995, is the suggestion in the papers. The fact is that there was not even an offer extended to Siddig Ali until last Friday. That is a fact. The prosecutors in this case did not have any communication with Siddig Ali at all until after the offer was communicated to him and it was accepted.

I think the record bears out that the only protectable interest that the defendants have has been scrupulously honored, by the government and by the court, and I simply do not believe, and there certainly isn't any authority for it, that they have a right to be apprised at any point in the proceedings of the settlement status, if

there is one, in connection with a codefendant in a joint trial.

THE COURT: Does anybody have anything to add?

MR. CLARK: You have had a chance to read my affidavit?

THE COURT: I have read your affidavit.

MR. CLARK: And five other affidavits. We are moving for a mistrial based upon judicial misconduct and misconduct of the prosecution. The essence of the injury is that the court and the prosecution and counsel for Siddig Ali, knowing that plea negotiations were under way for him, permitted the other defendants, through counsel, to make opening statements, ignorant of the existence of those plea negotiations, on the assumption that he would remain a defendant, as he had been since he failed to secure a plea negotiation back in the summer of 1994, when the matter was brought to the court's attention on the 23rd.

While we claim no right to participate in his efforts to cooperate with the government, the defense was entitled to know that this was going on. When the court condoned the statement of defense counsel that he would come out and say something that was not true, as to why there was a conference going on, that it was to see whether Siddig Ali could be returned to the general population when that wasn't true -- and it is a coverup -- the court participated in

that coverup by condoning it if he said "I understand."

On the 25th, when counsel for the government twice raised the problem that is of such enormous proportions to the defense -- you can see from the affidavits of five counsel, who would have made entirely different openings had they known that openings were coming -- the court cut him off --

THE COURT: That is your reading of the transcript, but go ahead.

MR. CLARK: That is how I read the transcript and there has to be a hearing on this.

THE COURT: A hearing to determine what? There is a transcript. What would you determine at a hearing? Whether I cut him off?

MR. CLARK: We have heard from government counsel as to what the status was at various times as a matter of fact of the negotiations. We don't know that. We are entitled to have a hearing on that. We don't know what the court had in his mind. The court acted unconscionably when it realized and sat there and watched opening statements to that jury that Siddig Ali might well be a cooperating witness, and here defense counsel were making statements on the assumption --

THE COURT: That is all in your affidavit. Other than the rhetoric --

MR. CLARK: It is not rhetoric, your Honor, it is statements of fact.

THE COURT: It is rhetoric -- do you have any case that holds that you are entitled to know the status of plea negotiations of any defendant?

MR. CLARK: Your Honor, we have an obvious right to a fair trial, we have an obvious right to due process of law. We have a court that knew --

THE COURT: I take that as no, you do not have a case.

MR. CLARK: There are two cases that I ran across last night. One is U.S. v. Martin --

THE COURT: Are they in your memo?

MR. CLARK: No. They are situations where the court may have known something but didn't, kind of didn't know. Here it is clear that the court knew before opening statements --

THE COURT: United States versus Martin. Do you have a cite?

MR. CLARK: Your Honor, the case is not very compelling because the court denied any knowledge and the appellate court found that it had no knowledge.

THE COURT: Why don't I see what they say they would have done if they had knowledge of whatever it is the knowledge concerned in that case. What did the knowledge

concern?

MR. CLARK: The question was whether the court knew the prosecution's status in a particular matter -- I just glanced at the case last night and didn't think it was very helpful. The fact is that the situation comes up very rarely, apparently.

THE COURT: I guess I can do one of two things. I can either take your word for it that it is not very helpful or I can read it if you have the citation. Martin is not exactly an uncommon name. What is the other case?

MR. CLARK: The other case district court case by Judge Devitt, chief judge for the district court of Minnesota.

THE COURT: I would be happy to read any case by Judge Devitt whether it is relevant or not. If you can get me those citations I will read the cases and decide the matter.

Right now, I think we are going to proceed.

MR. CLARK: We would like a resolution of it before we go forward, your Honor, because we really believe a hearing before another judge is absolutely necessary.

THE COURT: What is the prejudice to you of going forward without a resolution?

MR. CLARK: We want to protect this jury from contamination, and if there has to be a mistrial we don't

want anything to happen in the meantime.

THE COURT: Protecting this jury is a moot point if there is a mistrial, because there is going to be another jury if there is a mistrial.

MR. CLARK: Your Honor, clearly if there is probability of a mistrial, that ought to be resolved before this jury is brought back in and further actions taken in court.

THE COURT: Based on what I have heard so far, there being absolutely no right whatsoever of a defendant to know what the status is of plea negotiations involving a defendant --

MR. CLARK: Your Honor, Brady itself gives a right. You can't sit there and permit defendants to make a statement to a jury --

THE COURT: Brady involves exculpatory information. What does Brady have to do with this?

MR. CLARK: It is certainly relevant to the defense to know whether this man who no one had confidence in -- on page 64 we cite the probability of antagonistic defenses. Everybody knew what type of person he was.

THE COURT: Yes, and a number of people opened dancing a tarantella on his head.

MR. CLARK: Quite the contrary, and if you read their affidavits, you will see that they said quite the

contrary.

THE COURT: I also recall their openings.

MR. CLARK: You heard the attacks of Emad Salem. If you have another Emad Salem, you have to attack his credibility. If he is going to be sitting at the defense table and not a party --

THE COURT: That assumes that you have a right to know in advance who the government's witnesses are, and it also assumes that he is going to be a government witness, two assumptions that on this record as far as I can tell are not warranted.

MR. CLARK: You could also order that he not testify on this record, which would potentially cure the problem.

THE COURT: I am not going --

MR. CLARK: While he remains a potential witness in the case --

THE COURT: There are a lot of potential witnesses in the case, and I suggest that we stop right now and hear from them.

Can I hear you on -- there is one other -- actually, two other issues. I suggest that we remove the artifact of the name tags that are in Mr. Siddig Ali's place, unless somebody wants them left there. Anybody want them left there? Hearing nobody, we are going to remove

them.

MR. CLARK: Your Honor, we think it is unnecessary and prejudicial to bring the jury in and let them come in when there is no instruction available --

THE COURT: There is an instruction available that I handed out yesterday, which is my next point. Does anybody have any input with regard to that?

MR. CLARK: I think we are risking this jury unnecessarily --

THE COURT: Your argument is for a mistrial. If a mistrial were granted, this jury would not hear any further evidence. So I don't see any further risk.

MR. CLARK: I am trying to protect the process here, that's all. If you act on a mistrial, we won't have to worry about what happens in the meantime.

THE COURT: The process is fully protected. Does anybody want to be heard with regard to the instruction?

MS. AMSTERDAM: I have two points. If Mr. Siddig Ali is going to be a government witness, and I think the government should at this point know whether that is true, on behalf of the defendants I would make an application that defense counsel be permitted to reopen their opening statement. The government knew that they were having negotiations with Mr. Siddig Ali, and it was clear to me that they were privy to information that allowed them to

craft their opening statement in a way in which they may not have crafted their opening statement had they not anticipated that he might be a government witness.

THE COURT: Ms. Amsterdam, I would venture to say that they are privy to information that permitted them to craft their opening statement in a wide variety of ways that neither you nor I know about. That is the nature of this process.

The only thing weighing on the other side, and it is to my mind a substantial weight, is that they have the obligation to prove their case beyond a reasonable doubt and you have an obligation to prove nothing. If every time something happens that you didn't anticipate you are going to ask to stop the game and start from the beginning, we are not going to get anywhere with this.

MS. AMSTERDAM: Your Honor, my point is that if the game had been temporarily postponed for simply a day, my opening statement would have been materially different. Mr. McCarthy recognized that when he suggested to the court that there was a problem going forward with openings. That being the case --

THE COURT: He suggested what?

MS. AMSTERDAM: Suggested to the court in the minutes that there were plea negotiations and how would that impact on going forward in opening statements.

THE COURT: Where is that?

MR. CLARK: 1419, your Honor.

THE COURT: Where he tells me he doesn't see how their plea negotiations could conceivably get wrapped up prior to the opening statements?

MS. AMSTERDAM: Yes, your Honor. My reading of that is that Mr. McCarthy was so concerned about many ramifications about having opening statements.

Mr. McCarthy, I would appreciate if you did not continue to shake shake your head when I am speaking.

But to make a point here, to me it does seem to suggest that Mr. McCarthy was concerned about a multitude of issues that might arise as a result of our going forward with opening statements, not being aware that Mr. Siddig Ali was going to cooperate --

THE COURT: He was not aware at the time that Mr. Siddig Ali was going to cooperate or that he was going to plead guilty. That's the way I read that statement.

MS. AMSTERDAM: I beg to differ, your Honor. When he says I cannot conceive how we are going to wrap this up next week, there certainly seems to be the suggestion that there is something to wrap up.

THE COURT: Indeed, there was something to wrap up last summer and what happened to that? Do you recall? It it got unwrapped in a hurry, and I recall you being

quoted pungently in the New York Times about the cost of taking Mr. Siddig Ali to the prom.

MS. AMSTERDAM: At no point did Mr. McCarthy come at that time and say I don't see how we can wrap this up prior to opening statements. I wasn't privy to that conversation but that may be why we need to have a hearing, because I was not privy to that conversation and I do not know what he meant when he said that.

THE COURT: Whatever Mr. McCarthy meant when he said it, there was no plea at that time.

Do you want to be heard Mr. McCarthy?

MR. McCARTHY: Two things. If she would have continued down the line down on the same page that Miss Amsterdam was referring to, I also mentioned to your Honor that publicity was a concern at the time. As the transcript indicates, other portions of that record were redacted and this was not the only information that was available to me --

THE COURT: It was not the principal information that was conveyed at the time, to my mind.

MR. McCARTHY: Right.

Secondly, I don't think that your Honor is required under these circumstances to close his eyes to the facts. This is not a situation, as unusual as it may seem, which was to be considered in the abstract. This was a

situation where there was a record with respect to this very defendant, where all the parties to this case were aware of the fact that for nearly two months during the summer we had been engaged in plea negotiations and they didn't get settled, there was no successful conclusion to them.

Moreover, the record is that both prior to opening statements and at the time that I made the disclosure to the court that Miss Amsterdam refers to, the trial prosecutors in this case had not spoken with Siddig Ali, which was going to be a necessary ingredient if there was to be any final settlement of this case, and that was because it was necessary to do it that way to protect the rights of the other defendants.

THE COURT: I will decide this -- yes.

MR. JACOBS: Your Honor, just one further matter. The special prosecutor that was designated, Mr. Kelley, one of the things that concerns me is the fact that apparently Kelley is having contact with Adler and Siddig Ali, and I can't understand why the United States Attorney's Office didn't stop his opening statement. If Siddig Ali is telling the government before the opening, A, B, C, that he is not entrapped and all these things, how does the United States Attorney's Office allow Mr. Siddig Ali get up there and make false statements to the jury? I understand that these two prosecutors --

THE COURT: Mr. Jacobs, do you want to think about the implications of that for a second? If any defendant has an unsuccessful plea negotiation before trial with the government and he then goes to trial, it is your position that the government is obligated to get up and interrupt his lawyer's opening when he opens on a theory that is inconsistent with a suggestion that he made in a proffer before trial? That is absurd.

MR. JACOBS: As I understand it, those proffer statements come in as evidence in the trial when and if the defendant testifies. They are not just documents that are thrown out.

The problem that I have is that this was something that was ongoing and --

THE COURT: Thank you for sharing the ongoing problem.

Ms. London. Your Honor --

THE COURT: Miss London, is this anything that is not in your affidavit? If you are getting up to talk, I don't want to hear it.

MS. LONDON: Yes, your Honor, I believe it is important.

THE COURT: I didn't ask you whether it was important. I asked you whether it is something that is not in your affidavit.

MS. LONDON: Yes, your Honor, it is.

THE COURT: Why not?

MS. LONDON: It is occurring to me now, your Honor, that when Mr. Ali's attorneys come back and advise us, after having been in the robing room with the court, told us, cocounsel, that they are trying to get Mr. Ali back into general population, meaning deliberately giving us the impression that they are totally, 100 percent with us and that we can rely on them, I think that with the court's acknowledgement, as Mr. Clark said, that the court understands, right before opening statements, I think there is a quality of an unfair process that is going on.

MR. STAVIS: Your Honor, on a related issue, if Mr. Siddig Ali is going to be a witness for the government in this trial, I would ask that the government preserve all of his notes and all of the correspondence between Mr. Siddig Ali and Mr. Siddig Ali's lawyers, particularly Mr. Adler, as well as the correspondence from Mr. Siddig Ali's first go-around last summer and any notes concerning that which I believe to be --

THE COURT: I don't know that the government has any correspondence between Mr. Siddig Ali and his lawyers. If they do, then I guess the privilege evaporates, so you don't have a problem there.

MR. STAVIS: And between Mr. Siddig Ali's lawyers

and the government, your Honor, and correspondence between government assistant U.S. attorneys and Justice Department officials concerning Mr. Siddig Ali.

MR. McCARTHY: We know what Giglio and 3500 are and will comply with it if it becomes an issue.

THE COURT: Does anybody want to be heard on the proposed instruction that I distributed? Has anybody read it?

MS. AMSTERDAM: May I have a moment, your Honor?

MR. STAVIS: Your Honor, one more thing. About these name plates that your Honor removed with regard to Mr. Siddig Ali, while we are here, there may, late this afternoon or early tomorrow, come a government witness who may in fact be called upon to make an in-court identification of my client Mr. Nosair, at which time he would be greatly assisted by the name plate that says El Sayyid Nosair. I have a suggestion that perhaps during that witness's testimony my client would switch with one of the other defendants at trial.

THE COURT: Do you want to just remove the name plates or do you want to switch places?

MR. STAVIS: Whatever your Honor's preference.

THE COURT: I don't have a preference. Why don't I hear you when the problem arises.

MR. STAVIS: I was just alerting your Honor.

THE COURT: Thank you very much.

Again, does anybody want to be heard on the proposed instruction?

MR. BERNSTEIN: Your Honor, based on the fact that the court has given us no relief on the application that we made this morning and given the fact that the jurors have a general belief that government and defense counsel exchange witness lists and names based on the Simpson trial --

THE COURT: I guess I can congratulate you for being the first person to invoke that procedure.

MR. BERNSTEIN: I am not invoking it as proper law.

THE COURT: That's a relief.

MR. BERNSTEIN: I cannot keep the Simpson phenomenon outside the courtroom --

THE COURT: Yes, you can, and yes, you will.

MR. BERNSTEIN: Judge, we have 18 jurors who still probably go home and watch the Simpson case at night. I can't assume otherwise given its phenomenon --

THE COURT: I am not going to start delivering limiting instructions designed to distinguish this case from the Simpson case.

MR. BERNSTEIN: I am concerned that these jurors possibly have the belief that both sides now sit in this

courtroom knowing full well --

THE COURT: What do you want me to tell them?

MR. BERNSTEIN: In the instruction I want the jury to understand that we do not know when we begin this trial who the government witnesses are, and to further instruct the jury that at the time we opened, the defense omitted, the defense did not know that Siddig Ali was in the in fact in the process of pleading guilty and becoming a government cooperator.

THE COURT: Not only I won't say that, I am not permitted to say that. The Second Circuit has said that they can't or shouldn't be told that. You are telling me the opposite.

MR. BERNSTEIN: The circumstances of what happened, the fact that we have been prejudiced, in our view, in the openings, that defense counsel participated in the discussions and requests per our affidavit -- you have seen my affidavit. I am asking that that instruction be given so that we at least have some curative measure given what took place here yesterday, Judge. That's my application.

THE COURT: Does anybody else want to be heard on that issue?

MS. AMSTERDAM: As to that issue, your Honor, the first part, the fact that there are no witness lists, I

think that the jury should be told that, and while -- in connection with the Simpson case, every time I turn on the television, there is a reporter saying that trial by ambush is a fiction of history and no longer exists in this country because now in this country there are shared witnesses, shared depositions, shared discovery. I would not like the jury to have that misapprehension.

THE COURT: Are you asking me to tell them that this person pleaded guilty and has a cooperation agreement with the government?

MS. AMSTERDAM: And that he sat in opening statements and made his opening statement and listened to the government's opening statement. Yes, I would like you to tell them that.

THE COURT: No. Mr. McCarthy?

MR. McCARTHY: I don't think you can tell them that and follow the law of the circuit.

THE COURT: I am going to instruct them in accordance with the law of the circuit. I see no good reason not to. I will find specifically that the Simpson case is not a good reason not to.

Let's get the jury.

MR. BERNSTEIN: Judge, if it wasn't clear that the motion filed --

THE COURT: I assume the motion for a mistrial is

joined in by anybody who hasn't disassociated himself or herself from it. Is that right?

Hearing no dissent, it's right.

(Jury present)

THE COURT: Good morning, ladies and gentlemen. As you can see, Siddig Ibrahim Siddig Ali is not in court, nor are his attorneys. He is no longer on trial and you will not be asked to render a verdict as to him. You should not speculate on why he is no longer on trial, and the fact that he is no longer on trial should not affect or influence your verdict as to any other defendant who is on trial. You must base your verdict as to each remaining defendant solely on the evidence or lack of evidence against that defendant.

Even though you will not be asked to reach a verdict as to Mr. Siddig Ali, evidence may nonetheless continue to be received as to his conduct and statements, and you will consider such evidence in accordance with the instructions I have already given you and the instructions I will give you during the trial and at the end of the trial.

Mr. Fitzgerald.

MR. FITZGERALD: Your Honor, the government calls Special Agent Steven Chapman, C-H-A-P-M-A-N.

STEPHEN CRAIG CHAPMAN,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Mr. Chapman, if you could just keep your voice up so everyone in the courtroom can hear you.

Can you tell the jury what you do for a living?

A. I am a special agent with the FBI.

Q. For how long have you worked with the FBI?

A. A little over 15 years.

Q. What is your current assignment?

A. I am a assigned to the International Terrorism Squad in in Newark, New Jersey.

Q. Had you had occasion to work on wiretaps pursuant to FISA, the Foreign Intelligence Surveillance Act?

A. Yes, I have.

Q. Can you explain to the jury briefly the procedure one uses to get approval for a FISA wiretap.

MS. STEWART: Objection, Judge.

THE COURT: Sustained.

Q. Did you have occasion to work on a FISA wiretap involving a home telephone of defendant Abdel Rahman?

A. Yes, I did.

Q. For what time period, approximately, was the wiretap in place?

A. That wiretap was in place from February, I believe it was 16 of 1993, through June 10 or 11 of 1993.

Q. And the machinery that was used to intercept the phone conversations over his telephone, where was the machinery located?

A. It was located in a secure space in the -- FBI space in our office.

Q. How was the conversation recorded? Was it on cassettes or reels or --

A. No. We had two machines set up, an original, an original duplication simultaneously recording the same thing. It was reel-to-reel tapes.

Q. What was your involvement in that process?

A. My function was to administrate the tape machines and any information gathered from those machines after the fact.

Q. What would you do each day with the reels that were on the machines?

A. I would check the reels to see -- they would run continuously, and if they were about to run out or had run out they would be removed, the original would be secured, the original duplicate would be forwarded for translation purposes, and as soon as those two reels were taken off, two knew reels were put on.

Q. Do you speak Arabic yourself?

A. No, I do not.

Q. You were not involved in translating the reels?

A. No, I was not.

Q. Let me approach you with what have been premarked for identification purposes only as Government's Exhibits 699A through T. Just take a moment to look through those exhibits and see if you recognize them.

A. Yes, I recognize them. I took off every one of the tapes there but one.

Q. Can you describe just generally what those items are?

A. These are the envelopes that contained the original tape. When they were taken off, the information would be written on the outside of the envelope as to who took it off, what time, what date, and then it would be sealed.

Q. And you said all but one are tapes that you removed from the machine?

A. That is correct.

Q. What would you do once you removed the tape from the machine?

A. The original, again, would be put into this envelope and sealed, and it would be put into secure storage in the FBI space. The other one would be provided to the translator.

Q. Would you sign those envelopes in any way at that time?

A. Yes, I would. The top line indicating that the person took it off would be where my signature appeared.

Q. For all but one of those exhibits, is your signature the first signature on the envelope?

A. Yes, it is.

Q. As to the last one that the first signature is not your signature, where were you when the person signed the envelope?

A. I was not in the secured FISA room at that time. The tape had run out. There was somebody else working another FISA, so he had permission to be in there, took the two tapes off, set them aside, put two new tapes on, and when I came back he signed that envelope in front of me.

MR. FITZGERALD: I have nothing further, Judge.

THE COURT: Cross, Miss Stewart?

CROSS-EXAMINATION

BY MS. STEWART:

Q. Agent Chapman, I think you told us that the wiretap was on the sheik's home phone from February 16 to June 16. Is that what your testimony was?

A. It was about June 10 or 11, I believe. What happened was, his phone discontinued and we weren't exactly sure what time or date that happened.

Q. And you say there are tape reels sitting next to you that are identified as A through T. Is there one tape

in each exhibit?

A. Yes, there is.

Q. But there were a total of over 63 reels of tape, isn't that correct?

A. That is correct.

Q. So this is a selection of approximately 21 reels out of the 63?

A. That is correct.

Q. You indicated that this was a tap on his home telephone. Are you aware, Agent, that the tap followed him wherever he went, that when he went to California on a speaking engagement they would tap whatever home he happened to stay in and seize conversations there?

A. Yes, I am aware that that occurred.

MS. STEWART: No further questions, Judge.

THE COURT: Anything else?

MR. FITZGERALD: No.

THE COURT: Anyone else? Anything else?

MR. FITZGERALD: No, Judge.

THE COURT: Thank you, you are excused.

(Witness excused)

MR. McCARTHY: The government calls Thomas Corrigan.

(Continued on next page)

THOMAS F. CORRIGAN,

called as a witness by the government,

having been duly sworn, testified as follows:

MR. McCARTHY: May I proceed, your Honor?

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. McCARTHY:

Q. Good morning, sir. Can you please tell us how you are employed?

A. With the New York City Police Department.

Q. What is your rank?

A. I am a detective.

Q. Detective Corrigan, how long have you been with the New York City Police Department?

A. Fourteen years, sir.

Q. What is your current assignment?

A. With the Joint Terrorist Task Force.

Q. Do you have a specific assignment?

A. I am a case detective on this investigation.

Q. How long have you been working on investigations related to this case?

A. Since 1989, sir.

MR. JACOBS: Your Honor, I am going to object.

THE COURT: Overruled.

Q. Detective Corrigan, I have placed before you four

binders. Do you see those?

A. Yes, sir.

Q. They contain Government's Exhibits 201 through 228, 231 through 262, 265 through 278, and 281 through 285, each exhibit has a photocopy which has the same number except that A is added; is that correct?

A. That is correct, sir.

Q. Detective Corrigan, have you reviewed those items at my request prior to testifying?

A. Yes, I have.

Q. Do you recognize the scenes depicted in those photographs?

A. Yes, I do, sir.

Q. Can you briefly describe what scenes are depicted to the jury?

A. One scene is the Farouq Mosque located at 552 Atlantic Avenue, in Brooklyn, New York.

MR. STAVIS: Objection, your Honor, referring to a matter not in evidence.

THE COURT: Sustained.

Q. Detective Corrigan, I am directing your attention to Government's Exhibits 201 and 202 for identification. Also 203, 204, and 205. With respect to Government's Exhibits 201 through 205, would you please answer yes or no, do you recognize the scene depicted in those photographs?

A. Yes, sir, I do.

Q. How is it that you are able to recognize the scenes depicted in those photographs?

A. I have conducted surveillances at that location.

Q. What do you recognize the scenes depicted in those photographs to be?

MR. STAVIS: Objection, your Honor.

THE COURT: Overruled.

A. The first two pictures pertain to the entrance of the Farouq Mosque.

Q. Where is that located, sir?

A. On Atlantic Avenue.

Q. What is the address number exactly, if you recall?

A. 552 Atlantic Avenue.

Q. What about 203 through 205, briefly?

A. That is a location on Atlantic Avenue very close to the mosque.

Q. Thank you.

Detective Corrigan, did you recognize at least some of the persons depicted in the photographs in Exhibits 201 through 285, as I have enumerated them before?

A. Yes, I did.

Q. How were you able to recognize them?

A. Through past surveillances and also photo

identification.

Q. Can you please explain what procedure you followed in reviewing those photographs and the photocopies of the photographs?

A. At your request, I would take the original prints, look at those and then make notations on the subjects that I had identified on the photocopied paper. Sometimes if there was -- if there were multiple subjects in the photo, I would draw lines to identify them.

Q. When you say you made notations, what kind of notations did you make?

A. I would usually write the subject's name.

Q. Usually?

A. I did -- I am sorry -- all the time.

Q. Beginning with Exhibit 201, can you tell us if you recognize the person depicted in that photograph?

MR. STAVIS: Objection, your Honor.

THE COURT: Overruled.

A. Yes, sir, I can.

Q. Who is that?

A. That is El Sayyid Nosair. I must apologize to Mr. Nosair. I spelt his first name wrong. Sorry.

Q. Directing your attention to Exhibit 201A, have you written the name El Sayyid Nosair under Mr. Nosair's picture?

A. Yes, I have.

Q. Did you follow that procedure with respect to all of these photographs?

A. Yes, sir, I did.

Q. Let's just go through them quickly. Exhibit 202, did you recognize anyone in that photograph?

A. Yes.

(Continued on next page)

MR. STAVIS: Objection, your Honor. May I be heard at the side bar?

THE COURT: I will hear you briefly at the side bar. One lawyer.

(At the side bar)

MR. STAVIS: Your Honor, the witness is identifying people from photographs that have not been offered into evidence. He stated that he recognizes the individuals from past surveillances and photo ID's. He has not established on this record that he was present at the time that the photographs were taken --

THE COURT: He doesn't have to have been present at the time the photographs were taken.

MR. STAVIS: Please allow me to complete my record, your Honor.

THE COURT: Please.

MR. STAVIS: His identifications must be based on hearsay of what someone else told him concerning names. These are names that he is now putting onto the record and they are names of people who are on trial here today. There has not been a foundation for the testimony that is being given to this jury, your Honor, at this time with respect to these photographs.

MR. McCARTHY: Your Honor, I think all he would need to do to lay a foundation -- actually, I think the

foundation that has been laid already is adequate. The people he is going to identify who are on trial are Mr. Nosair and Mr. Hampton-El, both of them he has seen present in court, in addition to having seen them in surveillances.

THE COURT: Has he been present in courts before?

MR. McCARTHY: Yes, your Honor. I believe he was -- yes, he has been present in courts before.

THE COURT: Do you want to develop that? See if he can identify them.

Before we leave here, this is being offered to show what association?

MR. McCARTHY: Photographs of firearms training in Calverton, Long Island. The next four witnesses who took the photographs in 1989 did not know the names of the persons of whom they were taking photographs. If I had put them on first we would have a lot of unidentified males and not a lot of sense to the jury. The only purpose is to make some sense for the jury.

MR. STAVIS: If those witnesses were put on first --

THE COURT: I am not going to require that the witnesses go on first.

MR. STAVIS: I understand that, but then there would be a duplication. This witness cannot testify of his own personal knowledge as to when those photographs were

taken.

THE COURT: He doesn't have to testify unless the photographs are being offered, and it is my understanding they are.

MR. McCARTHY: I have told counsel that I would not offer them through this witness.

THE COURT: Let's try the case in the courtroom.

MR. WASSERMAN: Your Honor, one thing?

THE COURT: No.

(Continued on next page)

(In open court)

BY MR. McCARTHY:

Q. Detective Corrigan, directing your attention to Government's Exhibit 201 for identification, the person that you have identified as El Sayyid Nosair, can you tell us some of the places you have seen him before?

MR. STAVIS: Objection, your Honor.

THE COURT: Overruled.

Q. You can answer the question.

A. Some of the places I have seen him are from arrest photos, and also from surveillance photos recovered from a search of his residence, I believe.

Q. In the course of being one of the case agents on this case, have you also seen Mr. Nosair in court previously?

A. Yes, sir.

Q. Directing your attention to Government's Exhibit 206 for identification.

A. We will be skipping 203 and --

Q. Yes. Would you please answer this question yes or no. Do you recognize the person depicted in that photograph?

A. Yes, sir.

Q. Can you tell us some of the places where you have seen him before?

A. I have seen him on the areas of Atlantic Avenue, Fulton and Bedford, and another location on Atlantic Avenue.

Q. Who is that person, sir?

A. Sabir Hassan, also known as John Kinard.

MS. AMSTERDAM: I am sorry. I couldn't hear the answer.

Q. Could you spell that for the reporter?

A. Sabir, S-A-B-I-R, H-A-S-S-A-N, also known as John Kinard, K-I-N-A-R-D.

Q. Detective Corrigan, would you please turn to 207 for identification. Do you recognize either of the persons depicted in that photograph? Yes or no.

A. Yes, sir.

Q. Can you tell us who it is that you recognize in that photograph?

A. Mohammed Salameh.

Q. Have you indicated that on the photocopy that is 207A?

A. Yes, sir.

Q. Turning next to 208, did you recognize the person in that photograph?

A. Yes, sir.

Q. Who is that, sir?

A. It's the back of Mohammed Salameh.

Q. You indicated that on the back of 208A?

A. That is correct, sir.

Q. Let me direct your attention now to Government's Exhibit 209 and ask if you recognize the person depicted in that photograph?

A. Yes, sir, I do.

Q. Who is that, sir?

A. Mikial Abdur Rahim, M-I-K-I-A-L, A-B-D-U-R, R-A-H-I-M, also known as Richard Smith. He is on the passenger side of the vehicle.

Q. Have you indicated him on 209A, the photocopy?

A. Yes, sir, I have.

Q. Let me direct your attention now to Government's Exhibits 210 and 211. Do you recognize the scene depicted in those photographs?

A. Yes, sir, I do.

Q. What scene is that?

A. It's the Calverton Shooting Range, located in Calverton, Long Island.

Q. Directing your attention to 211, did you recognize anyone in that photograph?

A. Yes, sir, I did.

Q. Who was that?

A. It was Sabir Hassan and Mohammed Salameh.

Q. Would you proceed, sir, through Exhibits 212 through 228 and tell us with respect to each number who it

is that you recognized in those photographs?

A. 212, again, Sabir Hassan, also known as John Kinard, and Mohammed Salameh. 213A would be Sabir Hassan, again, John Kinard. 214, Mohammed Salameh. 215 would be Mikial Abdur Rahim, Richard Smith, Mohammed Salameh, and Mahmud Abouhalima. 216 would be Sabir Hassan, also known as John Kinard, El Sayyid Nosair. 217, Sabir Hassan, also known as John Kinard; Mahmud Abouhalima; El Sayyid Nosair; Mohammed Salameh, Mikiel Abdur Rahim, also known as Richard Smith. 218, Mikiel Abdur Rahim, also known as Richard Smith; PHAPLD Abouhalima, and Mohammed Salameh. 219, El Sayyid Nosair. 220 Mahmud Abouhalima. 221, Mikiel Abdur Rahim, also known as Richard Smith, and Sabir Hassan, also known as John Kinard. 222 is Sabir Hassan also known as John Kinard, and Jarrad, J-A-R-R-A-D Abdul-Hakim, H-A-K-I-M, also known as Anthony Rogers. That is 222, sir.

Q. Yes, sir.

A. Did you want me to continue on?

Q. Yes, I did, through 228.

A. 223 is Jarrad Abdul-Hakim, also known as Anthony Rogers. 224, I don't know who that is. 225, I don't know who that is. 226 is Sabir Hassan, also known as John Kinard, and Jarrad Abdul-Hakim, also known as Anthony Rogers. 227 is Mohammed Salameh. And 228, I don't know who is depicted in the photo.

Q. Thank you. Moving on to the next group of photographs -- that's Government's Exhibits 231 through 262 -- were there two individuals, sir, that you recognize who are depicted in various of those photographs?

A. Yes, sir, I do.

Q. Who are those two individuals?

A. In 231 is Mahmud Abouhalima and Abdul Rashid, Clement Hampton-El.

(Continued on next page)

Q. With respect to exhibits 231 through 262, did you note on the photocopy that is the A exhibit that coordinates with each numbered photograph, where you observed Mahmud Abouhalima and where you observed defendant Clement Hampton-El?

A. That's correct, sir.

Q. Let me move, sir, to the next group of photographs, Government Exhibits 265 through 278. I guess particularly let me direct your attention beginning at exhibit 273 and running through 278.

Was there a person depicted in each of those photographs who you recognized?

A. Yes, sir.

Q. Who was that?

A. 273 is Mahmud Abouhalima.

Q. Did you see Mr. Abouhalima in the other photographs I've mentioned, that is, 273 through 278?

A. That's correct, sir.

Q. Where you saw Mr. Abouhalima, did you follow the procedure of noting that on the photocopy of the photograph?

A. Yes, sir, I did.

Q. Finally, let me direct your attention to Government Exhibits 281 through 285.

Det. Corrigan, did you recognize any of the people depicted in exhibit 281?

A. Yes, sir, I did.

Q. Who was that?

A. That's Nidal Ayyad. That's N-I-D-A-L A-Y-Y-A-D, and Mikial Abdur Rahim, also known as Richard Smith.

Q. Did you again note those on the photocopies?

A. Yes, sir, I did.

Q. With respect to 282, do you recognize that person?

A. Yes, sir.

Q. Who is that?

A. That's Nidal Ayyad.

Q. 283?

A. Again, Nidal Ayyad and Mikial Abdur Rahim, also known as Richard Smith.

Q. Directing your attention to Government Exhibit 284, do you recognize any of the people depicted in the van that is depicted in that photograph?

A. Yes, sir, I do.

Q. Who would that be?

A. El Sayyid Nosair and Mahmud Abouhalima.

Q. And directing your attention finally to exhibit 285 for identification, do you recognize any of the people depicted in that photograph?

A. Yes, sir, I do. That's El Sayyid Nosair and Mahmud Abouhalima.

MR. MC CARTHY: May I have a moment, your Honor?

THE COURT: Yes.

(Pause)

Q. Det. Corrigan, just to be clear, did you take any of those photographs yourself?

A. No, sir.

MR. MC CARTHY: Thank you. Your Honor, I have no further questions.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Were you present when any of those photographs were taken, sir?

A. At the Calverton Range, no, sir.

MR. STAVIS: Nothing else, your Honor.

CROSS-EXAMINATION

BY MR. RICCO:

Q. Good morning, Det. Corrigan.

A. Good morning.

Q. Can you tell us when those photographs were taken?

A. The exact date?

Q. Yes.

A. I believe they were taken July 2 through July 23, 1989, over consecutive Sundays.

Q. Those are both the photographs at Al Faroog and

the photographs at Calverton?

A. That's correct, sir.

Q. Now, you indicated that you were not at the Calverton location?

A. That's correct, sir.

Q. And were you at the Al Faroog?

A. No, sir, I didn't say that.

Q. Were you at the Al Faroog?

A. No, sir.

Q. You were not --

THE COURT: You mean was he there when the photographs were taken?

Q. When the photographs were taken, yes.

THE COURT: Not has he ever been there?

Q. Were you at Al Faroog when those photographs were taken?

A. Those particular photographs, no, sir.

Q. Those photographs are sampling of other photographs, if you know?

A. They're photocopies of originals, sir.

Q. Do you know how many photographs were taken of those locations on those dates and time?

A. Offhand I'd say probably between a roll or two each day, but I couldn't say that. That would have to be for the surveillance agents.

Q. How many photographs did you review in connection with your testimony as relates to the Calverton location and Al Faroog?

A. Well, since 1991 I reviewed these particular photos numerous times. For this particular exhibit this morning I would say probably forty to fifty photos, maybe.

MR. RICCO: No further questions.

THE COURT: Mr. Wasserman.

CROSS-EXAMINATION

BY MR. WASSERMAN:

Q. Good morning, Detective.

A. Good morning, sir.

Q. The photographs that you identified as 201 through 228, do you know what date they were taken?

A. I'd have to go back and look if you just give me a second.

MR. MC CARTHY: Objection, hearsay.

THE COURT: Sustained.

Q. You mentioned that the photographs were taken on four successive Sundays. Is it your testimony that you don't know which photographs were taken on which days?

MR. MC CARTHY: Objection.

THE COURT: Overruled.

A. I don't know which are taken on which days, no, sir, off the top of my head.

Q. Was there anything that you could review to refresh your recollection?

A. Surveillance logs of photographic surveillance.

Q. Had you reviewed the surveillance logs?

A. Not in depth, no, sir.

Q. When you say not in depth, had you reviewed them prior to your testimony today?

A. No.

Q. Have you had any occasion to review those surveillance --

MR. MC CARTHY: Objection, relevance.

THE COURT: Sustained.

Q. Is there any document that you have up there now that can refresh your recollection as to when the photographs were taken?

A. No, sir.

Q. When you testified on direct you were asked to identify certain people. Could you identify people in addition to those in connection with which you put names down?

A. If I didn't put names attached to photos it's because I didn't recognize those individuals.

Q. So, in other words, you were asked to identify all those that you could identify?

A. That's correct, sir. In those particular, in

each photo.

Q. And so if there is no name attached to a picture that means that you have no idea who that person is; is that correct?

A. Or I recognize it, but I didn't know who they are.

Q. Would there be -- you're a case agent in this matter, is that true?

A. That's correct, sir.

Q. There would be some reports that you could refer to that could identify those people you could not identify?

MR. MC CARTHY: Objection.

THE COURT: Sustained.

Q. Were you asked to identify my client as Abdul Rashid or as Clement Hampton-El?

A. I know your client as Abdul Rashid. I also know him as Clement Hampton-El.

Q. Did you make the identification at the same time as Abdul Rashid and Clement Hampton-El each time you made that identification?

A. Well, I wrote Abdul Rashid and then Clement Hampton-El. I think on one occasion I had switched them up.

Q. You did that at the same time?

MR. MC CARTHY: Objection to form.

THE COURT: You want to rephrase it? He did what

at the same time?

MR. WASSERMAN: Yes, your Honor.

Q. When you made the identification of Abdul Rashid did you at that time also make the identification of Clement Hampton-El?

A. That's correct, sir.

Q. You were not asked to do so by anybody?

A. No, sir.

MR. WASSERMAN: I have no further questions.

THE COURT: Ms. London.

CROSS-EXAMINATION

BY MS. LONDON:

Q. Good morning, Detective.

A. Good morning.

Q. Detective, were you present in the courtroom last week?

A. Yes, sir. Yes, ma'am, I'm sorry, excuse me.

Q. When you were present here in the courtroom did you have -- do you know Special Agent Christopher Voss?

A. Yes, he's my partner, ma'am.

Q. And did you have conversations with him at that time in the courtroom?

A. In the courtroom?

Q. Yes.

A. I don't recall. I think maybe on breaks I had

conversation with his him, yes.

Q. And are you familiar with a man by the name of Ken Haas?

A. I know who he is, ma'am, yes.

Q. Did you have conversations with him, too, in the courtroom?

A. Yes, ma'am.

Q. And was Mr. Haas pointing out defendants in this case to you at that time?

A. No, ma'am.

Q. How about Mr. Voss?

A. No, ma'am.

Q. Did you have conversations about the defendant and pointing to them?

A. No, ma'am.

Q. Not at all?

A. I wouldn't know that. I mean, pointing out in what manner, to identify them or --

Q. I wasn't present at the conversation. I'm asking you.

A. No, ma'am. If there was any identification of any subject in this courtroom, I'm familiar with them myself.

Q. Did you have discussions about defendants with either of these two?

A. Discussions --

MR. MC CARTHY: Object to relevance.

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

A. I mean discussions in what manner, ma'am?

Q. Did you discuss any defendant in this case back there?

A. I can't recall.

Q. It was only last week, wasn't it?

A. I know, ma'am, but I don't know really the point that I, that you asked me what clothes they were wearing, I don't recall.

THE COURT: All she asked you was whether you had a conversation with -- was it Voss or Haas?

MS. LONDON: Well, both.

THE COURT: -- or both that touched on any defendant in this case?

THE WITNESS: I don't recall it, no, sir.

MS. LONDON: I have no other questions.

THE COURT: Anything else? Thank you, you are excused.

(Witness excused)

MR. MC CARTHY: Government calls James Fogle. Your Honor, may I have a moment with Mr. Wasserman, please?

THE COURT: Yes.

(Pause)

JAMES P. FOGLE,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MC CARTHY:

Q. Good morning, sir. Can you tell us how you're employed?

A. I'm a Special Agent with the FBI.

Q. How long have you been an FBI agent?

A. A little over ten years.

Q. Let me direct your attention to the spring and summer of 1989. Can you tell us what your assignment was in the FBI at that time?

A. I was assigned to the New York office Joint Terrorist Task Force, specifically SO9, which is the surveillance group, based out of New York.

Q. Can you tell us what SO stands for?

A. Special operations.

Q. Can you explain to the jury briefly what a physical surveillance is?

A. Physical surveillance is where we would set up usually five people, five agents, or in this case there was New York City detectives working with us, at a location where we would set up and look for license plates that were known to us, people that were known to us, or if we just had

a location, we would watch who went in there, and then decide if in fact these people need to be followed or not to be.

MS. STEWART: Judge, could he keep his voice up please? We're having trouble.

THE COURT: Talk into the microphone. Please try to keep your voice up.

Q. Agent, how did you communicate with other agents during the course of the surveillances?

A. We had radios in our car, and we could just talk back and forth that way.

Q. Can you tell us, please, how you kept a record of what you observed while out on surveillance?

A. Well, there is one person that was responsible for keeping a daily log, and that was assigned at the beginning of the tour and that person would take notes on anything pertinent that happened during that shift.

Q. Are you familiar with photo logs?

A. Yes, that's in conjunction with physical surveillance if there were photos to be taken one agent would be assigned to do a photo log, and that would be separate from the physical surveillance, and that agent would make notes of anything pertinent of the photographs that he took on the surveillance.

Q. Let me direct your attention to July 2, 1989.

Were you on duty that day?

A. Yes, I was.

Q. Do you recall what day of the week that was?

A. That was a Sunday morning that I was working.

Q. Were you alone or with other agents?

A. I believe I was with at least four or five other agents.

Q. Agent Fogle, directing your attention to the early morning hours, can you tell us please where you were located?

A. On Atlantic Avenue in Brooklyn.

Q. Can you describe for the ladies and gentlemen of the jury what you observed at Atlantic Avenue in the early morning hours of July 2, 1989?

A. Well, I was there at about 7 o'clock in the morning. Traffic was extremely light on Atlantic Avenue, and there was, I don't think there was more than one or two businesses that were open along that stretch of Atlantic Avenue.

Q. Did you maintain your surveillance in the vicinity of Atlantic Avenue?

A. Yes, I did.

Q. All right. Can you tell us what you observed as the course of the morning went on?

A. As the morning progressed at 552 Atlantic Avenue.

That was the location that we were set up at. It opened up, the metal gate that they have in front there was opened, and numerous individuals, not really known to me, some were familiar, some were not, entered and exited, and it's quite a bit of activity at that location that morning.

Q. Were you taking photographs that day?

A. Yes, I was.

Q. I believe, Agent, that there is a binder to your left. Let me direct your attention to what have been previously marked as Government Exhibits 201 through 209 for identification.

Are those photographs that you took, Agent?

A. Yes, they are.

MR. MC CARTHY: Your Honor, the government offers exhibits 201 through 209.

MR. STAVIS: No objection, your Honor.

THE COURT: 201 through 209 are received without objection.

(Government Exhibits 201 through 209 received in evidence)

MR. MC CARTHY: Your Honor, I believe that the ladies and gentlemen of the jury have been given binders with the photographs so that they can following along.

THE COURT: If you look down on the floor, take the thinner of the two binders. There are two binders, one

is thin. Take the thicker of the two binders.

MR. STAVIS: Your Honor, do the jury binders include photographs not yet in evidence?

THE COURT: Yes. And I will caution them on that. The binders are there for your convenience to follow material that is received in evidence as it is received. I want to tell you to turn only to the exhibits that you are asked to turn to and that are the subject of testimony. Do not turn to any other exhibits. We're on 201 through 209 now. Those are the only exhibits that we're on.

MR. MC CARTHY: Your Honor, I should have offered also 201A through 209A, and I do that at this time.

THE COURT: Those are the ones with the I D on them.

MR. MC CARTHY: Yes, your Honor.

THE COURT: Mr. Stavis?

MR. STAVIS: I have a hearsay objection, your Honor.

THE COURT: Overruled.

(Government Exhibits 201A through 209A received in evidence)

Q. Agent Fogle, can you please describe for us briefly the scenes depicted in exhibits 201 through 209?

A. All right. 201 and 202 are of at that time an unknown individual that was the first person that I observed

in front of 552 Atlantic Avenue, and I took two pictures of that person. Moving along to 203, there's two individuals about to cross Atlantic Avenue, would be south, going north across Atlantic Avenue.

Exhibit 204 is of two individuals removed a box that appears to be some type of clothing, unknown materials inside it, from 552, and they're walking in front of the location.

Q. Let me stop you there for a moment. Can you tell us, please, what you saw in connection with traffic in and out of 552 Atlantic Avenue that morning?

A. Well, this was about the only location there was any traffic at that time in the morning, and there were numerous individuals that arrived by foot or by different vehicles, and they would walk inside to 552, and when they exited, most were carrying something, and that's when I took their picture.

Q. What did you observe them to be carrying at that time?

A. Boxes. There was some items covered with blankets, a duffle bag or two, various items.

Q. Was it clear to you at that time what, if anything, was inside the blankets and boxes you saw?

MR. STAVIS: Objection, your Honor. Calls for speculation.

Q. Could you answer that yes or no?

A. I couldn't tell what was inside.

Q. I think you stopped with 203. Could you go through 204 and 205, please?

A. 204 is of two individuals just walking along the street that had exited 552 Atlantic Avenue. The next picture 205, is of these same two individuals placing the items that they brought out of 552 Atlantic Avenue into the back of a vehicle.

Q. Let me stop you there. Do you see that the individuals depicted in 205 appear to be wearing T-shirts?

A. Yes, I do.

Q. Were you able to see what was inscribed on the T-shirts?

A. No, no, I wasn't.

Q. Could you continue with 206, please?

A. Yes. 206 is of a black male exiting, I'm not sure which vehicle, I believe it's the green van. He had been observed in previous surveillances. I just decided to take a picture. He walked over to 552 Atlantic Avenue.

Q. Agent, will you just try to tell us what you saw that day, okay?

A. All right.

Q. 207?

A. 207 is the two individuals standing in front of

552 Atlantic Avenue.

Q. Finally, 208 and 209?

A. 208 is of two of the same people in 207 meeting with one other individual in front of 552 Atlantic Avenue. 209 is a black male entering a green van in front of 552 and departing the area.

Q. Agent Fogle, did you continue to conduct surveillance, you and the other agents, that morning?

A. Yes, we did.

Q. Did there come a time when you left the area of Atlantic Avenue in Brooklyn?

A. Yes, we traveled over to the BQE east, north and then on to the Long Island Expressway eastbound.

Q. What were you observing as you were traveling from the location in Brooklyn to the Long Island Expressway?

A. I believe it was two or three vehicles traveling together in a, somewhat of a convoy, eastbound on the Long Island Expressway.

Q. Where had the vehicles come from?

A. From 552 Atlantic Avenue. They had arrived earlier in the morning, and all departed the area together.

Q. The individuals that you saw, or at least some of them, congregating in the area of Atlantic Avenue that morning, are the individuals who went in these vehicles and proceeded on the Long Island Expressway?

A. Yes, they are.

Q. Where did they go, sir?

A. They traveled east out to exit 71 on the Long Island Expressway, traveled south to a pistol rifle range, Calverton, I think it's called Calverton Rifle Range out on eastern Long Island.

Q. Agent, can you tell us how long it took to get from Brooklyn to the Calverton shooting range?

A. At least an hour.

Q. Any reason why it took that long?

A. Normally it would take a lot less, but the speeds they were driving were extremely slow, approximately 40 miles an hour or slower on the Long Island Expressway. Traffic was extremely light, and it was somewhat unusual to see that type of driving.

Q. Directing your attention to the time when you got to the Calverton shooting range, can you tell us briefly what you observed there?

A. Well, we, when I arrived at the range, several of the vehicles that I had previously observed at 552 Atlantic Avenue and followed out to this rifle range were parked just directly in front of the walkway that, in front of this rifle range. Everyone was out of the vehicles, and they were in various positions shooting weapons down range at various different targets.

Q. Agent, can you explain to the ladies and gentlemen of the jury what the procedure is or was at least on July 2, 1989, to get admittance into the Calverton shooting range?

A. Well, when I drove in there was a older woman at a booth, and she asked how many people were inside the van and I said just myself. And she said, $5. I paid $5 and just drove in. And there was no restrictions given upon any type of weapons. She didn't ask me what type of weapons, if any, I had to shoot at this range.

Q. Were you asked for any permits or anything of that nature?

A. No, nothing at all.

Q. Tell us what you saw at Calverton shooting range?

A. There were different groups of people out there shooting. The group that I was interested in was the group that we observed at 552 Atlantic Avenue, and they were in various positions along the firing line shooting weapons ranging from a AK-47 to a shotgun to a 9 millimeter semi-automatic pistol.

Q. Can you give us some idea of what the range looked like?

A. It was just a barren strip of land with mounds on both sides and on the far end where the targets were. It was open on the end where we were -- or where the people

were shooting. There's some wooden stakes at the end of the range, and it was the responsibility of whoever was shooting to bring what targets they wanted to shoot to the range.

Q. Let me direct your attention to Government Exhibits 210 through 228 for identification.

Did you take those photographs that day?

A. Yes, I did.

MR. MC CARTHY: Your Honor, the government offers 210 through 228, and 210A through 228A.

MR. STAVIS: I have no objection, your Honor.

THE COURT: 210 through 228 and the corresponding A exhibits are received without objection.

(Government Exhibits 210 through 228 and 210A through 228A received in evidence)

Q. Agent, directing your attention to Government Exhibit 210, can you tell us if you recognize the vehicle that's depicted in that photograph in the middle?

A. Yes, that was one of the vehicles that we followed out to the Calverton rifle range from 552 Atlantic Avenue.

Q. Is that the blue van?

A. Yes.

Q. There a is green van next to it, is that correct?

A. Yes, that's also one of the vehicles.

Q. Let me direct your attention to Exhibit 211.

A. 211 is also one of the vehicles that was observed at 552, and was photographed in a previous exhibit.

Q. Running through 211 through 214 for identification, can you briefly describe what's depicted in those photographs?

A. The angle that I was sitting I could only observe between those two vehicles different individuals each shooting a AK-47 or what appeared to be an AK-47 to me from that distance.

Q. Agent Fogle, let me ask you this. Were the names of any of the individuals that you observed that day known to you at that time, that is, on July 2, 1989?

A. No, no, they weren't.

Q. Continue, please describing 211 through 214?

A. All right. 211 is of an unknown male talking with someone, it appears to be, holding an AK-47, and there is some activity at the back of a, looks to be a Cherokee to the left of that, removing some items out of the back.

Q. The person you've described as holding the AK-47 is that the person who was described in 211A as Mohammed Salameh?

A. Yes, it is.

Q. Directing your attention to 212?

A. It's basically the same picture, just maybe ten or twenty seconds later.

Q. 213?

A. 213 is a different individual now shooting the AK-47 from behind that green van.

Q. And 214?

A. 214 is another different individual shooting the AK-47.

Q. Let me ask you about the next group of photographs, that's 215, 216, 217, and 218. Can you tell us what's going on in those photographs?

A. Yes. On 215, when it was declared cleared for everyone on the range to walk down range for their targets, everyone on the line had to stop shooting for these individuals to begin to walk down to see exactly what, if anything, they had shot at, how they did.

On 216 it's still these individuals walking down toward the range. Exhibit 217 is standing in front of the targets that they were firing at, and 218 is after they had marked or look at their targets, walking back toward the firing line.

Q. Let me point you to 218 for a moment, and direct your attention to 218A, the coordinating photostat.

Do you see the individual who is identified in 218A as Mahmud Abouhalima?

A. Yes.

Q. Do you recall any incident that sticks out

particularly in your mind with respect to Mr. Abouhalima that morning or that afternoon?

A. Earlier in the shooting when they were first beginning to shoot with the AK-47, one of the individuals, who I don't remember, but was part of this group, had the AK-47, and for some reason the weapon discharged approximately three or four feet in front of him, and the individual in this photograph with the yellow shirt came over, and grabbed the weapon, and like slapped this person, you know, for carelessness. That's what it appeared to be to me. I mean, the weapon doesn't discharge three feet in front of your feet for --

MS. AMSTERDAM: Objection, your Honor.

THE COURT: Sustained and stricken.

Q. Please just try to answer the question. Directing your attention to 219 and running through the end of the photographs, can you tell us briefly what's depicted in each of those photos?

A. 219 and 220 are of the subjects that were at the range walking back from the targets. 220 is the same. 221 is of another individual that was at the range with this group, and the pictures that follow are just of individuals that as they came in to focus I took the picture.

Q. Agent, do you recall about how long you were conducting surveillance at the firing range that day?

A. I would guess two hours, maybe a little bit longer, maybe a little bit less. I don't really recall the exact time:

MR. MC CARTHY: May I have a moment, your Honor?

THE COURT: Yes.

(Pause)

MR. MC CARTHY: Thank you, your Honor. No further questions.

MR. WASSERMAN: Your Honor, may we have a sidebar?

THE COURT: We are going to take a break, so, ladies and gentlemen, I'll ask you to put your notebooks down, and the other materials down. Please don't discuss the case. We'll resume in a few minutes.

(Jury not present)

THE COURT: You can step down.

THE WITNESS: Thank you, your Honor.

(Witness temporarily excused)

THE COURT: Mr. Wasserman.

MR. WASSERMAN: Judge, I have made a request of the government to provide me with unredacted 3500 material in connection with the testimony of Agent Fogle. The same request was made in connection with surveillance reports of the next three witnesses who will also be testifying about the photographs. I've been told by Mr. McCarthy that some

in the case name that were redacted and that's it. I believe I'm entitled to the statements of the witness. I don't believe I have to rely on Mr. McCarthy's statement as to what the redactions might contain.

THE COURT: You're saying you want me to look at the redaction?

MR. WASSERMAN: I'm sorry, what?

THE COURT: Are you saying you want me to look at the redactions?

MR. WASSERMAN: I think that I have to, your Honor, to make that request.

MR. MC CARTHY: Let me just be clear. The offer to tell him the case name is withdrawn. I tried to do that in order to settle this without having to litigate it. I'll hand up the redactions which are just the case names and numbers and a label at the top of the administrative documents and the additional documents.

MR. WASSERMAN: Your Honor, if I may, there are redactions throughout the reports, and although most appear to be license plate numbers, I would like those reviewed by the Court as well to make sure.

MR. MC CARTHY: They're not redacted. They are just poorly copied. I'll give him those.

THE COURT: He says they are not redacted. They're just poorly copied.

MR. WASSERMAN: Judge, if I see a heavy black line it looked like a redaction to me.

MR. MC CARTHY: Your Honor, this is not the first conversation we've had about that. If that was the problem, I would have fixed it already. What we were arguing about was the front page.

MR. WASSERMAN: Your Honor, I tried to make clear in my letter to Mr. McCarthy yesterday that I wanted redactions that didn't specify or distinguish between the body. I'd like them all reviewed by the Court.

MR. MC CARTHY: Where I redacted I wrote redacted. (Pause.

THE COURT: The redaction on the first page appears to be a case name, which in any event was not the subject of his testimony. What you see as redactions in fact are yellow highlighters.

MR. WASSERMAN: Your Honor, the way they have come through, if I could hand up --

THE COURT: I know how yellow highlighters xerox. They occasionally xerox as black lines.

MR. MC CARTHY: I'll get him the numbers over the break.

THE COURT: Thank you.

MR. WASSERMAN: Your Honor, in terms of your Honor's ruling that the statements by the Agent as to what

he perceived to be the case he was working on is not something that is covered by 3500. As long as it's his writing and his report I believe I'm entitled to it.

THE COURT: It was not the subject of his direct testimony. Therefore, it is not 3500 material. Therefore, your objection to the redaction, if that's what it is, is overruled.

MR. WASSERMAN: Your Honor, I believe that it's so implicit the government is offering these photographs and had surveillance teams for a purpose that day and that purpose was the case that that Agent was working on. To the extent --

THE COURT: It was not the name of the case.

MR. WASSERMAN: I'm sorry, judge?

THE COURT: I said the purpose was not the name of the case.

MR. WASSERMAN: But it's his perception of why he's there. It's his statement why he's there.

THE COURT: I know. I understand your point, Mr. Wasserman.

MR. SERRA: Your Honor, one quick matter, which for this morning's purpose comes under the heading of no harm no foul, but in the future, the defense counsel in my immediate area, including myself, had no idea that there were exhibit binders.

THE COURT: I didn't either, and I had planned to raise it before it came up. The practice is commonly followed in trials where exhibits are extensive to have exhibit books and have the jury instructed each time an exhibit is being reviewed that has been introduced to look at them.

The principal admonition of course is not to look at the stuff that hasn't been introduced. Obviously, if you have a similar situation on which numerous exhibits are being offered, I would invite you to do that because the only alternative is to start passing exhibits which is simply a waste of everybody's time.

MR. SERRA: Your Honor, I have no objection to the process. I simply would like in the future to know in advance so that I can look at them first, that's all.

MR. MC CARTHY: Yes, your Honor, we'll do that.

THE COURT: Please.

MR. MC CARTHY: I just want to note for the record, I'm not making an application, but because there is a considerable record developing here with respect to Rule 16, I was handed yesterday, the day the witnesses were scheduled to testify, a series of photocopies of photographs that were turned over by counsel for the defendant Nosair pursuant to Rule 16. This morning I was handed a map or what appears to be a map with respect to the Calverton

shooting range which also purports to have been turned over pursuant to Rule 16.

MS. STEWART: Judge, I want to state for the record I cross-examined Agent Chapman and did not ask for a sidebar, because I felt it would be onerous under the circumstances, but I want to object to the fact that there was no 3500 material, and I want to object under the FISA Act. I think that the fact that the Act permits the government to seal affidavits and everything in connection with the FISA tapes does deprive a defendant of his right to confront witnesses.

THE COURT: I'm sorry, go ahead.

MS. STEWART: And it was my understanding in discussion -- I wasn't here for the litigation on the FISA -- but I did talk to Mr. Fitzgerald, and he apprised me that indeed, the underlying applications and affidavits had been sealed by your Honor, and that they would not be turned over as 3500 material either, and I object to that.

THE COURT: I don't believe that this witness was the affiant on --

MR. FITZGERALD: My understanding, your Honor, I'm advised he was not.

THE COURT: There was no affidavit from this witness in connection with the FISA material.

MS. STEWART: Then speaking as a general matter

it would seem when one has no notion of the rationale under which specifically one's client was wiretapped it does --

THE COURT: That objection was made already I believe at the time that the FISA issue was litigated, and the objection is to the nature of the statute, and what it provides, and that has been litigated before. It was litigated here.

MS. STEWART: I just want to make it clear it also applies at trial.

THE COURT: Again, the witness so far as I know, generated no 3500 material, certainly not in connection with the FISA material that I saw.

MS. STEWART: Thank you.

MR. MC CARTHY: Your Honor, may I have the exhibits back?

THE COURT: Yes.

MR. MC CARTHY: Thank you.

(Recess)

(In open court)

(Jury not present)

JAMES FOGLE, resumed.

THE COURT: Ms. Stewart.

MS. STEWART: We were handed during the break something entitled Government Exhibit 499A or 699, the copies are A through C. It appears to be Agent Chapman's

log.

MR. FITZGERALD: Judge, these are the covers of the reels which Mr. Jacobs said, can you make a copy of the FISA reels, which were made available to counsel. They are the covers of the envelopes, that's all.

MS. STEWART: I see, okay. Withdrawn, Judge.

(Jury present)

MR. STAVIS: May I inquire, your Honor?

THE COURT: Yes, please.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Mr. Fogle, we've haven't met before, have we?

A. No, we haven't.

Q. Have we ever spoken before?

A. No.

Q. Have we ever had anything to do with each other before?

A. No, we haven't.

Q. Now, prior to coming here this morning and testifying did you have occasion to speak to any of the Assistant US Attorneys in this case?

A. Yes.

Q. And when was that?

A. Last Thursday and last Wednesday.

Q. How much time did you spend last Wednesday

speaking to them?

A. About 15 minutes, maybe.

Q. And on Thursday?

A. Less than that, maybe 10 minutes.

Q. And were those the first time that you had met with an Assistant US Attorney or Assistant US Attorneys regarding this case?

A. I stopped at the office on Tuesday, but was told that I wouldn't be needed for court but Wednesday, Thursday were the first times I talked to AUSA on this matter.

Q. When you spoke to -- by the way, which Assistant US Attorney did you speak to?

A. Mr. McCarthy.

Q. When you spoke to Mr. McCarthy did he give you some idea of the questions that he was going to be asking you?

A. He showed me the surveillance photos and told me that, this is what my testimony was going to be about.

Q. And how many photos did Mr. McCarthy show you?

A. He showed me the stack that I had earlier in the binder that was the exhibits, I don't recall the numbers, and the rest of the photos that were taken that day.

Q. Approximately how many photographs did he show you?

A. Oh, 36 approximately.

Q. From your approximation are you able to tell us if Mr. McCarthy showed you more photographs than have been introduced into evidence here this morning?

A. Yes, I, there is more photos than the ones introduced.

Q. Would it be fair to say that there was a selection process as to which photographs were going to be used for your testimony this morning?

A. Yes.

Q. And why don't you tell the ladies and gentlemen of the jury how that selection process went about?

A. A lot of those photos were duplicates or shots taken in the time sequence of maybe 10 or 15, 20 seconds, where there really wasn't much of a difference between one action and another, and some photos were a little clearer than others.

Q. Who made the selection decision with regard to the photographs that were going to be used? Was that you or Mr. McCarthy or you and Mr. McCarthy together?

A. Mr. McCarthy.

Q. Do you recall on your direct examination Mr. McCarthy asked you about Government Exhibit 206 which was a photograph?

MR. STAVIS: Your Honor, may I approach the witness?

THE COURT: Yes.

A. Yes, I recall that photo.

Q. Do you recall that when you were testifying this morning about that photograph you said that you recognized that individual from prior surveillance.

Do you recall that testimony?

A. Yes, I do.

Q. Was that a prior photo surveillance, Special Agent Fogle?

A. No, prior physical surveillance.

Q. I believe you testified this morning that part of the job in either a physical surveillance or a photo surveillance is to take a log; is that correct?

A. That's correct.

Q. Okay. May I see your log for the prior surveillance with regard to the person depicted in Government Exhibit 206?

MR. MC CARTHY: Objection.

THE COURT: Sustained as to form.

Q. Was there a log with respect to the surveillance that you've testified about on your direct examination concerning the person depicted in Government Exhibit 206?

THE COURT: You mean the log that he kept, or a log, period?

MR. STAVIS: A log, period.

A. There's, yes, there's a log. I don't have it.

Q. Have you ever seen it?

A. I haven't seen it since 1989.

Q. Does it exist?

A. Yes, it does.

Q. Can you bring it here for us?

MR. MC CARTHY: Objection.

THE COURT: Sustained.

Q. Special Agent Fogle, was that a log that you kept?

A. No, it wasn't.

Q. What was your role in that prior surveillance?

A. Just part of the team to make observations and relay them to whoever was keeping the log.

Q. And how many prior surveillances were there with regard to the individual depicted in Government Exhibit 206?

A. I don't recall.

Q. Can you approximate for us?

A. Maybe a week of surveillance.

Q. Is that a seven-day week, Monday through Sunday or is it Monday through Friday, five-day week?

A. Well, five days of surveillance that I would have worked, but it's, we work a seven-day work week.

Q. So when you're referring to a week of surveillance are you referring to five days of surveillance

or seven days of surveillance?

A. Most likely seven.

Q. And whoever was the person filling out the log on those days there would be seven logs; is that correct?

A. If we did seven surveillances on that.

Q. And if you did five, it would be five logs?

A. That's correct.

Q. And there were no photos taken at all in that prior surveillance for that week?

A. I don't recall.

Q. Do you know the year of that prior surveillance with regard to the individual depicted in Government Exhibit 206?

A. Possibly 1989, maybe earlier. I don't recall.

Q. The surveillance that you were involved with on July 2d of 1989 started out at 552 Atlantic Avenue; is that correct?

A. That's correct.

Q. The first photograph that you took on that day has been entered into --

MR. STAVIS: May I approach the witness, your Honor?

THE COURT: Yes.

Q. -- has been entered into evidence as Government Exhibit 201; is that correct?

A. That's correct.

MR. STAVIS: I'm showing you what we will mark as Defense Exhibit B for purposes of identification and ask you to look at Defense Exhibit B and compare that exhibit with Government Exhibit 201.

A. It appears to be the same photo, just blown up.

MR. STAVIS: I offer that photograph into evidence, your Honor.

MR. MC CARTHY: No objection.

THE COURT: 201 is received without objection.

MR. MC CARTHY: It's got a Government Exhibit number, too.

THE COURT: It doesn't matter whose tag is on it. It is received.

(Defense Exhibit B received in evidence)

(Continued on next page)

MR. STAVIS: Your Honor, could I ask the witness to come off the witness stand so that we can examine this photograph in front of the jury?

THE COURT: Sure.

MR. STAVIS: Maybe we will be better down in the corner here. It is probably the best way.

MR. McCARTHY: Your Honor, may I step back?

THE COURT: Sure.

Q. What time was this photograph taken, if you know, Special Agent Fogle?

A. I can approximate, maybe 7:30 in the morning.

Q. This was shortly after the building opened at 552 Atlantic Avenue?

A. Yes, this metal gate had been opened up.

Q. What is the individual depicted in this picture, Defendant's Exhibit B, appear to you to be doing?

A. Waiting for someone.

Q. How is it that you know from looking at this photograph that he was waiting for someone?

A. It's my opinion. You asked me what I thought. That's what it appears to be.

Q. Do you have any opinions regarding whether or not -- withdrawn.

Is the man depicted in the picture, Defendant's Exhibit B --

THE COURT: Excuse me, Mr. Stavis. The interpreter can't hear the witness. Maybe the witness can stand at the lectern or take a microphone.

MR. STAVIS: Are we ready to go?

THE INTERPRETER: Yes.

MR. STAVIS: I will try to keep my voice up.

Q. The person depicted in Defendant's Exhibit B, does he appear to be taking any actions to you?

A. No, he doesn't.

Q. And you said you had an opinion as to what he might be waiting for, is that correct, just a second ago?

MR. McCARTHY: Objection.

THE COURT: Did you say that?

THE WITNESS: No, I didn't say that. I said he appeared to be waiting. I don't recall that I said he was waiting for someone or something.

Q. Does the man depicted in Defendant's Exhibit B appear to you to be thinking seditious thoughts?

MR. McCARTHY: Objection.

THE COURT: Sustained.

Q. You can resume your seat.

A. Thank you.

Q. On July 2 of 1989, you were the person on the team, you said, who was designated to take a log, is that correct?

A. To take the photo log, yes.

Q. Photo log, and I believe you said were four or five other people on your team, on your surveillance team that day?

A. Approximately. I don't have the log in front of me to say for sure.

Q. Who were the other people on your team that day?

A. Without the log in front of me, back in 1989, I don't really recall other than maybe one person, Brad Ware, I think, was with us that day.

Q. In your log -- by the way, a log is a very important thing, isn't it?

A. Yes, it is. It details what is occurring during the shift.

Q. And I believe you testified on your direct examination that your photo log has to include all the pertinent information, is that correct?

A. What I believe to be pertinent at that time, yes.

Q. Did you notice at that day whether there were any what you referred to as BM's at that range?

A. It is just an abbreviation for black males. We have to write quite quickly and that's just the way we do it.

Q. Did it appear to you on that day that the BM's were firearms instructors to the ME's?

A. That was my observation at that day, yes, it was.

Q. Could you share with us what an ME was?

A. That was my abbreviation for a Middle Eastern male.

Q. What from a surveillance point of view is a Middle Eastern male?

A. We have to categorize individuals that we observe, somewhat, in some way, and that was my observation that day, as, you know, when I see a black male, BM, male. When I see someone that I believe possibly is Middle Eastern or from a Middle Eastern origin, that is what I would place, ME male.

Q. Special Agent Fogle, if you would be so kind, could you tell the ladies and gentlemen of the jury what goes into your determination as to who you classify as an ME?

A. It's just a guess on my part. You know, I have to make some type of determination and that's what I put down, just based on my observation.

Q. On your observation of what?

A. Of that individual.

Q. On what about that individual?

A. What the person looks like.

Q. What does an ME look like?

A. It could range from just about anybody that

appears to be a Middle Eastern male. It's hard to put a specific reasoning on this. It's hard to pinpoint how I make that determination. I look at someone and I am going to categorize him on my log as that. I don't have a lot of time -- I can't go up to the person and ask them where they are from, so I make that opinion.

Q. Do you make the ME opinion based on information that you think is pertinent, regarding how that person appears to you?

A. That possibly plays into it if the person is dressed in a certain type of clothing, if there is some type of -- that's probably why I would put Middle Eastern male on some of these.

Q. Based on the clothing?

A. On the clothing and just on my observations.

Q. On your observation of what, other than the clothing?

A. Of that person --

Q. Excuse me, I haven't finished my question.

A. All right.

Q. On your observation of what in addition to the clothing, Special Agent Fogle?

A. Of that person, just looking at the person.

Q. Were some of the people that you have described as ME's wearing T-shirts, Special Agent Fogle?

A. Without looking at my log, I can't say that is what I wrote.

MR. STAVIS: May I approach the witness, your Honor?

THE COURT: Yes.

Q. I am showing you 3547B and Government's Exhibits 201 to 228. I would like to start at 7:50 a.m. I would like to know if any of the ME's are wearing non-Middle Eastern clothing.

A. On this exhibit --

Q. What exhibit are you referring to, Special Agent Fogle?

A. Exhibit 203. It appeared to me that they were Middle Eastern, so that's what I placed on my log.

Q. The individual to the right, what color does his hair appear to you?

A. Red.

Q. And what color does his beard appear to you?

A. Red. I listed him as a -- one as a Middle Eastern male and one just as a white male.

Q. You mean WM?

A. Yes. That's how I abbreviated it on this log.

Q. Did you ever use the abbreviation MM?

A. MM?

Q. Yes, Muslim male.

A. No, never.

Q. Did you think that the abbreviation MM might refer to both the BM's and the ME's at the same time?

MR. McCARTHY: Objection, relevance.

THE COURT: Sustained.

Q. Please look through the Government's Exhibits 204 through 228 and we will continue, and please make reference to your log.

A. On Exhibit 204, I have listed two unknown Middle Eastern or ME males carrying a white bag, blue jacket, book, exiting 552 Atlantic Avenue. That is back on frame 4 through 7, this picture here. I have an unknown Middle Eastern male and an unknown white male carrying a box and black bag.

Q. And the one on the left is ME?

A. That's what I describe him as, yes.

Q. Does he appear to be wearing a T-shirt?

A. Yes, black T-shirt.

Q. On what photograph is the next ME that you have described?

A. Frames number 9 and 10, which are --

Q. What government exhibits do those correspond to?

A. I believe it is Exhibit 203, which would be frames 9 and 10. I have them listed as two unknown Middle Eastern males carrying a white bag, blue jacket and book,

exiting, crossing the street.

Q. You have them listed as two --

A. Two Middle Eastern males.

Q. And that's the one that we just discussed a minute ago?

A. As the one with the red hair, yes.

Q. And you mistakenly described him -- withdrawn. You had previously described him as a WM, is that correct?

A. On my log, yes.

Q. And now you are describing him as an ME?

A. I am describing him just as I remembered it or I am reading it from the log as a Middle Eastern male, yes.

Q. And he is wearing a T-shirt, isn't he?

A. Yes, he is.

Q. You testified on direct examination this morning -- it's still the morning -- earlier this morning that as a special agent in charge of a surveillance team, you would have to make a decision as to whether or not someone needs to be followed. Do you recall that testimony?

A. Yes, but I wasn't in charge of the surveillance that day.

Q. You were just in charge of the photo log?

A. Yes, and taking the photos.

Q. And on that day, what factors determined for you whether or not someone needed to be followed?

MR. McCARTHY: Objection.

THE COURT: His testimony was he didn't make the decision, I think.

THE WITNESS: That wasn't my decision to make.

Q. Were you part of the team on that day?

A. Yes, I was.

Q. Was a decision made by the team or by anyone within the team as to whether or not someone needed to be followed that day?

A. By the team leader that day.

Q. Did the team leader consult with the members of the team in making a determination as to who needed to be followed on that day?

MR. McCARTHY: Objection.

THE COURT: I will allow it. Go ahead.

A. No, there was no discussion. He makes the decision. That's why he is in charge.

Q. Have you ever been a team leader?

A. Yes, I have.

Q. And on the days that you have been a team leader, have you been the one who decides who needs to be followed?

A. Yes, I have.

Q. You testified earlier this morning that there were different groups shooting at the Calverton range. Do you recall that testimony?

A. Yes, I do.

Q. How many different groups were shooting at the Calverton range on the morning of July 2, 1989?

A. Maybe three or four.

Q. Describe, if you would, the members of the three or four other groups who were shooting at the Calverton range on July 2 of 1989.

A. I don't recall the other groups. I just know that there were several groups out in. My focus was on the group that we followed out there.

Q. And in these four to five other groups that were shooting at the Calverton range that morning, did you make any notations in your photo log?

A. I would have to look at my photo log to be able to answer that question correctly.

MR. STAVIS: May I approach the witness, your Honor?

THE COURT: Yes.

A. OK, I recall this group as I refresh myself on this photo log.

Q. You did make a notation with regard to -- is that one or more than one of the other groups that were shooting at the Calverton range on that morning?

A. This one group that was just to the north of the group I was photographing.

Q. Did you take any photos of that group?

A. Yes, I did.

Q. Do you have those -- and those photos are at frames 20, 21 and 22, is that correct?

A. That's what it says on that photo log, yes.

Q. Could you describe for us the people in the other group who were shooting at the Calverton range?

A. Only one person really stands out in my mind. It was a white male, heavy build, looked like he had a large beer gut, shooting at what appeared to be a 6-inch .357 Magnum, and that's what got my interest in him at first.

Q. Were all the people in the other group, in one of the other four to five groups that were in the Calverton range on July 2, 1989, were all the members of that group WM's?

A. I don't recall.

Q. Well, do you know if there were any BM's in that group?

A. In the group that I marked on that photo log? I don't recall that either.

Q. Do you know if there were any ME's in that group?

A. I don't recall that.

Q. Did you ever go to the Calverton range prior to July 2 of 1989?

A. No, I didn't.

Q. Did you ever go to the Calverton range subsequent to July 2, 1989?

A. No, I haven't.

Q. On the day that you were there did you do any investigation concerning the Calverton range?

A. No, I didn't.

Q. Did the Calverton range appear to you to be open to the public?

A. Yes, it did.

Q. Approximately how many people in these four to five groups were present at the Calverton range on the morning of July 2, 1989?

A. Anywhere between 20 and 30. That's the best I can recall on, from five years ago.

Q. You stated that a woman came out to speak to you before you could enter the range. Do you recall that testimony?

A. I believe there was a gate or a box or a little booth that she was sitting in, and you pulled up to that and she came out and you paid your admission in.

Q. Did you notice if this woman spoke to the ME's who were in the group that you were surveilling -- excuse me -- the ME's and the BM's who were in the group that you were surveilling that morning?

A. No, I didn't make that observation at all.

Q. Did you speak to that woman when you entered the range?

A. All I asked was how much and she said five dollars, and that was the extent of my conversation, I recall.

Q. Do you know if that woman is the owner of the range?

A. I have no idea.

Q. Do you know if the name of that woman is Mrs. Schmelzter?

A. I have no idea.

Q. Do you know the name of the owner of that range?

A. No, I don't.

Q. You testified earlier this morning about checking permits at the range. Do you recall that testimony?

A. No, I don't.

Q. Do you recall saying that you were not asked for a permit when you entered the grounds of the Calverton range on the morning of July 2, 1989?

A. I don't recall saying that.

MR. STAVIS: May I approach the witness, your Honor?

THE COURT: Yes.

Q. Special Agent Fogle, I am showing you what have been previously marked as defendant Nosair Exhibits A8, A9

and A10, and I am going to show you them and ask you -- first I will ask you just to take a look at them.

What do these photographs depict?

A. A rifle or pistol range.

Q. Does that appear to you to be the Calverton range in Calverton, Long Island?

A. It looks similar. I can't say for sure.

Q. It looks similar?

A. Yes, it does.

MR. STAVIS: I offer these into evidence, your Honor.

MR. McCARTHY: No objection.

THE COURT: All right, A8, A9 and A10 are received without objection.

(Defendant Nosair Exhibits A8 through A10 were received in evidence)

Q. At the Calverton range there was a pistol section, is that correct?

A. I don't recall that there was any type of categorization. There were people shooting pistols and rifles side by side at this range when I was there.

Q. So you don't know if there was a different section for pistols or for rifles?

A. No, I don't.

Q. Do you know if there was a special war of urban

terrorism section at the Calverton range that morning?

MR. McCARTHY: Objection.

THE COURT: Sustained.

Q. When you were at the Calverton range that morning, you took photographs of people walking toward the targets, is that correct?

A. Yes, I did.

MR. STAVIS: May I approach the witness, your Honor?

THE COURT: Yes.

Q. And those photographs of people walking toward targets are depicted in Government's Exhibit 215, is that correct?

A. That is correct.

Q. 216, is that correct?

A. That is correct.

Q. 217, is that correct?

A. That is correct. They are standing by the targets by then.

Q. And 218 they are coming back from the targets, is that correct?

A. That is correct.

Q. Were there any moving targets at the Calverton range on the morning of July 2, 1989?

A. No, there wasn't.

Q. Were there any targets in the shape of police officers or anything like that at the Calverton range on the morning of July 2, 1989?

A. Not that I observed.

Q. And the targets depicted in Government's Exhibit 217 that the people were standing there were just ordinary targets, is that correct?

A. That is correct.

Q. Did you see anybody at the Calverton range on that morning going through any kind of obstacle course or anything like that?

A. No, I didn't.

Q. Did you see anybody in the Calverton range on the morning of July 2, 1989, crawling under barbed wire while people were firing live ammo over them?

A. No, I didn't.

Q. Did you see anybody that morning who was doing what appeared to you to be survival training or something like that?

A. No, I didn't.

Q. They were just shooting guns, right?

A. That's correct.

Q. Along with four or five other groups, is that correct?

A. Yes.

Q. No one was pitching a tent there for anything like that, were they?

A. No, they weren't.

Q. No one was hunting for their supper and making do with the surroundings, were they, that day?

A. No, they weren't.

Q. When you enter the Calverton range, the rules and regulations are posted right in front, aren't they?

A. They could be. I don't recall that.

MR. STAVIS: May I approach the witness, your Honor?

THE COURT: Yes.

Q. Special Agent Fogle, I am showing you what has been marked as Defendant's Exhibit A4 and ask you to take a look at that. Is that a sign that you recall being posted at the Calverton range on July 2 of 1989?

A. I didn't see that sign.

Q. Did you know that the sign was there?

A. No, I didn't.

Q. I am showing you what has been marked as Defendant Nosair Exhibit A6 and ask you to take a look at that. Does that appear to depict the entranceway to the Calverton range?

A. Possibly. It was five years ago. It's hard to say what that front entrance looked like.

Q. Would you like to look at your log to refresh your recollection, Special Agent Fogle?

A. That is not going to help tell me what the front of the pistol or rifle range looked like. I just drove right in.

Q. Was there a gate there?

A. Yes, I believe there was.

Q. Did the gate look like this gate?

A. It was similar.

MR. STAVIS: Your Honor, at this time I would offer into evidence Defendant's Exhibit A6.

MR. McCARTHY: May I have voir dire?

THE COURT: Yes.

VOIR-DIRE EXAMINATION

BY MR. McCARTHY:

Q. Directing your attention to Nosair A6, can you tell us, please, when was the last time that you were at the Calverton range?

A. July 2, 1989.

Q. Do you have any idea from looking at this photograph when this picture was taken during the course of the last say five years or so?

A. Absolutely not.

MR. McCARTHY: I object, your Honor.

THE COURT: Sustained.

BY MR. STAVIS:

Q. I am now showing you what has been marked as Nosair Defendant's Exhibit A5 and ask you to take a look at that. Does that depict the Calverton range?

A. I don't know.

Q. I am now showing you what has been marked as Nosair Exhibit A1. What is depicted in that photograph?

A. Two signs, one saying "Mount Hope Asphalt," and below that "Calverton Shooting Range, rifle, pistol, bow, shotgun and trap."

Q. Does the sign saying "Calverton Shooting Range, rifle, pistol, bow, shotgun and trap," appear to depict the sign on the road leading to the Calverton Shooting Range?

MR. McCARTHY: Objection, foundation.

THE COURT: Do you want to ask him whether he saw a sign?

A. When you got off Exhibit 71 of the Long Island Expressway, how did you get to the Calverton Shooting Range?

A. We traveled south on a road there -- I don't recall the route number -- and pulled off, I think it was a westbound turn up onto the range.

Q. Did you follow any signs to get onto the range?

A. I don't recall. There must have been a sign for us to see it there.

Q. Does this appear to be one of the signs that you

followed on that day on July 2 of 1989?

A. I really don't recall that sign.

Q. I am now showing the witness what has been previously marked as Nosair Defendant's Exhibit A2. I ask you to take a look at that photograph. Is that one of the signs that you followed to get to the Calverton range?

A. I really don't recall the signs out at the range there.

Q. I am now showing the witness what has been previously marked as Nosair Defendant's Exhibit A3 and ask you to take a look at that. Does that appear to be the front gate of the Calverton range?

A. I don't know.

Q. What did the front gate of the Calverton range look like on July 2 of 1989?

A. I don't recall.

Q. I am now showing you what has been marked as Nosair Defendant's Exhibit A7 and ask you to take a look at that. Does that appear to be a sign from the Calverton range?

A. It appears to be.

MR. STAVIS: I offer A7 into evidence, your Honor.

MR. McCARTHY: Foundation. Objection.

THE COURT: If you want voir dire I will give you

a voir dire, or I will rule on the record as it is now.

VOIR-DIRE EXAMINATION

BY MR. McCARTHY:

Q. Showing you Nosair A7 for identification, do you recall seeing the sign depicted in that photograph on July 2, 1989?

A. No, I don't.

Q. Do you know looking at this photograph when during the course of the last five years this photograph was taken?

A. No, I don't.

MR. McCARTHY: I object.

THE COURT: Sustained.

BY MR. STAVIS:

Q. You previously testified that this appeared to be at the sign that you saw in front of the Calverton range?

MR. McCARTHY: Objection.

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

(At the side bar)

THE COURT: Did anybody try for a stipulation on this?

MR. McCARTHY: We just got the photos this morning.

MR. STAVIS: I just got the photos, your Honor.

MR. McCARTHY: I don't know where he is going.

THE COURT: You didn't and you didn't.

(In open court)

MR. STAVIS: May I have my last question read back to the witness?

THE COURT: You mean the one that he answered?

MR. STAVIS: No. I asked a question and then we had a side bar, I believe, your Honor.

THE COURT: All right.

(Record read)

BY MR. STAVIS:

Q. Does this photograph, Nosair Defense Exhibit A7, appear to depict a sign at the Calverton range at the time that you were there?

A. I don't recall seeing any signs at that range.

Q. Do you recall if alcoholic beverages were forbidden at the range at Calverton on July 2, 1989?

A. I don't recall.

Q. Do you recall if children were required to stay in the cars that they came in at the Calverton range on July 2, 1989?

A. No, I don't recall that.

Q. Do you recall if people were not permitted to pick brass up at the Calverton range on July 2 of 1989?

A. I don't recall that either.

Q. Do you recall if onlookers were forbidden to be at the Calverton range on July 2, 1989?

A. I don't recall that.

Q. Do you recall if people were required to obey rules and regulations at the Calverton range on July 2, 1989?

A. Were they required to?

Q. No.

A. I don't recall. I wasn't shooting there.

Q. You weren't shooting there, but where were you at the Calverton range on July 2, 1989?

MR. McCARTHY: Objection.

THE COURT: Where with respect to what? Where with respect to the firing line?

Q. Are you able to answer that question?

A. Yes. I was in a vehicle at the time.

Q. And how far was that vehicle from the four to five groups that were at the Calverton range on July 2, 1989?

A. Twenty to 50 feet away.

Q. And the photographs that you were taking, were you using any special kind of lens at the Calverton range on the morning of July 2 of 1989?

A. No, just a 135 millimeter lens with a Canon F1 camera.

Q. Did you use a telephoto lens?
A. 135, no.
Q. Special Agent Fogle, what is the NRA?
A. It's the National Rifle Association.
Q. What kind of organization is that?
MR. McCARTHY: Objection.
THE COURT: Are you going to tie this up?
MR. STAVIS: Yes.
THE COURT: Good. I will allow it. Go ahead.
A. It's a lobbying group for weapons rights in the United States.
Q. Just a lobbying group, Special Agent Fogle?
A. It's a national organization for weapons rights. That's all I believe it to be.
Q. Are you a member of the NRA?
A. No, I am not.
Q. Do you know anyone who is a member of the NRA?
MR. McCARTHY: Objection.
THE COURT: Sustained.
Q. Do you know whether the NRA promotes gun safety?
A. I believe they do.
Q. Do you know if NRA members practice at places like the Calverton range?
A. I have no idea if they do or not.
MR. STAVIS: May I approach the witness, your

Honor?

THE COURT: Yes.

Q. I am showing you what has been marked as Government's Exhibit 211, and I direct your attention to a red vehicle on the bomb of that photograph. Do you see in the right half of the side driver window there appears to be a symbol at the bottom of that window?

A. Yes, I see that.

Q. Do you recognize that symbol, sir?

A. No, I don't.

Q. Would you like to take a closer look at it?

A. I can't tell what it is.

Q. Have you ever seen the symbol for the National Rifle Association, Special Agent Fogle?

A. Possibly on a magazine or on a car, but I don't really recall what it looks like.

Q. Is the symbol depicted in Government's Exhibit 211 the National Rifle Association symbol or emblem with which you are familiar?

A. I can't --

THE COURT: Sustained. He hasn't testified he is familiar with it.

Q. Does the emblem depicted in Government's Exhibit 211 at the bottom of the photograph on the right side driver windshield appear to be the NRA symbol that you have seen in

magazines?

A. It could be any symbol. I can't make a determination by that photograph.

Q. Drawing your attention to Government's Exhibit 212, same symbol, same window.

A. It's out of focus to see that emblem clearly. I can't make a determination by this photograph.

Q. I've got a magnifying glass.

A. Well, it doesn't bring the picture into focus. I still can't tell. It just makes it larger.

MR. STAVIS: Your Honor, the government has indicated that it will stipulate that the symbol in the photograph on Government's Exhibit 211 and 212 in the vehicle at the bottom on the right side --

THE COURT: No, it's the left side of the vehicle, the right side of the picture. It's the driver's side on the vehicle.

MR. STAVIS: That is correct -- is a National Rifle Association symbol.

THE COURT: So stipulated. Go ahead.

Q. Did you notice when you went to the Calverton range on July 2 of 1989 whether there was a truck selling hot dogs and other snacks?

A. I do recall that.

Q. Special Agent Fogle, on July 2 of 1989, did you

eat a hot dog at the Calverton range?

A. No, I never exited my vehicle.

Q. Are FBI agents allowed to eat hot dogs on duty, Special Agent Fogle?

A. Yes, they are.

Q. This truck, this hot dog truck that you noticed at the Calverton range on July 2 of 1989, did you notice whether any of the people from the four to five groups that were there on that day were eating hot dogs or approaching the hot dog man?

A. They had customers and they were from the range, so apparently yes.

Q. Did any of the ME's that you were looking at approach the hot dog van at the Calverton range on July 2 of 1989?

A. I don't recall who went up to that truck that day.

Q. Did anyone from the group of ME's that you were looking at on July 2 of 1989 go up to the hot dog truck?

A. I don't recall.

Q. Did you see whether people who went up to the hot dog truck got soft drinks and not hot dogs?

A. Some people did that.

Q. Did any of the people from the group of the ME's that you were looking at on July 2, 1989, get soft drinks

from the hot dog truck at the Calverton range?

A. I really don't recall who went up to that truck to buy either a hot dog or a drink.

Q. How many vehicles were there assigned to your surveillance team on that day?

A. Approximately five, I believe.

Q. And those five vehicles were following what you have described as a convoy?

A. Convoy of approximately three vehicles, yes.

Q. And those vehicles were going very slowly, weren't they?

A. At times, yes.

Q. And so were your five vehicles, weren't they?

A. That is correct.

Q. And you were just following along the whole way, you with your five vehicles from your surveillance team?

A. Yes.

Q. No high speed chases on the Long Island Expressway that day, were there?

A. Not between our group and their group.

Q. No weaving in and out from between cars, from between your four or five vehicles and the three vehicles of the group of ME's that you were surveilling on that day?

A. No, there wasn't.

Q. When you went to the Calverton range on the

morning of July 2, 1989, how did you know when you had arrived?

A. At the range, you mean?

Q. Yes.

A. I could see the range. I could see people shooting and I could hear the guns going off. So I knew I was at the range.

Q. In wasn't a sign announcing you are now at the Calverton range, was there?

A. As I recall, it was just a beat-up entrance, and I don't remember seeing signs.

Q. And there were no signs along the way that said you are almost at the Calverton shooting range?

A. I don't recall that.

MR. STAVIS: May I approach the witness, your Honor?

THE COURT: Yes.

Q. I am showing you Government's Exhibits 204 and 205. The man in the right, on the right of that photograph, on our right as we are looking at it, and we are on the same side here --

A. Right.

Q. I guess it would be on the jury's right as they are looking at it, right?

A. Right.

Q. I mean correct.

A. Correct.

Q. He is wearing a gray T-shirt, is that correct?

A. Yes, he is.

Q. And there appears to be a round white something or other in front of that T-shirt, is that correct?

A. Yes, sir, there is something like that.

Q. 205, is that the same -- the man on our right, that is also the gray T-shirt, is that correct?

A. Yes, it is.

Q. And it appears to have a round symbol on the T-shirt, right?

A. Yes.

Q. I would ask you to pay very close attention to that symbol and see if you can make out any words on that T-shirt. Hold on. I will be back with my magnifying glass.

A. I can make out the words "Service Office," and what appears to be "Afghanistan" in the very center of that shirt.

Q. I am now showing you what is in the process of being marked as Nosair Defendant's Exhibit C, and I ask you to take a look at that, and I would ask you to compare that with the T-shirt depicted in Government's Exhibit 205.

A. Yes, it appears to be very similar.

MR. STAVIS: Your Honor, I offer this T-shirt

into evidence.

MR. McCARTHY: No objection.

THE COURT: Defendant's Exhibit C is received without objection.

(Defendant Nosair Exhibit C was received in evidence)

Q. Agent Fogle, if you would be so kind, why don't you come off the witness stand with Government's Exhibit 205 and the T-shirt for just one second. Why don't you read the back of that T-shirt to the ladies and gentlemen of the jury.

A. On the top it says "Help each other in goodness and piety." On the bottom, "A Muslim to a Muslim is a brick wall." In the middle is "Service office." And there appears to be a map of Afghanistan with "Afghanistan" in the middle of it. On the bottom, 552 Atlantic Avenue, Brooklyn, New York 11217, and the phone number, 718-797-9207.

Q. And 552 Atlantic Avenue, that was the place where you began your surveillance that morning, is that correct, Special Agent Fogle?

A. That is correct.

Q. Please resume your seat.

THE COURT: Mr. Stavis, can you come to a reasonably convenient break point in the next five minutes or so?

MR. STAVIS: I will be finished in five minutes, your Honor.

THE COURT: Fine, good.

MR. STAVIS: You can put me on the clock.

Q. At the time that you were doing the surveillance to of 552 Atlantic Avenue, did you think that this T-shirt was, to use your words, pertinent?

A. No.

Q. You didn't note it in your report, did you?

A. I don't believe I noted any similarity to shirts or anything in my report, in my photo log.

Q. There were a lot of people that day wearing that T-shirt, weren't there, Special Agent Fogle?

A. If I recall, I remember two. There could have been more.

MR. STAVIS: May I approach the witness, your Honor?

THE COURT: Yes.

Q. I am now showing you, Special Agent Fogle, what have been marked as Nosair Exhibit D1, D2, D3, D4, D5, D6, and D7. I would ask you to take a look at them.

Do you recognize them?

A. They appear to be the photographs I took that morning.

Q. Do they appear to have numerous people wearing

the T-shirt in either black or gray that you identified just minutes ago?

A. Yes.

Q. And these are all photographs that you took on July 2 of 1989?

A. Yes, I believe so.

Q. When you were doing your surveillance at 552 Atlantic Avenue?

A. That is correct.

MR. STAVIS: Your Honor, I would offer Defendant's Exhibits D1 through 7 into evidence at this time.

MR. McCARTHY: No objection.

THE COURT: D1 through 7 are received without objection.

(Defendant Nosair Exhibits D1 through D7 were received in evidence)

MR. STAVIS: And I would ask that at an appropriate time Exhibit D and Exhibit C be published to the jury, your Honor.

THE COURT: Do you want to do it now? Why don't we do it now and break.

(Pause)

THE COURT: Ladies and gentlemen, we are going to break for lunch. Please don't discuss the case. Please

leave your materials behind. We will resume at 2:00.

(Jury excused)

THE COURT: You can step down.

THE WITNESS: Thank you, your Honor.

(Witness excused)

THE COURT: Is there anything else?

MR. STAVIS: No, your Honor.

MR. McCARTHY: Your Honor, I would like to take an opportunity, with the court's permission, over lunch to review my notes and make a determination as to whether we would like to file anything or not in response to the motion.

MR. STAVIS: I can't hear you.

MR. McCARTHY: I would like to have at least until after lunch to determine whether or not to file anything further with respect to this morning's proceedings.

THE COURT: Sure.

MR. McCARTHY: If we file anything, we can have it in by this evening.

MR. SERRA: Your Honor, Mr. Alvarez and I raised a certain matter in the robing room yesterday.

THE COURT: Yes. I will see you with the reporter now. Is that all right?

MR. SERRA: Yes. Thank you, Judge.

(Pages 2390 through 2392 sealed by the court)

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

2:00 p.m.

JAMES FOGLE, resumed.

(In open court; jury present)

THE COURT: Good afternoon, ladies and gentlemen. Mr. Wasserman.

CROSS-EXAMINATION

BY MR. WASSERMAN:

Q. Good afternoon, Agent.

A. Good afternoon.

Q. Were you aware that there was a flyer advertising the shooting at Calverton range outside 552 Atlantic Avenue?

A. No, I wasn't.

Q. Did you know what the building at 552 Atlantic Avenue was used for?

A. It was a religious mosque.

Q. And when you say religious mosque, did you know the name of that mosque?

A. I don't recall it. I might have known it then, but I mean it's five years.

Q. Were you briefed at all before you were sent out on this surveillance?

A. Not for this day, no.

Q. For prior days?

A. Well, at the beginning we're briefed basically

just with maybe a license plate of a car or just the location, given very brief facts, or about the spot that we're supposed to be surveilling.

Q. Were you told that at 552 Atlantic Avenue there was also the Afghan relief office, otherwise known as the Alkifah?

A. I don't recall that at all.

Q. Were you told the purpose of your surveillance?

A. It was a terrorism matter as I remember it to be.

Q. It was a terrorism matter. You weren't told what terrorism was involved?

A. International terrorism.

Q. International terrorism. Were you told what kind of international terrorism?

A. No.

Q. Was the word Afghanistan used at all in your briefing?

A. No, it wasn't.

Q. Was the name Moustafa Shalabi used in your briefing at all?

A. I don't remember.

Q. How about the name Fawaz Damra?

A. I don't remember that either.

Q. Were you ever told that there were alleged violations of Neutrality Act?

A. I think it was worked under a Neutrality Act slash terrorism. It was a combined matter.

Q. When you made your notation on your report, your log, did you put down a case name?

A. Yes, I probably did, yes.

Q. What do you mean you probably did?

A. I don't have the log in front of me to see, you know, to be sure.

Q. Who would have your log?

MR. MC CARTHY: Objection. This is the matter from this morning.

THE COURT: I'll allow it.

MR. WASSERMAN: Thank you.

A. It was the photo log that was shown to me earlier this morning. I don't know who has it right now.

Q. I'm sorry I didn't catch the last part?

A. I said it was the photo log that, the photo log that I had earlier today that was shown to me. I don't have it right now though.

Q. You kept two logs that day, correct?

A. I kept one. The team kept a separate surveillance log, and I did the photo log by myself.

Q. This photo log, who would have the original that you prepared?

A. Probably Mr. McCarthy.

Q. I see. If I show you --

MR. WASSERMAN: May I approach?

THE COURT: Yes.

Q. Take a look at that.

THE COURT: Indicating exhibit what?

MR. WASSERMAN: For identification, your Honor, it would be marked as Defense E, I believe.

THE COURT: No, no. Everybody in the courtroom is running on their own sequence.

MR. WASSERMAN: A.

THE COURT: Does it have an exhibit number?

MR. WASSERMAN: Mark it Defense A.

THE COURT: It's El-Hampton A. Is it a 3500 exhibit?

MR. WASSERMAN: Yes, Judge.

THE COURT: Use it.

MR. WASSERMAN: 3547B.

Q. Would you take a look at that document.

Using that document to refresh your recollection, will you take a look at the front page of that document. Where it says case caption, do you recall what you placed there?

A. No, I don't.

Q. Would the name Moustafa Shalabi or Fawaz Damra ring a bell?

A. It really doesn't.

Q. What would help you refresh your recollection, the original document in Mr. McCarthy's possession?

A. If it had the case caption, yes.

MR. MC CARTHY: Objection, relevance.

THE COURT: Sustained as to that.

Q. Your testimony is that you don't recall the specific nature of this purpose of this surveillance other than it was international terrorism; is that correct?

A. That's correct.

Q. And wouldn't it refresh your recollection as to the specific nature of the purpose of this surveillance if you could look at the original log you prepared with what you put down under the case caption?

A. Not really.

Q. That would have been your notation as to why you were out on surveillance, correct?

A. No. I was out there for a terrorism matter. Because the case caption had a certain name doesn't specifically mean that person or case caption is going to be at that location that day.

Q. You don't even recall today what that case caption was, correct?

A. No, that was five years ago, I'm sorry.

Q. I'm sorry?

A. I said it was five years ago, I'm sorry, I don't remember.

Q. And you haven't discussed what it was about with the prosecutors before your testimony today?

A. Other than it was a neutrality slash terrorism matter, no.

Q. Well, you say neutrality slash terrorism. What does neutrality have to do with your surveillance?

A. I was on a surveillance team. I wasn't briefed on the exact specifics of the case. We were told to go to a location, and to conduct a physical or photo surveillance. It wasn't our purpose to know every fact or circumstance surrounding these cases.

Q. You went out there with five cars; is that correct?

A. Yes.

Q. And you proceeded to follow the vehicles. There were three vehicles that left the 552 Atlantic Avenue?

A. That's correct.

Q. And if I may, I'm going to just refer to that as the Faroog Mosque. You followed these vehicles from the Faroog Mosque to Calverton, correct?

A. Yes.

Q. You followed them back from Calverton to the Faroog Mosque, correct?

A. No.

Q. No?

A. We dropped the surveillance after the vehicles exited the range, got back on to the Long Island Expressway, we put them westbound on the Long Island Expressway for about a couple of miles and then just broke off from there.

Q. At any time did the vehicles that you were following attempt to avoid your surveillance?

A. Not to avoid, but to conduct encounter surveillance. That would be my opinion the way they were driving.

Q. Your opinion is based upon your experience as a surveillance agent?

A. Yes.

Q. And because they were driving slow you felt that they were trying to detect surveillance, correct?

A. That's one, that's one way that subjects would try to find out if there were surveillance behind them. If you're driving forty miles an hour in a 55 mile zone on the Long Island Expressway where people normally drive a lot faster, you'd stand out.

Q. You mean by standing out --

THE COURT: Mr. Wasserman, the interpreter is having difficulty hearing. If you would try to pull the microphone toward you and speak into it. Thank you.

MR. WASSERMAN: You're welcome, your Honor.

Q. Your five vehicles were also driving slow, correct?

A. Yes.

Q. And you were following the three vehicles from the Faroog Mosque, correct?

A. That's correct.

Q. And is it your opinion that they detected your pursuit and your surveillance?

A. No, we alternated every, every other mile or so, people. We would pull off to the side of the road, let them get a couple of miles ahead. There was only one point vehicle making doing the surveillance.

Q. How many vehicles entered the Calverton range?

A. Just myself.

Q. And you shot your pictures from the car?

A. It was a van.

Q. From a van. Was there any attempt by the people you photographed to hide their faces?

A. No.

Q. Was there any attempt by the people you photographed to look around to see if they were being photographed?

A. They were observant, but I don't think they were looking for photographers.

Q. Now, you took what has been introduced into evidence as exhibit 201 to 228, correct, the photographs?

A. I believe so. I don't know the specific numbers.

Q. Well, those are the photographs that you took on July 2d, correct?

A. Correct.

Q. And did you take any photographs of Clement Hampton-El on July 2d?

A. Without looking at that photo, the photos that I took, I couldn't tell you.

Q. Would you take a look at the photos that you took.

A. If someone could bring them to me.

(Pause)

What was the person I'm looking for here?

Q. Clement Hampton-El?

A. No.

Q. Now, you observed a vehicle AXM442. Take a look at what I've previously given you as your photographic log.

THE COURT: Do you want to pose a question, Mr. Wasserman?

MR. WASSERMAN: Yes, Judge.

THE COURT: Please.

Q. Would you take a look at your log and on the next to the last page is there any entry that would refresh your

recollection as to one of the vehicles had the license AXM442?

A. Yes, I have an entry at 11:31 in the morning.

Q. That would be a blue green van; is that correct?

A. I have it listed as a blue GMC van, yes.

Q. And that's a van that left from the mosque at a 552 Atlantic Avenue?

A. That's correct.

Q. And how many people did that contain approximately?

A. I don't recall.

Q. Is there anything in that log that you prepared that would refresh your recollection? Would it be fair to say that you photographed everybody who exited that van?

A. No.

Q. What led you to choose who to photograph and who not to photograph?

A. The van was empty when I arrived at the range. I waited about ten minutes, ten to 15 minutes after their vehicle went into the range before I followed them in.

Q. And then you proceeded to take the photographs, correct?

A. That's correct.

Q. And what led you to photograph who you photographed?

A. From the previous surveillance at 552 that morning I remember most of the faces, and since they were all together in one group I photographed everyone who was in that group.

Q. Did you photograph anyone who was not in that group?

A. Yes, I did.

Q. Which photographs are they?

A. They're not part of the exhibit in this black binder.

Q. When you prepared your report was there any discussion concerning your surveillance activity?

A. I prepared my report when I received the film back from being developed on the 11th of July, and I handled the photo log just by myself, just did it, and turned it in.

Q. There was no discussion at the time concerning the Afghan Relief Office?

A. No, not at all.

MR. WASSERMAN: Okay, thank you very much.

THE COURT: Ms. Amsterdam.

MS. AMSTERDAM: I have a few questions, your Honor.

CROSS-EXAMINATION

BY MS. AMSTERDAM:

Q. Good afternoon, Agent.

A. Good afternoon.

Q. You're aware that the case on trial is captioned by the FBI as terrorstop. Is that correct?

A. Yes.

Q. Isn't it a fact that the 1989 investigation was not captioned terrorstop?

A. That's correct.

Q. And isn't it a fact that the 1989 investigation involved a violation of the Neutrality Act which is an Act of Congress, correct?

MR. MC CARTHY: Objection, competence, relevance.

Q. Isn't it a fact that the 1989 investigation was an investigation regarding support of Afghanistan, of people fighting in Afghanistan?

A. I never heard anything like that.

Q. You were at a relief organization which on its door said Afghanistan, and you never heard anything about the fact that the people at that location were funding support in Afghanistan?

Is that your testimony?

A. Yes, it is.

Q. Now, regarding the trip on the Long Island Expressway, you stated on your direct testimony, Agent, and correct me if I'm wrong, that that drive took a little bit over an hour?

A. As I recall, yes.

Q. And you also indicated that it was on a Sunday, July 2d?

A. Early Sunday morning, yes.

Q. That was the Sunday of the 4th of July weekend, I suppose?

A. Yes, it was.

Q. And it was a sunny summer day?

A. Yes.

Q. And you traveled eastbound on the Long Island Expressway to exit 71?

A. Yes.

Q. And that is the next to the last exit east on the Long Island Expressway, is it not?

A. Yes, I believe it is.

Q. And that exit, exit 71 exits at Riverhead, Long Island. Is that true?

A. I believe so.

Q. In Suffolk County, is that true?

A. Yes.

Q. Now, do you know the distance from New York to Riverhead?

A. From where in New York?

Q. From where the BQE enters the Long Island Expressway to Riverhead?

A. I guess forty miles.

Q. Forty miles?

A. Maybe more.

Q. Sixty miles would that be a more close approximation of the distance?

A. I guess.

Q. You guess?

A. I don't know the exact distance.

Q. Well, have you ever gone to Easthampton or Southhampton or Sag Harbor?

A. No, I haven't.

Q. You've never been out to exit 70 on the Long Island Expressway?

A. Yes, on the Long Island Expressway.

Q. Right. And from, on the Long Island Expressway exit 70 exits to go down to the southern towns Easthampton, Southhampton, Westhampton, correct?

A. I believe so. I haven't been down there.

Q. Have you ever made the trip from New York City to exit 70 in less than an hour?

A. Oh, yes.

Q. You have?

A. Yes, I have.

Q. Obeying the speed limit you've made it less than an hour?

A. No, I was probably responding somewhere, and --

Q. You probably had a siren on your car?

A. Possibly or just following traffic. They move pretty quick out there.

MS. AMSTERDAM: Thank you, officer.

THE COURT: Anyone else? Redirect?

MR. MC CARTHY: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. MC CARTHY:

Q. Agent Fogle, you were asked a number of questions about your use of the terms or initials BM and ME on the log. You recall that?

A. Yes, I do.

Q. Were those initials the only initials that you used in the log?

A. No, I used the initials WM, also.

Q. Do you use the initials UNK?

A. Yes, for unknown.

Q. How about GRN?

A. For green.

Q. By the way, how did you identify yourself on your log?

A. I didn't. Well, I signed the very last line and then initialed every entry that I observed.

Q. With respect to each of the observations that you

made on the log can you tell us how you identified yourself?

A. With my initials.

Q. I place before you 3547B. I see you already have a copy of that.

Do you have the original photographs there, sir?

A. Yes, I do.

Q. Can you open up, please, to Government Exhibit 201 in evidence. Would you remove the photograph from its sleeve, please. Turn to the back of the photograph. I'm not talking about the photocopy now. I'm talking about the photograph.

Now, can you explain to the ladies and gentlemen of the jury, using Government Exhibit 201 as a guide, how it is that you coordinate which photograph that you took on a particular day with which observation in your log?

A. All right. On the third line on the back it shows frame, and in line above that is the roll. I had the negatives, and would look to the roll of film and the exact frame under a magnifying glass, and comparing it with the developed photograph, and then mark it with that number.

Q. When is it that you make the markings on the back of the original photograph?

A. When I receive the developed pictures back.

Q. And the frame that's indicated on the back of the photograph coordinates to the frame in the observation in

your log?

A. Yes, it does.

Q. So that once you've made that comparison regardless of whether you've written ME or BM or whatever else you've written, you have a photograph for that observation; is that correct?

A. That's correct.

Q. You were asked some questions by Mr. Stavis, about four or five other groups that you saw out at Calverton that day?

A. Yes, that's correct.

Q. And you were asked whether there were any ME's or BM's that might have captured your attention in these other groups?

A. That's correct.

Q. The individuals that you happened to be watching on that day were you watching them because they were ME's or BM's?

A. No.

Q. With respect to the four or five other groups, did you see any of the people who were in those four our five other groups at the Faroog Mosque that morning?

A. No, I didn't.

Q. Did you see any of the individuals who were in that four or five other groups carrying boxes or blankets

out of the Faroog Mosque?

A. No, I didn't.

Q. Did you see any of them driving about forty miles an hour on the Long Island Expressway?

A. No, I didn't.

Q. Let me direct your attention by the way to the log. And ask you to turn to the second page of observations.

Looking at the second page of observations does that refresh your recollection as to how long it took you to get from Brooklyn to Calverton, Long Island?

MS. AMSTERDAM: I object, your Honor.

THE COURT: Overruled.

A. Yes, it does.

Q. How long was that?

A. We discontinued at 552 Atlantic Avenue at 9:15. I reinstituted the surveillance at Calverton at 11:30. Give 15 minutes for the time they went in, I would approximate maybe an hour and a half.

(Pause)

Q. Agent Fogle, you were asked some questions about the National Rifle Association, do you recall that?

A. Yes, I do.

Q. And Mr. Stavis showed you a photograph of a car with a National Rifle Association sticker?

A. Yes, I recall that.

Q. And do you recall he asked you whether you knew that the NRA promotes firearm safety?

A. Gun safety, yes.

Q. Let me direct your attention to what has previously been identified as Government Exhibits 277 and 278 for identification. Do you see those photographs?

A. Yes, I do.

Q. In looking at those photographs -- by the way, let me direct your attention also to Government Exhibit 218 in evidence. Do you see Government Exhibit 218?

A. Yes, I do.

Q. All right. Do you see the individual who has been identified in that photograph 218 in evidence, as Mahmud Abouhalima in 218A in evidence?

A. Yes.

Q. All right. Do you recognize any of the people depicted in Government Exhibits 277 and 278?

A. It look like the same person.

Q. Mahmud Abouhalima?

A. Yes.

Q. Do you notice whether Mahmud Abouhalima is wearing anything on his head in exhibits 277 and 278?

MR. STAVIS: Objection, referring to an item not in evidence.

THE COURT: Sustained.

A. Yes, he's wearing --

THE COURT: I sustained the objection. You don't answer the question.

THE WITNESS: Sorry, your Honor.

Q. Do you know whether wearing National Rifle Association regalia means a person promotes firearm safety?

MR. STAVIS: Objection, your Honor.

THE COURT: Sustained.

Q. I'm showing you now Government Exhibits 218B and 217B for identification. Do you recognize those photographs?

A. Yes, I do.

Q. What do you recognize them to be?

A. Pictures that I took at the Calverton range on July 2, 1989.

MR. MC CARTHY: Your Honor, the government offers 218B and 217B.

MR. STAVIS: These are already in evidence as 217 and 218?

THE COURT: They are blow-ups of 217 and 218.

MR. STAVIS: I have no objection.

THE COURT: 217B and 218 received without objection.

(Government Exhibits 217B and 218B received in

evidence)

Q. The person that we previously in 218B directed your attention to, this is the individual that we were just referring to, Mahmud Abouhalima?

A. Yes, it is.

Q. Are you able to see Mr. Abouhalima in this picture? Directing your attention to the middle with the white cap.

MR. STAVIS: Objection, your Honor.

THE COURT: Sustained.

MR. MC CARTHY: Thank you, your Honor.

THE COURT: Anything else?

MR. STAVIS: No, your Honor.

THE COURT: All right, you are excused.

(Witness excused)

MR. MC CARTHY: Government calls Edward Dustman.

Edward C. Dustman,

called as a witness by the government,

having been duly sworn, testified as follows:

THE COURT: If you could speak into the microphone.

THE WITNESS: Do you want me to repeat that, Judge?

THE COURT: No.

MR. MC CARTHY: May I proceed, your Honor?

THE COURT: Please.

DIRECT EXAMINATION

BY MR. MC CARTHY:

Q. Can you tell us how you are employed, sir?

A. I'm a Special Agent with the Federal Bureau of Investigation.

Q. How long have you been an FBI agent?

A. 22 years.

Q. How are you feeling today?

A. Not too good.

Q. Do your best if you could to keep your voice up so we can hear you?

A. Okay.

Q. Directing your attention to the summer months of 1989, can you tell us what your assignment was?

A. I was on a special operations group surveillance team.

MR. STAVIS: I'm sorry, I can't hear.

Q. Can you pull the microphone any closer to you, perhaps?

A. How about if I just sit forward? I was on a special operations surveillance team in New York.

Q. Directing your attention to July 9, 1989, were you on duty that day?

A. Yes, I was.

Q. What was your assignment?

A. I was a photography agent on a surveillance team.

Q. What were the weather conditions that day if you recall?

A. Clear and hot.

Q. Directing your attention to the late morning hours of July 9, 1989, can you tell us where you were conducting surveillance?

A. The late morning hours it was out in Calverton, Long Island at a firing range out there.

Q. Can you please tell us what it is that you observed at the Calverton range late that morning?

A. I observed and photographed several individuals who we had followed to that location firing weapons.

Q. You had followed them from what location to that location?

A. They were followed from Atlantic Avenue in Brooklyn to Calverton, Long Island.

Q. Were any of the men who you were following that day known to you by name at that time?

A. No.

Q. Do you recall how they traveled to Calverton?

A. I did not participate in the observation of them as they drove out there. I was in a van. It was our intention to keep the van out of notice. They were in a,

there were six, seven or eight of them in a blue van and two were in a vehicle, an automobile.

Q. When you got to Calverton and you set up your surveillance, about how many individuals did you observe and I'm talking about the group that we've been discussing, not other people who may have been out there?

A. At various times anywhere from eight to a dozen.

Q. Would you please tell us what type of weapons you observed this eight to a dozen people using?

A. They were using long guns, rifles, weapons with collapsible stock, semiautomatic type.

Q. Can you tell us what you mean by a collapsible stock?

A. It's a weapon that is easily concealed. It's a weapon that usually is associated with automatic weapons or semiautomatic weapons.

Q. Did there come a time in the afternoon hours on July 9th that the group that you were watching began to leave the area?

A. Yes.

Q. When they left the area can you please explain to the ladies and gentlemen of the jury what you did?

A. I, after they departed I waited a time and then I exited the van that I was in, that I was taking photographs from, and walked on down along the line where they were

firing from, and I picked up a couple of handfulls of shell casings in the area in which they were firing. Some were from one table and some was from the ground. And I also noticed that there was a roll of film, spent film, used film laying on the ground in the area where the van was, the blue van, and I picked that up, also.

Q. Let me back you up to the spent shells that you saw. Was there any way for you to tell from what you observed whether the spent shells that you picked up were actually fired by the men who you were watching?

A. No, there were just too many down there.

Q. With respect to the canister of film, what did you do with that?

A. Put it in my pocket. After we departed the area I put it in an envelope, noted on the envelope what it was, where I found it, and it was given to my team leader and it was sent with the log to the case squad.

Q. Did you ever examine the film itself?

A. No. You mean the prints?

Q. What I'm referring to, sir, is the canister of film that you picked up, did you open the canister and look at the contents?

A. No, no.

Q. Now, were you taking photographs that day?

A. Yes, I was.

Q. Were you taking color prints or black and white prints?

A. I was taking black and white prints.

Q. I think I placed a binder near you which contains Government Exhibits 231 through 262.

A. Yes.

Q. It also contains --

THE COURT: I'll ask the members of the jury not to look yet at those photographs until they are received in evidence. Thank you.

Q. It also contains, am I correct, 231A through 262A?

A. That's correct.

Q. Agent Dustman, I want to direct your attention first to 231 through 259; which would be I guess all except for the last three photographs in the book. What I want to know is, are those photographs that you took that day?

A. Bear with me a second while I just check on the back of them.

(Pause)

Q. Agent Dustman, was anyone else besides you taking photographs that day?

A. No, at least, if you're talking about my surveillance team?

Q. Yes.

A. No.

(Pause)

They're the photos I took, some of the photos.

Q. Pardon me?

A. They are some of the photos that I took.

MR. MC CARTHY: Your Honor, the government offers 231 through 259.

MR. PATEL: Objection, your Honor, foundation.

MR. MC CARTHY: Can I ask a few more questions, your Honor?

THE COURT: Sure.

Q. Do the photographs that you say you took which are marked for identification as Government Exhibits 231 through 259 fairly and accurately depict scenes that you personally observed on July 9, 1989, at the Calverton range?

A. Yes, they do.

MR. MC CARTHY: The government offers 231 through 259.

MR. PATEL: No objection.

THE COURT: 231 through 259 are received without objection.

(Government Exhibits 231 through 259 received in evidence)

MR. MC CARTHY: The government also offers 231A through 259A.

MR. PATEL: There has been a previous objection.

THE COURT: Same ruling.

(Government Exhibits 231A through 259A received in evidence)

Q. Agent Dustman, now let me direct your attention, please, to 260, 261 and 262.

A. Okay.

Q. Did you take the photographs that are marked 260 through 262?

A. No, I did not.

Q. Do the scenes depicted in the photographs 260 through 262 fairly and accurately depict scenes that you observed that day from a different angle?

A. Yes, they do.

Q. There are persons who are -- withdrawn. Are those photographs -- I'm sorry.

260 through 262, are they black and white prints or color prints?

A. No, they're color prints.

(Continued on next page)

Q. The persons who are depicted in those photographs, have you compared the clothing that they appear to be wearing in those photographs with the clothing they are wearing in the photographs that you took?

A. Yes, I have.

Q. What is the result of the comparison?

A. Same clothing.

Q. Directing your attention to the scene depicted in 260 through 262, can you compare that to the scene depicted in the other photographs 231 through 259?

A. Yes, I can.

Q. What is the result of that comparison?

A. It's the similar, same.

MR. McCARTHY: Your Honor, the government offers 260 through 262.

MR. PATEL: Objection, your Honor. May I have a moment? I would like to voir dire on this point.

THE COURT: You want to voir dire?

MR. PATEL: Yes.

VOIR-DIRE EXAMINATION

BY MR. PATEL:

Q. Would you look at the photograph marked 260 for identification.

A. All right.

Q. Could I ask you, do you observe some trees in the

background?

A. No, I don't.

Q. In 260?

A. In 260, yes, I do.

Q. 261?

A. Yes.

Q. Trees in the background?

A. Yes.

Q. 262, trees in the background?

A. That is correct.

Q. Could you look at 231 through 259. Could you tell me the exhibit number where those trees appear in the background?

A. No, they don't.

Q. Agent, are these photographs taken -- withdrawn.

Do you see in Government's Exhibit 243 in evidence, in the lower left-hand corner there is a 52?

A. Yes.

Q. Do you see that 52 in any of Government's Exhibits 260, 261, or any of the photographs that have been marked for identification, 260, 261 and 262?

A. No, but I see the oil can and the table and the individuals.

Q. There are oil cans in numerous parts of the range, is that fair to say?

A. I don't know if there are oil cans in numerous parts of the range.

Q. Are you familiar with the entire range?

A. No.

MR. PATEL: We will get to that later, your Honor.

I object to the admission of these photos.

MR. McCARTHY: May I ask a few more questions, your Honor?

THE COURT: Yes.

BY MR. McCARTHY:

Q. Agent Dustman, where did you tell us you picked up the van?

A. In the area where the blue van was parked.

Q. And directing your attention, just so we are clear, to, say, Exhibit 259 in evidence, do you see the van you are talking about?

A. Yes.

Q. Let me direct your attention also to 258 and 249 in evidence. Do you see the van?

A. Just a second. Yes.

Q. Were the men firing in the vicinity of the van?

A. Yes, they were.

Q. Let me show you what I have marked for identification as Government's Exhibits 261B and 262B. Do

you see the scene depicted in those blow-up photographs?

A. Yes, I do.

Q. Can you compare them to what has been marked as 261 and 262?

A. Yes. These are enlargements of these two photos.

Q. Let me direct your attention on the enlargements, sir, on 261, to the left side of the photograph, the left edge of that blow-up photograph.

A. Yes.

Q. Can you tell us, please, what it is that you see on the left side of the photograph?

A. A bluish colored door.

MR. PATEL: I didn't hear the witness's answer.

A. A bluish colored door.

Q. Showing you again 262B for identification and again directing your attention to the left side of the photograph, can you tell us what you see there?

A. The blue colored door.

Q. A blue colored door that appears to be a door to what?

A. A van.

Q. Mr. Patel just showed you photographs that showed trees in directing your attention to, I guess, 260, 261 and 262.

A. Yes.

Q. Are the photographs that you took that day taken from the same angle as the photographs that were taken in 260, 261 and 262?

A. No.

Q. Can you explain to the ladies and gentlemen of the jury how they are different?

A. The photographs I took were taken -- if you were standing where this van is, were taken from further to the rear, approximately 75 to 100 feet to the rear, and facing the firing line, and they would be to the left of the van, and they were cutting across. Without putting the trees, I would have dunes in there.

Q. How about the other photographs, 262 and 263? What angle were those?

A. It is the same angle.

Q. I am talking now about the photographs you didn't take.

A. Right.

Q. Comparing them to the angle of the photographs that you did take.

A. The angle, it's not the same.

MR. McCARTHY: Your Honor, the government offers 260, 261, 262, 260 through 262A, and the blow-up photographs 261B and 262B.

MR. PATEL: No objection.

THE COURT: 260 through 262, A and B, to the extent there are B's, are received without objection.

(Government's Exhibits 260, 261, 262, 260A, 261A, 262A, 261B and 262B were received in evidence)

Q. Agent Dustman, can you briefly describe the scenes depicted in Exhibits 260, 261 and 262?

A. Individuals are firing weapons and there are individuals there instructing them in the firing of weapons.

MR. PATEL: Objection, move to strike.

THE COURT: You can cross on it. Go ahead.

Q. Drawing your attention to Exhibit 262 and 262A in evidence, am I correct that there is a person in the middle wearing what appears to be a blue outfit on the top and a form of a hat, who has been identified as --

THE COURT: I should point out to the jurors that these exhibits have been received, so you can now look at them, if you wish.

MR. McCARTHY: Sorry. We are on 262.

Q. Directing your attention to 262 and 262A, do you see the man in the middle of the photograph, that is, 262?

A. Yes.

Q. And the identification on 262A that reads Abdul Rashid, Clement Hampton-El?

A. Yes, I do.

Q. And directing your attention to the left side of

that photograph and comparing it to 262A in evidence, do you see the identification of Mahmud Abouhalima?

A. Yes, I do.

Q. Inviting your attention to the photographs that you took, 231 through 259, are the persons who have been identified as Mr. Hampton-El and Mr. Abouhalima depicted in some of those photographs?

MR. PATEL: Objection.

THE COURT: Overruled.

A. Yes.

Q. Can you tell us generally what you observed in the scenes depicted in those photographs? I am not asking you to run through the whole bunch of them. Just tell us generally and briefly what it is that you observed.

A. Individuals are firing weapons, individuals are appearing to be giving instructions on the firing of those weapons.

MR. PATEL: Objection, your Honor. Could we have --

THE COURT: Overruled.

MR. PATEL: Could I ask for a brief side bar, your Honor?

MR. McCARTHY: I am almost done. I need one more question.

Q. Let me direct your attention to 259 in evidence.

A. OK.

Q. I am pointing you to the weapon that is leaning against the table in that photograph.

A. Yes.

Q. Can you describe that weapon, please.

A. It is a weapon with a collapsible stock, a long weapon with a collapsible stock.

MR. McCARTHY: I have nothing further at this time.

THE COURT: Cross, Mr. Patel?

MR. PATEL: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. PATEL:

Q. Agent Dustman, my name is Andrew Patel. Have we ever met before?

A. Not that I know of.

Q. Have we ever spoken before?

A. No.

Q. Is it safe to say in your 23 years with the FBI this is not the first time you have been in a courtroom? Is that fair?

A. That is correct.

Q. How many times have you testified before?

A. Twenty, 25, in court.

Q. Additional time in the grand jury?

A. About another dozen.

Q. I am sorry.

A. I am sorry, about another dozen.

Q. Thank you.

On July 9, 1989, you were part of a special operations group assigned to the Joint Terrorist Task Force?

A. No. Our unit was a special operations surveillance team that happened to be -- I am sorry, yes. I take it back. Yes, we were in effect assigned to that.

Q. What time did you come to work that morning?

A. It was approximately 6:00 in the morning, I think, between 6, 7:00 when we formed up. I can't be sure. I would have to look at the log.

Q. Do you have a log that would tell you what time you reported to work?

A. Do I have a log? Do you have one?

MR. PATEL: If I may approach, your Honor.

Q. Let me show you what has been marked 3548A, if this will help.

A. It was 7:00 a.m. We probably got there a little bit earlier than that.

Q. Is that when you got -- that is when your surveillance began?

A. That's right.

Q. Before your surveillance began, did you go to a

meeting with some other agents?

A. Yes, we did.

Q. What time was that meeting held?

A. Probably in the area of 6:30.

Q. Where was that meeting held?

A. If I am correct, it was further west on Atlantic Av, towards the river, in Brooklyn.

Q. I am sorry.

A. In Brooklyn.

Q. In Brooklyn.

Before July 9, 1989, had you had a team meeting to plan this surveillance?

A. To the best of my knowledge, no. I was just told -- this is the first time I had worked on this. I was told to be in that area and we would form up there.

Q. Who told you?

A. Team leader.

Q. When did he tell you?

A. That I am not sure. I would say it was probably the Thursday or Friday before the date.

Q. Did he tell you what equipment to bring with you?

A. Told me to bring cameras -- camera, my camera.

Q. Is that your personal camera or a camera that belongs to the bureau?

A. The bureau camera.

Q. What lenses did you bring for that camera?

A. Number one, it was a T70 Canon camera.

Q. I am sorry.

A. It was a T70 Canon camera. In the kit there was a 50 millimeter lens and there was a 70 to 200 millimeter lens, extendable.

Q. Agent, the camera that you had with you was a 35 millimeter camera?

A. Yes.

Q. In 35 millimeter cameras a 50 millimeter lens is what we call a normal lens?

A. That is correct.

Q. As the numbers go higher it is a telephoto lens?

A. That is correct.

Q. And as the numbers go below 50 that is a wide angle lens?

A. That is correct.

Q. So the zoom lens that you had was to some degree a telephoto lens, is that fair to say?

A. Yes.

Q. And you had brought this with you from where?

A. It was my equipment that I had. It was Bureau equipment that I kept with me.

Q. You keep that in your personal vehicle?

A. Yes, I do. By personal vehicle, in my government

vehicle, not in my personal vehicle.

Q. So when you went out on the 9th, you were using a Bureau vehicle?

A. That is correct.

Q. Did you have a video camera with you?

A. I didn't, no.

Q. Did any of the other members of your team have a video camera?

A. To the best of my knowledge, no.

Q. Had you had a meeting at any point to discuss what equipment you would bring with you?

A. Just the team leader told me to bring my camera.

Q. So you have no idea what other equipment other people had?

A. No.

Q. Did you have a radio with you?

A. Yes, I did.

Q. Did you have a cellular telephone with you?

A. No.

Q. What kind of vehicle were you in?

A. I was in a van.

Q. Is that a surveillance van?

A. Yes, it was.

Q. And a surveillance van has darkened windows?

A. Yes. This one did.

Q. Did this one have a periscope?

A. No.

Q. Does the Bureau have surveillance vans with periscopes?

MR. McCARTHY: Objection.

THE COURT: Sustained.

Q. The surveillance van that you were in, did it have any recording equipment in it?

A. No.

Q. Had you brought a shotgun microphone with you?

A. No.

Q. Had you brought any --

A. Excuse me. Could you define shotgun microphone?

Q. Had you brought any listening device that would enable you to overhear conversations from a distance?

A. No.

Q. So is it fair to say that when you took these photographs, that is, photographs 231 through 259 in evidence, you could not hear what any of those people were saying to each other?

A. That's correct.

Q. And looking at the color photographs in the back, 260 through 262, I believe --

A. Yes.

Q. You couldn't hear what any of those people were

saying, could you?

A. That's correct.

Q. The van, did that have a computer in it for running license plate numbers?

A. No, it did not.

Q. Are you familiar with a computer that runs license plates?

A. I am familiar with it, I have never used it.

Q. Could you explain what it is to the jury?

A. Basically you call up a code, punch the number on in, and see what it comes back to.

Q. What information is it that comes back over this computer?

A. Normally it would be based on that license, who the vehicle is registered to, and the type of vehicle.

Q. Is it fair to say that one of the purposes of doing this surveillance was to record license plates on vehicles?

A. Yes.

Q. The Calverton range that you did this surveillance in, that is located in Suffolk County, is it not?

A. Yes.

Q. There are state police officers or state police officers stationed in Suffolk County, are there not?

A. Yes, there are.

Q. So if you had needed a state trooper to make a stop of a vehicle, you could have arranged that over the radio you had?

A. I couldn't have, the team leader could have.

Q. And if you had observed -- in your 22 years in the Bureau, you are familiar with the term pretext stop, are you not?

A. Yes.

Q. That is a stop that is made for some apparent violation of law, but the true purpose is to find out the identification of people in the vehicle?

A. I would say that is my understanding. I never made one, so I really don't --

Q. You are familiar with the term?

A. I am familiar with the term.

Q. On July 9, 1989, did your team leader or were you aware of a pretext stop being made to identify the people in the van or that vehicle that you surveilled?

A. No.

THE COURT: Mr. Patel, could you come to a convenient break point in the next five minutes?

MR. PATEL: This would be fine, your Honor.

THE COURT: Ladies and gentlemen, we are going to take a short break. Please leave your notebooks and other

materials behind. Please don't discuss the case. We will resume in a few minutes.

(Recess)

(Jury not present)

THE COURT: Mr. Wasserman?

MR. WASSERMAN: Your Honor, I would just like to renew with respect to this witness Agent Dustman my application that was made previously for the redacted portion --

THE COURT: Denied. That has been covered. That subject has been covered.

MR. WASSERMAN: Your Honor, I think it came out --

THE COURT: It has been covered. Take your seat. Let's go.

(Jury present)

MR. PATEL: May I, your Honor?

THE COURT: Please, Mr. Patel.

(Continued on next page)

BY MR. PATEL:

Q. Basically one more question, Agent Dustman. Agent Dustman, I would ask you to take a look through photographs you took 231 in evidence through 259 in evidence, and also 260 through 262 in evidence, and I would ask you, would it be fair to say that in none of those photographs is Mr. Nosair depicted?

A. I am not even sure who Mr. Nosair is, sir, so I can't be sure. Do we have a photo of Mr. Nosair?

MR. McCARTHY: We will stipulate, your Honor.

THE COURT: The government has offered to stipulate that Mr. Nosair is not depicted in those photographs.

MR. PATEL: Thank you, your Honor.

THE COURT: I take it you accept the stipulation.

MR. PATEL: Yes, I do.

THE COURT: Mr. Ricco.

CROSS-EXAMINATION

BY MR. RICCO:

Q. Your Honor, I would like to show the witness a document which has been identified as 3548, and I would bring your attention to this particular item. Please take a look at it, if you would.

A. Do you want me to read it out loud?

Q. No. Agent Dustman, you testified on

cross-examination by Mr. Patel that one of the things that happened on the date that you were at Calverton's was that license plate numbers were recorded.

A. Yes.

Q. And those license plate numbers were what we in the colloquial sense would call, you ran the license plate numbers, is that right?

A. I didn't.

Q. But they were run, isn't that right?

A. At some point. I don't know when they were run, though.

Q. But you know that they were run?

A. In all probability, yes, they were.

Q. I would like to direct your attention to the first page of 3548. That is a report of the surveillance that took place on that day, isn't that correct?

A. It is the cover sheet.

Q. One of the things that you did was record in your report those plates that were observed that day. When I say you, I mean the group.

A. OK.

Q. Is that correct?

A. That's correct.

Q. And some of the plates that were recorded were deemed to be nonpertinent, isn't that correct?

A. At that time, yes. That was a judgment. Maybe they were pertinent, but from what we saw or I saw, I determined nonpertinent.

Q. One of the plates was determined to be pertinent because the plate was ran, isn't that correct?

A. Again, I was not running them. I am assuming they were or perhaps they had that plate from some other time.

Q. OK, but a plate was run and it came back with an address 3607 30th Street, Long Island City, New York, isn't that correct?

MR. McCARTHY: Objection.

A. I do not know.

Q. If you know.

THE COURT: Sustained.

Q. You don't know?

A. I don't know.

Q. Can you tell us what agents ran the plate numbers on that day?

A. I will look through this, but I don't know if I can tell from that. Again, you have to realize I was in a totally different vehicle relaying information back to other agents who were doing these things.

Q. Please look through the document and tell us if you can. If you can you can, and if you can't you can't.

A. I can't.

Q. Just a few more questions. The purpose of the report, or one of the purposes of the report is to memorialize what you and your fellow agents are doing at that particular time and place, isn't that correct?

A. Yes.

Q. By memorializing the information in this report, it helps you when you come to testify maybe one, two, three, four, five years later, isn't that right?

A. Yes.

Q. In fact, you don't really have an independent recollection of many of the details, isn't that right?

A. I have a recollection of some of the details but not all of them.

Q. Of course, and the report helps you fill in the gaps, isn't that right?

A. That's correct.

MR. RICCO: I have no further questions.

THE COURT: Cross.

MR. WASSERMAN: Thank you.

CROSS-EXAMINATION

BY MR. WASSERMAN:

Q. Good afternoon.

A. Good afternoon.

Q. Did you observe any rockets being fired at the

range?

A. No, I didn't.

Q. Any grenades, anything like that?

A. No, I didn't.

Q. When you took these pictures, you took what has been marked into evidence as 244. Could you take a look at that, please.

A. OK.

(Continued on next page)

Q. Could you tell the jury what you see in that photograph?

A. 244 I see two individuals, one identified as Abdul, and I'm reading from 244.

Q. I'm close, and I have --

A. I see two individuals, one of who is identified on Exhibit 244A as Abdul Rashid Clement Hampton.

Q. And what is he doing in photograph 244?

A. Abdul Rashid?

Q. Yes, sir.

A. He appears to be either walking towards or limping towards the van or just standing there.

Q. Would you turn your attention to 253, please. What is he doing in 253?

A. Shaking hands and leaning on crutches.

Q. Are you aware of the reason why he had crutches at that time?

A. No, I am not.

Q. Had you been briefed at all prior to this assignment as to the purpose of the assignment?

A. Just about two days beforehand being told to met in a specific location, and bring camera, and bring the van, and approximately a half hour before when we met, the specifics of the assignments were given out.

Q. When you filled out your photo log which has been

marked for identification as 3548B -- do you still have a copy up there, sir?

A. No, I don't.

Q. Okay, let me bring it up.

MR. WASSERMAN: Your Honor, may I?

Do you recall what the name of the assignment was?

A. No, I don't.

Q. Would you have indicated the name of the assignment or the case caption on the front of your log for that day, your photo log?

MR. MC CARTHY: Objection, relevance.

THE COURT: Sustained.

Q. You inserted on the front page of your log notations as to the purpose of your assignment or the term describing your assignment; is that correct?

MR. MC CARTHY: Objection, relevance.

THE COURT: Sustained.

Q. Do you recall when you prepared a log of photographs that you are taking on the cover sheet do you indicate what the name of the assignment is?

MR. MC CARTHY: Objection, relevance.

THE COURT: That's strike three.

Q. At this time it's your testimony that you have no recollection of that; is that correct?

A. Of the name of the assignment.

Q. That's correct?

A. That's correct.

Q. And would you turn your attention back to photograph 244. Now that you've had a moment or two, is it your testimony that, what is your testimony concerning what you see in that photograph?

MR. MC CARTHY: Objection to the form of the question.

Q. Does it, does that photograph depict an individual praying, if you take a look at it?

A. Not to me.

Q. Not to you?

A. No.

Q. Is that based upon your knowledge of how Muslims pray?

A. No, just, you just asked me a question if it depicts someone praying and, to me it doesn't.

Q. And the basis of your knowledge as to what depicts someone praying is what? Does the basis of your knowledge include observations of Muslims at prayer?

A. No.

Q. You testified that you observed and photographed 260, 261 and 262; that although you did not take them yourself they were fair and accurate representations of what

you had observed. Is that correct?

A. Yes, they're much better photos than the ones I took.

Q. You testified that it appeared to you that the gentleman in 262, my client, Clement Hampton-El, is instructing someone in how to fire a weapon; is that correct?

A. That's what it appears to me.

Q. Now, did he instruct anyone else that day?

A. I have to look through the photos.

Q. I'm sorry?

A. I have to look back through the photos.

Q. Please do.

(Pause)

A. I don't see any.

MR. WASSERMAN: Thank you. No further cross.

THE COURT: Any redirect?

MR. MC CARTHY: No, thank you, your Honor.

THE COURT: You are excused.

(Witness excused)

MR. MC CARTHY: Government calls Michael Oyler.

MICHAEL RICHARD OYLER,

called as a witness by the government,

having been duly sworn, testified as follows:

MR. MC CARTHY: May I proceed, your Honor?

THE COURT: Please.

DIRECT EXAMINATION

BY MR. MC CARTHY:

Q. Good afternoon, Agent.

A. Good afternoon.

Q. Tell us how you are employed, please?

A. Yes, sir, I'm a Special Agent with the FBI.

Q. How long have you been an FBI agent?

A. Approximately 11 and a half years.

Q. Can you tell us, please, how you were assigned in July of 1989?

A. Yes, sir. At that date I was assigned to special operations 9 in New York City which is attached to the Joint Terrorist Task Force.

Q. Did you conduct surveillance in that assignment?

A. Yes, sir, I did.

Q. Let me direct your attention to July 16, 1989. Were you on duty that day?

A. Yes, sir, I was.

Q. Can you tell the ladies and gentlemen of the jury what your assignment was?

A. Yes, sir, on that day I was conducting a surveillance of a residence at an address at 552 Atlantic in Brooklyn, New York.

Q. Did there come a time later in the day that you

moved your surveillance to a different location?

A. Yes, sir.

Q. Can you tell us what that location was?

A. It was the Calverton firing range in Long Island.

Q. Were you taking photographs that day, Agent?

A. Yes, sir, I was.

Q. I placed a binder on the witness stand which I believe contains Government Exhibits 265 through 278, and 265A through 278A for identification.

Do you recognize the scenes depicted in those photographs?

A. Yes, sir, I do.

Q. Did you take those photographs, Agent?

A. Yes, sir, I did.

MR. MC CARTHY: Your Honor, the government offers 265 through 278, and 265A through 278A.

MR. PATEL: Objection, foundation.

THE COURT: There has been an objection to foundation.

Q. Agent Oyler, let me direct your attention 265 to 278. Can you tell us, please, what it was that you were doing on the afternoon of July 16, 1989?

A. What I was doing?

Q. Yes.

A. At the Calverton firing range I was taking

photographs of five individuals who were at a stand here at the range shooting weapons.

Q. Let me direct your attention first to Government Exhibits 265 through 267. Do you recognize the scenes depicted in those photographs?

A. Yes, sir, I do.

Q. Do you recognize the persons depicted in those photographs? I'm not asking if you know their names. I'm asking if you recognize them?

A. Yes, sir.

Q. Are the scenes that are depicted in these photographs scenes that you observed that day on July 16, 1989?

A. Yes, sir, they are.

Q. And in observing those scenes did you take these photographs?

A. Yes, sir.

MR. MC CARTHY: Your Honor, the government offers 265 through 267.

MR. PATEL: No objection.

THE COURT: 265 through 267 are received without objection.

(Government Exhibits 265 through 267 received in evidence)

Q. Can you describe to us briefly what is going on

in exhibits 265 through 267 and perhaps we can wait a moment so the jury can find theirs.

THE COURT: Those have been received. You can now look at them.

MR. MC CARTHY: I also offer 265A through 267A.

THE COURT: Same ruling.

(Government Exhibits 265A through 267A received in evidence)

Q. Agent Oyler, can you describe the scenes depicted in 265 through 267?

A. Yes, sir. The individual in the light blue shirt with the earphones on his head was at that time assembling a rifle on this bench, and at the same time conversing with the individual in the white short sleeve shirt with the beard.

Q. Thank you.

Let me direct your attention now, but not the jury's, to 268 through 272.

Agent Oyler, do those photographs in the numbers that I've just mentioned depict scenes that you observed on July 16, 1989 while out on surveillance at Calverton, Long Island?

A. Yes, sir, they do.

Q. Did you take those photographs?

A. Yes, sir, I did.

Q. Do the photographs fairly and accurately depict the scenes that you observed that day?

A. They do.

MR. MC CARTHY: Your Honor, the government offers 268 through 272 and 268A through 272A.

MR. PATEL: No objection.

THE COURT: Those exhibits are received without objection. Go ahead.

(Government Exhibits 268 through 272 and 268A through 272A received in evidence)

Q. Can you please describe for us briefly the scenes depicted in 268 through 272?

A. Yes, sir. From 268 to 272 the photographs I took show three of the individuals that we surveiled that day firing this rifle at a target that's out of view of the picture.

Q. Let me direct your attention to 273 through 278. Again, just your attention, not the jury's because they're not in evidence yet.

Have you looked at --

A. Yes, sir, I am sorry.

Q. Do you recognize the scenes depicted in those photographs?

A. Yes, sir, I do.

Q. Do you recognize the person depicted in those

photographs?

A. Yes, sir.

Q. Are those photographs that you took?

A. Yes, sir, they are.

Q. Do the photographs fairly and accurately depict scenes that you observed on July 16, 1989 in Calverton, Long Island?

A. Yes, sir, they do.

MR. MC CARTHY: Your Honor, the government offers 273 through 278, and 273A through 278A.

MR. PATEL: Your Honor, I have a 403 objection to this batch.

MS. AMSTERDAM: I would join in that application, your Honor.

THE COURT: Overruled.

(Government Exhibits 273 through 278 and 273A through 278A received in evidence)

Q. Agent Oyler, directing your attention to exhibit 273, do you see the person depicted in that photograph?

A. Yes, sir.

Q. Turning over to 273A, that's the photostat on the back of the photograph, do you see the name Mahmud Abouhalima identifying that photograph?

A. Yes, sir, I do.

Q. Does Mr. Abouhalima appear to have a hat on his

head?

A. Yes, sir, he does.

Q. Can you tell us what the emblem on the hat is?

A. Well, sir, at the time I took the photos I didn't recognize it, but now looking at the photos now it's a National Rifle Association hat. The emblem on the crest, and then with, you know, the yellow olive branches on the bottom of the hat.

Q. You mean on the bill of the cap?

A. The bill, yes.

Q. Directing your attention from 273 through 278, could you tell us, please, the scenes that are depicted in those photographs and describe them briefly?

A. 273 to 276?

Q. 273 -- I'm sorry. 273 through 278.

A. Well, sir, the scenes that I took photos of is of Mr. Abouhalima and four of the other individuals that we surveiled from 552 Atlantic to the firearms range, either standing by the blue van or in conversation or handling the weapons.

MR. MC CARTHY: Thank you. Your Honor, I have no further questions.

MR. PATEL: Your Honor, could I have two minutes?

THE COURT: Sure.

MR. PATEL: If anyone else has a question.

THE COURT: Anyone else? Mr. Ricco.

CROSS-EXAMINATION

BY MR. RICCO:

Q. Good afternoon, Agent Oyler. With the Court's permission I'd like to approach the witness.

THE COURT: Go ahead.

Q. The record should reflect the witness has 3549A. Agent Oyler, as a part of your responsibilities and duties on that day you would, you were required to record the information that you observed, isn't that correct?

A. Yes, sir.

Q. And the information was ultimately recorded in a surveillance report?

A. Yes, sir.

Q. And that surveillance report not only included what you photographed, but also observations that were made by members of the group?

A. Yes, sir.

Q. Now, directing your attention to the first page, the area that's circled in red, the group on that day also took license plate numbers down and ran license plate numbers, isn't that correct?

A. Yes, sir.

Q. And one of those license plates that was run by the group was license plate number IAV657, isn't that

correct?

A. That's what's on the log, yes, sir.

Q. And the registered address of that particular vehicle was 36-07 30th Street, Long Island City, New York, isn't that right?

MR. MC CARTHY: Objection.

Q. If you know.

THE COURT: Did you run the plates?

MR. MC CARTHY: I withdraw the objection.

THE COURT: All right, go ahead.

A. Can you repeat the question, sir?

Q. The address of where the plate was run to was 36-07, 30th Street Long Island City, New York, isn't that right?

A. That's what the log says, sir.

Q. Okay. And if the log says it, that means that someone from your team put it down; is that right?

A. Yes, sir.

Q. Now, the registered owner of that vehicle was Mohammed Abdou, isn't that correct?

A. I have A-B-D. I guess the U got cut off.

Q. Okay. And there was an age for that person, isn't that right, October, date of birth, I'm sorry, that would be August 1, 1959? August 31 --

A. I say August 31 of '59, yes.

Q. Now once that report is completed who is that report turned over to, if you know?

A. What, this log, sir?

Q. Yes.

A. When it's completed and everyone on the team signs it, it's sent to the case squad of the terrorist task force. The person specifically I don't recall.

Q. Okay. Now the purpose of taking down the information of the license plates is a part of your intelligence gathering task, isn't that right?

A. Yes, sir.

Q. And you do it so that you try to make connections, isn't that correct?

A. I wouldn't put it that way. It's just part of my job is to observe and, you know, anything I see during the day I try to record as best as I can. Now, I'm not trying to make connections, no, sir.

Q. No, you just take down, for example, if you see an automobile and you see people, on this particular day, shooting, you take pictures of it, isn't that right? That's what you did?

A. Of the people that were in the van that was at 552 Atlantic that morning and then drive to the firearms range, yes, sir.

Q. But your team also took the license plate numbers

of at least four other vehicles, isn't that correct?

A. Yes, sir.

Q. And none of those vehicles came from 552 Atlantic Avenue, isn't that right?

A. I can't answer that. I don't recall. I have to review the log.

Q. Would you.

(Pause)

A. Well, sir, it appears to me by looking at this that two of the vehicles were at 552 Atlantic, the TAV657, DLE878.

Q. Which would mean that two of them were not from Atlantic Avenue, isn't that right?

A. Well, looks like AXM442 was observed entering the rifle range.

Q. That's the van.

A. Maybe I'm missing it. I can't see where, I guess there's a Connecticut tag --

Q. Agent Oyler, rather than read from the report that's not in evidence, let me ask you a question.

The purpose of taking down the license plate numbers was to gain more information about the vehicle and its owners, isn't that right?

A. Yes, sir.

Q. And aside from the fact that the vehicle was

there, it was the hope of the team that the tag would give them more information about who owned the vehicle, and where the vehicle, who the vehicle was registered to, isn't that right?

A. When we get a tag, you know, we do, we run it, we see who it belongs to. Several times tags that we gather aren't, you know, part of the investigation. Sometimes they are. You know, on the surveillance squad we're out there trying to gather as much intelligence and as much information that we can pass on to the case squad.

Q. So is it fair to say then that often times even though a registration number or tag number is present the person who owns it may not be associated with the investigation, isn't that right?

A. That happens, yes, sir.

MR. RICCO: No further questions.

THE COURT: Mr. Patel.

MR. PATEL: Thank you very much, your Honor.

CROSS-EXAMINATION

BY MR. PATEL:

Q. Good afternoon, Agent Oyler.

A. Good afternoon.

Q. We've not met before, have we?

A. You don't look familiar, sir.

Q. We haven't spoken recently, have we?

A. No, sir. Not that I know of.

Q. And in your eleven years at the FBI is it fair to say this is not the first time you've been in the courtroom?

A. I didn't hear that.

Q. You testified before in your eleven and a half years in the FBI?

A. Yes, sir.

Q. Now, on July 16, 1989 you observed a van enter the Calverton shooting range; is that fair to say?

A. I can't recall if I actually saw the van enter the firearm range, no, sir.

Q. Well, let me see if I can show you what has been marked 3549A and see if that refreshes your recollection?

A. Okay.

Q. This is on the third page, including the cover page as the last page.

A. That's not my initials.

Q. Not your initials?

A. No, sir.

Q. Is this your report?

A. No, sir.

Q. Did you make any reports concerning this surveillance?

A. Sir, I can't hear you.

Q. I'm sorry. Did you make any reports concerning

this surveillance?

A. Yes, sir, I did.

MR. PATEL: May I approach, your Honor?

Q. I show you 3549B, and 3549C and tell us if either of those are your reports?

A. This is --

THE COURT: Excuse me, Mr. Patel, when you put questions, could you try talking into some microphone because the interpreters can't hear, and you have a soft voice.

MR. PATEL: I apologize, your Honor.

THE COURT: Nothing to apologize for. Just keep it in mind.

A. Sir, this is my photo log for that day.

Q. 3549B is your report?

A. Yes, sir.

Q. Thank you.

Let me see if this report refreshes your recollection.

MR. MC CARTHY: Objection to the form of the question.

MR. PATEL: May I approach the witness, your Honor, and show him this report to see if it refreshes his recollection?

THE COURT: Yes.

A. What's your question? Yes, that's my initials at 12:35.

Q. Do you recall seeing someone arrive at the Calverton range?

A. No, sir, they were already there.

THE COURT: Mr. Patel, again.

MR. PATEL: I apologize, your Honor.

THE COURT: Please.

Q. Do you recall entering Calverton range on July 16, 1989?

A. Yes, sir, I do.

Q. I'd like to show you, if I may approach the witness, your Honor, what has been previously marked --

THE COURT: Please don't talk to him while you're walking up there.

MR. PATEL: I apologize, Judge.

THE COURT: All right.

Q. I'd like to show you what has been previously marked Nosair A1, A2, A3 and A6. These are for identification. Would you look at those?

A. Yes.

Q. Do those photographs fairly and accurately depict the entrance to the Calverton range?

A. Well, sir, I don't recognize the first three pictures of the sign for the range, but the fourth one is

familiar.

Q. That fairly and accurately -- the fourth one has an exhibit number on the back?

A. A6.

Q. That fairly and accurately depicts the entrance to the range?

A. As best as I can recall, sir, that looks pretty familiar.

MR. PATEL: Your Honor, I offer that in evidence at this time.

MR. MC CARTHY: The one?

MR. PATEL: One photograph.

THE COURT: A6 is received without objection.

(Defendant Nosair Exhibit A6 received in evidence)

Q. I'd also like to show you photographs that have been marked Nosair D1 and D2, D as in David for identification.

MR. PATEL: May I stay here, your Honor?

Showing you D2, do you recognize that as a photograph that you took on July 16, 1989 at the Calverton range?

THE COURT: Mr. Patel, if you are going to talk, talk into his microphone if you want. Just any microphone will do.

Q. Can we share this?

A. Sure. I don't recall taking this photo.

MR. STAVIS: That's E, your Honor, not D as in David, but E as in Edward.

MR. PATEL: I apologize. I thought we were up to --

THE COURT: E as in Europe.

A. I don't remember taking that.

Q. I'm showing you what is now being marked as E1. Do you recognize that as a photograph that you took on July 16, 1989?

THE COURT: Mr. Patel, would you --

MR. PATEL: I'm sorry, Judge. I'm just about sitting in his lap here.

THE COURT: Turn the microphone.

Q. Do you recognize that as a photograph that you took on July 16, 1989 in Calverton range?

THE COURT: Now turn it back.

A. I don't remember taking this one either, sir.

MR. PATEL: Your Honor, I am going to offer E1 and E2 in evidence.

MR. MC CARTHY: No objection.

THE COURT: E1 and E2 are received without objection.

(Defendant Nosair Exhibits E1 and E2 received in

evidence)

MR. PATEL: Your Honor, I'd like to approach the witness again.

Q. Agent, does one of those photographs depict a hot dog stand in Calverton range?

A. It look like a hot dog stand, yes, sir.

Q. Do you remember seeing a hot dog stand there on July 16, 1989?

A. I just can't recall that, sir.

Q. The other photograph, what's the number on that one?

A. It's now E1.

Q. Does that photograph depict a man holding a can of soda and a hot dog?

A. Yes, sir, it looks like that, yes, sir.

Q. Agent, before you came here today did you meet with one of these prosecutors?

A. Yes, sir, yes, I did.

Q. How much time did you spend with them?

A. A minute.

MR. PATEL: No further questions.

THE COURT: Mr. Wasserman.

CROSS-EXAMINATION

BY MR. WASSERMAN:

Q. Before going out on your surveillance assignment

were you shown photos of the Alkifah office, the Afghan Relief Office at 552 Atlantic Avenue?

A. I can't recall.

Q. Were you shown photos of Moustafa Shalabi the director of the Afghan Relief Office?

A. I don't recall, sir.

Q. How about Fawaz Damra who was the Iman or spiritual head of the mosque located at 552 Atlantic Avenue?

A. No, sir, I don't recall being shown photos of him, sorry.

MR. MC CARTHY: I ask the jury be instructed about questions.

THE COURT: As I've told you before, the evidence is what is in the answer, not what's in the question.

MR. MC CARTHY: Move to strike.

THE COURT: Go ahead.

Q. Now, do you recall this log that you prepared of your photographic assignment that day?

A. Yes, sir.

Q. Do you recall what you placed in your log as a case caption for your assignment?

MR. MC CARTHY: Objection.

THE COURT: I'll allow that.

A. I don't recall that sitting here, no, sir.

Q. Would it refresh your recollection to look at the

log?

A. Yes, sir.

Q. I'm showing you 3549C. Do you recognize that document?

A. No, sir, this is the afternoon surveillance. I was on the morning surveillance.

Q. I'm sorry, that would be 3549B is yours. Do you see the place marked case caption on the front?

A. I see where it should be, but it's not there. I mean it's been --

Q. Been what?

A. Blanked out --

MR. MC CARTHY: Objection.

A. -- with the word redacted on it.

Q. Now, isn't it a fact that the assignment that you had was to investigate violations of Neutrality Act specifically with reference to Afghanistan?

MR. MC CARTHY: Objection, relevance.

THE COURT: I'll allow him to answer that one question.

A. Could you repeat it, sir? I'm sorry.

MR. WASSERMAN: If the reporter would read it back.

(Record read)

A. No, sir, I don't recall that.

Q. What do you recall as the nature of your assignment?

MR. MC CARTHY: Objection.

THE COURT: Sustained. I am going to sustain any further ones along that line. Go ahead.

Q. Were you told the purpose of your assignment?

A. Yes, sir.

Q. And what was your understanding as to the purpose of your assignment?

MR. MC CARTHY: Objection.

THE COURT: Sustained. How about, what were you told?

Q. What were you told?

A. My assignment that day was to surveil 552 Atlantic, I think it was 552-554 Atlantic in Brooklyn and to be in that area at a specific time on July 16th.

Q. Is it your testimony that you had no idea of the purpose of the surveillance?

MR. MC CARTHY: Objection.

THE COURT: Were you told the purpose of the surveillance other than to be there and to conduct it?

THE WITNESS: And to conduct.

THE COURT: Period?

THE WITNESS: No, sir, I think we were, maybe instructed that there is a possibility that individuals may

be traveling to a firing range in Calverton.

THE COURT: Other than that?

Q. And were you told what these individuals would do when they reached the firing range in Calverton?

A. I can't recall specifically, but going from the last two weeks prior to my day there, July 16th, I think we had an idea what was going to happen.

MR. WASSERMAN: Thank you. No further questions.

THE COURT: Anyone else? Any redirect?

MR. MC CARTHY: No thank you, your Honor.

THE COURT: You are excused.

(Witness excused)

THE COURT: Ladies and gentlemen, we are going to break for the day. Please leave your notes and other materials behind. Please don't discuss the case. Please don't read, hear or see anything about the case, and have a pleasant evening and we'll see you tomorrow.

(Continued on next page)

(Jury not present)

THE COURT: Mr. Jacobs.

MR. JACOBS: Your Honor, I gather tomorrow morning you're going to be starting the Kahane part of the case.

THE COURT: Before we do that, can I explain something, maybe for Mr. Wasserman's benefit and for Mr. McCarthy? The reason that I permitted inquiry on some occasions about the scope of the assignment and not on other occasions, and maybe this will be a guide to both of you in the future, is simply this. If people, particularly in 1989, agents testify that they were on some sort of terrorist assignment, and it turns out that it was a Neutrality Act violation assignment, then I'm going to permit him to neutralize it, as it were, by bringing out that it had something also to do with the neutrality or principally to do with the Neutrality Act. If there isn't any such testimony, I'm not going to permit it. That's what's going on.

MR. MC CARTHY: Your Honor, I objected to the whole line of questioning. I don't think it should have been opened up at all if the first place. My primary objection is these reports, which all counsel have, notwithstanding the fact that they have on a couple of occasions said to the witness, do you have your report, and

where can you get your report? These reports are properly redacted pursuant to Section 3500.

The witnesses were questioned in a way to suggest that the redactions, which were litigated this morning, were improper. I don't want the jury to have the impression that counsel isn't getting what they are legally entitled to.

THE COURT: I doubt they've got that impression.

MR. MC CARTHY: The last line of inquiry Mr. Wasserman asked, what's in the caption, and he said it says redacted. Now, Mr. Wasserman knows full well that that's exactly what it said, and that it was redacted with the Court's authorization.

THE COURT: So he does and so it was.

MR. JACOBS: Your Honor, I gather we're starting the Kahane part of the case tomorrow, and I would request the following. The Kahane murder is specifically related acts to charged in Count Seven through 15. None of the defendants except Mr. Nosair is charged in those counts, and if I understand your Honor's ruling on the seditious conspiracy is out as an overt act, but in, I gather, to prove the conspiracy, if I understand your Honor's ruling.

Well, to that extent, I would make a 403 objection on behalf of my client who allegedly didn't join the so-called conspiracy until '93. I think the unfair prejudice in putting this murder in, not to prove a part of

the seditious conspiracy, is outweighed by putting this in.

THE COURT: I think I dealt with that issue in another part of the same opinion.

MR. JACOBS: At any rate, I'm making the objection again. In any event, if it's denied, I would ask for a limiting instruction as follows:

That certainly I think the jury should be told that at least -- I don't know if anybody will join me -- but at least my client is not charged in Count 7 through 15, and in fact, the limited purpose of the Kahane murder what it is being offered for, and I think the jury should be told that what it's limited purpose is. And I think the jury should be told that none of the defendants are charged with substantive counts except for Nosair. Otherwise I think this jury is going to be confused as to what it's coming in for or that someone was charged separately with the murder.

THE COURT: Since they've never been told that, I can't understand how they would draw that conclusion.

MR. JACOBS: I don't know. I'm just saying as far as I'm concerned I think on behalf of my client I would like this jury to be told he's not charged with the murder, and I'm not going to get up here next month and ask questions about it, and I don't think the jury should speculate somehow he's charged with the murder or aiding and abetting the murder, and I think the jury should be given

some guidance as to the charge is intended.

MR. SERRA: Your Honor, I join in that and in point of fact, although the Court noted that the jury has never been instructed otherwise. In point of fact the law is clear in your Honor's ruling on the several previous motions makes it clear that as against one defendant in the case, Mr. Nosair, the evidence clearly does come in on a different basis than against every other defendant in the case.

THE COURT: Mr. McCarthy.

MR. MC CARTHY: Yes, your Honor. That's taken care of by the fact that they are not charged in those counts and the jury won't be asked to reach a verdict. There is no proper limiting instruction that you could give. The evidence is completely admissible against everybody on Count One. So there is no appropriate instruction.

The limitation that has been placed on the evidence is that it's not an overt act. Your Honor has already instructed the jury that there is no requirement of an overt act for purposes of Count One. So the limitation is a legal one. It's not one that is appropriate for this jury's consideration given what it has to resolve.

MR. SERRA: Your Honor, I represent, as does Mr. Jacob's objection, someone, who as I understand the government's proof, the government will not allege joined

their charged conspiracy until 1993. Perhaps I am obtuse but I do not see for what purpose this proof is offered against Mr. Alvarez.

If the government wishes to argue that it shows the existence of a conspiracy among other people in 1990, perhaps it does, perhaps it doesn't, but as against Mr. Alvarez I ask the government -- I ask the Court to ask the government for an offer of proof as to what it could conceivably show about him, and if the government cannot give your Honor that offer of proof, under Rule 403, I ask the Court for an instruction that in fact it has nothing to do with Mr. Alvarez.

MR. LAVINE: Judge, before you rule I'd like to join in that on behalf of Fadil Abdelgani as well.

MS. AMSTERDAM: On behalf of Mr. Khallafalla.

MS. LONDON: On behalf of Mr. Elhassan.

MR. BERNSTEIN: Your Honor, on behalf of Amir Abdelgani.

MR. MC CARTHY: I wonder if your Honor would ask the defense counsel that they would stipulate the conspiracy existed at that time. The conspiracy that --

MR. BERNSTEIN: That has no bearing.

MR. MC CARTHY: Cassamento says if you want to remove issues from the case what you are supposed to do is stipulate.

THE COURT: No. It says that's one way to remove issues from the case.

MR. SERRA: Your Honor, I'm sorry, Judge, but I notice absent from Mr. McCarthy's response to what I said is any offer of proof as to what this has to do with Mr. Alvarez.

MR. MC CARTHY: Your Honor, we've already made an extraordinary offer of proof in this case. We have to prove the conspiracy with respect to each individual, the existence of the conspiracy charged in the indictment.

We don't have an obligation to prove it as from point A to point B per particular defendant. We have to prove the conspiracy charged in the indictment and that they became members of it sometime.

THE COURT: At what point tomorrow do you start with that evidence?

MR. MC CARTHY: We have one more witness, one more surveillance agent witness, who is about a 20 minutes.

THE COURT: First of all, I should note that we're aways into the trial, and that, again, people have waited until the day before we're going to start the evidence to get up and make a very general request for a limiting instruction of undefined terms.

If somebody would like to put pen to paper and propose a limiting instruction, and also provide the

authority for it, and also perhaps reread the opinion that dealt with that issue, then, fine. I'll also turn my hand to it, and we'll see whether we can arrive at something.

I don't think that I have to have that limiting instruction in hand before the first witness gets on the stand to testify to that event. I think if there is going to be a limiting instruction, if underlined, it can come reasonably close to the beginning of that proof. It doesn't have to be before the first witness testifies.

MR. JACOBS: I don't disagree, your Honor.

THE COURT: Good. So help me.

MS. STEWART: Your Honor, could we possibly have a witness list for tomorrow? He said there is one more surveillance and then he wasn't sure. Is it possible --

THE COURT: I don't think that's what he said, no. I think he said there is one more surveillance witness and then he begins the proof on the Kahane murder.

MS. STEWART: I didn't hear that. I thought he said, "I don't know." I'm sorry if that's what he said.

THE COURT: That was the sense I got.

MR. MC CARTHY: We've given Mr. Patel and Mr. Stavis the 3500 material for the first seven witnesses. I'm sorry, everybody the 3500 for the first seven witnesses. Can I have a moment? Your Honor, Mr. Khuzami will give the order of the witnesses.

MR. KHUZAMI: Your Honor, the first witness will be Ari Gottesmann. The next witness will be Stephen Hoffman. The next witness will be Sholem Gubin. The next witness will be Jonathan Dunetz.

The next witness will be Abraham Ancselovics, and the seventh witness will be Irving Franklin.

The 3500 material for those witnesses should have been made available. I don't know whether or not it has yet for the remainder of the witnesses.

MS. STEWART: Thank you very much.

THE COURT: Thank you. Were you going to tell me about whether you were going to submit anything?

MR. MC CARTHY: Yes, your Honor, by 7 o'clock.

THE COURT: All right. Thank you.

MR. JABARA: Could we also be given a copy of that, Judge?

THE COURT: Absolutely.

MR. MC CARTHY: We'll fax it out.

THE COURT: I will hear you either if you want to respond in writing, or I will hear you orally sometime tomorrow before any ruling.

MR. RICCO: Your Honor, in the future how does this Court want to deal with the 403 objections? One week in advance? We just need to get a sense as to when your Honor wants to hear 403 objections? Should we notify you?

THE COURT: I don't have some overarching philosophy about Rule 403 objections. It depends on the nature of the objection. If you are talking about a Rule 403 objection to a month's worth of proof, would I like something other than the day before? Yes, I would.

If you are talking about a Rule 403 objection as I got a few minutes ago, to a photograph of Mahmud Abouhalima, that I can take on the fly, because I think I understand the nature of the objection. It depends.

MR. JACOBS: Your Honor, just to clarify, I understood your Honor to rule previously, and perhaps 403 was covered. I just think for purposes of the record now they're on trial, I want to just renew the 403.

THE COURT: I wasn't suggesting that 403 was covered explicitly in that opinion, although I think I dealt with the question of whether it would be received, whether it got struck or not. I'm sure I remember discussing that.

MR. JACOBS: You did.

THE COURT: I don't remember a whole lot about the discussion, but I remember discussing it. Implicit in that I think is a 403 balance.

MR. JACOBS: I think it was there, but I just want to state that your Honor's pretrial order is on that point. Now we're on trial, we proceeded, there is an opening statement, I don't want it to be considered waiver

on behalf of the other ten defendants in this case on the 403 point, and while I acknowledge that, I just want to make sure we made it, it's on the record, and your Honor has made a ruling on that. I'm not interested in briefing an argument.

THE COURT: If that is the nature of the objection, then, fine. If it is a brand new matter that you don't think that I addressed earlier, then that was the reason I reacted.

MR. JACOBS: I have nothing to add we haven't previously briefed. I just want to make it clear we're raising it again, your Honor has made a ruling.

As far as the limiting instructions are concerned I do it now only on the basis that the government did not outline for the jury the nature of the counts involved and who is charged in which counts, I don't believe. Maybe I'm wrong. And I think they may have mentioned it briefly, but I just feel when we're getting into a month's worth of proof perhaps the jury has some idea what is coming in.

THE COURT: I think the government opened principally on who was alleged to have done what, rather than in terms of counts. The last person who talked about counts I think was me, and that was so long ago that I'm sure they don't remember it. I barely remember.

MR. JACOBS: I'll take some shot at putting some

of it in.

THE COURT: Thank you. Good night.

(Adjourned to 9:30 a.m., Wednesday, February 8, 1995)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
a/k/a "John Medley,"
CLEMENT HAMPTON-EL,
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.
----------x

S5 93 Cr. 181 (MBM)

February 14, 1995
9:30 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

MARY JO WHITE
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Southern District of New York
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PATRICK FITZGERALD
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ANTHONY RICCO
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FREEMAN, NOOTER & GINSBERG
Attorneys for Defendant Matarawy Mohammed Said Saleh
BY: THOMAS H. NOOTER

(Trial resumed)

(In the robing room)

(Mr. McCarthy, Mr. Nooter and defendant Wahid Saleh present)

THE COURT: Good morning, Mr. Saleh. I understand you are not feeling well.

DEFENDANT WAHID SALEH: No.

MR. NOOTER: Your Honor, I saw my client Saturday and he was looking pretty sick. He has had a request in to see a physician's assistant every day for the last several days. He was seen this morning and was told he has a fever of 106. I felt him now and it seems lower, but there is no question that he has a fever. There is no question in my mind that he has to go back to the MCC.

The open question is what we do about continuing with the trial. Obviously last week when we thought it was a half day we were perfectly willing, given the evidence that is going on now, to have my client's presence waived, but I am a little reluctant to do that for a whole day now even though the evidence doesn't seem that relevant to his portion of the case. Things happen which are relevant to the case. For example, on Thursday your Honor read the decision on the motion --

THE COURT: Those are matters of law that I could do if I wanted in the absence of defendants and I often did

do in the absence of defendants.

MR. NOOTER: When I saw him Saturday I had not even realized that he did not know the outcome of that decision.

I don't want to be a pain in the neck about it. I feel awkward making this. Obviously there is so much that goes into setting up each trial day. But my client has always had an incredibly keen interest in everything that goes on in this case, and I guess my application would be that if we could adjourn for today, if he is still not well tomorrow -- they gave him some penicillin apparently. I don't know if they have tested him for strep throat. I hear strep throat is going around and that even Mr. Khuzami, I am told, had it, although I didn't ask him directly.

But if this were something that is going to go on for more than today, I don't want to feel that I hold up the trial longer than that, but I guess my application is that for one day I would like to have him seen by a doctor, see what it really is, see if it is something that may go away with the administration of antibiotics fairly quickly, and see where we stand tomorrow morning.

MR. McCARTHY: I think, unfortunately, your Honor --

THE COURT: I don't think I have any choice.

MR. McCARTHY: I don't think so either. I

represent to the court that we don't have any anticipation that Mr. Saleh's name or anything about him will come up in the evidence that we plan to put forward today, but obviously he has a right to be present.

THE COURT: That is fine.

MR. NOOTER: Maybe, while the reporter is still here, I also feel a little awkward about having my client brought here, let's say tomorrow, if he is still sick. I have discussed it with him and I think that we would be -- if he is still sick tomorrow then I don't want to hold up the trial any more, but I would rather not have him brought over from MCC. Perhaps there is some way we can just get a medical report.

THE COURT: In view of the way this has developed if today, I am not going to take a waiver except in person. So it is going to have to be day by day. I am not keen on dragging anybody out of the sick bed. At the same time -- I suppose I could do it on the telephone. Couldn't I, Mr. McCarthy?

MR. McCARTHY: I think you could, your Honor.

THE COURT: I think I could. If there is a convenient way that I could do it on the telephone --

MR. NOOTER: I can be here very early, if that helps.

THE COURT: That helps. Let's go.

(In open court; jury not present)

THE COURT: Miss Stewart?

MS. STEWART: Yes, Judge. I believe Miss Schwartz has been given a copy of a petition for mandamus which we intend to file today, and I am asking you for a stay so that we may take that to the Second Circuit and be heard on it.

THE COURT: Your application for a stay is denied, because I think that your petition lacks merit. On the other hand, as you once pointed out in another setting, sometimes it is better to be lucky than smart. Do you remember that?

MS. STEWART: Yes.

THE COURT: Good, because this is another one of those occasions. Mr. Wahid Saleh is ill and obviously cannot proceed today. He agreed last time to permit us to go ahead in his absence. He has not so agreed today. Accordingly, I have no choice but to break for the day.

MR. NOOTER: I would just like to place on the record that I was totally unaware of Miss Stewart's application.

MS. STEWART: As was I.

THE COURT: That is why I made the comment.

MS. STEWART: The second Valentine's Day present, we made some inquiries of the jury on Thursday -- the first

day that Ramzi Yousef was apprehended, we approached the jury as to whether anybody had heard anything inadvertently. Since then there has been a virtually deluge of two stories, I would characterize them, one having to do with an ostensible Wall Street plot. It is the headline story in Newsday today about an ostensible Wall Street plot, which also mentions Siddig Ali, as well as ongoing stories of plots by Ramzi Yousef, Ramzi Yousef in the Philippines, via Diskette, via the New York Times.

I am requesting that at the very least the jury should be admonished once again that they should not read anything that even seems to hint at anything, and I would make the request that you ask, inquire of them whether or not anybody did inadvertently hear or see anything, because the stories were spliced in in strange ways, it seems to me.

MS. AMSTERDAM: The only thing I would add is that perhaps you should tell the jury that should there ever be any occasion that they hear some media coverage, that they should bring it to Miss Schwartz's attention, so that we don't have to ask them every day, so that they have a standing request.

THE COURT: I will do that. Can we do it the same way we did the initial inquiry last week?

MR. STAVIS: Yes, your Honor.

THE COURT: That is, Miss Stewart and I guess

somebody from the front table. Let's do that and see what else we can get done. Let me tell them first that my appearance at the jury room door is good news for them, and then make the inquiry.

MR. JACOBS: You are coming back?

THE COURT: I am going to go back and tell them that we can't go ahead for other reasons, have Miss Stewart and Mr. McCarthy come back, make the inquiry, see if we get any responses, and tell you that.

MR. JACOBS: Can we take up some legal matters afterwards?

THE COURT: Yes, we can.

(In the jury room)

THE COURT: Good morning.

JURORS: Good morning.

THE COURT: My appearance at the jury room door is usually good news from your standpoint, and it is, I guess, good news from your standpoint today, in the sense that we have a little bump in the road and we are going to have to deal with some legal matters. So rather than have you wait, we are going to have you break for the day. For you, rather than us.

I am going to make the same inquiry on the same subject that I made last week, which is whether anybody heard any news report over the weekend either relating to

Ramzi Yousef or any other matter relating to this case.

You did. Juror number 4. I am going to talk to you in two seconds.

Anything else?

Why don't you wait here, and we will see you in two minutes.

(In open court)

THE COURT: Juror 4 reported hearing something. Do you want to do this the same way we did last week?

MS. AMSTERDAM: Yes, your Honor.

THE COURT: Same people. All right, I will see you back in the robing room.

(In the robing room)

(Mr. McCarthy, Ms. Stewart, and Ms. Amsterdam present)

(Juror number 4 present)

BY THE COURT:

Q. I guess the first question is, what do you recall hearing or seeing?

A. I didn't hear anything. I saw the front page of a newspaper this morning.

Q. What did you see?

A. "Tick tick" or "Time bomb" or something about Wall Street under alert. Just caught my eye.

Q. Is there anything about what you saw that would

affect your view of the evidence in this case?

A. I don't believe so. I don't know what it had to do with. I just looked away at that point.

Q. Thanks very much. Have a pleasant rest of the day. I am going to back there, so don't --

MS. AMSTERDAM: Don't leave without the judge.

(In the jury room)

THE COURT: One thing before you leave, and that is, instead of me having to come in here each time there is a news story, I am going to give you a standing request, and that is, if at any time you hear any broadcast or see any headline or story or anything like that, if you just tell Miss Schwartz about it, we can make whatever inquiry we have to make, instead of taking the time each time there is a story of me coming back and asking the question. If at any time you did hear or see a story, don't tell anybody else about it.

Have a nice day.

(In open court)

THE COURT: Mr. Jacobs, you wanted something?

MR. JACOBS: Just briefly, your Honor. Your Honor, I handed up this morning a letter to your Honor and two subpoenas which I served on the government there morning. Obviously I don't want to deal with the merits in any detail but just to give your Honor the heads up. The

subpoena is to let FBI and to the CIA, involving documents involving Ramzi Yousef, quoting various items. In the letter as well, besides our --

THE COURT: Are you going to ask for a ruling on this now?

MR. JACOBS: No, your Honor.

THE COURT: In other words, you want to prepare me orally for what I am about to see in the letter?

MR. JACOBS: Correct. I will sit down.

THE COURT: I appreciate it.

MR. SERRA: Your Honor, Mr. Alvarez and I would appreciate five minutes of the court's time in the robing room, and it is not the matter we discussed last week, it is something else.

THE COURT: Anybody else?

I distributed this morning, or asked to have distributed this morning two proposed instructions, one dealing with the Neutrality Act issue, raised by Mr. Wasserman or the government, and the other about witness preparation. Have you seen that? Mr. Wasserman?

MR. WASSERMAN: Your Honor, if I may, I would like to have the opportunity to confer with Ms. Amsterdam. It was basically a joint request on our part.

THE COURT: Part yours, part theirs, fine.

MR. WASSERMAN: As always, I think your response

needs and deserves to be reviewed thoroughly. So if I may do that with Ms. Amsterdam before responding.

THE COURT: I don't know whether it deserves to be. When do you want to to it?

MR. WASSERMAN: I would prefer to do it tomorrow morning, your Honor.

THE COURT: No, I would prefer this afternoon, because it is strictly a legal matter that does not require anyone else being present. So why don't you review it.

MR. WASSERMAN: How about an hour from now?

THE COURT: That is fine. Anything else that we can accomplish today?

MR. SERRA: This is something other than what I just raised with the court. I have a proposed instruction on behalf of defendants who are situated as Mr. Alvarez is, that it is my understanding of the government's proof that the government won't allege that he entered the conspiracy until well after the events of 1990 which we have been hearing about. I have circulated that to most of my cocounsel but not everyone. The government has a copy. I will circulate it to the rest of my cocounsel and drop it off in chambers and perhaps the court would like to discuss that as well.

THE COURT: Fine, if everybody is prepared to do that.

MR. STAVIS: I had many discussions over the weekend with the government concerning a variety of things, but the witness who was expected to testify this morning, Carlos Acosta, I believe when he testified at the state trial and a diagram was used, there was an overlay, and he wrote on the overlay, which I would maintain became part of his testimony there at the state trial. I have been discussing that with Mr. Khuzami. The government does not have those and there is no question, there is no malfeasance or anything like that. I just wanted to place that on the record, that portion with regard to Mr. Acosta. I don't know if there are any other witnesses who previously testified. I just wanted the record to be clear that that portion of his testimony at the state trial is not available to us.

THE COURT: Is that something that you want to bring out when he testifies or that you want to put on the record?

MR. STAVIS: I wanted to put it on the record. I may confront the witness regarding and I may not, your Honor.

Have I stated --

MR. KHUZAMI: That is correct, your Honor.

THE COURT: I just wanted to raise one subject that may be distant in your minds and it is not in mine, and

that is charge requests.

MR. PATEL: Your Honor is correct.

THE COURT: Can you have them in by April 28?

MR. STAVIS: Yes, your Honor.

THE COURT: Obviously, to the extent you can consolidate them all the better, but if you can't, you can't. It has to start someplace, so I want to give you as much time as I reasonable can and give myself as much time as I reasonably can. Obviously if you can get it to me sooner, all the better, but April 28 is the deadline for that.

I will see you in an hour on the other issue.

(Pages 2841 through 2843 ordered sealed by the court)

(Recess)

(In open court; jury not present)

THE COURT: Mr. Wasserman, are you carrying the ball?

MR. WASSERMAN: On the Neutrality Act?

THE COURT: Yes.

MR. WASSERMAN: Yes, together with Ms. Amsterdam.

MS. AMSTERDAM: Your Honor, at this point the defense is going to withdraw its application for the jury to be charged on the Neutrality Act.

MR. RICCO: Judge, the defense hasn't decided.

THE COURT: Let me understand this. Ms. Amsterdam said that the request for a charge is being withdrawn. You, Mr. Ricco, say it hasn't been withdrawn.

MR. RICCO: Judge, I just asked my colleagues what was going on and I was told basically to take a walk, and I am offended by that.

THE COURT: Wait a second, please.

MR. WASSERMAN: Nobody told you to take a walk.

THE COURT: There is no necessity of unanimity, and I understand that. What I would like you to do is to get me something this afternoon in writing that either says you can all sign on to one thing or that you can't. If you can't, then I am going to take the requests that I have received up until now, in behalf of whoever it is who is

pressing, and act on it.

MR. WASSERMAN: Judge, if I may. It was Ms. Amsterdam's request at side bar to have a Neutrality Act charge. I have a number of specific comments that I would address to the court concerning the proposed charge. We all met upstairs and it was an accident of both notification and remembrance to have Mr. Ricco there --

MR. RICCO: Wait a second, wait a second. We did not all meet up there. Four lawyers met in the conference room. We did not all meet upstairs.

MR. McCARTHY: Your Honor, let me just put the government's position on the table, if it helps.

THE COURT: Yes.

MR. McCARTHY: I would like to put the government's position on the table so that they have it whenever they convene and come up with whatever position they come up with. I don't have a strong feeling about the Neutrality Act charge. That was something that the defense wanted and we submitted a charge along the lines that we felt appropriate, and I think the court's charge is appropriate.

If the Neutrality Act charge is not going to be given, the government will ask for a charge which reflects the fact, as the court's proposed charge set forth in the first paragraph, that what the agents purport to be

investigating doesn't control what the charges are or what the evidence shows.

There has been a lot of examination along those lines, there was a lot of suggestion made to the jury both in the openings and in the examination as it has developed to this point that what was in the minds of the investigators in terms of what they thought they were investigating and who they thought was believable has relevance in terms of the proof of the charges in the indictment, and I think something should be said to the jury about that.

THE COURT: That is your position.

MS. AMSTERDAM: At this point, your Honor, on behalf of my client I am withdrawing my application to have anything charged on the Neutrality Act. If anything is going to be charged, then I would by reference ask Mr. Wasserman to specifically state his objection to the parts of the court's proposed charge, and I will stand on that.

THE COURT: Mr. Wasserman.

MR. WASSERMAN: Yes, your Honor. Your Honor, there are about six separate comments, if the court would bear with me. The most important is, at the end of the court's proposed charge, the language that possible violations of the Neutrality Act that agents may have been investigating are not relevant to your consideration whether

any defendant has committed any crime with which he is charged in the indictment.

Your Honor, the preliminary charge by the court to the jury before any evidence is heard in this case, one aspect of it concerned religion and one aspect of that concerned motive, and the court made clear that although motive was not necessary for the government to prove, the government could allege motive, the defendant could allege lack of motive, or in fact if the government had a motive of its own for prosecuting him and the court gave the example of a bank robbery. Rather than belabor the point, it is on pages 23 and 24 of the preliminary instruction.

The Neutrality Act is something that was not testified to by any agent but rather stipulated to by the government after three agents had testified and the fourth had testified on direct. The government then proposed basically to undercut the Neutrality Act stipulation by asking the court to charge the jury that the Neutrality Act was not relevant to a determination of guilt or nonguilt in this case. In the following way, your Honor, it is relevant, much the same way as your Honor charged the jury with regards to religion.

One, it is a motive by the government to pick on or go after the defendants in question who are in this particular instance the subject matters, shooting at

Calverton range. Second, it is an explanation why the government was there in the first place, doing surveillance. Three, it illuminates potentially for the jury an understanding of what the agents were understanding that the defendants were doing, the agents' understanding that they were engaged in terrorism or target practice in reference to Afghanistan and the Afghan Relief Force. Even the fact that the agents didn't understand what they were there for, as several of them testified, I think, is relevant to the defendants' case.

In short, I think that the possible Neutrality Act violations that were stipulated to, there is potentially going to be more evidence concerning government surveillance subsequent to Calverton range -- in fact, I strongly suspect and think that there will be. And there will be additional evidence concerning participation in the Alkifah office, participation in aid to Afghanistan, participation in aid to Bosnia, all of which relate to possible violations of the Neutrality Act. Even the assumption that the agents are controlling their own mission isn't something that we can conclude at this time.

For all those reasons, Judge, I would ask that this charge be treated as too premature at this time, and to be revisited when the other charges to the jury are to be considered.

I might just add that it is a week now since the evidence was heard, and the jury is now focused on the Nosair matter and Kahane, and I would ask that the court not revisit it at this time in the form that the instruction is currently drafted.

Those are my remarks.

THE COURT: Do you want to be heard?

MR. McCARTHY: I don't really understand all of what Mr. Wasserman said. Let me just make a couple of points. First of all, he mentions the possible Neutrality Act violation that was stipulated to at the end of part of his argument. The government didn't stipulate to any possible Neutrality Act violation. At the request of the defense, because we had a witness on the stand through whom we could not elicit that information, we stipulated that the Neutrality Act was one of the violations that the agents believed that they were investigating, a matter that only came into evidence because some of the agents had testified that they were affiliated with the Joint Terrorism Task Force. So it was to countermand that suggestion. And also because the defense, largely over the government's objection, went into what the agents believed they were investigating, which is an area, the government suggests -- and I think we cited the Court of Appeals decision in February 1994 in Reyes to your Honor. The agents' state of

mind or the agents' belief about what they were doing is simply not relevant unless some colorable reason makes it relevant to the jury's consideration of the evidence in front of it.

To go back to the bank robbery analogy that the court used in the preliminary charge and that Mr. Wasserman alluded to a few moments ago, if in fact there was a bank robbery and the agents went out thinking they were investigating the robbery of a grocery store, the fact of what the agents may have thought would lend not a scintilla of material evidence to the question of whether the defendants were guilty of the bank robbery. In this case, it really doesn't matter if the agents thought they were out investigating firearms, terrorism, the Neutrality Act or anything else. The question is, what are the charges in this case, what did the defendants do, and what did the defendants think, not what did the agents think. At the moment, with respect to these agents, their state of mind is simply not relevant to the charges in the indictment.

I think that the court's charge or the court's proposed charge that we received this morning at least conveys accurately to the jury the notion and the reality that what we are here to consider is what the defendants did and thought, not what the agents thought they were seeing when they saw it.

MR. WASSERMAN: Your Honor, if I just may respond briefly, I think that Mr. McCarthy leaves out the central portion of the argument, which is that we want to leave open the question of the possible violation of the Neutrality Act as a motive for the government, one, to be doing the surveillance we are doing, two, to be concluding certain conclusions from that surveillance, and, three, as a reason for prosecuting, for example, my client, not for the crimes charged but rather for possible violations of the Neutrality Act.

At this stage of the proceedings, for the government to propose that the jury be told to disregard it is at best premature, and in fact Mr. McCarthy's example is not on point. The court's instruction to the jury at the beginning on pages 23 and 24 which dealt with motive is exactly on point at the conclusion of the charge.

I would suggest, since it was asked for by Miss Amsterdam and I was present at the side bar and joined in, to resolve the matter, we would withdraw our request for the instruction.

THE COURT: A couple of problems. First of all, I think you have mischaracterized the instruction. Secondly, I am not just a piece of machinery at the end of somebody's string. If you asked for an instruction and it turns out it relates to a matter that has come up in the

case, it won't do simply to say well, if this is what you propose to do, forget about it, and have it be forgotten.

If what you are telling me is that you plan to explore the issue further during the course of the trial and that you prefer to wait until the end of the trial to have the jury get any instruction at all about the Neutrality Act, I think that is a bad idea. I plan to give some kind of instruction about the Neutrality Act if the question is going to be asked. You are the one who knows what you are going to ask, I am not.

MS. AMSTERDAM: Then, your Honor, if Mr. Wasserman is representing to the court that there will be additional information in this area, then I would ask that the reference to the Neutrality Act be explained at the point that that evidence comes in.

THE COURT: Fine.

MS. AMSTERDAM: Thank you.

THE COURT: As it stands now, I think it is off their screen.

MR. WASSERMAN: Right.

THE COURT: That is all it really comes down to.

But understand that I am going to address it when and if it comes up again, so I would like you to be prepared to talk about it at that time, and to talk about it in the context of this. I will consider your remarks and see if I

need to revise it.

MR. WASSERMAN: Absolutely.

THE COURT: What about the issue of witness preparation?

MR. JACOBS: Most times that just goes to the jury in the regular charge.

THE COURT: That is going to come a number of months from now.

MR. STAVIS: If your Honor believes that a charge is warranted, I have no problem with the language of your Honor's charge.

MS. AMSTERDAM: There is just one additional piece of business, if your Honor doesn't mind.

THE COURT: I don't.

MS. AMSTERDAM: I know that the government is not under any obligation to give us a witness list, but I am under the opinion that there has been some change in the government's strategy and it is possible that the World Trade Center evidence will come later. I am just pointing out to the court that in my opinion there are three or four major witnesses in this case that are going to require extensive cross-examination, and I at least would like to have some indication of the order of those witnesses so that we will not have to delay the trial for any request in terms of preparation of cross-examination. I want to know if

specifically Salem is getting on the stand before Siddig, if Mr. Ali is testifying. I would like to know if we are getting the translator to authenticate the tapes before Salem. I would like to know which of the major witnesses are coming next at some point so that I can be prepared to direct my attention to that cross-examination.

MR. McCARTHY: Your Honor, I spent some time with Mr. Jacobs regarding the CM's and actually discussed that matter with Miss Amsterdam a little bit last week also. I will give them an idea of who comes next but we are not going to make a commitment to calling anyone in particular. Salem obviously we have opened on and we are going to call him, but as far as the order of witness, I am not going to make a commitment about whether we are actually going to call other people.

THE COURT: Why don't you continue to talk.

MS. STEWART: Judge, just on this subject, we were given to understand at some point from the government that they were basically going to proceed chronologically. We understand that the World Trade Center perhaps will be taken out of context because perhaps they are not fully prepared to go ahead with that at this point. Notwithstanding that, is it still the government's intention to proceed basically in a chronological manner? That would help us to some degree in terms of where our preparation is

going.

MR. McCARTHY: I disagree that we are taking the World Trade Center out of context. I believe that we will probably call Salem before we put the World Trade Center proof on. That would not be out of context. The first evidence that he is going to testify about, as we all heard in the openings, is stuff that happened long before the World Trade Center case. So my general assumption or our general plan at this point, if the evidence can be considered in big segments, is Salem, the World Trade Center, and then the phase, the last phase, what has been called the bridges and tunnels plan.

MS. STEWART: And Mubarak somewhere in the middle then?

MR. McCARTHY: Somewhere in the middle, but chronologically.

MS. STEWART: Thank you, Judge.

THE COURT: Do you feel yourself to have been enlightened by that?

MS. STEWART: No comment, Judge.

THE COURT: Have a nice day.

(Proceedings adjourned until 9:30 a.m., Wednesday, February 15, 1995)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
CLEMENT HAMPTON-EL, S593Cr.181(MBM)
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.
----------x

February 15, 1995
9:30 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

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Southern District of New York
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(In open court; jury not present)

MR. STAVIS: Before your Honor brings the jury in, I had a conversation with Mr. Khuzami yesterday afternoon and this morning. It is anticipated that the first witness who will be testifying this morning is Carlos Acosta, the postal police officer.

Mr. Acosta was the defendant in a civil suit brought here in the Southern District of New York before Judge Martin by my client, Mr. Nosair. There is an affidavit of Carlos Acosta concerning the lawsuit in which he describes events and which might fairly be characterized as 3500 material. It is my understanding that Mr. Acosta first notified Mr. Khuzami of that this morning, and obviously I would like to review that affidavit at some point.

MR. KHUZAMI: Your Honor, what I propose is I would send one of the agents in to get Mr. Acosta's home address and dispatch him immediately to Mr. Acosta's home if that can be arranged, to get the affidavit and bring it back so that it will be here, and we'll keep Mr. Acosta here in case Mr. Stavis wants to recall him.

THE COURT: What about local remedy?

MR. KHUZAMI: Court file?

THE COURT: Yes, fine.

MR. KHUZAMI: We can try that.

THE COURT: Do you have the docket number of the case.

MR. STAVIS: Yes, 92CIV8274.

THE COURT: Before Judge Martin?

MR. STAVIS: Yes, your Honor.

THE COURT: Why don't we try to get somebody to chase it down. Do you know if the case is still active?

MR. STAVIS: No it's not, your Honor. It was dismissed on summary judgment.

THE COURT: When?

MR. STAVIS: In 1994. I can give you the precise date.

THE COURT: It may be in Bayonne.

MR. STAVIS: Excuse me, your Honor, August 27, 1993 was Judge Martin's memorandum opinion and order.

THE COURT: I am going to ask my deputy to call and find out whether the file is still here from the clerk's office, and also to call Judge Martin's chambers to find out whether he has perhaps a courtesy copy in his file that may have been used in connection with deciding the motion. Otherwise, you'll have to chase it down the way you propose. Okay.

(Continued on next page)

(Jury present)

THE COURT: Good morning, ladies and gentlemen.

MR. KHUZAMI: Your Honor, the government calls Carlos Acosta as its next witness.

CARLOS F. ACOSTA,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Mr. Acosta, how old are you?

A. 59 years old.

Q. Are you employed?

A. No, I'm retired.

Q. When did you retire?

A. March 1st, 1991.

Q. What did you do before you were retired?

A. I was a postal police officer at the time working for the New York division for the Postal Service.

Q. What did you do before you were a postal police officer?

A. I was a mail handler from about 1961 to 1974.

Q. And you became a postal police officer in 1974?

A. That is correct.

Q. And did you hold that position until you retired?

A. That is correct.

Q. Now, what are the duties and responsibilities of a postal police officer?

A. The duties are to protect life, protect sites, buildings, anything that belong to the Postal Service you protect it, protect life and protect yourself and others.

Q. Are you married?

A. Yes, I am.

Q. Do you have any children?

A. One.

Q. Did you ever serve in the military?

A. I was four years in the Navy in about 1954 through 1958.

Q. What rank did you achieve in the navy?

A. I was just a seaman.

Q. Directing your attention to November 5th of 1990, were you working on that day?

A. I was working at that particular day I was working at 500 Lexington annex, which is a post office on between 47th and 48th Street on Lexington Avenue.

Q. What is the Lexington Avenue annex?

A. It was a post office in which people have boxes, mail boxes, and also was we sell, you know, part of the three annexes that replaced Grand Central Station at the time when it was closed.

Q. Was that your regular assignment on that day?

A. That been my regular assignment for the last six months and going to that area from the hours from 8 to 9.

Q. You were assigned to that location the hours of 8 to 9 everyday that you worked?

A. Everyday.

Q. For the six months prior to that day?

A. Right.

Q. And what hours were you working on November 5, 1990?

A. The hours 3:30 to 12 midnight.

Q. And how were you dressed for work that day?

A. I was in a full postal police uniform.

Q. What is that?

A. That's a navy blue jacket, pants with the stripes, radio, baton, badge, cap and revolver.

Q. What kind of revolver did you have?

A. I have six, magnum Ruger, six bullet revolver.

Q. Was that your gun or did that belong to the post office?

A. That belongs to the Postal Service, post office.

Q. Were you authorized to carry it?

A. Yes, I was.

Q. Was it loaded that day?

A. It has to be loaded otherwise it's against the law to carry when you go to carry an unloaded weapon when

you're on duty.

Q. Do you recall what time you arrived at the Lexington Avenue post office annex on November 5, 1990?

A. About the same time, 8 o'clock, maybe five minutes after.

Q. And what did you do when you first arrived there?

A. First thing I do, you report to the supervisor at the time and then you go on do what you're supposed to which is you know attend the lobby, and then you attend whatever business, you know, comes after that.

Q. When you say "attend to the lobby," what do you mean?

A. Well, you work in the lobby from about time you there until the they close the place up 9 o'clock.

Q. What are you are your duties when you tend in the lobby?

A. Well, you know try to help, sometime help customers and but main thing is to security, that's my job.

Q. After you were attending in the lobby what did you do next?

A. After we, the lobby is closed, well, then you report, you know, you secure the place after that, make sure that the post supervisor lock the place up, and then she sets up an alarm, and I go outside and wait for the alarm to make a sound, make certain sound and then you leave, you

know, you go.

Q. Who was the supervisor on that day, do you recall?

A. That particular was Ms. Wright.

Q. And it was Ms. Wright who set the alarm?

A. That's correct.

Q. And what is it that you do to make sure the alarm is secured?

A. When I go I, when she set the alarm, it take about a minute or so for the alarm to go off. So but she has to prepare whatever, you know, herself take care of her business inside post office, you know, check the roll, put everything away. Then she sets alarm, so it takes sometimes five, six, seven minutes, and then I wait outside. When I hear the sound of the alarm then I wait for her and I make sure she gets into a cab, and then I leave.

Q. When you say you, wait to hear the sound, where is it that you wait to hear the sound of the alarm?

A. Right on the customer entrance on 500 Lexington, where the customers come in.

Q. Can you describe that entrance, please?

A. Well, it's you have a little light small light, not like, it's not a vestibule because it doesn't have doors, but it is, it's a place, it's about two feet, you got an inner part in there about two feet, foot and a half. In

case it rains you can always go in there, and it's about two or three feet wide. Like door. It's a door where people come in, but it's covered, you know, it's covered.

Q. Is it recessed in from the sidewalk?

A. Yes, it's recessed in, yes.

Q. What are you listening for when you're listening for the alarm in that doorway?

A. It's a sound that you have to listen to it, because that will tell you that the alarm is set and set off for the night, and you have to go and listen to it, because of the traffic that comes that avenue, sometimes you might get a fire truck, and the fire truck goes by, you don't hear the alarm if you're not there.

Q. Did you hear the alarm that night on November 5, 1990?

A. I never got to heard the alarm that particular night.

Q. What happened after you were standing in the doorway?

A. I was in the doorway and I heard a commotion that went, you know, and I saw people running after the commotion, and look down, and I saw a cab.

Q. Where did you see the cab?

A. That was on 48th Street north, 48th Street on the corner of 48th Street and Lexington Avenue, East 48th

Street, Lexington Avenue of course, and about close to a deli that I used to -- I don't know the deli's still there, I haven't been there in quite a while -- but used to be a deli in the corner there.

Q. Was the cab on the east side of Lexington or the west side of Lexington?

A. I would say it was about in the second, I would say it was close to the east side, yes, of Lexington.

Q. The post office where you were standing, is that on the east side of Lexington or the west side of Lexington?

A. That's opposite to, you know, I would say west side.

Q. Was the cab north of 48th Street on Lexington or south of 48th Street on Lexington?

A. North of 48th Street, because south would be where I was.

Q. When you say you heard commotion, can you describe more specifically what it is that you heard?

A. Well, it was like I saw people running, you know, saw the cab, and I, it was you know something irregular, doesn't happen every night, so it's that's what I call a commotion. It's noises, you know, people running, and --

Q. What did you do after you heard the commotion?

A. Well, I step back in my little way the inner part, and I look, first I look, then I step back. But I

became, you know, I was aware, I was more aware of what was going on, so.

Q. What happened after you stepped back in the doorway?

A. Stepped back. There was people running, and then it was this guy running toward me, you know, running actually in the sidewalk. First he running from 48th Street south, and he has like the last second he really run toward me, you know, like on the sidewalk.

Q. Can you tell where this person was running from?

A. He was running from the area, the area on 48th Street.

Q. What area on 48th Street?

A. More or less where the, where the cab was around there.

Q. When was the first time you saw this man?

A. I saw this man when he was practically approaching me, you know. I saw him probably in the, there was ATM machine near there. By the way, that place belonged to, the area where the post office rent belong to the Chemical Bank and there was an ATM machine, and I was past the ATM machine maybe a few feet up, but this particular man was running.

Q. When you first saw the man did you notice anything about him?

A. When I saw him I noticed a weapon, a gun, you know, I noticed a weapon.

Q. Can you describe the weapon that you saw?

A. Well, it was a metallic, when I first saw, saw the metallic gun in his hand. He had it in his right hand.

Q. In his right hand?

A. Right.

Q. What did you do after you saw the man with the gun?

A. I started drawing my service revolver, and tried to identify myself. There was never time really.

Q. What happened next?

A. Next thing there was an exchange of fire. I remember what I felt like I was hit, you know. And I had prepared myself, I turned myself around a little bit to give this person less target, you know, as part of the training that I have taken, and I have no time to identify myself, no time at all. This person was running, I mean he was, he was moving.

Q. How far away was the man from you when he shot you?

A. I would say approximate seven, maybe seven, eight feet, around there.

Q. Did he say anything to you before he shot you?

A. He didn't say a word. He just fired two shots at

me.

Q. Did you say anything to him?

A. I didn't say anything to him, no.

Q. Where was your gun at the time that he shot you?

A. My gun was coming up.

Q. Was it out of the holster?

A. Yes.

Q. Was it pointed at the man?

A. It was on, I was in that position.

Q. I'm sorry, you were what?

A. I was trying to, you know, coming up.

Q. Specifically do you know where the gun was pointed when he shot you?

A. My weapon?

Q. Yes.

A. Was going pointed toward him at that time.

Q. How soon after you saw the man with the gun did he shoot you?

A. Right after. Right when he was at that distance from me about, he didn't make a sound, he just shot at me.

Q. Was there anyone else around the man at the time that he shot you?

A. No. There's other people that run before that, maybe.

Q. Anyone in the immediate area?

A. Nobody was around, nobody.

Q. Did he have any expression on his face at that time?

A. He had like call maybe a grin, a grin expression.

Q. I'm sorry, a what?

A. Like a grin, you know, a grin, like not a smile but is --

Q. Like a grin?

A. Yeah, grin.

Q. Now, what happened, where did you first feel the shot hit you?

A. I felt shot hit me around the chest area. When I felt burning later on in my right shoulder was a burning and I knew, I knew I was hit.

Q. Were you wearing any protection that time?

A. I had the bulletproof vest, you know, the navy blue bulletproof vest with white, the inside was pattern was white, white color.

Q. At what point did you know that you had been shot?

A. Almost immediately I felt the burning sensation and when I bounce, you know, the shot sort of bounce me back and I knew I was hit.

Q. Do you recall how many shots the man took at you?

A. I saw the flash two. One went right by my,

inches away from my head.

Q. And was the second one the one that hit you in the chest?

A. The first one, I believe it was the first one because I saw another burst of flash.

Q. Now, what did you do after you were hit with the bullet?

A. I fire my weapon three, in successive times, three times. I believe the first bullet probably hit him. The second bullet never, was misfire, never went out of the weapon and the third bullet, thanks God, nobody got hurt with it.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Mr. Acosta, let me show you what has been marked as Government Exhibit 10 and ask you if you can identify it?

A. I take out my reading glasses. Certain numbers there that I look at. This weapon is unloaded.

MR. KHUZAMI: Your Honor, that weapon has been disabled.

THE COURT: Fine.

A. Yes, this is my weapon at that time, yes.

Q. How do you recognize that as your weapon?

A. It has the number inside here. It's a magnum, a Ruger. It's a revolver, six bullets, and that black handle,

that's what we carry.

Q. Is that weapon the same or substantially the same condition as it was on November 5, 1990?

A. Outside of the bullets being removed, yes, it's the same weapon.

MR. KHUZAMI: Your Honor, the government would move exhibit 10 into evidence.

MR. STAVIS: No objection, your Honor.

THE COURT: 10 is received without objection.

(Government Exhibit 10 received in evidence)

Q. You can put that down.

Mr. Acosta, do you think today you would recognize the man that shot you if you saw him?

A. I believe he's here.

Q. Could you look around the courtroom and see if you see him?

A. Mr. Nosair, how are you, sir?

Q. Can you please point out to the person you recognize as Mr. Nosair?

A. I believe this gentleman over here.

Q. Can you describe his shirt and tie?

A. Oh, he has brown tie, dark suit, probably darker than my color. His shirt is yellow color, light.

Q. How many people from the end of this table is he?

A. The second person over here.

THE COURT: The record will reflect he identified Mr. Nosair.

Q. You may sit down.

Mr. Acosta, what happened after you shot Mr. Nosair?

A. After Mr. Nosair went down I bent over toward him and pick up the weapon possibly with my left hand, because I was bleeding profusely from the right hand, blood was coming down, so --

Q. Before you picked up the weapon, do you recall how Mr. Nosair fell to the sidewalk?

A. He fell sort of side way, you know, backwards, he fell backwards.

Q. Was he on his back or on his stomach?

A. He was on his back.

Q. Were his feet pointed uptown or downtown?

A. The feet were facing toward me. They were, his head was in the sidewalk. He was in the sidewalk, and his head was facing away from me, but his feet were closer to me.

Q. Why did you go over and pick up his weapon?

MR. STAVIS: Objection, your Honor.

THE COURT: Overruled. You can answer.

THE WITNESS: Should I answer that?

THE COURT: Yes.

Q. Yes.

A. You have to secure the weapon. You know you're taught as a postal police officer in training you're taught to secure the weapon, and it was important. There's other people there. I'm not in condition to run after nobody, somebody pick up that weapon and run with it, you know. So that's the reason I secure the weapon.

Q. Do you recall where the gun was when you picked it up?

A. It sort of fell to, sort of trickled out to his left side.

Q. Mr. Nosair's left side?

A. Yes.

Q. And what did you do after you picked it up?

A. I brought it over to me and I picked it up my hand, left hand and put it, I stepped on it, I went back to the spot that I was prior to that, which is the door in the inner part, and I stepped on it.

Q. Can you describe Mr. Nosair's gun that you saw that night?

A. It was a metallic weapon. It was, it's a revolver, also, a revolver. It was heavier than mine. Also a magnum revolver, and with a brown handle.

MR. KHUZAMI: May I approach the witness, your Honor?

THE COURT: Yes.

Q. Mr. Acosta, let me show you what has been marked as Government Exhibit 11 and ask you if you can identify it?

A. This is the weapon.

Q. What do you recognize that as?

A. This is the weapon that I recovered that night.

Q. How do you recognize that as the weapon you recovered?

A. It has brown handle, it's a revolver, six, and it has metallic color that I saw that night.

Q. Is it in substantially the same condition as it was when you picked it up that night?

A. Outside the bullets not being there it probably is.

MR. KHUZAMI: Your Honor, the government moves Government Exhibit 11 into evidence.

MR. STAVIS: May I have a voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. STAVIS:

Q. Good morning, Mr. Acosta.

A. Good morning, sir.

Q. My name is Roger Stavis. When you picked the gun up on November 5, 1990, did you examine the gun closely?

A. I looked at the weapon just for color. I didn't

quite, you know, get that close. I was no condition to really look that close to it.

Q. Did you make any notes concerning the precise condition of the weapon?

A. In the precise condition, did I make any notes?

Q. Yes.

A. No, sir, I did not.

Q. As you sit there today is your testimony that this is the weapon based on the fact that it has a brown handle and a metallic color?

A. My testimony is what I saw that night, based on what I saw the weapon when I looked at the weapon that night.

Q. Do you know as you sit there this morning whether it was this brown-handle metallic revolver or a different brown-handle metallic revolver that you recovered that?

A. This was the same --

Q. Excuse me. Let me finish my question?

A. Oh, I'm sorry.

Q. As you sit there and testify today do you know whether it was this brown-handled revolver or a different brown-handled metallic revolver that you recovered on that evening?

A. This one handle, this revolver.

Q. And how is it that you know that it is this

brown-handled metallic revolver as opposed to any other brown-handled metallic revolver?

A. I would say by the way I described it, it was metallic revolver with a brown handle, and what I had in my hand.

Q. Is your testimony here based on the color and appearance of the revolver?

A. Testimony was made on what I was that night able to see on it.

MR. STAVIS: Your Honor, I have an objection to the introduction of this exhibit at this time.

THE COURT: The objection I think goes to weight and is overruled. 11 is received.

(Government Exhibit 11 received in evidence)

MR. KHUZAMI: Your Honor, may I approach the witness?

THE COURT: Yes. Would you approach the sidebar first.

(Continued on next page)

(At the sidebar)

THE COURT: If you want I'll consider a limiting instruction that in essence tells them that this weapon as it has been admitted so far is only admitted only to show what the weapon that he says the defendant had looked like, because I'll take judicial notice weapons have serial numbers.

MR. KHUZAMI: Two points, your Honor. One, the serial number on this weapon is ground away. Two, if it makes a difference, another witness today, a police officer, will testify that he scratched his initials in the gun when he recovered it from this witness and he will be here.

MR. STAVIS: Your Honor, I specifically didn't ask him about the serial number because that's a substantive count in the indictment, but I would appreciate an instruction from the Court.

THE COURT: Okay. So it is received at this point only to show what the weapon that he says the person had looked like.

MR. STAVIS: Yes, your Honor.

MR. KHUZAMI: Even though it sounded to me like the questions asked by Mr. Stavis go to weight, but not to the gun, was it the gun he saw that night.

THE COURT: I am going to give the instruction anyway.

(In open court)

THE COURT: Ladies and gentlemen, although the gun has been received in evidence, at this point the only purpose for which it is received is to show what the weapon that this witness says he was shot with looked like. Go ahead.

MR. KHUZAMI: Thank you, your Honor.

Q. Mr. Acosta, let me show you what has been marked Government Exhibit 6A in evidence and ask you to take a look at it.

Your Honor, at the same time I request permission for the jury to be permitted to turn to photograph 6A in their binder.

THE COURT: Yes. That is the smaller binder.

THE WITNESS: May I have a cup of water, sir?

THE COURT: Sure.

Q. Have you taken a look at that, Mr. Acosta?

A. Yes, I'm looking at it, sir.

Q. Do you see yourself in that photograph?

A. Yes, I do.

Q. Are you --

A. I am in the place where I was mostly at night.

Q. Are you on the right side of the photograph?

A. On the right side, the post service, yes, on the entrance right on Lexington, the place that I described

before.

Q. Is there anything at your feet in that photograph?

A. Yes, the weapon, a gun, a revolver.

Q. What weapon is that?

A. This weapon right here.

Q. You're referring to Government Exhibit 11?

A. That is correct.

Q. How did it end up there on the ground next to you?

A. End up there because I put it there. First I was step on it. Then I'm still looking at it, you can see.

Q. What did you do with the gun after you brought it over and put it in the doorway?

A. What did I do with it? First thing I did was I stepped on it.

Q. After that what did you?

A. I kept it close to me. I just it was there.

Q. Did you later give it to anyone else?

A. Yeah, I gave it to a police officer.

MR. KHUZAMI: No further questions on that picture, your Honor.

THE COURT: You can put the picture down.

Q. By the way, at the time this picture was taken did you receive any medical help at that point?

A. Yes, I did. After the EMS got to the scene that night --

Q. At the time that picture was taken, Government Exhibit 6A, did you have any medical assistance at that point?

A. No. I was without medical assistance. I was just making sure that nobody hurt this man also while I was in the floor.

Q. You were making sure nobody hurt which man?

A. Mr. Nosair.

Q. Why are you making sure that no one hurt him?

A. Well, it is my duty to make sure nobody hurt that man.

Q. Why is that your duty?

A. To protect him, you know, even though he shot at me, he shot me, I'm there also to protect him.

Q. Did there come a time you radioed for assistance?

A. Right after I radio, but there was a lot of static in the communication, so when the supervisor came out, Ms. Wright, since I couldn't get through, I asked her to call from the inside, but by that time there was, the assistance had, you know, had come, meaning the ambulance.

Q. After the shooting did a crowd gather in that area?

A. Yes. Probably a group, you know, small group,

maybe ten people.

Q. Did you see anyone in that group touch Mr. Nosair in any way?

A. Nobody got close to that man while I was there. Only persons that got there was the arresting officers that came later which are at the scene there.

MR. KHUZAMI: Your Honor, may I approach the witness?

THE COURT: Yes, you may.

Q. Mr. Acosta, let me show you what has been marked as Government Exhibit 12 and ask you if you can identify it?

A. This is the bulletproof vest I was wearing that night, navy blue outside, and white or yellow color. Used to be white at one time.

Q. How do you recognize that as your bulletproof vest?

A. Well, recognize it by the bullet mark that hit my chest here, and also it was made by the Faust Corporation, I know that, because I put this every night for about quite a while, quite a long time, so.

Q. Is it in the same or substantially the same condition as it was on November 5, 1990?

A. Yes. More or less it is.

MR. KHUZAMI: Your Honor, the government moves exhibit 12 into evidence.

MR. STAVIS: No objection, your Honor.

THE COURT: 12 is received without objection.

(Government Exhibit 12 received in evidence)

Q. You can put that aside, Mr. Acosta.

MR. KHUZAMI: Your Honor, may I approach the witness?

THE COURT: Yes, you may.

Q. Mr. Acosta, let me show you what has been marked as Government Exhibit 6Q for identification and ask you to take a look at it.

Do you recognize that picture?

A. Yeah, that is myself.

Q. Without telling us what's in the picture, do you recognize what you see there?

A. Yeah, I seen the wound that I myself, the wound that I received that night.

Q. Is that approximately the way that you looked that night November 5, 1990 after you were shot?

A. It's the way I look, not the way I felt.

Q. Does it fairly and accurately show the way you looked that night?

A. Yes.

MR. KHUZAMI: Your Honor, the government would move exhibit 6Q into evidence.

MR. STAVIS: May I be heard at the sidebar, your

Honor?

THE COURT: Yes.

(Continued on next page)

(At the sidebar)

MR. STAVIS: Your Honor, I don't know if Mr. Khuzami intends to introduce Mr. Acosta's medical records. If he does, then I would have a Rule 403 objection to that photograph.

MR. KHUZAMI: Your Honor, if I may be heard there are two photographs. This is the second one a close-up. Mr. Patel informally made to me a Rule 403 objection to that and I agreed to take that one out. We have an attempted murder charge here which obviously I'm sure the wounds --

THE COURT: That is going to be received over objection. I should tell you something else while you're up here. I have the papers in the civil case. We've got the affidavit and the complaint. This is the notice of motion. So what I would suggest is that after you finish the direct we'll break and you can both take a look at this and see what you want to do.

MR. KHUZAMI: Is it permissible to leave the direct open and take a look at that?

THE COURT: Fine.

(Continued on next page)

(In open court)

THE COURT: 6Q is received.

(Government Exhibit 6Q received in evidence)

Q. Mr. Acosta, did you receive medical assistance that night?

A. Yes, I did.

Q. Can you describe for the jury what assistance you received?

A. I, EMS emergency came over, EMS officer and they, they gave me oxygen, took my blood pressure, it was quite high to, I believe he told me it was quite high, 180 over 110 or 185 over 110 around there, and they put a, clean my arm some, and then they put, they covered it, you know, to stop bleeding.

Q. Did they take you to the hospital?

A. Yeah, they did. They took me to Bellevue Hospital.

Q. How long did you remain there?

MR. STAVIS: Objection, your Honor.

THE COURT: I'll let him testify how long he was there. Go ahead. Overruled.

A. I was there from Monday to Friday. That week from the, that would make it from the 5th to the 9th I believe that's a Friday. Yeah, to the 9th.

MR. KHUZAMI: Your Honor, pursuant to stipulation

the government would move the introduction of Government Exhibit 23 which is a package of documents reflecting Mr. Acosta's medical records.

THE COURT: All right. That's on stipulation?

MR. STAVIS: Yes, your Honor.

THE COURT: 23, Mr. Acosta's records are received on stipulation.

(Government Exhibit 23 received in evidence)

MR. KHUZAMI: Your Honor, at this point I would ask permission for the witness to be permitted to step down and display to the jury the two weapons and the bulletproof vest.

MR. STAVIS: Objection, your Honor.

THE COURT: Overruled. Go ahead.

(Witness left the stand)

Q. Mr. Acosta, first I'd just like to ask you to hold up for the jury what has been received as Government Exhibit 10 which is your weapon.

A. Weapon is a Ruger 357. It's government issue. It belongs to the government Postal Service.

THE COURT: There is no question right now.

Q. I would next ask you, Mr. Acosta, to hold up what has been introduced into evidence as Government Exhibit 11 the weapon you picked up next to Mr. Nosair?

A. This also a revolver --

THE COURT: Again, please don't say anything unless he asks you a question about it.

Q. Thank you.

Last I'd like you to hold up your bulletproof vest which has been identified as Government Exhibit 12 and particularly show the area where the bullet hit?

A. Right pectoral, right to the belly button --

MR. KHUZAMI: No question,

MR. STAVIS: Your Honor, may I have those remarks stricken?

THE COURT: Stricken.

THE WITNESS: This is the bullet that night --

Q. Mr. Acosta, just show the vest. You don't have to say anything. Thank you.

MR. KHUZAMI: You can take your seat.

(Witness resumed stand)

Your Honor, I have no further questions of the witness pending the one matter we discussed at sidebar.

THE COURT: Fine. Ladies and gentlemen, we are going to take a short break. Please leave your notes and other materials behind. Please don't discuss the case.

(Continued on next page)

(Jury not present)

THE COURT: You can step down.

(Witness temporarily excused)

(Pause)

THE COURT: All right. The record should reflect that I've got from the Court file in Nosair v. Acosta and United States Postal Service, notice of motion filed March 26, 1993, document 93CIV8274.

We'll reconvene in a few minutes.

(Recess)

(In open court; jury not present)

CARLOS F. ACOSTA, resumed.

MR. KHUZAMI: Your Honor, I have two additional items and I'll rest direct.

THE COURT: Fine.

(Continued on next page)

(Jury present)

MR. KHUZAMI: May I proceed, your Honor?

THE COURT: Pleas.

DIRECT EXAMINATION (continued)

BY MR. KHUZAMI:

Q. Your Honor, may the jury be permitted to open their binder of photographs and examine Government Exhibit 6Q which has been admitted in evidence?

THE COURT: Yes.

(Pause)

THE COURT: Go ahead.

MR. KHUZAMI: Thank you, your Honor.

Q. Mr. Acosta, since the prior time that you testified have you had any contact direct or indirect with Mr. Nosair?

A. Well, yes, indirectly. He sent me a summons in which he was suing me for, me and the Postal Service for $20 million.

Q. Without telling us what that was about?

A. Yes.

Q. Did that lawsuit arise out of the events of November 5, 1990?

A. Around, yeah, from the events of that, I shoot him that night in self defense.

MR. KHUZAMI: Thank you, your Honor. No further

questions.

THE COURT: Mr. Stavis.

MR. STAVIS: Thank you.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Mr. Acosta, I asked you a few questions earlier this morning. Do you recall that?

A. I believe you did ask me some questions, yes.

Q. Was that the first time that you and I had spoken?

A. Maybe I spoke, I don't believe I spoke to you but I probably -- had we spoken?

Q. Do you know if we have ever spoken before?

A. As a lawyer I don't know you, sir.

Q. Have we ever met before, Mr. Acosta?

A. No, I don't think so.

Q. Did you meet with Mr. Khuzami before you testified --

A. Yes, I had seen him a couple of times, at least, you know before I testified, yes.

Q. Approximately how many times did you meet with Mr. Khuzami?

A. Approximately twice.

Q. And when were those two times that you met with Mr. Khuzami?

A. That was sometime in November I believe. And sometime this month.

Q. When you say November, which year are you referring to?

A. Referring about November, 1994. Probably December, but anyway I met him last year.

Q. Did you have occasion to meet with anyone else from the U. S. Attorney's Office concerning the subject matter of your testimony this morning?

A. Did I, did I meet with somebody else?

Q. Besides Mr. Khuzami?

A. Well, no, no, just Mr. Khuzami and some, and that's it, Mr. Khuzami.

Q. Did Mr. Khuzami go over with you the questions that he would be asking you?

A. We spoke briefly about, you know, more or less.

Q. When you spoke to Mr. Khuzami did he have a black book with him like this book that I'm holding up?

A. He might have one on his table. I wasn't really looking for it.

Q. Did you go over your, the answers that you'd be giving here today?

A. I spoke to him and I made my own statement, you know, more or less. I didn't practically go over, I spoke with him, yes.

Q. Now, you testified at the prior trial concerning these events; is that correct?

A. Yes, there's a prior trial in 1991.

Q. And before testifying at that prior trial did you speak to an Assistant District Attorney?

A. Yes, I did.

Q. And was that assistant District Attorney's name William Greenbaum?

A. That's correct, sir.

Q. Approximately how many times did you speak to Mr. Greenbaum?

A. Mr. Greenbaum about three times, two or three times.

Q. Could it have been four times, Mr. Acosta?

A. Could have been a fourth the day that we went to court and it was cancel, but I didn't have time to speak to him that time, just went to testify when I, you know, everything was canceled a couple of days later.

Q. And you were wearing your uniform I believe you testified?

A. That's correct, sir.

Q. That's a blue uniform?

A. Blue uniform with postal pants, two stripes on the side, and baton, radio, cap, a badge, and a revolver.

Q. You said a badge. You just touched your hand to

the right side of your chest. Was that where the badge was?

A. The badge comes in the left, my left side.

Q. It's outside of the jacket?

A. Yes. Yes, sir.

Q. Were you wearing a hat as part of your uniform?

A. That is correct, we always wear a hat.

Q. And was there a badge on your hat as well?

A. Is a badge on the hat, also.

Q. During the time that you were serving as a postal police officer did you have occasion to speak to members of the public and to help members of the public?

A. Yes, I do that, I make that part of the job. It's called courtesy. You try to be, you know, courteous with the public.

Q. Did any of those people ever mistake you for a police officer?

A. Did any of those people what, sir?

Q. Ever think you were a police officer?

A. I was just a postal police officer, not, not the city police officer.

Q. Did the people that you came in contact with ever treat you as if you were a police officer?

A. They treat me as I treat them with respect, yes, sir.

Q. Did they ever ask you questions like they would

ask of a police officer?

A. No, just mainly questions regarding the Postal Service, job-related questions.

Q. In your direct examination Mr. Khuzami asked you to look closely at several exhibits. Do you recall that?

A. Yes, yes, sir.

Q. And when he asked you to do that, you put on your eye glasses. Do you recall that?

A. Yes, sir, I did. Reading glasses.

Q. You wear reading glasses, Mr. Acosta?

A. I don't wear reading glasses. I read with them. That's why they called reading glasses.

Q. Now, what is your eyesight?

A. Well is, I have diabetes now. It's less than what it was.

Q. Was it about 20/40?

A. Probably at that time, yes.

Q. Mr. Acosta, I just ask you, please, if you could wait until I finish the question --

A. Yes, sir.

Q. -- before giving me the next answer.

At the time of the incident was your eyesight about 20/40?

A. I would say, yes, or 20/40, yes.

Q. And you say it's a little worse now?

A. Yes.

Q. Have you applied for a driver's license in the recent past?

A. I had the driver's license, and I'm still able to pass the test without glasses. I don't need glasses for my driving license. As a matter of fact I can show it to you, it's here in my pocket. There's no, what do you call, no glasses involved.

Q. I'll take your word for it.

A. Okay.

Q. Were you wearing glasses when you were out on the street on November, 1990?

A. I only wear glasses to read, sir, and to look at certain things close.

Q. When you were working on November 5th of 1990, did you have to look at anything close?

A. No, not until, not while I was working until 9 o'clock.

Q. Did you bring -- I'm sorry, have you finished your answer?

A. Yes, sir.

Q. Did you bring your eye glasses with you to work on the --

A. I had them --

Q. Please. Please let me finish my question.

Did you bring your eye glasses with you to work on the afternoon of November 5, 1990?

A. I always have eye glasses kept them with me, you know, in case I have to read, do any reading pertaining to job or some things. You have memos and you have to read them. So I would bring it with me mostly everyday. I may have to get them sometime, but not --

Q. Where were your eye glasses at the time of the shooting?

A. They were in the probably side pocket, we had a side pocket with a zipper.

Q. That would be your right side pocket?

A. That would be left side pocket. The gun is, I don't want anything close to the weapon so it probably my left side pocket.

Q. Left side pocket.

Mr. Khuzami showed you a photograph where you were in a hospital. Do you recall that this morning?

A. Picture showing my wound when I was in the, that's the only picture that I saw here.

Q. Right. That's the one I'm referring to?

A. Yes.

Q. And you were wounded in your right arm, Mr. Acosta?

A. I was hit in the chest and then went out

completely out my right shoulder.

Q. The photograph that you were shown this morning was a wound in your right arm; is that correct?

A. That's right shoulder, yes, sir.

Q. In the right shoulder or the right arm, shoulder?

A. The right arm, the upper shoulder.

Q. Following the shooting and your wounding you were taken to the hospital, correct?

A. That is correct.

Q. When were you at the hospital, Officer Acosta -- by the way that's Bellevue Hospital?

A. Bellevue, yes, sir.

Q. Did they require to you sign a consent form agreeing to have medical treatment there?

A. If they did I don't quite remember. They probably did. They usually do in all cases.

MR. STAVIS: Your Honor, may I approach the witness with page 18 of Government Exhibit 23 in evidence?

THE COURT: Go ahead.

Q. Mr. Acosta, I'm showing you page 18 from that Government Exhibit. If you'd like to put your eye glasses on and take a look at that, please.

A. Yeah, that is it the form that I signed.

Q. Wait, you have to speak into the microphone.

A. It's a patient consent and signed by myself.

11/5/90.

Q. And that was the evening that you were admitted into the hospital?

A. That is correct, sir. That is the evening.

Q. Did you sign that with your right hand, Mr. Acosta?

A. Yes, I did, very painfully.

Q. Officer Acosta, later on that day on November 6th did you speak to a postal inspector by the name of Joel --

A. I'm no longer an officer.

Q. Excuse me?

A. I'm no longer an officer. I'm retired.

THE COURT: You keep calling him "officer." He says he's no longer an officer.

THE WITNESS: I'm a retired postal police officer.

Q. I'll call you, Mr. Acosta then?

A. That's better, yes.

Q. I'd call you Carlos, but we never met before.

Mr. Acosta, when you were in the hospital at Bellevue Hospital on November 6th of 1990, did a postal inspector come and interview you concerning this case?

A. Yes, two postal inspectors.

Q. And that would be Postal Inspector Long?

A. Yes, one of them.

Q. And Postal Inspector McGrath?

A. I believe that was the other one, yes.

Q. After they spoke to you did you sign a written statement?

A. Yes, I did.

Q. Did you sign that written statement with your right hand, Mr. Acosta?

A. I did with the right hand, that's what I do my signing.

Q. In the four years since November 5th of 1990 have you ever seen Mr. Nosair on television?

A. On television, probably had, yes.

Q. Approximately how many times have you seen Mr. Nosair?

A. You mean after 1990?

THE COURT: He said since November of 1990.

A. Yes, probably a few times. I'm not that fond of television anyway, so I might have seen maybe a couple of times.

Q. Have you ever seen his picture in the newspaper?

A. Yes, I had.

Q. Since November 5th of 1990?

A. After I got home probably, yes.

Q. Approximately how many times have you seen Mr. Nosair's picture in the newspaper?

A. Oh, well, maybe a few times, you know.

Q. Would it be fair to say, Officer Acosta, that Mr. Nosair looked Hispanic to you?

A. He's dark complexion like me. He look Hispanic. At the time he looked Hispanic to me. He's a dark complexion man. I am a dark complexion man. I am Spanish.

MR. STAVIS: Your Honor, may I approach the witness with Government Exhibit 6D? Is that in evidence? And 6E.

THE COURT: 6D and 6E.

MR. STAVIS: 6D and 6E.

THE COURT: Go ahead. You want the jury to examine it?

MR. STAVIS: Yes, I would ask the jury to open it.

THE COURT: Ladies and gentlemen, if you would open your binders to exhibits 6D and 6E, whichever Mr. Stavis is examining.

Q. Mr. Acosta, I'm showing you Government Exhibit 6D and 6E in evidence. I'd ask you to take a look at them.

Turning your attention to 6D, in the upper part of that picture do you see striped pants, blue striped pants?

A. Yes. I see them.

Q. Would those be your pants, Mr. Acosta?

A. That's my uniform, yes.

Q. And facing in the direction of that uniform are two white sneakers. Is that correct?

A. Correct.

Q. And those appear to be Mr. Nosair's sneakers?

A. Yes, they appear to be.

Q. Did you see Mr. Nosair falling down at the time that you fired at him?

A. Yes, he fell backwards.

Q. Did you see him falling forwards immediately prior to your shooting him that evening?

A. Not forward, just slumped backwards.

Q. Directing your attention to Government Exhibit 6E, is that how Mr. Nosair appeared after he was shot and fell backwards?

A. According, yes, it appears that way, yes.

Q. Is he wearing light colored pants, Mr. Acosta?

A. Yes, there is, yes.

Q. Do you notice anything on the light colored pants?

A. There's blood in it. There's blood on his pants, yes.

Q. Are you able to explain to the ladies and gentlemen of the jury how the blood came to be on the front of Mr. Nosair's pants?

A. I have no idea, sir.

Q. When you discussed this case with Mr. Khuzami did he show you your testimony from the prior trial?

A. From the prior trial?

Q. Yes.

A. No, he did not. I don't even have it myself. I don't know.

Q. Have you ever seen it since you've testified?

A. Have I ever seen it since I testified? No, I haven't.

Q. Mr. Acosta, while were you standing outside of the postal annex how were the doors? Describe if you would the doors while you were standing outside?

A. The door is in the back of what I was, and is, the door then there's a vestibule inside, but we talking about the outside door, and there's a little leadway which is about two feet where I used to be in there when, you know, when it rain I used to, that's what I used to stand. This is what I used to stand all the time.

Q. Do the doors open inward or outward?

A. The doors opened I believe it was inward.

Q. When you were standing outside of those doors on the evening of November 5th of 1990 were those doors locked?

A. Yes, sir, they were locked.

Q. Were you -- would you be able at that time to

open those doors?

A. They're locked, sir. How could I open them?

Q. If you had a key.

A. No, I didn't have a key. The key was held by Ms. Wright, supervisor.

Q. At the time that you were standing outside the doors on November 5th of 1990 did you see a young man try to get inside those doors?

A. There was seen a guy, running first and I was mainly focused on Mr. Nosair. He wasn't focusing on anybody else.

Q. Who's the guy that you saw running first?

A. Saw a few people running as a matter of fact but only one went by me, so.

Q. Okay. Describe if you could for the ladies and gentlemen of the jury the one who ran by you?

A. Was a young person. That much I can tell you. Very young man.

Q. How much time was there between the time that you saw that man and the shooting?

A. Maybe two seconds right there. He was following, you know, like, he was following this, running after this man. Or the man was running away I would say.

Q. Did there come a time that evening while the doors were locked that a man, a young man shook the doors to

try to get inside the postal annex?

A. Sir, my concern was the man with the weapon. I wasn't looking at that man or anybody else.

Q. Did there come a time that evening on November 6th of 1990, when a young man went up to the doors and shook them to try to open them?

A. I just answered you that, sir.

THE COURT: Do you recall that happening? Whether you were focused on Mr. Nosair or not, did you ever notice that evening anybody go up and shake the doors?

THE WITNESS: All my main focus was on the man with the weapon.

THE COURT: Understanding that, but did you see at all, whether he was the main focus or not your main focus, did you see at all anybody try to shake the door?

THE WITNESS: Not that I recall. I was, you know mainly concerned with Mr. Nosair. That was my main concern. To me it was a matter of life and death at the time.

Q. Did there come a time on November 5th of 1990 that a young man came up to you, a young man other than Mr. Nosair?

A. Yes. Right after the shooting, right after the shooting.

Q. Did there come a time on November 6th, 1990, just prior to the shooting --

A. November 5th you talking about. We talking November 6th, we talking November 5th, right? You said November 6th.

Q. Excuse me, I'm sorry.

A. November 5th, sir.

Q. Did there come a time on November 5th of 1990 just prior to the shooting that a young man came up to you?

A. Prior to the shooting? Yes. Meaning before to the shooting?

Q. Yes.

A. I, like I told you before, I was concerned with the man with the weapon. I have all my focus was with that man because my life depend on it.

(Continued on next page)

Q. But did there come a time prior to that shooting when the young man came up to you?

A. The only man that came right up to me was Mr. Nosair.

Q. Did there come a time on November 6, 1990, prior to the shooting that a young man grabbed you --

THE COURT: You are saying November 6.

MR. STAVIS: Excuse me. I am sorry.

Q. Did there come a time on November 5, 1990, around 9:00 p.m., before this shooting, that a young man came up and grabbed you by your shoulders?

A. Nothing happened then. Everything happened after 9:00, sir. Prior to, nobody grabbed me by the shoulders.

Q. Did anyone grab you by the shoulders immediately prior to the shooting?

A. No, sir.

Q. Did the young man come up to you immediately prior to the shooting and say to you, "Oh, my God"?

A. Somebody run by but I don't recall exactly what he said. Like I said, my main concern was that man with the weapon.

Q. Immediately prior to the shooting did a young man shake you by your shoulders and say "Oh, my God" at the same time?

A. Nobody shook me by the shoulders.

Q. Immediately prior to the shooting, was there a young man crouching down right next to you?

A. Like I said, sir, I was focusing on Mr. Nosair only.

Q. Prior to your testifying at the state trial when you spoke to Mr. Greenbaum, did he discuss with you a young man coming up to you immediately prior to the shooting?

A. No, he did not.

MR. STAVIS: Your Honor, may I approach the witness with Government's Exhibit 3531P, page 414?

THE COURT: Yes.

Q. Mr. Acosta, I ask you to take a look at page 414, line 19, where it says "The court."

THE COURT: Just read it to yourself.

A. Yes. This is the question --

THE COURT: Don't tell us what is there. Just read it to yourself and the attorney will ask you a question about it.

Have you read it?

THE WITNESS: Yes, your Honor.

THE COURT: OK.

Q. Mr. Acosta, did Mr. Greenbaum ask you before the first trial --

MR. KHUZAMI: Objection.

THE COURT: Sustained.

Q. Mr. Acosta, did Mr. Greenbaum discuss with you prior to the first trial --

MR. KHUZAMI: Objection.

THE COURT: Sustained.

MR. STAVIS: May I be heard at the side bar, your Honor?

THE COURT: No.

Q. Mr. Acosta, at the first trial did the court pose the following question and did you give the following answer?

MR. KHUZAMI: Objection.

THE COURT: May I see the transcript?

Sustained.

Q. Mr. Acosta, I asked you earlier during the cross-examination whether Mr. Greenbaum had discussed with you the man who came up to you immediately prior to the --

MR. KHUZAMI: Objection.

THE COURT: Sustained, stricken. I want to remind the jurors that the evidence is what the witness testifies to, not what the lawyer asks.

You are directed to proceed to another topic.

Q. Did Mr. Khuzami ever discuss with you the young man, a young man who came up to you immediately prior to the shooting in this case?

MR. KHUZAMI: Objection.

THE COURT: That I will allow. Overruled. Did Mr. Khuzami ever discuss with you somebody coming up to you before the shooting?

A. No.

Q. Is it your testimony here this morning, Mr. Acosta, that a young man did not come up to you immediately prior to this shooting, grab you by the shoulders and say "Oh, my God"?

MR. KHUZAMI: Objection, your Honor.

THE COURT: Sustained. I directed you to go on to something else. Please do so.

Q. During your direct examination this morning, Mr. Acosta, Mr. Khuzami asked you about your weapon and drawing your weapon. Do you recall that testimony?

A. Yes, sir, I do.

Q. You at that time made an indication with your right arm at a right angle like I am having my arm right now. Do you recall that?

A. Make an indication?

Q. You had your arm sort of pointed in front of you.

A. When I draw a weapon I sort of turn, your Honor, to produce less target, because he was definitely -- I knew I was going to get hit, you know, at a short reach like that. So I had to use within split seconds whatever was taught me in training, and believe me, execute that to my

best.

Q. At the time that you were shot, was your weapon drawn, Mr. Acosta?

A. At the time that I was shot, my weapon was coming up, yes.

Q. It wasn't in your holster at that time, was it?

A. At the time he shot the weapon, like I said, it was coming up, sir.

Q. It wasn't in your holster at that time, was it, Mr. Acosta?

A. In the holster at that time?

Q. Yes.

A. The weapon was coming up, sir, at the time I was shot.

THE COURT: Was any part of it still in the holster?

THE WITNESS: It was up.

Q. Is the answer to the judge's question that it was not in the holster, Mr. Acosta?

A. Not when I was shot.

Q. You testified on direct examination that your attention was drawn to a cab on the evening of November November 5, 1990. Do you recall that testimony?

A. Yes.

Q. You didn't see anyone get out of that cab, did

you, Mr. Acosta?

A. I saw a lot of people around the cab, sir.

THE COURT: His question was simply whether you saw anybody get out. Did you see anybody get out of the cab?

A. I saw people running out of the cab, yes.

THE COURT: Out --

THE WITNESS: Not out, around the cab.

THE COURT: He doesn't want to know if anyone was running around the cab, he simply wants to --

THE WITNESS: No, there was nobody running out, sorry.

Q. And there were people running in all different directions?

A. Yes, sir.

Q. Approximately how many people could you see?

A. I could see maybe a few people.

Q. Are you able to put a number on it for us?

A. Maybe around there about different directions about maybe four, five.

Q. And there was some sort of commotion?

A. Yes, there was a commotion. That's how I noticed it.

Q. There were people yelling and screaming?

A. There was people yelling, yes.

Q. What kinds of things were they yelling, Mr. Acosta?

A. They were yelling, but I can't quite make out what they were saying. They were just yelling.

Q. You weren't able to hear precisely what they were saying?

A. No, sir.

Q. Was it the commotion around the cab that drew your attention on the evening of November 5, 1990?

A. Yes, sir.

Q. Did you think that the commotion had something to do with the cab on November 5, 1990?

A. Yes, sir.

Q. Were they fixing the street out on Lexington Avenue between 49th and 47th Street --

A. I believe --

Q. Please let me finish my question.

THE COURT: Let him finish the question.

THE WITNESS: Yes.

Q. Were they fixing the street on Lexington Avenue between 47th and 49 at that time on November 5, 1990?

A. I believe around 48th Street there was what is called a funnel, where they working on steam pipes -- they put up -- I know the city workers or the Con Edison come up and put these tents, and then they have this, where the

steam comes up. There was one on 48th Street, I believe, because I used to walk, come to work, and I used to sit, yes.

Q. When you heard a commotion at that time, did you think that a manhole cover had blown up and that people were running on account of the manhole?

A. That was the first thought I had, yes.

Q. Please allow me to finish my question.

A. Yes.

Q. Did you think that the commotion related to a manhole cover that had been blown open and that people were running because of that manhole cover?

A. That was my first thought, like I figured out it could have been a manhole.

Q. So you first thought it was a blown manhole cover?

A. Yes. I didn't know but I thought that what it was because of the steam pipe that I seen, that maybe that's what caused it.

Q. And that is as soon as your attention was drawn, is that correct, Mr. Acosta?

A. Yes, as part of the commotion, sir.

Q. How far away from you was Mr. Nosair when you were shot?

A. I would say about seven to eight feet. Could

have been six to eight, seven, between there, seven to eight feet.

Q. Would it be fair to say that as soon as you saw him you got shot?

A. Yes, sir, as soon -- I saw him in front of me.

Q. And before Mr. Nosair was -- what would you say, seven to nine feet away?

A. Yes, seven to eight, seven to nine, yes.

Q. And before Mr. Nosair was seven to nine feet way, you didn't see him at all, is that correct?

A. I seen him maybe prior to that, just seconds, but he just came up, just in an angle toward me.

Q. As soon as you saw him, is that when you got shot?

A. As soon as I saw him, that's when I saw the weapon, right after that I got shot.

Q. And he was seven to nine feet away at that time?

A. Between there, sir.

Q. When he was 15 feet away you didn't see him, did you, Mr. Acosta?

A. Fifteen feet away, I did see him, but I couldn't --

Q. You did see him when he was 15 feet away from you?

A. Yes, I saw a man running, yes.

Q. You said you saw a man running. I am asking you about Mr. Nosair, Mr. Acosta --

A. Yes --

Q. Please allow me to finish my question.

As soon as you saw Mr. Nosair, you got shot, isn't that correct, Mr. Acosta?

A. As soon as I saw Mr. Nosair approach me I got shot, when he was seven to nine feet from me.

Q. And now you are saying that you saw him when he was 15 feet away from you, Mr. Acosta?

A. I saw this man running but later it happened to be Mr. Nosair.

Q. So you saw -- with withdrawn.

When you first saw Mr. Nosair, he was almost right in front of you, is that correct?

A. When I first saw Mr. Nosair, he was approaching very fast to me, yes, sir.

Q. And when you first saw Mr. Nosair, there were other people running near him, is that correct?

A. Not near him, maybe away from him. But he was the only person that I was concentrating on.

Q. While you were concentrating on him, did you see somebody else from the side?

A. There was other people prior to that during the commotion by the cab. I saw the people running, yes, around

the incident where the cab was.

Q. You shot Mr. Nosair, is that correct, Mr. Acosta?

A. Yes, sir, I shot Mr. Nosair.

Q. Would it be fair to say that you nailed Mr. Nosair, Mr. Acosta?

A. No, I shot Mr. Nosair in self-defense, sir.

Q. Please allow me to finish my question.

Would it be fair to say that you nailed Mr. Nosair, Mr. Acosta?

A. I would prefer to say that I shot Mr. Nosair in self-defense.

Q. Did you ever tell anyone that you nailed Mr. Nosair, Mr. Acosta?

A. Did I ever tell anyone that I nailed Mr. Nosair?

Q. That you nailed him.

A. No, I would not use the word nail.

Q. On July 31, 1991, did a private investigator come to your house, Mr. Acosta?

A. July 31, Mr. Thomas, I believe. Is that the person you are referring to?

Q. Yes.

A. Yes, he did.

Q. Did Mr. Thomas ask you about what happened on the evening of November 5, 1990?

A. Yes, he did.

Q. Did you tell Mr. Thomas at that time that you shot back and nailed him? Is that -- please allow me to finish my question. Is that what you told Mr. Thomas on July 31, 1991?

A. I told Mr. Thomas that I shot back in self-defense, that this man tried to kill me. That's what I told Mr. Thomas.

THE COURT: His question was simply whether you recall whether in talking to Mr. Thomas you used the word nailed. Did you?

THE WITNESS: I don't recall using that particular word.

MR. STAVIS: May I approach the witness, your Honor?

THE COURT: Yes.

A. Yes, shot back. I used the word "shot," too.

THE COURT: Excuse me. There is no question pending. If he wants to show you a piece of paper, he can show you a piece of paper. Look at it. Then he can pose you the question.

Q. Does that refresh your recollection, Mr. Acosta, as to whether you used the word "nailed"?

A. I also used the word "shot" as it is in there.

THE COURT: Excuse me. He wants to know whether as you look at that piece of paper you remember now --

THE WITNESS: Yes, sir, it's there.

THE COURT: He is not asking you what is on the paper because what is on the paper is not evidence. He wants to know whether in looking at the piece of paper and thinking about what you told Mr. Thomas, whether you used the word "nail" or not?

THE WITNESS: It's probably so if it is there.

THE COURT: Do you have your own recollection of using the word "nailed"?

THE WITNESS: I used the word "shot, I know that, because it's also in there.

Do you see the word "shot" in there, sir?

THE COURT: No, he asks the questions, you give the answer.

Q. Do you see the word "nailed" in there, sir?

THE COURT: Sustained and stricken. I remind you once again, ladies and gentlemen, the evidence is what the witnesses say, not what the lawyers say, because the lawyers can say anything. Go ahead.

Q. Did you tell Mr. Thomas that you shot back and nailed him?

A. I told Mr. Thomas I shot back, yes.

Q. You said yes. Does that include "shot back" and "nailed him"?

THE COURT: Sustained, sustained. That's enough.

Move on to something else.

Q. You testified earlier this morning that you wanted to make sure after you shot Mr. Nosair that nobody hurt him. Do you recall that testimony?

A. Yes, sir, I did protect that man while he was on the floor.

Q. Who did you protect him from, Mr. Acosta?

A. He was running from somebody. I don't know what he had done prior to that. It was wasn't my concern. My concern was that Mr. Nosair shot at me.

THE COURT: Excuse me. He wants to know who you protected him from. Do you recall?

THE WITNESS: I figure that he was running for a reason. The reason, I don't know. What happened prior to that, I have no idea.

Q. After he was shot, did you see other people around?

A. After he was shot, other people came around, yes. I testified that maybe 5, 10, maybe 11, 12 people, I don't know.

Q. Did you protect Mr. Nosair from those 5, 10 or 11 or 12 people?

A. Nobody got close to Mr. Nosair, sir, while I was there.

THE COURT: He wants to know whether you did

anything to protect him from any of those people.

THE WITNESS: Yes. I kept focus on Mr. Nosair and nobody got close to Mr. Nosair but me when I pick up the weapon.

Q. How did you keep those people away from Mr. Nosair?

A. They have respect for me at the time. I didn't say anything, just that -- I was hurt but I was aware what was going on at the times.

Q. Are you able to describe for us any of these 5, 10, 11 or 12 people that you kept away?

A. I remember one man with a suit. That's about the only one prior that I remember well while I was there.

Q. Were any of the people who were around yelling or screaming?

A. They were commenting, sir. Nobody was really out of -- mostly were, I believe, commenting. I don't know.

Q. Were they commenting about Mr. Nosair at that time?

A. I have no idea what they were commenting at.

Q. Do you remember anything about their comments?

A. No, sir. I don't remember.

Q. You testified earlier this morning that you picked up the weapon with your left hand. Do you recall that testimony?

A. Yes, sir, I did.

Q. Are you sure you picked up the weapon?

A. I am sure I am looking to you, sir, at you, sir.

Q. Did you kick the weapon?

A. I picked up the weapon and I secure it, I put it by me and I stepped on it, sir.

Q. Did you push away the weapon and not pick up the weapon?

A. Did I what?

Q. Did you push the weapon away instead of picking up the weapon?

A. I took the weapon and I put it by me, sir. I didn't push it, I took it, I picked it up.

Q. Did you speak to take police detective by the name of James Kennedy?

A. Mr. Kennedy, he was a detective, yes.

THE COURT: Let him finish his question. He wants to know whether you talked to a detective named Kennedy. Did you?

THE WITNESS: Probably, maybe at Bellevue probably, yes, sir.

Q. Did you speak to Detective Kennedy on the evening of November 5, 1990, at approximately 11:00?

A. I was at the Bellevue. I probably did it, sir.

Q. Did Detective Kennedy ask you questions about

what occurred --

THE COURT: Mr. Stavis, if you could move just a little bit away from the microphone. Thank you.

Q. Did Detective Kennedy ask you questions about what had occurred earlier that evening in front of the postal annex?

A. I don't believe he quite asked me that evening because I was just -- I remember that evening I kept going, getting up and urinating a lot. That much I remember.

Q. Did you tell Detective Kennedy at Bellevue Hospital that evening that you pushed the gun away from Mr. Nosair? Did you tell that to him?

A. I might have pushed it somewhat when I picked it up. You know, I might have done that. Inadvertent, but I did pick up the weapon.

Q. Did you push it before you picked it up?

A. The weapon fell, I put the hand in, left hand, and I picked it up.

Q. Did you push it before you picked it up, Mr. Acosta?

A. I might have done it inadvertently, but I don't quite remember.

Q. When I asked you just a few minutes ago if you pushed the weapon, you said no, didn't you?

MR. KHUZAMI: Objection.

THE COURT: Sustained.

Q. What is your answer to the question as to whether or not you pushed the weapon away from Mr. Nosair?

MR. KHUZAMI: Objection.

A. I picked up --

THE COURT: Sustained.

Q. Immediately after the shooting on November 5, 1990, a man came toward you. Do you recall that?

A. Yes, I recall that, very close to me. It was like almost being on a leash so close to me.

Q. And the man bent down near the weapon, is that correct?

A. That's correct. He was so close to me, very close to me.

Q. And the man came from your right-hand side, is that right?

A. If I recall, yes.

Q. Please allow me to complete my question before you answer it.

And the man came from your right-hand side, is that correct, Mr. Acosta?

A. Yes, I believe so, sir.

Q. The man was a young man, about 20, 21 years old?

A. Yes, he could have been about that age, young fellow, yes.

Q. Did he appear to be Hispanic to you?

A. No, I don't believe so. He was -- he didn't appear to be Hispanic to me, no.

Q. Are you sure of your answer, Mr. Acosta?

A. My answer?

Q. Yes.

A. I said I didn't believe to me he was Hispanic, no. He could, but again, I was in no condition to judge by looking at this man.

Q. Do you recall testifying in the prior proceeding on November 21, 1991?

A. That a young man approached me?

THE COURT: No. He wants to know first of all whether you remember testifying at a prior proceeding on that date, November of 1991. Did you testify?

THE WITNESS: Prior proceeding --

THE COURT: A prior trial.

THE WITNESS: Before the shooting or after the shooting?

THE COURT: After the shooting -- no. The question is, did you testify at a trial in November of '91? Do you remember that?

THE WITNESS: Yes, I did.

THE COURT: OK.

Q. And at page 401 of the record, were you asked,

question, at line 13:

"Q. Did you notice anything on his head, by the way, if you looked?

"A. I wasn't looking at his head.

Then you were asked:

"Q. You say he looked Hispanic."

Then you answered:

"A. To me he did."

A. Maybe, could have been at the time I looked. I was in no condition at that time after the shooting --

THE COURT: His only question was, do you remember giving that answer or those answers to those questions?

A. Yes, probably I did.

Q. Mr. Acosta, is your memory better today in 1995 than it was in November of 1991?

A. It should be better today.

Q. Is it your testimony today that the man who came up after the shooting on November 5, 1990 did not appear Hispanic to you?

A. I say he could have looked Hispanic. I probably said it, yes, but I --

THE COURT: His question now is simply whether you remember if the man looked Hispanic or not.

THE WITNESS: At the time, probably looked to me,

yes, maybe.

Q. Did you point your revolver at that young man who came up to you immediately after the shooting?

A. I had the weapon and first I thought that he was, you know, after the weapon, that he was so close to me and I am there to protect the weapon. I might have make a motion, I might have make a motion, yes, sir.

Q. Did you tell that man, "Touch that gun and I'll blow you away"?

A. I don't believe I said that. If I did, it was a matter of bluff. You know what a bluff is, sir. I was in no condition, believe me, sir, but I could have bluffed.

THE COURT: His question is whether you recall saying in words or substance to somebody, "Touch that gun and I'll blow you away"? Did you say either those words or something like that?

THE WITNESS: Something like that, call it a bluff. You heard and you bluff.

THE COURT: That's the answer.

Q. The young man that you pointed your weapon at, what did he do right after you pointed your weapon at him?

A. Sort of went -- I didn't quite kept -- you know, he, he sort of went, walk away from me.

Q. Which direction did he go?

A. I have no idea. Just walk away. I didn't follow

him. I was in no condition to follow anybody.

Q. Did he head down Lexington Avenue?

A. He might have. Like I said, I don't know which direction. He just left.

Q. Did he go north on Lexington Avenue?

A. Sir, I just answered that question. I have no idea which way he went.

Q. Can you describe that man?

A. He was a young man, maybe 165 pounds, Muslim.

Q. Could he have been 200 pounds?

A. No, not that heavy.

Q. When you gave a written statement to the postal inspectors on the evening of November -- the early morning hours of November 6, 1990, did you write that he was 200 pounds?

A. I remember describing Mr. Nosair close to that weight.

Q. When you wrote out a statement on November 6, 1990, in the early morning hours, did you describe the man that you pointed the gun at as being 200 pounds?

A. I probably described him as lighter than that, but I didn't have time to weigh, you know, do any weighting of these people, sir. I was fading away, you could say, at the time.

MR. STAVIS: My may I approach the witness with

3531N, your Honor?

THE COURT: N as in Nancy?

MR. STAVIS: N as in Nancy.

THE COURT: Go ahead.

THE WITNESS: Yes, it says that, but like I said --

THE COURT: He hasn't posed a question. Just look at the statement.

THE WITNESS: Yes, your Honor.

THE COURT: Do you want to pose a question, Mr. Stavis.

Q. Having looked at that statement, does that refresh your recollection as to whether or not you told postal inspectors in the early morning hours of November 6, 1990, of the young Hispanic man who came up to the weapon, weighed 200 pounds?

A. Yes, correct, to my belief at the time. Anybody weighed -- you know.

Q. Mr. Khuzami asked you about a lawsuit --

A. Yes, sir.

Q. That was a lawsuit brought by Mr. Nosair, is that correct?

A. Yes, sir, that was in 1992, sometime in December.

Q. And it was brought against you, is that correct?

A. Me and the postal service, sir.

Q. But you were one of the named defendants in that lawsuit?

A. Yes, I was one of them.

Q. And you were represented by the United States Attorney for the Southern District of New York in that lawsuit, weren't you, Mr. Nosair?

A. Yes, sir.

Q. Let me finish.

You were represented by the United States Attorney for the Southern District of New York in that lawsuit, is that correct?

A. Yes, sir.

Q. And it was an Assistant U.S. Attorney by the name of Hoffman who represented you in that lawsuit?

A. It was William Hoffman, yes, sir.

Q. And you filed papers in that lawsuit,?

A. Yes, I had to file papers asking for representation because it is within the law to do that.

Q. You submitted an affidavit in that lawsuit?

A. Yes, sir.

Q. And the subject matter of the lawsuit was Mr. Nosair was suing you for having shot him, is that correct?

A. Yes, sir, yes, sir, having shot him, yes, sir.

Q. And he was suing you for money damages, is that correct?

A. Money damages, yes, sir, $20 million to be exact.

Q. And it was contention in that lawsuit that you had no right to sue him, isn't that correct?

MR. KHUZAMI: Objection.

THE COURT: Sustained.

Q. And that lawsuit took place in this very courthouse, is that correct?

A. I was represented by Mr. Hoffman. I wasn't told to come at the lawsuit, but I was represented by him.

Q. And he is an Assistant U.S. Attorney, is that correct?

A. Yes, sir.

Q. And Mr. Khuzami is an Assistant U.S. Attorney, is that correct?

A. I believe he is.

Q. And Mr. Hoffman is an Assistant U.S. Attorney in the civil division, is that correct?

A. I believe he is.

Q. And Mr. Khuzami is an Assistant U.S. Attorney in the criminal division, is that correct?

A. I believe he is.

MR. STAVIS: I have no further questions of this witness, your Honor.

THE COURT: Anyone else? Cross? No?

Any redirect?

MR. KHUZAMI: Just one or two, your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Mr. Acosta, Mr. Stavis asked you a number of questions about your reading glasses. Do you recall those questions?

A. Yes.

Q. Did you have any difficulty at all seeing Mr. Nosair on the night of November 5, 1990?

A. I haven't trouble then or today, sir. I recognize him without any difficulty today and then.

Q. Mr. Stavis also asked you some questions about a statement that you gave to postal investigators on the night of the shooting. Do you recall those questions?

A. Yes, he asked me some questions about that.

Q. Where were you when those postal investigators asked you those questions?

A. I was laying in bed in Bellevue with a sore right hand, right arm.

Q. Did you write any statement that night?

A. They wrote the statement because my arm, whole arm was sore the next day, very sore.

MR. KHUZAMI: No further questions.

RECROSS-EXAMINATION

BY MR. STAVIS:

Q. The statement that you gave in Bellevue to the postal inspectors, did you sign that statement, Mr. Acosta?

A. Yes, very painfully, but I sign it.

Q. With your right hand, correct?

A. Right hand, yes, same hand that was very painful, but I signed it.

Q. Have you completed your answer?

A. Yes, sir.

MR. STAVIS: I have no further questions, your Honor.

THE COURT: Thank you very much. You are excused.

(Witness excused)

MR. KHUZAMI: Your Honor, the government calls as its next witness Ms. Eva-Marie Cusack.

THE COURT: Before we have the next witness, ladies and gentlemen, during the cross-examination of at least one witness who testified last week, Mr. Gottesmann, who is not a government employee, there were a number of questions put as to whether the witness received a fee for his appearance and whether his travel expenses were compensated, and there was also testimony during the last week and other testimony today about whether the witnesses met with government lawyers before they testified to discuss the substance of their testimony. I want to instruct you first that a party to a case is required to pay a witness reasonable travel expenses and lodging, and that every such witness, regardless who calls the witness, is entitled by law to a fee of $40 a day.

As far as witnesses meeting with lawyers before they testify, I instruct you that it is entirely proper for a witness called by either side to meet with a lawyer to discuss his or her testimony. That is routinely done and it is helpful to everyone, including you, because it saves time by helping to ensure that a witness's testimony will be limited to matters relevant to the case on trial and that the testimony is otherwise proper under the rules of evidence. Of course, it is also proper for a lawyer on the

other side to inquire into the nature and degree of a witness's pretrial preparation and also to elicit testimony to show that that attorney on the other side has not spoken to the witness.

Whatever weight you give to the testimony about pretrial preparation, if any, is entirely within your discretion.

Swear the witness, please.

EVA-MARIE CUSACK,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Ms. Cusack, what is your occupation?

A. I work for the New York City Emergency Medical Service.

THE COURT: Mr. Khuzami, please pose the questions a little further from the mike.

A. I work for the Emergency Medical Service as an emergency medical technician.

Q. How long have you been an Emergency Medical Services technician?

A. For eight years.

Q. Is the Emergency Medical Services often referred to as EMS?

A. Yes.

Q. What is your background and training as an EMS technician?

A. I am trained as an emergency medical technician with the New York City EMS Academy. We are trained in defibrillation, medical defibrillation, which is shocking someone, we are trained in hazardous materials, and a lot of continuing education courses.

Q. When you say fibrillation, can you define what that is?

A. When someone has a heart attack and is shocked, you give them an electrical shock to bring their heartbeat back.

Q. Are you also trained in basic life support?

A. Yes, sir.

Q. Can you describe what that is?

A. Basic life support is bandaging, CPR, splints, maintaining someone's, like physical posture after an accident. Stabilizing them and transporting them to a hospital to keep them alive.

Q. In general, what is the purpose or role of EMS technicians when they arrive on the scene where a person has been injured?

A. Our role is to get to the scene, treat the patients to the best of our ability, and transport them to

the nearest hospital.

Q. Is there a difference between an EMS technician and a paramedic?

A. Yes, there is.

Q. What is that difference?

A. That difference is that the paramedic can administer medications, whereas I can't.

Q. Directing your attention to November 5 of 1990, were you working as an EMS technician on that day?

A. Yes, I was.

Q. Did you have a partner?

A. Yes, I did.

Q. What was his name?

A. Simeon Klevin.

Q. Were you in an ambulance that night?

A. Yes, I was.

Q. Were you driving?

A. I was the technician that night so my partner was driving.

Q. What is the role of the technician who is not driving when you are assigned to an ambulance?

A. You are the first one to treat the patient. You both treat but I was treating first that night.

Q. Were you assigned to a particular hospital that night?

A. No. We work out of Bellevue Hospital but we are not assigned to a hospital.

Q. Directing your attention to around 9:00 p.m. on November 5, 1990, did you get a call on that date at that time?

A. Yes, I did.

Q. What did the call direct you to do?

MR. STAVIS: Objection, your Honor.

THE COURT: Sustained. Pose another question.

Q. Without telling us what the caller said, what did you do as a result of receiving that call?

A. I responded to a hotel on Lexington Avenue.

Q. Do you know which hotel?

A. It's the Marriott Hotel. It's on Lex and 48th.

Q. Do you recall what time you received that call?

A. I remember sometime in the evening past 9:00.

Q. Are there any documents that you have that would refresh your recollection as to what time you received the call to which you testified?

A. I have an ambulance activity report and a utility log which would help me.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Showing you what has been marked as Government Exhibit 3533B, take that for a moment and just look at it.

Does that document refresh your recollection as to what time you received a call that night?

A. Yes, it does. It was 9:08. 9:00 p.m.

Q. Where were you when you received that call?

A. We were right around the area of St. Patrick's Cathedral.

Q. Did you go to the Marriott Hotel?

A. Yes, I did.

Q. What happened when you arrived?

A. When I arrived, I was told that someone had been shot upstairs, and I proceeded upstairs.

MR. STAVIS: Objection. Objection, your Honor, and I would move to strike.

THE COURT: That is stricken. Don't tell us what you were told, just tell us what you did.

Q. Do you recall what time you arrived at the hotel?

A. I think it was like 9:10 or 9:11, something around there.

Q. Are you sure about that?

A. It would be on my ambulance call report or on my log.

MR. STAVIS: Your Honor, may I have a side bar, please?

THE COURT: Yes.

(At the side bar)

MR. STAVIS: Your Honor, the ambulance call report is not in evidence. The witness is referring to it. She is being asked to refresh her recollection concerning precise, up-to-the-minute times. It is obvious that the document which is not in evidence is being read from and not used to refresh.

MR. KHUZAMI: I don't know on what basis Mr. Stavis makes that objection except for the fact that it is a specific time. It is no different than it is in any situation. He asked questions about 200 pounds, as to whether or not that refreshed his recollection.

THE COURT: The fact that he did it doesn't mean you can do it. Number one. Number two, if you want to establish how that log was kept and do it as past recollection recorded, I will let you do it.

(Continued on next page)

(In open court)

Q. Ms. Cusack, when you arrived at the hotel, were there any other ambulances there?

A. Not at that time.

Q. Can you describe to the jury what you did once you arrived?

A. I entered the hotel and went up the stairs to the second floor.

Q. What did you see when you arrived at the second floor?

A. I approached a room at the front of the building. Before the entrance there was a man that was shot and lay by the front entrance. I checked him, made sure he was OK, and proceeded inside.

Q. What was your partner doing?

A. My partner was following up behind me with more equipment.

Q. What did you see when you proceeded into the room?

A. I found a man that was shot in the neck in the front of the room, in a pool of blood. I went over and helped him.

Q. Did there later come a time when you learned the identity of that man?

A. Yes, I did.

Q. What did you learn his identity to be?

A. Meir Kahane.

Q. Can you describe to the jury what position he was in when you entered the room?

A. He was lying on his back, just lying on his back.

Q. Were there others around him when you arrived?

A. There were a number of other people.

Q. Do you know what they were doing?

A. They were trying to help him. They were trying to do CPR, give him a little respiration.

Q. Were there any other EMS technicians there?

A. No, not yet.

Q. Do you recall what Meir Kahane's condition was when you arrived?

A. He was dead.

Q. What do you base that on?

A. He had no vital signs at that time. He had an obvious mortal injury. He was in quite a large amount of blood at that point, enough blood to say that he had lost, I think it was like three pints or so, at least.

Q. When you say he had no vital signs, did you personally check his vital signs?

A. Yes, I did.

Q. When did you do that?

A. As soon as I got up to him.

Q. Which vital sign did you check first?

A. I started with his breathing and his pulse. I bent down and checked to see if there was any breathing and checked, the pulse at the same time.

Q. Can you tell the jury how you check for his breathing?

A. Yes sure. You go down to his head and literally try to see if there is a rise and fall of the chest, or breathing, air coming in and out of the moth. I slid my finger down his throat to the carotid artery as I was doing that, to see if there was a pulse there.

Q. What was the result of the test to see whether or not there was breathing?

A. There was no breathing.

Q. When you tested his pulse by feeling his carotid artery, what did you find?

A. There was no pulse.

Q. Did you check any other vital signs?

A. You check his pupil reaction.

Q. Did you do that?

A. Yes, I did.

Q. How do you check his pupil reaction?

A. You literally look in his pupils and check his reaction to light.

Q. What did you find as a result of that check?

A. There was no reaction.

Q. Do you know what the medical significance is of having pupils that don't react?

A. Yes.

MR. STAVIS: Objection. Outside of the ken of this witness, your Honor.

THE COURT: Sustained.

Q. At that point did you notice the nature of Meir Kahane's wounds?

A. Yes, I did.

Q. What were they?

A. He had a large open wound to the neck that proceeded with an exit wound through the cheek.

Q. What treatment did you give Meir Kahane when you arrived upon the scene?

A. When I first got to the scene when he wasn't breathing, I wanted to ventilate him.

Q. What does "ventilate" mean?

A. Wanting to help him breathe. I wanted to get some air into his lungs to assist him in breathing. I tried to get the airway in to open up his airway, get the air through.

Q. When you say you tried to get the airway, what does that entail?

A. An airway is just like a plastic stick. It's

kind of flat and it's round and it goes into the mouth and it slides down into the throat a little so it stays open, so the mouth won't close, so the tongue won't block it. Then you can get some air through, straight into the lungs.

Q. Do you know whether air was able to get to Meir Kahane's lungs as a result of that?

A. No, I couldn't.

Q. How do you know that?

A. The airway didn't stay in, which meant either it was blocked or -- there is a couple of reasons.

Q. What other treatment did you undertake?

A. CPR, which is compressions on the chest to try and get the heart beating again.

Q. How long did you give CPR to Meir Kahane?

A. From that point until he was at the hospital.

Q. Did you undertake any other treatments other than attempting to start breathing and to give CPR?

A. After I attempted that, then you have to -- I had to secure the wounds, try to stop the bleeding, and that was -- I placed bandages on the wounds and I tried to put a cervical collar on his neck to hold the wound on the side of his neck closed, this way, so it would stop bleeding.

Q. Did you undertake any other treatment?

A. I had the CPR going on at that point and I was trying to get some air into his lungs, and it wasn't working

too well. That was about it at that time. I was holding him still, waiting for some more assistance to come help me.

Q. Did further assistance arrive?

A. Yes, they started coming.

Q. Who arrived?

A. First one of my lieutenants arrived and then another paramedic unit came to assist me.

Q. Did these individuals undertake additional treatment?

A. The paramedic unit did. One of the paramedics went up to the head, took me away from the head and was going to try to put a tube down his throat so he could breathe -- that's a little better than trying to stick the airway -- while I was doing the CPR and putting mask trousers on.

Q. What are mask trousers?

A. They are pants that you put on the legs and they pump up, like a balloon, push the blood from the lower part of the body into the chest so that the heart has some blood to pump around.

Q. Do you recall whether or not the paramedic was able to put the tube down Meir Kahane's throat?

A. He was having a problem putting the tube down his throat.

Q. Do you know whether or not he ever was successful

in doing that?

A. Not that I remember.

Q. Was there any other assistance that arrived?

A. At that point there were a lot of units on the scene at that point, but it was mainly myself and the other two paramedics working on it at this point.

Q. Did any other ambulances arrive?

A. Hatzollah Ambulance.

Q. What is Hatzollah Ambulance?

A. It's a volunteer ambulance.

Q. Did any persons employed by Hatzollah or working for Hatzollah appear on the scene?

A. Yes.

Q. Do you recall who?

A. It was a doctor.

Q. Do you remember his name?

A. Stowe.

Q. Did Stowe perform any treatment?

A. He had gone up to the head, to help the paramedic out.

Q. Do you recall what Dr. Stowe did?

A. He tried to intubate the patient himself.

Q. Can you describe for the jury what is involved in intubating a patient?

A. What they do with intubating the patient, it's

the same thing with an airway, you want to open up the mouth and you want to stick a tube down and the tube will obviously -- you know, it's a straight tube, it will keep everything clean and push air into the lungs. What they do is, they stick a metal scope that opens up the throat and they slide the tube down into the lungs.

Q. By the way, at the time that Dr. Stowe arrived, had Meir Kahane's vital signs registered any change?

A. No.

Q. He was still not breathing?

A. Yes, he wasn't breathing.

Q. And there was still no pulse?

A. No pulse.

Q. Do you recall whether or not Dr. Stowe was successful in being able to intubate the patient?

A. No, he wasn't.

Q. Do you recall whether or not there were any disputes between Dr. Stowe and the paramedic who was there?

A. There was.

Q. What was the dispute?

A. The paramedic wanted to intubate the patient and Dr. Stowe wanted to intubate the patient and the paramedic was doing as well as he could before Dr. Stowe came in, so he wanted to continue.

Q. Who prevailed?

A. Dr. Stowe did for a little while.

Q. What do you mean for a little while?

A. Then at one point -- it's a lot of fast treatment on the scene, and by that time I had him just about ready for transport, so he prevailed until we were on the stretcher.

Q. Were there any other devices used to assist Meir Kahane in breathing?

A. We were respirating him, giving him air -- that was the bag valve mask.

Q. Can you describe what the bag valve mask is?

A. Instead of using mouth to mouth, it's a mask that is attached to almost a balloon-like structure and you squeeze that and it will pump air straight through, a specific amount of air, as opposed to breathing into his mouth, I might not get enough air in.

Q. Could you tell whether or not air was actually getting into Meir Kahane's lungs as a result of the use of the bag valve mask?

A. I could tell. There was no air getting into his lungs.

Q. How could you tell that?

A. Because there was no rise and fall of the chest.

Q. Can you describe to the jury what happened once you -- how you prepared Meir Kahane for transport?

A. I had put the mask trousers on him, I put the collar on his neck, and then we put a long, big piece of wood called a back board under him to keep him flat, keep him stable. The CPR was continued, the ventilations were continued, and then he was ready for transport. He just had to go on the stretcher.

Q. Was there any treatment given while you were transporting him?

A. CPR continued and we continued attempting to ventilate him.

Q. Do you recall approximately how long you were at the hotel before you left the second floor room where you were?

A. I am not sure, maybe about 10 minutes.

Q. Once he was ready to transport, who went with him?

A. I went and the paramedic unit came with me. We went down to the ambulance together.

Q. What happened when you went downstairs?

A. We went downstairs, got in the ambulance, placed him in the ambulance, the three of us came in, and I believe another EMT jumped in to assist.

Q. At this point had there been any change in Meir Kahane's vital signs?

A. No, no change.

Q. Was there any breathing?

A. No.

Q. Was there any pulse?

A. No.

Q. What happened when you arrived in the street?

A. When we arrived in the street, there were numerous EMS units and police units at that time, and we just put him in the ambulance.

Q. Who went in the ambulance?

A. Myself, the paramedic unit, another EMT jumped in, and Dr. Stowe jumped in.

Q. Where did you take Meir Kahane?

A. Bellevue Hospital.

Q. How long did the trip take from the hotel to the hospital?

A. I am not sure. Couldn't have been more than five minutes. I am not sure.

Q. Did you give him any treatment while you were driving to Bellevue?

A. We continued CPR and the paramedic continued to try and get some air into him.

Q. Was there any change in his vital signs at that time?

A. No, no change.

Q. What happened when you arrived at Bellevue?

A. When we arrived at Bellevue, we removed him, continued CPR, and we brought him inside.

Q. What happened once you brought him inside?

A. We brought him into like the trauma slot, it's called, where all the trauma patients go, and we just transferred treatment to the doctors that were ready on scene.

Q. Once you dropped him off at Bellevue, did you have any further responsibility for his care?

A. No.

MR. KHUZAMI: No further questions, your Honor.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Miss Cusack, we have never met before, have we?

A. No.

Q. And we have never spoken, have we?

A. No.

Q. Did you have occasion to meet with Mr. Khuzami before your testimony?

A. Yes, I did.

Q. Approximately how many times did you meet with Mr. Khuzami?

A. Twice.

Q. When were those two times?

A. Once in December, I think, and once about two weeks ago.

Q. Did you go over the questions that he would be asking you when you testified in this case?

A. Yeah -- well, not really, just kind of what I remembered.

Q. Did you discuss with Mr. Khuzami issues concerning the cause of death of Meir Kahane?

A. Concerning the cause?

Q. Yes.

A. No.

Q. Did you discuss with Mr. Khuzami Dr. Stowe?

A. Yes.

Q. Approximately how long did you take discussing Dr. Stowe on the two times you met with Mr. Khuzami?

A. I really don't know. It wasn't long.

Q. Did you testify at a state trial in 1991?

A. Yes, I did.

Q. Did you go over your testimony with an assistant district attorney before testifying at that trial?

A. Yes, I did.

Q. Approximately how many times did you go over your testimony?

A. I couldn't remember.

Q. Did Mr. Khuzami give you your prior testimony to

review?

A. No.

(Continued on next page)

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

(At the side bar)

THE COURT: All this is about is, juror number 6 is not feeling terribly well and she is not comfortable, and she would like to take a short break. Can we do it now and take a short break and finish and go to lunch?

MR. STAVIS: Either that or we can go to lunch.

THE COURT: Can we break now and then we will come back at, say, quarter of 2 to resume?

MR. STAVIS: Sure.

THE COURT: We are going to break now. Please leave your notes and other materials behind and please don't discuss the case. We will resume at quarter to 2.

(Jury excused)

(Witness excused)

THE COURT: We will resume at 1:45.

(Luncheon recess)

AFTERNOON SESSION

1:45 p.m.

EVA-MARIE CUSACK, resumed.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

Mr. Stavis.

MS. STEWART: Your Honor, Mr. Ricco is not here.

MR. FITZGERALD: Should I check the hallway?

THE COURT: Please.

(Pause)

THE COURT: Ladies and gentlemen, we are going to have to wait a little bit. Rather than have you wait in here and stare at us stare at you, why don't you go back to the jury room and we will have you back out as soon as we can. Please leave your notebooks and other materials and don't discuss the case.

(Recess)

(In open court; jury present)

EVA-MARIE CUSACK, resumed.

THE COURT: Here we are again. Before we broke, Mr. Stavis, you were examining the witness on how often she reviewed her testimony with the assistant district attorney before the state court trial and she said she was unable to recall, and you were in the process of showing her her testimony, I believe.

MR. STAVIS: I asked the question but I was not in the process of showing her the testimony.

THE COURT: All right, you had asked the question. Go ahead.

CROSS-EXAMINATION continued

BY MR. STAVIS:

Q. Miss Cusack, you are employed by the ESU, Emergency Services Unit, is that correct?

A. No, I am not.

Q. EMS.

A. Yes.

Q. Emergency Medical --

A. Service.

Q. And you are an EMT?

A. Yes, I am.

Q. What is an EMT?

A. An EMT is an emergency medical technician. We specialize in basic life support.

Q. Are there people other than EMT's, emergency medical technicians, who work for EMS, Emergency Medical Services?

A. Yes, there are.

Q. There are paramedics, are there not?

A. Yes, there are.

Q. Could you please explain to the ladies and

gentlemen of the jury the difference between an EMT emergency medical technician, and a paramedic?

A. A paramedic will administer medication, which is the main difference. The other thing they do, they stick -- they intubate. They put a tube down people's throat. We can't do that.

Q. Were there other EMS personnel at the hotel on the evening of November 5, 1990?

A. Yes, there were.

Q. Your partner was there, is that correct?

A. Yes, he was.

Q. And he is Simeon Klevin?

A. Yes.

Q. And there was an EMS team there from St. Claire's Hospital, is that correct?

A. Yes, there were.

Q. That EMS team consisted of paramedics, is that right?

A. Yes, they did.

Q. Would that be Gideon Zahler?

A. Yes.

Q. Was his partner's name Peter Dworsky?

A. I believe so.

Q. Was there also an EMS, Emergency Medical Service person by the name of Stuart Wolf?

A. Yes.

Q. And he rode in the ambulance with you, Stuart Wolf?

A. I think he may have. I am not sure.

Q. Was he from St. Claire's Hospital too, if you know?

A. He works for EMS.

Q. Does he work for --

A. He works for the City of New York.

Q. Was he a paramedic or an EMT?

A. A paramedic.

Q. You testified this morning concerning your supervisor, and his name was Lieutenant Kevin Howe.

A. Yes, he was.

Q. Did Lieutenant Kevin Howe join you before you proceeded into Marriott Hotel?

A. No.

Q. Are you sure that you didn't meet Lieutenant Kevin Howe outside of the Marriott Hotel and proceed inside with Lieutenant Kevin Howe?

A. Yes, I am positive.

Q. When you first arrived at the scene, did you see a crowd of screaming people?

A. You mean at the front of the hotel?

Q. That is correct.

A. Not that I remember.

Q. Who were you with at the time that you first arrived?

A. My partner.

Q. That would be Simeon Klevin?

A. Yes, it would.

Q. It was just you and Simeon Klevin?

A. Yes.

Q. You didn't notice a crowd?

A. There may have been people on the street. I mean, it's Lexington Avenue. I don't remember a crowd. I just remember the building.

Q. How about when you proceeded inside the hotel? Did you notice a screaming crowd there?

A. In the lobby?

Q. Yes.

A. No.

Q. How about on the second floor?

A. On the second floor, down the hall, by the room.

Q. Did you notice a screaming crowd?

A. They weren't screaming. There was a crowd there, if you want to call it a crowd.

Q. What were they doing?

A. Down at the room?

Q. Yes.

A. I don't know what everybody was doing. I just know what the people were doing by my patient.

Q. And you proceeded with Simeon Klevin?

A. Yes.

Q. Into the room?

A. Yes, he was behind me.

Q. Was there an injured person directly outside of the room?

A. Yes, there was.

Q. Did Simeon Klevin remain with that person while you proceeded inside the room?

A. Yes, he did.

Q. Did you proceed inside the room with Lieutenant Kevin Howe?

A. No, I did not.

Q. Are you positive of that?

A. I am absolutely positive of that.

Q. As an emergency medical technician, are there certain precautions that you take for neck injuries?

A. Yes, you do.

Q. What are those?

A. You keep the spine still, primarily.

Q. How do you go about doing that?

A. Keeping the head still in line with the body, so keeping the spine still in a straight line.

Q. Could you please explain to the ladies and gentlemen of the jury why you do that for neck injuries?

A. Because we know what the spine is. It's a bunch of vertebrae, and it bends and it turns and it twists, and if there is an injury, in between all those vertebrae are cartilage. If you have an injury inside the spinal column, you don't want broken vertebrae into the cartilage or move about within the spinal fluid. So you try to keep it still during that time, because you don't want any further injury to be done.

Q. Is there something called a cervical collar?

A. Yes, there is.

Q. What is a cervical collar and how is it used?

A. A cervical collar, you see people walk around with them, they are foam collars. We happen to have plastic collars that extend from the chin to the base of the neck. It goes around the neck and holds the neck still and onto the top of the body.

Q. What does a cervical collar do with regard to injuries of the neck?

A. It keeps the neck still and the spine in line with the body.

Q. Was there a cervical collar used in this case?

A. Yes, there was.

Q. Was that after Dr. Stowe arrived at the scene?

A. No, it was before. I had put that on at one point before, because there was the bandaging somewhere underneath it.

Q. So by the time Dr. Stowe arrived --

A. It was on.

Q. -- the injured person already had a cervical collar on?

A. Right.

Q. So that it would not be possible at that point to move the neck?

A. There could be some movement.

Q. But not too much?

A. No.

Q. At the time that you saw Meir Kahane, the person you have identified as Meir Kahane at the front of the room, there were several people around him, is that correct?

A. Yes, there were.

Q. And some of those people were placing pressure on his wounds, is that correct?

A. Yes, they were.

Q. And some of those people were performing CPR, is that correct?

A. Yes, there were.

Q. And one of those people was doing mouth-to-mouth resuscitation, is that correct?

A. Yes, I believe.

Q. Did there come a time that you started performing CPR on Meir Kahane?

A. Performing -- when I first approached, I immediately concentrated on trying to get the air into him, while I left one of them doing CPR for me, doing compressions, the actual compressions. But ventilating is CPR also.

Q. Did Lieutenant Howe direct you to perform CPR on Meir Kahane?

A. No.

Q. Are you sure of that?

A. I was there first alone. I am sure of that.

Q. At the time that you were doing CPR on Meir Kahane, did Lieutenant Howe use the bag valve mask on Meir Kahane?

A. Not that I remember.

Q. Could he have used the bag valve mask?

A. Not that I remember. He knows how to use it.

MR. STAVIS: May I approach the witness, your Honor?

THE COURT: Yes.

MR. STAVIS: Page 1077 of the transcript.

Q. I am showing you something and I ask you to take a look at that and see if that refreshes your recollection,

beginning on line 5.

A. OK. That was not mine. It doesn't refresh my recollection, no.

Q. And directing your attention to lines 7 through 9, I ask you to examine that, tell us if that refreshes your recollection.

A. No, it doesn't.

Q. Did there come a time that the paramedics Zahler and Dworsky joined you in rendering care to Meir Kahane?

A. Yes.

Q. At what point did that occur?

A. Shortly thereafter. I couldn't tell you how long, five minutes.

Q. Was Lieutenant Howe there at that time?

A. Yes, he was.

Q. Did Lieutenant Howe assist in the care that was given to Meir Kahane when he arrived?

A. I believe he just assisted more on the supervision, but not the actual care.

Q. Was Lieutenant Howe at the time that -- withdrawn.

Was Lieutenant Howe on the radio, do you recall that at all?

A. I can't recall that.

Q. Was Lieutenant Howe giving directions to other

people, if you recall?

A. I can't recall, no.

Q. Do you recall if a woman began screaming at Lieutenant Howe while you were rendering care to Meir Kahane?

A. I really wouldn't know.

Q. Do you recall if somebody pushed a 9-millimeter revolver into the ribs of Lieutenant Kevin Howe at the time that he was next to you, while you were rendering care to Rabbi Meir Kahane?

A. No, I don't know of that.

Q. Excuse me. What was your answer?

A. I don't know of that.

Q. Do you remember anything specifically like that?

A. No.

Q. You testified this morning that you cut the -- withdrawn -- that you put mask trousers on Meir Kahane?

A. Yes, I did.

Q. And those are sort of inflatable pants, right?

A. Right.

Q. And they sort of push the blood up?

A. Right.

Q. Did Lieutenant Kevin Howe assist you in doing that?

A. That's possible.

Q. At the time that you were rendering care to Meir Kahane, that was toward the front of the room, correct?

A. Yes, it was.

Q. The door that you came in, was it the back of the room?

A. Yes, it was.

Q. And you were rendering care in the front of the room, correct?

A. Yes.

Q. As you were facing the wall, was there a door to your immediate right at the front of the room?

MR. KHUZAMI: Objection to form.

THE COURT: You mean as in the front of the room?

MR. STAVIS: Yes.

THE COURT: Do you understand the question? As you are looking at the front of the room, is there a door to your right?

THE WITNESS: Yes.

Q. And that is a different door than the one you came in, correct?

A. Yes, it was.

Q. Approximately how many feet were there between that door and where you were rendering care to Meir Kahane?

A. I am really not sure.

Q. Can you estimate it for us?

A. To be honest with you, I am really not sure.

Q. Did the paramedics Zahler and Dworsky attempt to intubate Meir Kahane while you were there?

A. Yes, they did.

Q. You testified this morning that at the time that you arrived in the ballroom, Meir Kahane had no vital signs. Do you recall that testimony?

A. Yes, I did.

Q. Following that testimony, you concluded that he was dead. Do you recall that testimony?

A. Yes, I do.

Q. Is it common for you to arrive on a scene and to find people with no vital signs?

A. Yes, it is.

Q. Does that happen couple times a week to you in your job as an emergency medical technician?

A. Depending how busy the week is, it does.

Q. And when that happens and you have someone with no vital signs, there are certain actions that you take, correct?

A. Yes.

Q. You have certain medical devices that help you, for want of a better word, jump start a person, is that correct?

A. Yes, there is.

Q. You have a fibrillation device, is that correct?

A. Yes, I do.

Q. Explain to the ladies and gentlemen of the jury how a fibrillation device works on someone who doesn't have vital signs.

A. When someone has a heart attack, it's usually because there is no electrical impulse. So the fibrillation gives them that electrical impulse, hopefully to restart the heart, like a jump start in a car.

Q. Have you had occasion as an emergency medical technician where you have successfully used that fibrillation device?

A. No.

Q. Are you aware of situations where a fibrillation device has been used successfully?

A. Solely, alone, you mean? That's just one treatment for a heart attack. Alone, I have never known it to work really alone, in my history.

Q. What is it used with?

A. It's used with medications.

Q. Is it also used with CPR?

A. Yes, it is.

Q. The combination of CPR, fibrillation and medication, has that ever been a winning formula for you as an emergency medical technician?

A. When someone has a heart attack, yes, when they go into cardiac arrest because their heart is stopped.

Q. And you have been able to restore their vital signs following that treatment, is that correct?

A. Sometimes.

Q. But that has happened to you, is that correct?

A. Very rarely.

Q. When Dr. Stowe arrived, how did he identify himself?

A. He identified himself as a doctor. That was it.

Q. Was he wearing any sort of identification?

A. Not that I remember.

Q. Were paramedics -- withdrawn.

Paramedics Zahler and Dworsky were attempting intubation at the time that Dr. Stowe arrived, is that correct?

A. Yes.

Q. And when he arrived, he pushed them out of the way, is that correct?

A. I remember they had a problem up there, about who was going to intubate, yes.

Q. Wasn't the problem that Dr. Stowe pushed the paramedics away from Meir Kahane?

A. I am not quite sure.

MR. STAVIS: Your Honor, may I approach the

witness with 3533C?

THE COURT: Yes.

Q. Following the events of November 5 of 1990, did you fill out an employee statement form?

A. Yes, I did.

Q. Can you please take a look at it.

A. Sure.

Q. Having looked at that, does that refresh your recollection as to whether Dr. Stowe pushed aside the EMS personnel who were working on Meir Kahane at that time?

A. Yes, it does.

Q. Having your recollection refreshed, did they push him aside -- withdrawn.

Did he, Dr. Stowe, push the EMS people aside?

A. Yes, that's what I wrote.

Q. Did Dr. Stowe prevent the EMS personnel from clearing the patient's -- withdrawn -- from clearing Meir Kahane's airway at that time?

A. I don't know -- the way -- I can't answer that the way it was phrased, really.

Q. The paramedics Zahler and Dworsky were working on the patient Meir Kahane at the time that Dr. Stowe arrived, correct?

A. Yes, they were.

Q. At that time they were attempting to intubate

Meir Kahane, is that correct?

A. Yes.

Q. Then Dr. Stowe came and pushed them out of the way, correct?

A. Yes, that's what I wrote.

Q. And in pushing them out of the way, did he prevent them from intubating Meir Kahane?

A. Well, yes, he stopped them from -- that moment, yes.

Q. And intubation is something that is used to get air into the lungs, is that correct?

A. Yes, it is.

Q. So at the time that Dr. Stowe arrived he prevented the EMS paramedics from getting air into the lungs of Meir Kahane, is that correct?

A. I don't know if you could -- he prevented them from intubating him. He didn't prevent them from getting air in, just that procedure. There was no air going in.

Q. What is the purpose of intubation, Miss Cusack?

A. The purpose of intubation is to clear the airway. What I am saying is, I don't think anyone could have cleared the airway. It wasn't clear.

Q. Is that an opinion that you are rendering?

A. I tried to clear the airway.

Q. Did Dr. Stowe prevent EMS personnel from

intubating Meir Kahane?

A. Yes.

Q. At the time that Dr. Stowe prevented the EMS personnel from intubating Meir Kahane, would it be fair to say that he was hysterical?

A. Yes, he was.

Q. Dr. Stowe was hysterical?

A. Dr. Stowe.

Q. And he was out of control?

A. Yes, he was.

Q. And he was acting in an unprofessional manner?

A. I would think so.

Q. When Dr. Stowe pushed aside the emergency medical personnel, he began to manipulate the cervical spine, is that correct?

A. Yes, he did.

Q. Explain to the ladies and gentlemen of the jury what it means to manipulate the cervical spine.

A. OK. Well, Meir Kahane had a cervical collar on, so that would mean that he was moving the head about within the cervical collar at that point, which is manipulating, or maneuvering the spine at that point.

Q. Would it be fair to say that he manipulated the cervical spine horribly?

A. Yes.

Q. And would it be fair to say that the manipulation -- withdrawn.

And the cervical collar is designed to prevent manipulation of the cervical spine, is that correct?

A. Yes, it is.

Q. Would it be fair to say that the manipulation of the cervical spine can have serious consequences?

A. Yes, it can.

Q. You testified this morning that Dr. Stowe jumped in your ambulance. Do you recall that testimony?

A. Yes. Well, I recall that he came in.

Q. Prior to his jumping into your ambulance, did Dr. Stowe prevent your ambulance from leaving the scene at the Marriott hotel?

A. I wouldn't know that. I was in the back.

Q. Was Lieutenant Kevin Howe near your ambulance at the time it left from the scene of the Marriott Hotel on November 5, 1990?

A. I wouldn't know.

Q. Do you know if Lieutenant Kevin Howe tried to throw Dr. Stowe out of the ambulance as it was leaving the scene at the Marriott Hotel on the evening of November 5, 1990?

A. Not that I remember.

Q. Did you see anything like that?

A. Not that I remember.

MR. STAVIS: Your Honor, may I approach the witness?

THE COURT: Yes.

MR. STAVIS: Page 1088 of the transcript.

Q. Miss Cusack, I am showing you something and I direct your attention to lines 7 through 17.

THE COURT: May we have that marked, whatever is being shown.

MR. STAVIS: Yes. What letter are we up to? I would ask that page 1088 of the transcript be deemed Defendant's Exhibit F for purposes of identification only, your Honor.

MR. KHUZAMI: Your Honor, might we have the previous page that was shown as well?

THE COURT: That will be F1, this will be F2.

Q. Have you had a chance to look at that?

A. Yes, I have.

Q. Has that refreshed your recollection?

A. Not really.

Q. Miss Cusack, did you formally complain to your bosses over at EMS concerning the conduct of Dr. Stowe in the Marriott Hotel on November 5, 1990?

A. Yes.

Q. What was the nature of your complaint?

A. That he was just unprofessional and hysterical at the scene.

Q. To your knowledge, did EMS officials make a formal complaint concerning Dr. Stowe and his activities in the Marriott Hotel?

MR. KHUZAMI: Objection.

THE COURT: Sustained.

MR. STAVIS: I have no further questions, your Honor.

THE COURT: Anything else? Any other cross? Any redirect?

REDIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Miss Cusack, after Dr. Stowe prevented paramedics Zahler and Dworsky from intubating Meir Kahane, did anyone else attempt to intubate him?

A. After he stopped them? After Dr. Stowe pushed them, they went back after that and they tried to intubate him again.

Q. Were they successful?

A. Not that I remember.

Q. Did Dr. Stowe himself attempt to intubate Meir Kahane?

A. Yes, he did.

Q. Was he successful?

A. No, he wasn't.

Q. Did Dr. Stowe also attempt to use a bag valve mask?

A. I believe he did.

Q. Again, what is the purpose of using the bag?

A. To get air into the lungs.

Q. Was he successful in getting air into the lungs by using the bag valve mask?

A. No.

Q. In connection with the manipulation of Meir Kahane's cervical spine, what was Dr. Stowe doing at the same time that he was manipulating the spine?

A. He was trying to intubate him.

Q. I am sorry.

A. He was trying to to to intubate him.

Q. Is there anything about manipulating the spine that makes intubation easier?

A. Yes, it does make it easier to get the tube down.

Q. Why is that?

A. Because you can tilt the head back then if you manipulate the spine, and it makes it almost a line.

Q. During the ride in the ambulance to Bellevue Hospital, was Dr. Stowe in the ambulance with you?

A. Yes, he was.

Q. During that time, did he attempt to do anything

to assist Meir Kahane in breathing?

A. Well, he wanted to.

Q. What did he want to do?

A. He wanted to do an advance procedure that a doctor can do.

Q. Do you know what that procedure was?

A. It's called like a needle trach. I'm not too positive on it, but it would assist him.

Q. Was that procedure performed?

A. No, he couldn't in the ambulance. We were moving.

MR. KHUZAMI: No further questions.

RECROSS-EXAMINATION

BY MR. STAVIS:

Q. Miss Cusack, when you used the words horribly manipulating the spine, what did you mean by the word "horribly"?

A. Just that he horribly manipulated it. An adjective.

Q. Did you mean that damage could have been done to the spine at that time?

A. That he manipulated -- yes, it shouldn't have been manipulated at that time.

Q. How did he manipulate the cervical spine?

A. By maneuvering the head by trying to intubate

him.

Q. Is it fair to say that he didn't hold the head in the proper positions?

A. Probably. I couldn't remember.

Q. What did he do when he manipulated the neck and cervical spine?

A. I couldn't remember that right now.

Q. Did he hyperextend the neck?

A. Probably. That would make it easier to intubate.

Q. What is hyperextending the neck?

A. To bend your head back and get that straight line.

Q. That is something that should not have been done in this case, in your opinion, is that correct?

A. Right, in my opinion.

Q. And that is something that could have serious consequences, isn't it, Miss Cusack?

A. It could.

MR. STAVIS: No further questions, your Honor.

MR. KHUZAMI: No further questions.

THE COURT: Thank you. You are excused.

THE WITNESS: Have a good day.

(Witness excused)

MR. KHUZAMI: The government calls Dr. Basil Michaels.

THE COURT: When somebody is being sworn, please don't shuffle shuffle papers.

BASIL MATTHEW MICHAELS,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Dr. Michaels, how are you employed?

A. I am currently a physician in Boston, at Brigham and Women's Hospital.

Q. How long have you been a physician?

A. I have been a physician since 1987.

Q. Where did you attend medical school?

A. I went to Columbia College of Physicians and Surgeons in New York City.

Q. What did you do after graduating medical school?

A. I did an internship and residency in general surgery at NYU Bellevue for six years.

Q. Please describe what an internship and general residency is.

A. Internship is one year. The residency that I participated in was for four years. I also conducted a research fellowship during that time.

The internship, I have responsibility taking care of patients in operating and then during residency graduated

responsibility until I was chief resident where I functioned as attending physician taking care of patients. At Bellevue approximately one third of my time was taking care of traumatic injuries.

Q. Can you define traumatic injuries?

A. Gunshots, stab wounds, car accidents, and taking care of those patients entailed taking care of them from admission to discharge of the hospital, including all surgery.

Q. Have you received any specialized training?

A. I have specialty training in microsurgery and currently plastic surgery.

Q. Directing your attention to November 5 of 1990, were you working on that day?

A. Yes.

Q. Where?

A. At Bellevue emergency room.

Q. What was your particular assignment on that day?

A. I was an attending physician in the Bellevue emergency room, responsible for surgical cases.

Q. In that capacity, what are your duties and responsibilities?

A. My duty was to oversee care of all surgical patients in the emergency room, particularly traumatic patients and patients that were destined to go to the

operating room.

Q. Directing your attention to around 9:00 that evening, do you recall a surgical emergency involving gunshot around that time?

A. Yes.

Q. Do you recall what happened?

A. Um-hum.

Q. What happened?

A. There were several people brought in with gunshot wounds. I directed my attention primarily to the most ill, a man, late middle age, shot in the neck, left side of his neck, and he was brought in as a traumatic arrest. That is, he was brought in dead.

Q. Did you later learn the name of this individual?

A. Yes, I did. His name was Meir Kahane.

Q. Who brought him into the hospital?

A. He was brought in by EMS, Emergency Medical Services.

Q. Were they providing treatment for him whether he arrived?

A. As a traumatic arrest, he was under going cardiopulmonary resuscitation.

Q. That is CPR?

A. That is right. They were pumping him on his chest and ventilating him with a mask.

Q. By the way, at that point approximately how many gunshot wounds had you treated?

A. Gunshot wounds in total several hundreds; to the neck 15, 20.

Q. What was the first thing that you did when the patient was brought in?

A. The first thing that I did, got information from EMS and assessed the person's vital signs.

Q. When you say you assessed his vital signs, which ones did you assess?

A. First to see whether or not he was breathing, whether or not he had any heart rate, whether or not he had any detectable blood pressure.

Q. Did he have any breathing?

A. He was not breathing and he had no heart rate or blood pressure.

Q. How did you check for his breathing?

A. Physical exam.

Q. What does that entail?

A. You listen to his chest.

Q. How about the blood pressure? Did he have any blood pressure?

A. He had no blood pressure.

Q. How did you check that?

A. That is by cuff, cuff around the arm, blow up the

cuff.

Q. I am sorry. What other vital signs did you check?

A. The heart rate. We hook him up to a monitor and look for the EKG pattern. It was flat.

Q. Did you check any other vital signs at that time?

A. I also checked to see if he had any neurological response. I examined his pupils and they were fixed and dilated.

Q. What does that mean?

A. It means that he sustained significant trauma to his brain in one way or another, and it is usually a sign of brain death.

Q. When you say fixed and dilated, what does that mean?

A. It means that the pupils did not move in response to light, and they were dilated, not constricted.

Q. How would a properly functioning pupil respond to the light?

A. It would constrict to the light.

Q. What if any steps did you take to treat Meir Kahane?

A. The first step was to ensure that he had an airway, that there was proper ventilation to his lungs. After discussing the case with the EMS people, the people

that brought him in, and learning that he was unable to be intubated, I performed a tracheostomy and gained surgical control of his airway.

Q. What is a tracheostomy?

A. That is placing a tube into the trachea surgically, making an incision on the neck, on the interior surface.

Q. Were you successful in doing that?

A. Yes.

Q. Was that procedure able to assist his breathing?

A. Yes. We successfully ventilated him and for a short period of time we detected a heart rhythm on the EKG machine.

Q. How did you -- what did you use to ventilate him?

A. A bag. We call it a bag. It's basically a plastic balloon that we squeeze to push air into the tube, into the lung.

Q. When you say you noticed the heart rhythm, what is a heart rhythm?

A. We detected electrical activity in his heart.

Q. Was there any blood pressure at that point?

A. No blood pressure.

Q. Was there any heart rate?

A. No detectable pulse.

Q. Is it possible for a heart to have rhythm but not

be sufficient to push blood through the body?

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

THE COURT: Overruled.

A. It is a specific diagnosis called electrical mechanical dissociation. That is when the electrical function of the heart persists but there is no mechanical force delivered; in other words, there is no blood pressure or heart rate detectable by pulse.

Q. What happened after you were able to ventilate him for a short period of time?

A. It became increasingly difficult to ventilate him. It was very hard to squeeze the bag, to push the air into his lungs.

We examined the rest of his chest briefly to make sure there were no other obvious penetrating wounds to his chest. The only wound that we had detected was in his left neck. We assumed that he had a tension pneumothorax, meaning that there was air that had escaped his lungs into his thoracic cavity, restricting the motion in his lungs. So we placed two tubes into his chest to relieve that pressure. Air escaped, and we were able to bag him again.

Q. At that point, after you bagged him again, did he have any vital signs at that point?

A. Still no blood pressure or heart rate, and he had, did have intermittently detectable electrical activity

in his heart.

Q. What did you do next?

A. We assumed that there was some type of intrathoracic injury even though we didn't detect any externally -- potentially the bullet had passed into the thorax -- that's the chest -- and we opened his chest to examine his heart and lungs and assist circulation that way.

Q. What did you see when you opened up his chest?

A. We found no injury to his heart or lungs.

Q. What did you do after that?

A. We proceeded with attempting to resuscitate him by opening up the sac around the heart, manually compressing the heart. We gave additional fluid into the venous system, so there would be blood to move through the heart. We gave him many medications. We attempted to jump start the heart, if you will, using electrical paddles -- all to no avail.

Q. After attempting to jump start the heart, did you do anything to try and start his heart again?

A. The last measure that we attempted was placing electrical leads directly on the heart, attempting to pace the heart, and the heart did not respond.

Q. Was there any heart rhythm at that point?

A. No.

Q. Did there come a time when you pronounced Meir Kahane dead?

A. It was at that point, where we could not stimulate his heart to beat in any fashion.

Q. After declaring him dead, did you conduct any further examination of him?

A. Yes. I wasn't entirely certain why he had died, so I started examining his body more carefully and noticed that he had an exit wound in his beard on his right cheek.

Q. Did you notice any other wounds prior to that time?

A. The only wound that we had known of was the entrance wound in his left neck.

Then I manually explored both entry and exit wound, and found in the entry wound that there was significant bony damage to his cervical spine, the bone that supports the head on the shoulders and encases the spinal cord.

(Continued on next page)

Q. When you say you manually examined, what does that mean?

A. I put my finger in the hole and felt broken bones.

Q. What are the possible sources of bone in that area?

A. In the posterior neck the only bone is the bone that supports the head and protects the spinal cord.

Q. Based on that examination, plus your treatment of Meir Kahane, do you have a reasonable and certain medical opinion as to what caused his death?

A. The gun shot wound to his neck in some way damaged his spinal cord that's responsible for his breathing and his heart rate.

Q. Why is it that you believe that that was the cause of death?

A. The manual examination told me that the supporting structures to the cord were severely damaged, and the examination of his heart and lungs during the open thoracotomy told me that there was no direct injury to his lungs or heart at the time.

MR. KHUZAMI: No further questions, your Honor.

THE COURT: Mr. Stavis.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Dr. Michaels, what is your area of expertise?

A. I am board certified in general surgery.

Q. Is there a specialty known as forensic pathology?

A. Yes, there is.

Q. Is there a board certification for forensic pathology?

A. I believe there is.

Q. Can you please explain to the ladies and gentlemen of the jury what the area of expertise of forensic pathology consists of?

A. Forensic, well, pathologists in general are specialists in examining tissues and bodies, determining diagnosis, causes of death other pathologic diagnosis and forensics means that it's related to crime in some way.

Q. And explain to the ladies and gentlemen of the jury what a board certification means?

A. It means that you have fulfilled qualifications usually regarding to cases or experience that you have passed a written examination and in most cases also passed an oral examination.

Q. What do forensic pathologists do with regard to determining a cause of death in an individual?

A. As far as I understand, I'm not a forensic pathologist, as far as I understand they base most of their information on postmortem examination of the body, and

x-rays, chemical examination of the blood.

Q. Now, postmortem examination, one type of a postmortem examination is an autopsy; is that correct?

A. Yes.

Q. Please explain to the ladies and gentlemen of the jury what an autopsy is?

A. There are complete autopsies, limited autopsies, several different types of autopsies. Generally it's dictated by the family what the pathologist is allowed to do. In forensic I think that there are probably legal patterns that dictate what type of autopsy is allowed, but generally the body is examined grossly and microscopically. The gross examination is usually opening of the thoracic and abdominal cavity, examining all the organs, often opening up the cranial cavity, examining the brain. Any more?

Q. Let's just see if we could cut to the chase a little bit. An autopsy is sort of cutting somebody open, right?

A. Yes.

Q. And that's what a forensic pathologist does in order to determine cause of death, correct?

A. Usually, yes.

Q. And they also use x-rays; is that correct?

A. Often I think.

Q. Now, you are not a forensic pathologist. Is that

correct?

A. That's correct.

Q. You did not perform an autopsy here; is that correct?

A. Well, I don't know. I don't know if that's a matter of semantics. I think that one could argue that I did.

Q. Well, did you examine Meir Kahane grossly and microscopically?

A. Not microscopically, I did not have that available to me.

Q. Did you -- withdrawn.

Did you dissect the neck of Meir Kahane in order to determine a bullet path?

A. Bluntly.

Q. What does that mean bluntly?

A. Well, there are many methods of dissection. One of the ways is bluntly by using your fingers, manually compressing and digitally examining tissue.

Q. Do forensic pathologists use their fingers or do they open up the neck and actually determine the path of the bullet?

A. Both.

Q. Do forensic pathologists prior to making a determination of cause of death open up the neck and

determine the path of the bullet in the neck?

A. I guess it would depend on the forensic pathologist.

Q. Have you come in contact with forensic pathologists?

A. Oh, yes, there's, you know the Medical Examiner is attached to Bellevue Hospital. I spent sometime there.

Q. Tell the ladies and gentlemen of the jury, Dr. Michaels, what the cervical spine is?

A. That's the bone that supports the head on the body and in encases the spinal cord.

Q. Does it come in columns or sections?

A. Uh-huh. There are seven sections of the cervical spine.

Q. Okay. Are they referred to as C1 through C7?

A. That's correct.

Q. Which is the highest one?

A. Highest being closest to the head is C1.

Q. Going all the way down to C7?

A. Which is about the shoulder blade level.

Q. Did you make any determination as to which column of the cervical spine was affected here when you examined Meir Kahane?

A. Using surface landmarks I could make an estimation.

Q. But you did you take an x-ray of it?

A. Me personally? I did not, no.

Q. At the time that you inserted your finger into the hole, was an x-ray taken?

A. While my finger was in there? No. Afterwards I think there was some x-rays taken.

Q. How long afterwards?

A. I have no idea.

Q. Have you reviewed those x-rays?

A. I have seen x-rays of him that were told to me were of him, yes.

Q. Have you reviewed them?

A. Reviewed them, I've seen them, yes, reviewed them.

Q. When was the last time you saw them?

A. Yesterday I think actually.

Q. Can you tell the ladies and gentlemen of the jury which column of the cervical spine was affected after you examined the x-rays in this case?

A. The x-rays were very poor quality, and I couldn't tell you for certain exactly which ones were injured. I would have to narrow it down to two or three.

Q. You say injured --

A. Injured.

Q. Are you referring to fractures?

A. Yes. When you injure the cervical spine you can fracture bone or you can injure the ligaments or you can herniate discs.

Q. Is it your testimony that having reviewed the x-rays of the cervical spine in this case there was a fracture of the cervical spine?

A. There is no way that I can determine if there was a fracture based on those x-rays. They are too poor quality.

Q. Did you have an opportunity to examine the Medical Examiners file with regard --

A. No.

Q. -- to this patient?

A. I never, I had never spoke to him, to the Medical Examiner. I never read anything that a Medical Examiner wrote.

Q. Dr. Michaels, what is a specialty of radiology?

A. That's a doctor that specializes in looking at x-rays, ultrasounds, any method of examining the body using nonphysical diagnose method basically.

Q. Is there a board certification for radiology?

A. Yes, there is.

Q. Are you a board certified radiologist?

A. No, I am not. I am board certified in general surgery.

Q. Are you a radiologist at all, Dr. Michaels?

A. I have extensive experience reading x-rays.

Q. Do you know if the x-rays that you saw were examined by a radiologist?

A. No idea.

Q. Do you know of Dr. Melvin H. Becker?

A. That name sounds familiar but I have not met him. I don't work with him on a daily basis.

Q. During the course of your dealing at Bellevue did you have occasion to come in contact with a Dr. Melvin H. Becker?

A. It's possible. I don't remember particularly.

Q. Do you know if he's a radiologist?

A. He may be. The name sounds familiar but I can't quite place it.

Q. Do you know if he examined these x-rays, the x-rays of Meir Kahane?

A. I have no idea.

Q. The EMS team brought Meir Kahane into the emergency room at Bellevue Hospital at 9:10 p.m. on November 5, 1990. Is that correct?

A. I think that's correct.

Q. And you pronounced Meir Kahane dead at 9:55 p.m.; is that correct?

A. I think that's correct, yes.

Q. You worked on the patient for, my math is not that good, 45 minutes?

A. Half hour, 45 minutes. It's hard to keep track of time when things are moving so quickly.

Q. If he arrived at 9:10 and you stopped working on him at 9:55, it's 45 minutes; is that correct?

A. That would be correct, yes. That would be correct. 45 minutes.

Q. In the emergency room at Bellevue Hospital did you have an occasion to speak to an anesthesiologist?

A. That night?

Q. Yes. On November 5, 1990.

A. November 5, 1990? The night that Meir Kahane came in I did speak with an anesthesiologist.

Q. Was his name Dr. Stephen Stowe?

A. I have been since told that that was his name.

Q. Did you discuss Dr. Stowe -- withdrawn. Prior to testifying, did you discussion the subject matter of your testimony with Mr. Khuzami?

A. Yes.

Q. And you went over the medical records?

A. Yes.

Q. And you went over the x-rays?

A. Yes.

Q. And did you discuss Dr. Stowe with Mr. Khuzami?

A. He asked me if I knew him, and I said that, you know, at the last trial I had found out that that was his name and, yes, I did know him, and I had worked with him several times before the incident.

Q. Dr. Michaels what is the epiglottis?

A. It's the beginning of the trachea.

Q. And the trachea is commonly known as the wind pipe?

A. Yes.

Q. Is the epiglottis sort of like a lid on that wind pipe?

A. You could describe it as a lid.

Q. When you examined Meir Kahane did you notice that Meir Kahane's epiglottis had been shattered?

A. I never examined him, his airway from his mouth, so I never had definitive evidence that his epiglottis was shattered.

Q. Did you ever testify under oath that his epiglottis was shattered?

A. Yes, I did.

Q. When you examined Meir Kahane manually as you've referred to it, did you notice that there were bone fragments?

A. Yes, bone fragments at both the entrance and exits.

Q. Was that an important part of your determination that something had happened to the cervical spine?

A. Yes.

Q. Are there two sources of bone in the neck or bone fragments in the neck?

A. It depends exactly how you define the neck. If you restrict the definition to below the mandible and above the clavicles there is the hyoid bone, and there is the cervical spine.

Q. Are there bones associated with the wind pipe?

A. They are cartilage.

Q. Would it be fair to say, Dr. Michaels, that there are two sources of bone in the neck, one would be associated with the wind pipe and the other with the spinal cord?

A. Bone is a very hard substance that is composed of calcium among other things. There are two sources of bone that have calcium in it. One is the hyoid bone, which is a bone that's just above your Adam's apple, and the other is your cervical spine. The wind pipe itself is composed, the supporting structure of the wind pipe is composed of cartilage. There is no calcified bone in a normal wind pipe.

Q. I'm going to ask you a question and I ask you to answer it yes or no. If you are unable to answer it yes or no, please let me know, and I'll rephrase the question.

A. I understand.

Q. Is it fair to say that there are two sources of bone in the neck? One would be associated with the wind pipe, the other with the spinal cord?

A. No.

Q. Do you recall testifying before a grand jury in this case on November 19th of 1990?

A. Yes.

Q. Do you recall --

This is 3536B. The bottom is the number 6285. Beginning on line 4.

Do you recall being asked this question?

"Q. With respect to this one, Doctor, to a reasonable degree of medical certainty what, if anything, you can tell us -- if I am asking you to go beyond your expertise don't hesitate to say so -- with a reasonable degree of medical certainty what would the effect of bone fragments indicate to you as being -- what would they indicate by way of injury that later causes death? "

And do you remember giving this answer?

"A. There are two sources of bone in the neck. One would be associated with the wind pipe, the other with the spinal cord. Either, either source would potentially be a life-threatening injury. If you were to shatter your trachea, wind pipe or shatter your cervical spine both are

potentially life threatening, and in his case there was evidence that the trachea was shattered and there was evidence that the cervical spine was shattered."

Do you remember being asked that question and giving that answer, Doctor?

A. Yes, I do.

Q. The x-rays that you reviewed I believe you reviewed them yesterday; is that correct?

A. Yes, I did.

Q. What is an AP x-ray view? Tell the ladies and gentlemen?

A. AP means it goes from the front to back, anterior-posterior.

Q. And are there other views that can be depicted in an x-ray?

A. Many, many views.

Q. And one of the most common views is a lateral view; is that correct?

A. That's correct.

Q. From the side. Now, the x-rays that you viewed were only the anterior-posterior x-rays; is that correct?

A. The ones that I viewed yesterday were anterior-posterior x-rays. I think in the past though I had seen an oblique, but I did not see that yesterday.

Q. What is an oblique?

A. From a tangential examination, not a perfectly lateral or perfectly anterior-posterior.

Q. What does that mean tangential examination?

A. From another angle, basically that's all it means, just another angle.

Q. Are you sure of that?

A. Tangential?

Q. No, not the definition, but are you sure that you saw something other than an AP x-ray?

A. I think that I did. I did not see one yesterday.

Q. Was there a man who was being treated in the trauma unit at Bellevue Hospital by the name of Irving Franklin?

A. Yes, I think there was.

Q. And did you have occasion to review the medical records of Irving Franklin?

A. At the last trial I did.

Q. And did you render certain opinions concerning --

A. Yes --

Q. One second. Did you render certain opinions concerning the medical condition of Irving Franklin?

A. Yes, I did.

Q. And did you render certain opinions concerning entrance and exit wound of Irving Franklin?

MR. KHUZAMI: Objection, scope.

THE COURT: Sustained.

Q. What, if any, opinions did you render regarding the wounds of Irving Franklin?

MR. KHUZAMI: Objection.

THE COURT: Sustained.

MR. STAVIS: May I be heard at the sidebar, your Honor?

THE COURT: Yes.

(Continued on next page)

(At the sidebar)

MR. STAVIS: If need be, your Honor, I will call this witness back on my portion of the case, but it's my intention so long as he's on the witness stand to adopt him for at least part of my cross-examination as my own witness.

MR. KHUZAMI: Your Honor, it's outside the scope of direct.

THE COURT: It is outside the scope of direct. You want to call him back on your case, call him back on your case.

(Continued on next page)

(In open court)

Q. Dr. Michaels, did there come a time after 9:55 p.m. on the evening of November 5, 1990 that you referred the body of Rabbi Kahane to the Medical Examiner's Office?

A. I didn't have the ability to do that.

Q. Did you fill out a form for the Medical Examiner's Office?

A. Yes, I did.

Q. And as a -- would it be fair to say that you were a trauma doctor?

A. Yes.

Q. And as a trauma doctor did you often have occasion with trauma deaths to fill out forms for the Medical Examiner?

A. Absolutely.

Q. And the Medical Examiner would then conduct autopsies of those bodies; is that correct?

A. That's right. Well, no, no, I'm sorry. It would be up to the Medical Examiner to determine whether or not he wanted to do an autopsy.

Q. In a trauma case that's not a natural causes death, correct?

A. Yes.

Q. And when you filled out -- the ultimate decision was with the Medical Examiner; is that correct?

A. That's right.

Q. But the Medical Examiner's Office performs autopsies, correct?

A. Well, the Medical Examiner or his appointees perform autopsies.

MR. STAVIS: I have no further questions of this witness, your Honor.

THE COURT: Ladies and gentlemen, we're going to take a short break. Please leave your notes and other materials behind. Please don't discuss the case. We'll resume in 15 minutes.

(Jury not present)

THE COURT: You can step down.

(Witness temporarily excused)

THE COURT: 15 minutes.

(Recess)

(In open court; jury present)

BASIL MICHAELS, resumed.

(Jury present)

THE COURT: Redirect, Mr. Khuzami?

MR. KHUZAMI: Yes, your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Your Honor, may I approach the witness?

THE COURT: Yes.

MR. STAVIS: Your Honor, perhaps we should have a sidebar?

(Continued on next page)

(At the sidebar)

MR. KHUZAMI: These are two photos showing the entrance wound and exit wounds of Meir Kahane. There were stills taken off of slides taken by the Medical Examiner but I believe that we can lay the foundation for their admission through this witness.

MR. STAVIS: Foundation is one issue and I'll deal with that I have to, your Honor. However, my objection at this stage is as to scope. We're on redirect examination now.

THE COURT: I know. And we got into all sorts of cross with regard to entrance and exit wounds.

MR. STAVIS: No, I didn't, your Honor.

THE COURT: Sure you did. You examined him about his putting his finger into the wound.

MR. STAVIS: I got into cross concerning x-rays and cervical spine, your Honor.

THE COURT: The transcript will tell us what the cross was about. You can examine.

(Continued on next page)

(In open court)

Q. Dr. Michaels, if you would take a look at what has been marked Government Exhibit 18A and 19A for identification and examine them, please.

Have you seen those photos?

A. Yes.

Q. Do you recognize, without telling us what's in them, do you recognize the scene that's depicted in those photos?

A. In these photos, there's a scene of Meir Kahane --

MR. STAVIS: Objection, your Honor, as to what the scene is.

THE COURT: Do you recognize what is depicted on those photos?

THE WITNESS: Yes.

Q. Do you recognize what is depicted on those photos as the way Meir Kahane looked --

MR. STAVIS: Objection as referring to a matter not in evidence, your Honor.

THE COURT: Overruled.

Q. Do you recognize them as the way Meir Kahane looked the night, the day that you treated him on November 5, 1990?

A. He has been cleaned. There was some things

changed about him.

MR. STAVIS: Objection, your Honor. Move to strike the testimony as concerning an item not in evidence.

THE COURT: Denied.

Q. You may continue.

A. He's been cleaned.

Q. Aside from the fact that he's been cleaned, are those photographs true and accurate depictions of the way he looked when you saw him on November 5, 1990?

A. Essentially.

MR. KHUZAMI: Your Honor, I move the admission of Government Exhibits 18A and 19A.

MR. STAVIS: I'd like to voir dire, your Honor?

THE COURT: Go ahead.

VOIR DIRE EXAMINATION

BY MR. STAVIS:

Q. Dr. Michaels, at what time were those photographs taken?

A. I have no idea.

Q. Were you present when those photographs were taken?

A. I don't think so.

Q. Do you know if those photographs were taken in the Medical Examiner's Office or at Bellevue Hospital?

A. I have no idea.

Q. And was something done to the person depicted in those photos between the time that you saw the person and the time the photo was taken?

A. He was definitely cleaned.

MR. STAVIS: I object to the introduction of this exhibit, your Honor.

THE COURT: Overruled. 18A and 19A are received.

(Government Exhibits 18A and 19A received in evidence.

MR. STAVIS: May I have a sidebar, your Honor?

THE COURT: No.

MR. KHUZAMI: Your Honor, Government Exhibits 18A and 19A are not currently in the jury's binder. We have copies here. At this point I would request permission that copies be quickly distributed and they just look at them for a brief moment.

THE COURT: No. Are you going to examine the witness about the photographs?

MR. KHUZAMI: I'm sorry?

THE COURT: Other than putting them in evidence, is it your intent to examine the witness about the photographs?

MR. KHUZAMI: No, your Honor.

THE COURT: Then do it another time.

Q. Dr. Michaels, you were asked on cross-examination

about Dr. Stowe. Do you recall that question?

A. Yes.

Q. And you indicated that you knew Dr. Stowe?

A. I had worked with him several times prior to this incident.

Q. Do you recall under what circumstances you had worked with him?

A. Well, he was an attending anesthesiologist at NYU-Bellevue.

Q. As anesthesiologist is that a type of doctor that has particular knowledge in the management of an airway?

A. That's their specialty.

Q. And what is airway management?

A. Airway management is control of passage of air from outside the body into the lungs, and out.

Q. Do anesthesiologists perform intubations in your experience?

A. That's one of their primary responsibilities.

Q. Do you have an opinion as to whether an anesthesiologist or emergency medical services technician is better trained to perform an intubation?

MR. STAVIS: Objection, your Honor. It calls for speculation.

THE COURT: As to whether an anesthesiologist is qualified to perform intubation?

MR. KHUZAMI: Based on training, your Honor.

MR. STAVIS: Who is better he asked.

THE COURT: As to between who and who?

MR. KHUZAMI: As between anesthesiologist and medical emergency services technician.

THE COURT: Sustained.

Q. Dr. Michaels, you also testified on cross-examination concerning possible sources of bone in the neck area. Do you recall that testimony?

A. Yes, I do.

Q. And you testified, I believe that it was one source of bone in the neck. Is that correct?

A. One source of bone from the area where I digitally examined the neck.

Q. Is that a reference to Meir Kahane?

A. When I put my finger in the neck wound in Meir Kahane there was one source of bone.

Q. What is that source of bone?

A. The cervical spine.

Q. How is it that you are certain that that is the one source of bone in that area?

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

THE COURT: Sustained as to form.

Q. On what basis do you make the statement that the one source of bone in that area was the cervical spine?

A. The other bone in the neck is the hyoid bone. That is on the anterior surface of the airway. It on the front of the neck. The wound that Meir Kahane sustained in the back of his neck is a good eight inches from the hyoid bone. My finger is less than eight inches. I could not have felt that bone.

THE COURT: May I see counsel briefly at the side?

(Continued on next page)

(At the sidebar)

THE COURT: I don't have a graphic recollection. Of the photo, but I will let you distribute the photo if it illustrates the wound.

MR. KHUZAMI: The ones that were just introduced, your Honor, a moment ago?

THE COURT: All right.

MR. KHUZAMI: That is the photos you're talking about. There is the exit wound and the entrance wound.

THE COURT: All right.

MR. KHUZAMI: I'll do it at the end.

(Continued on next page)

(In open court)

MR. KHUZAMI: Your Honor, I have no further questions. At this time I would ask to distribute the photos 18A and 19A.

MR. STAVIS: I have some recross, your Honor.

THE COURT: I am going to let him distribute the photos and then you can conduct the recross.

MR. JACOBS: Your Honor, we'd like to be heard.

THE COURT: You may not.

MR. JACOBS: Reserved.

(Government Exhibits 18A and 19A distributed to the jury)

MR. KHUZAMI: Your Honor, let me ask one other question.

Q. Dr. Michaels, would you identify for the jury which exhibits reflect the entrance wound and which exhibit reflects the exit wound?

A. The entrance wound is 18A, and the exit wound is 19A.

MR. KHUZAMI: No further questions, your Honor.

RECROSS-EXAMINATION.

BY MR. STAVIS:

Q. Dr. Michaels, the trachea is in the neck; is that correct?

A. That's right.

Q. And that's composed of cartilage; is that correct?

A. That's correct.

Q. And there is a difference between cartilage and bone; is that correct?

A. That's correct.

Q. Are they both made of calcium, Dr. Michaels?

A. Is there calcium in both of them?

Q. That's correct.

A. The difference in proportion of calcium is very great between bone and cartilage.

Q. Is there a process known as calcification?

A. Absolutely.

Q. And please explain to the ladies and gentlemen of the jury what calcification is?

A. Calcification means that calcium is placed ectopically or in the wrong place.

Q. Dr. Michaels, is it fair to say that cartilage becomes calcified or becomes harder and more brittle the older a person gets?

A. It can.

Q. And when calcium becomes harder or brittle it can break into pieces; is that correct?

A. It certainly can.

MR. STAVIS: I have no further questions of this

witness, your Honor.

MR. KHUZAMI: No further questions, your Honor.

THE COURT: Thank you. You are excused.

(Witness excused)

MR. KHUZAMI: Your Honor, may we approach for one moment?

(Continued on next page)

(At the sidebar)

MR. KHUZAMI: Your Honor, while Mr. Fleming is the next scheduled witness, his direct is about twenty minutes, tomorrow he's being promoted and he had an all day ceremony to attend with his family. If we start today --

THE COURT: Do you have anybody else?

MR. KHUZAMI: We do have another witness, Officer Meury and we can put him on. I can do the direct and I don't know how long your cross is. I wasn't sure whether or not they were prepared.

MR. PATEL: Judge, I have no problem with taking -- everyone's out of turn so far. I have no problem. You want to do the direct of Meury, and I'll start with the cross tomorrow or whatever you want to do.

THE COURT: Yes.

(Continued on next page)

(In open court)

MR. KHUZAMI: Your Honor, the government calls James Meury as the next witness, M-E-U-R-Y.

JAMES MEURY,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Officer Meury, how long have you been a police officer?

A. Approximately seven years.

Q. What is your current assignment?

A. I'm assigned New York City Police Department, 17th Precinct on patrol.

Q. What does the 17th Precinct cover?

A. It covers an area from 30th Street to the south end of the Precinct up to 59th Street to the north end, from the East River to the east, and from Lexington Avenue east.

Q. Directing your attention to November 5th of 1990 were you on duty that day?

A. Yes, I was.

Q. What hours were you working that day?

A. I was working a 3 p.m. to 11:35 p.m.

Q. How were you dressed that day?

A. Similar, full NYPD uniform exactly what I'm

wearing today.

Q. Were you assigned to a patrol car?

A. Yes, I was.

Q. Did you have a partner that day?

A. Yes, I did.

Q. Do you recall his name?

A. Officer Michael Mclanahan.

Q. Directing your attention to approximately 9 o'clock that evening, did you receive a call that day?

A. Yes, I did.

Q. Without telling us what was said in that call, did you do anything in response to it?

A. Yes, we were directed to respond to 525 --

MR. STAVIS: Objection.

THE COURT: You responded? To where?

THE WITNESS: The location?

THE COURT: Yes.

THE WITNESS: 525 Lexington.

Q. Do you know what is at 525 Lexington?

A. It's the Marriott Hotel.

Q. Did you go there?

A. I began to go there. I never got there.

Q. Where were you when you received the call?

A. When the call came over my radio I was on the FDR Drive approximately in front of the Water Club, which is at

30th Street.

Q. And what route did you take to get to 525 Lexington Avenue?

A. I took the FDR Drive northbound. I got off at 42nd Street exit, and I don't recall if I went up Third Avenue or First Avenue, but I went westbound on 49th Street from which either street I went up. Continue?

Q. Yes.

A. At 49th Street between Third and Lexington, the hotel's around the corner. Traffic was just unbelievable. So I thought, at the time me and my partner made a decision to leave the police car there, abandon it, and go to the scene on foot.

We started running westbound on 49th Street towards Lexington Avenue, and which the corner of the hotel. At that time we heard another radio transmission.

Q. Did you do anything as a result of hearing another radio transmission?

A. Yes, I redirected myself to go to where the location of the new radio transmission.

Q. What was that location?

A. It was in front of the post office on Lexington Avenue, 48th Street.

Q. And did you eventually arrive there?

A. Yes, I did.

Q. When you arrived there, were there any other police officers on the scene?

A. There were two New York City police officers and one postal police officer.

Q. Do you know the names of any of the New York City police officers that were on the scene when you arrived?

A. Yes, I do. Officer Moran, James Moran and Officer Brian Fleming.

Q. Can you describe for the jury what you saw at that post office when you first arrived?

A. Yes. I saw two NYPD officers handcuffing a gentleman who was laying on the floor face up, who was bleeding quite badly out of his neck.

I also saw a postal police officer was shot, what it looked like in the shoulder area.

Q. Did you see any persons in the area other than the man laying on the sidewalk and the postal police officer?

A. There was civilians basically gawking, if that's a good word, you know, basically watching what was going on.

Q. Do you recall approximately how many civilians were there?

A. I would have to say more than twenty. I mean it wasn't my main contention at the time.

Q. And were any of these civilians close enough to

touch the man on the sidewalk?

A. No, absolutely not.

Q. How close was the nearest civilian to the man on the sidewalk?

A. I would have to say more than 15, 20 feet away.

Q. Was there a crime scene set up at that point?

A. Not at that point, no.

Q. Can you tell the ladies and gentlemen of the jury what it means to set up a crime scene?

A. Well, basically being assigned to patrol that's part, probably my most important detail to do those, and basically it's to push people away from the crime scene, get a big enough area where we can work.

When I say we, other police officers, detectives, and to preserve it, not let any unauthorized people in whether it be civilians or even other police officers.

Q. Was the crime scene set up at that location that night?

A. Eventually, yes.

Q. Were you involved in that?

A. Yes, I was.

Q. What steps were taken to set up that crime scene?

A. We pushed everybody away, all unauthorized people and even back further than where they were we expanded it. We set up tape, police tape, and my basic job was to keep

everybody out until the detective showed up, which is what I did.

(Continued on next page)

Q. Did there come a time that the detectives showed up?

A. Yes, there was.

Q. Approximately how long had you been there before the detectives showed up?

A. There was a few detectives. The first detective was from my precinct. He was there rather quickly, I would say within 5 to 10 minutes. The crime scene detectives took, I would say, quite a time after that.

Q. Did there come a time when ambulances arrived on the scene?

A. Yes, there was.

Q. What did you see them do when they arrived?

A. In regards to?

Q. What did they do when they arrived?

A. If I remember correctly, the first ambulance on the scene assisted the police officer, and the second one, which was right behind the first one, attended to the man that was shot on the ground.

Q. What did the second ambulance that attended to the man on the ground do?

A. They started treating him, they cut off his clothes, his pants, his sweater on top, they removed all his clothes, and then they proceeded to work on him medically.

MR. STAVIS: I am sorry, your Honor. Can I have

the answer read back?

THE COURT: Do you want to read it back.

(Record read)

Q. Did there come a time when he left in the ambulance?

A. Yes, there was.

Q. What happened to his clothes?

A. The clothes were left on the ground beside where he was laying, and I was assigned to guard him.

Q. How did you go about guarding his clothes?

A. I basically left them exactly where they were. I didn't touch him, and I just made sure no one else touched him or got close to him.

Q. Did anyone touch him or get close to him?

A. No, absolutely not.

Q. Had a crime scene been set up at that point?

A. Yes, it had.

Q. Were those clothes inside or outside the crime scene?

A. They were inside.

Q. Can you describe what happened when the crime scene detectives showed up on the scene?

A. The crime scene detectives showed up on the scene, they basically took pictures of the scene from different angles. At one point we examined the clothes that

were left there by Emergency Medical Service, and we searched the clothes.

Q. Were you involved in that search?

A. I wasn't directly involved, I was there to observe. I personally didn't go in.

Q. Do you know the name of any persons who were involved in the search?

A. I know two, two out of the three.

Q. Who were they?

A. Detective Pugliese from the 17th squad and Detective Rinaldi from the crime scene unit.

Q. Do you recall which of those two individuals actually physically searched through the clothing?

A. I would have to say no, I don't recall.

Q. Did you see any of the items that were taken from the clothing?

A. I seen every item.

Q. Do you recall what any of them were?

A. The first thing they pulled out was a wallet, and inside the wallet was a driver's license, New Jersey. They pulled out keys, U.S. currency, subway tokens, and bullets, 13 live rounds of bullet.

Q. As to the identification, did you look at any of the identification that was pulled out?

A. Yes, I did.

Q. What piece of identification or pieces did you look at?

A. I specifically remember a New York, New Jersey driver's license.

Q. Do you recall if there was what was the name on that license?

A. Yes, I do.

Q. Do you recall what the name was?

A. Nosair.

Q. You mentioned that there were bullets taken out as well. Do you recall anything about those bullets?

A. Just that they were live. They were live, which means they weren't shot, they were ready to go.

Q. Did you handle the bullets in any way?

A. No, I never touched them.

Q. How about the clothing? Did you handle the clothing that night at all?

A. I never touched the clothing. The clothing, once the detectives picked them up and searched them -- they were full of blood, and basically what the detective did, he put them inside a brown paper bag and sealed it at the scene with a crime scene seal and handed it to me inside the bag. So I touched the bag, I never touched the clothes.

Q. What did you do with the clothing after you got it in the bag?

A. The clothing along with the other stuff I took back to the precinct to voucher it.

Q. When you say voucher it, what do you mean?

A. Invoice. I put it in security envelopes with a seal, basically for the chain of custody.

(Continued on next page)

MR. KHUZAMI: No further questions, your Honor.

THE COURT: Do you want to come up to the side?

(At the side bar)

MR. PATEL: Since he is going out of order, Judge, I am going to be longer with him than I normally would have been.

THE COURT: Is this something that you can get done in 15 minutes?

MR. PATEL: With him?

THE COURT: Yes. I am not saying done with him in 15 minutes, I am saying is there a topic you can cover?

MR. PATEL: Sure, I can get done with the introductory stuff. No problem. I can get started with him.

(In open court)

(Continued on next page)

CROSS-EXAMINATION

BY MR. PATEL:

Q. Good afternoon, Mr. Murray.

A. Good afternoon.

Q. My name is Andrew Patel. Have we ever met before?

A. Not that I know of.

Q. Have we ever spoken before?

A. No.

Q. This is not the first time that you testified about the matters that you spoke about this afternoon, is that fair to say?

A. That is correct.

Q. You testified at a state hearing before a judge down the block?

A. Yes, I did.

Q. And before you testified before that court, you spoke with the assistant district attorney?

A. Correct.

Q. Was that Mr. Greenbaum?

A. Yes, it was.

Q. How many times did you meet with Mr. Greenbaum?

A. I would be guessing. I would say anywhere from 5 to 10 times.

Q. And when you met with him for 5 to 10 times, how

much time did you spend with him on those meetings? How long did those meetings last?

A. It varied.

Q. From 15 minutes to an hour?

A. Sometimes I was there all day, but it wasn't direct talking to him, it was waiting for him on -- I spent quite a lot of time there, but it wasn't directly talking to him.

Q. Before you testified at a trial before a jury in the state court, you met also with Mr. Greenbaum?

A. Correct.

Q. How many times did you meet with him before the trial?

A. Actually, between the 5 and 10 was completely, all inclusive, for both trials.

Q. Going back to November 5, you arrived at the post office at Lexington Avenue around 9:15?

A. Approximately 9:15, yes.

Q. And you had received two calls over your radio before you got there, is that fair to say?

A. Correct.

Q. Those calls came through the central dispatcher?

A. The first call did.

Q. Calls from the central dispatcher, are those calls recorded?

A. I believe so, yes.

Q. In the second call that you received, that came over -- was that also from central?

A. It was through the radio but it was from another police officer.

Q. At the time you received the second call, you were in your police car?

A. No. The second call I was already out of the police car.

Q. So that call came over a walkie-talkie?

A. Exactly.

Q. That is a point-to-point communication?

A. No. We have point to point but it came over the regular division radio.

Q. So that call also would have been recorded?

A. Yes, I imagine so, yes.

Q. Did you respond verbally over your radio to either of those calls?

A. I am sure I responded the first time, just to let the dispatcher know that we were going to the scene.

Q. And the second time?

A. The second time, I might have. I don't recall.

Q. Do you have copies of those transmissions?

A. Do I personally? No, I don't.

Q. Do you happen to recall what the weather was like

that night?

A. Strangely, I sort of do. After -- at that time it was dry, but I do remember calling for a crime scene to respond quicker, because it had started to drizzle.

Q. Was it drizzling when the crime scene arrived?

A. I don't recall.

(Continued on next page)

MR. PATEL: Your Honor, we are reaching the point where --

THE COURT: All right. We will break for the day. Please leave your notes and notebooks and other materials behind. If you would take the photographs that were introduced and tuck them into your binders before you go.

Please don't discuss the case. Please don't read, see, hear anything about this case or any related matter. Please have a pleasant evening. We will see you tomorrow. Good night.

(Jury excused)

THE COURT: Yes.

MR. STAVIS: Your Honor, may I be heard just very briefly? During the redirect examination of Dr. Michaels, the government sought to admit Exhibits 18A and 19A. I voir-dired the witness concerning those photographs and established that the witness did not know where the photographs were taken, did not know when the photographs were taken, and that the condition of the person depicted in the photographs had changed from the time that the witness --

THE COURT: He testified he had been cleaned up.

MR. STAVIS: And I am characterizing that as a change, for the record.

Your Honor, I believe that the item should not have been admitted, and earlier in this trial when we were voir-diring Special Agent Fogle, when Mr. McCarthy voir-dired Special Agent Fogle concerning Defendant's Exhibit A, I believe, which were the Calverton photographs, when Mr. McCarthy asked if he knew when the photographs were taken --

THE COURT: Would you like an explanation of the difference?

MR. STAVIS: Yes, I would.

THE COURT: Or do you want to go on?

MR. STAVIS: I made my record and I object to the time, so my record is preserved.

THE COURT: The difference is simply that there was no way that the agent could testify that what was depicted in the Calverton photographs was in fact what appeared at the time he conducted the surveillance. That is the reason those photographs were not admitted. The reason these photographs were admitted is that the witness not only could but did testify that they accurately portrayed the wounds. Since that was the purpose for admitting them and that was the thrust of both your examination and his, that is why I let them in. They show the location of the wounds, going specifically to the question of where the bone came from. That is why I let them in.

MR. SERRA: Your Honor, a related subject to 403 objections made by my colleagues.

THE COURT: Yes.

MR. SERRA: Yesterday I had submitted a request for limiting instruction on behalf of all defendants not similarly situated with Mr. Nosair. Perhaps if the court had a chance to read it, now would be the tame time to discuss it.

THE COURT: I have had a chance and I have read it. Anybody want to respond?

MR. McCARTHY: Your Honor, the government's position is, notwithstanding the fact that the instruction has reportedly been given a couple of times in this court, that it is inappropriate, certainly in its present form, for a variety of reasons.

To begin with, it suggests to the jury that the government has a burden, which we don't have, to establish when it is that a conspiracy began, when it is that members of the conspiracy entered the conspiracy. In fact, if the court is going to instruct the jury consistent with the instructions that have already been given and consistent with the standard instructions on the law of conspiracy, those issues are not relevant to liability, and to suggest to the jury otherwise would be, we submit, wrong.

There are also a variety of other lawful, proper

instructions regarding the law of conspiracy that we think ought to be given in tandem with this instruction, if the court has any intention of giving an instruction like this one.

THE COURT: I understand the reason for the requested instruction, and I think part of it is that they have already been instructed that the theory of conspiracy is essentially agency, and that in a conspiracy every conspirator becomes the agent of every other conspirator. In view of that, I think what they are asking is that for those who are not found to be members of the conspiracy at the time this went on, there is no way that anybody who was a member of the conspiracy could be acting on behalf of somebody who hadn't yet joined.

MR. McCARTHY: Your Honor, we suggest that that type of instruction ought to await such time, if ever, that an improper suggestion is made to the jury that that is so. What this instruction does is suggest to the jury that there is some significance in the period of time during which the conspirator enters the conspiracy.

THE COURT: There is --

MR. McCARTHY: I could understand the point if we were making the argument that people as to whom there is no evidence that they were involved in this transaction or involved in it or at sometime became members of the

conspiracy, but that not having been done, all this is doing is suggesting to the jury that there is some significance in terms of the decision they have to make, which is whether these people are liable or not under the charge to the period of time they entered the conspiracy.

THE COURT: I suppose I have to go back to what you said in the beginning, namely that there are other things that need to be charged at the same time. I don't know what you have in mind and I am not asking you to give me orally a proposed charge containing those other things, whatever they are. I would like you to respond, though, to the letter, both telling me why you think I shouldn't do it, if you think I shouldn't do it, and what it is that you think ought to go with it if you think something else ought to go with it.

MR. McCARTHY: Tomorrow morning.

MR. RICCO: Your Honor, I would like to apologize to the court for my lateness this morning.

THE COURT: It happens.

MR. RICCO: Having said that, tomorrow morning I am going to be delayed. I have a function at my son's school. I won't be in until approximately 11:30. It is a school play. Mr. Villanueva will be here. He is counsel of record.

THE COURT: Fine.

MR. RICCO: I have spoken to Mr. El-Gabrowny about it and he has waived my presence.

THE COURT: Is that all right, Mr. El-Gabrowny?

DEFENDANT EL-GABROWNY: Yes.

THE COURT: We are due to come in at 9:30. Please come in at 9:15, because people can't be brought in unless you are here and if you came at 9:30, which would otherwise be appropriate, what happens is that we don't get started until 9:45.

See you tomorrow morning. Good night.

(Pages 3043 through 3045 sealed by the court)

(Proceedings adjourned until 9:30 a.m., Thursday, February 16, 1995)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
CLEMENT HAMPTON-EL, S593Cr.181(MBM)
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.
----------x

February 16, 1995
10:00 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

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Southern District of New York
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ROBERT KHUZAMI
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Candido Valderrama

(In open court; jury not present)

THE COURT: Good morning.

MR. STAVIS: Your Honor, I have an application. This morning I received from the government a copy of a lab report which was dated yesterday. Actually it came into my office at 10:58 p.m. I hadn't seen it since this morning. The government has a chemical analysis of some item that was recovered from Mr. Nosair's work locker. I was present for that search and it occurred on December 20th of 1994.

I spoke to Mr. Fitzgerald about this matter and he indicated to me that he would anticipate putting on testimony concerning this substance sometime next week. My application, your Honor, is that I be given sufficient time to prepare my cross-examination.

I would like to consult with an expert with regard to this substance, and I would also like an independent testing of the substance. Perhaps it would move matters along if other than the lab report, which tells, gives me virtually no information, I could have the lab work sheets and other items, so that I could effectively consult with an expert.

MR. FITZGERALD: Your Honor, the lab analysis was done and the report generated yesterday. I told Mr. Stavis orally yesterday, I asked him earlier when he said he was going to move to preclude as to timing or its substance.

THE COURT: It is usually on the timing.

MR. FITZGERALD: I wasn't sure on that before. As to timing, we can talk as to whether or not we can rush these items to his expert. We did that earlier this week with regard to the gun. He called us on the weekend and we got it over to his expert.

THE COURT: I want you to get him whatever work sheets or other analytic materials would be needed by somebody to competently analyze the tests and help him prepare cross-examination. If that can be done by next week, fine. If it can't, then the proof is not going in unless and until that can be done.

MR. FITZGERALD: That's fine, sir.

THE COURT: If that ruins your timing, that's tough.

MR. FITZGERALD: We'll work with it.

THE COURT: The principal reason for the delay this morning was that Juror No. 104 overslept. This is not the first time he has had a problem. He had a problem during jury selection on two consecutive days when he showed up late, and we couldn't start because he was by then one of the people who were among the group we had winnowed down to.

MR. MC CARTHY: Your Honor, I'm sorry can you tell us which number juror? I don't know which number 104 is.

THE COURT: Number 9.

MS. AMSTERDAM: 8.

THE COURT: I believe it's 9.

MS. AMSTERDAM: 9.

MR. MC CARTHY: Thank you.

THE COURT: He also was late on one earlier day during this trial because he had forgotten some medication at home and it had to be retrieved, and so on. I don't know whether he's basically a nonserious person or what, but I don't propose to do anything about it now.

However, if he has another episode, I propose to have a chat with him one on one obviously on the record. I don't want to start inquisitioning a juror. I don't like doing it. On the other hand, if this is going to be a recurring thing, I don't really think it ought to be tolerated, and I want a record made of what his record has been so far, and so far it hasn't been good.

MS. AMSTERDAM: Is this the juror, your Honor, who indicated he was retired on disability and had a medical problem?

THE COURT: Yes.

(Continued on next page)

(Jury present)

JAMES MEURY, resumed.

THE WITNESS: Good morning.

THE COURT: Good morning. Have a seat.

Good morning, ladies and gentlemen. You are still under oath.

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

MR. PATEL: Thank you, your Honor.

CROSS-EXAMINATION (continued)

BY MR. PATEL:

Q. Officer Meury, I want to start out with something a little obvious today. You're wearing a uniform today?

A. Correct.

Q. That's the uniform of the New York City Police Department patrol officer, right?

A. Correct.

Q. Now, before you put that uniform on for the first time with a badge and gun and baton and handcuffs, you went to the Police Academy; is that right?

A. Correct.

Q. And in the Police Academy you were instructed --

THE COURT: Lean forward a little bit, Officer, or move the chair forward and talk into the microphone. Thank you.

Q. -- you were instructed in how to be a police officer, correct?

A. Okay, yes.

Q. How long were you at the academy?

A. Approximately six months.

Q. At the academy you were instructed about the New York City Police Department Patrol Guide, is that fair to say?

A. I was instructed on it?

Q. Yes.

A. I don't follow the question.

Q. There is such a thing as the New York City Police Department Patrol Guide?

A. Yes, correct.

Q. And that's a book that contains various procedures about being a police officer, correct?

A. Okay, yes.

Q. Responsibilities of a police officer?

A. Basically.

Q. And it's quite detailed?

A. Yes.

Q. There is even a section that says when you come to court as a uniformed member of the department you're supposed to wear your uniform.

A. I'm not sure. We have different --

MR. PATEL: May I approach the witness, your Honor?

THE COURT: Yes.

MR. PATEL: May we deem this marked H, Nosair H.

THE COURT: Yes.

(Defendant Nosair Exhibit H marked for identification)

Q. Does this look familiar?

A. The wording does.

Q. You want to take a look through?

A. What do you want me to look at?

Q. Does this look like a copy of the Patrol Guide?

A. A copy of it, yes.

Q. I'm showing you page 11401 page 1 of 3, and that is, does that refer to duties and conduct in court?

A. Okay.

Q. And does that indicate that when you come to court you're supposed to wear your uniform?

A. Okay. But there are times that I don't have to wear my uniform.

Q. You don't wear your uniform 24 hours a day, 7 days a week?

A. What I'm saying is some appearances in court I do not have to wear my uniform.

Q. That's right here in the Patrol Guide when --

A. That's what I said, these are the four exceptions.

Q. All right, okay. You're on duty today?

A. Right.

Q. Following the Patrol Guide, you're in uniform?

A. Correct.

Q. The Patrol Guide talks to you about other situations that come up in police work?

A. Correct.

Q. A whole array of things. There is a section in the Patrol Guide about dealing with firearms, isn't there?

A. Whose firearms?

Q. Firearms you recover?

A. Correct.

Q. That the police officer recovers?

A. Correct.

Q. And it tells you the first thing you're supposed to do when you find a firearm is make, is unload it?

A. I would disagree.

MR. PATEL: May I approach the witness?

THE COURT: Yes.

Q. Showing you in Nosair H page 11320 section entitled processing firearms, uniformed member of the service. That's you. You're a uniformed member of the service, is that correct?

A. Right.

Q. Number 1, what does it say?

(Continued on next page)

MR. KHUZAMI: Your Honor, may we approach?

THE COURT: Yes.

(At the sidebar)

MR. KHUZAMI: Your Honor, I have a few objections. One, we have never seen this document that has been shown. Two, he's reading from a document that's not in evidence. If he wants to refresh recollection he should show it to him. Three, it's outside the scope of the direct. This witness was never questioned about firearms.

MR. PATEL: He was questioned about being a police officer, wasn't he?

MR. KHUZAMI: Yes.

MR. PATEL: The procedures of the Police Department is part of his responsibility as a police officer.

THE COURT: He also said, didn't he, that -- I'm not sure what he said. Did he say anything about the weapon?

MR. KHUZAMI: No.

MR. PATEL: Actually, Judge, I was going to inquire about whether he saw what happened with the weapon.

THE COURT: No. I'm not going to, unless he himself is alleged to have handled the gun, then I'm not going to let you do it.

MR. PATEL: May I just explain why, Judge? I

just want to know, it's just what he saw. I'm just testing his memory. He says he was present when Nosair was cuffed. That he testified to.

My understanding is that the weapon was not recovered until after Mr. Nosair was cuffed. I'm just going to ask him if he saw it.

THE COURT: You get that as a predicate first before you get into this.

MR. PATEL: No problem.

MR. KHUZAMI: To the extent to which it's a 613 objection, he's obviously attempting to impeach another witness who handled the firearm through this witness.

THE COURT: That's right, exactly. I'm not going to let you do it.

MR. PATEL: Okay.

(Continued on next page)

(In open court)

MR. PATEL: Your Honor, may I ask one more question?

THE COURT: As long as it's consistent with the ruling at this time.

Q. Having looked at that, does that refresh your recollection?

A. In regards to firearms?

Q. Yes.

A. I still disagree with that. My first, my first priority is to safeguard a weapon, regardless of whether it means unloading it, or just making sure no one else can take it.

THE COURT: That's the last.

MR. PATEL: That is the last. Thank you.

Q. Now, you testified yesterday that you arrived on the scene. Would be it be fair to say that the scene was pretty chaotic, that scene outside the post office?

A. Yeah, I'll say that it is.

Q. You testified yesterday that there was a crowd of about 20 people there, right?

A. At least 20.

Q. Maybe more?

A. Well, Lexington Avenue, I mean midtown Manhattan is always more than 20 people.

Q. A crowd around the post office, fair to say that there may have been as many as 50 people there?

A. I would have to say, it wasn't my concern to count how many people. I have to say more than 20.

Q. And when you arrived you saw Mr. Nosair lying on the ground?

A. Yes.

Q. And he was not moving?

A. Quite honestly, I thought he was dead.

Q. And you saw Police Officer Fleming handcuff him?

A. And Moran, James Moran.

Q. You handcuff people, right?

A. Correct.

Q. And when someone is lying there not moving does it take more than one person to handcuff someone?

A. It's up to the individual officer. I mean, if it's just a shooting, you know, my safety is a priority.

Q. How many people does it take to handcuff someone?

A. I've been in fights where it took five, six cops to handcuff someone.

Q. Have you ever been in a fight with a dead person?

A. No. I mean I see no problem with an officer handing an arm to another person to handcuff him.

Q. Who snapped on the cuffs?

A. I couldn't tell you. I was approaching the scene

when I saw both of them --

Q. Fair to say that you testified on this very issue --

THE COURT: Did you finish your answer? You were approaching the scene when you saw both of them what?

THE WITNESS: Basically cuffing him.

Q. It's fair to say you testified on the subject matter before?

A. Correct.

(Continued on next page)

Q. And on previous occasions you have testified that Officer Fleming handcuffed Mr. Nosair?

A. I don't recall.

THE COURT: Please wait until you get up there to pose the question, because it has to go into the microphone. Thank you.

Q. I am going to show the witness what has been marked 3543D, page 276, lines 16 through 18.

Officer, I ask you to read those three lines, 16 to 18, to yourself.

A. OK.

Q. It is your testimony from the hearing in state court?

A. It is either the hearing or the trial.

Q. Does that refresh your recollection as to your prior testimony?

A. Yes.

MR. KHUZAMI: Objection.

THE COURT: There has been no showing of failure of recollection. Sustained.

Q. Prior to my showing you this exhibit, did you recall your prior testimony from that hearing?

A. I don't recall me saying it. I mean, if it's written I imagine I said it.

Q. Do you now recall your testimony --

A. I recall it because I read it. I don't recall saying it.

Q. This does not refresh your recollection?

A. No. I recall, I see what's written and I am sure that's what I said, but I don't recall saying it.

Q. Do you recall testifying here?

A. Correct.

Q. Coming to court at 100 Centre Street?

A. For that hearing?

Q. Yes. You came to court, right?

MR. KHUZAMI: Objection.

A. I don't understand the question.

THE COURT: Sustained as to form. Does he remember walking into the building?

MR. PATEL: That is where we are starting.

THE COURT: No. Focus the question.

Q. May 9, 1991, you came to court at 100 Centre Street, is that correct?

A. I don't even know the date, but if that was the date of the hearing, that's when I was there, yes.

Q. You came to the courtroom on the 13th floor?

A. I have no idea what floor.

Q. Judge Schlesinger's courtroom?

A. I am involved in many cases. I don't remember what floor.

Q. Do you remember testifying at a hearing in this case?

A. Yes, I do.

Q. At a courtroom in 100 Centre Street?

A. I don't remember what -- I come to court quite often. I don't remember if it was at 100 Center or 80.

Q. How many --

THE COURT: Let him finish his answer.

A. There is courthouses at 100 Centre, 80 Centre Street, at Lafayette Street. In regards to this case, I don't remember. I remember coming, I remember sitting in this chair, similar to a chair like this, in an atmosphere just like this. What address, I don't remember.

Q. Do you remember taking an oath like you took yesterday?

A. Yes, I do.

Q. Do you remember testifying?

A. Yes, I do.

Q. Do you remember what you said?

MR. KHUZAMI: Objection.

THE COURT: Sustained.

Q. Do you recall testifying, your testimony of seeing Officer Fleming handcuff Mr. Nosair?

A. I don't recall saying that.

Q. Having looked at this exhibit, does that refresh

your recollection?

MR. KHUZAMI: Objection.

THE COURT: Sustained and stricken. Move on to something else.

Q. When you arrived at the scene, there were two police officers there ahead of you?

A. Two NYPD officers.

Q. And there was a gun on the floor?

A. I never saw a gun.

Q. At some point EMS people arrived, is that fair to say?

A. Correct.

Q. And you saw them treating Mr. Nosair?

A. Correct.

Q. At any time did you see them swab his hands at all?

A. Not at all.

Q. You were assigned to guard the crime scene?

A. Correct.

Q. Who gave you that assignment?

A. Originally, no one. I mean, that's proper and that is what I am supposed to do. I was there, Officer Fleming went with Mr. Nosair to the hospital. That's my job.

Q. Did you begin your job of guarding the crime

scene before Mr. Nosair was taken away?

A. Yes, along with three other officers.

Q. Part of guarding the crime scene was keeping the crowd away, is that fair to say?

A. Exactly.

Q. Keeping the crowd away took some doing that night, didn't it?

A. Did it take some doing?

THE COURT: He wants to know if it was difficult.

A. No. People listen to police officers. When we say move away, they move away.

Q. But there were people trying to get to Mr. Nosair?

A. No, not at all.

Q. At some point detectives from the crime scene unit arrived, is that accurate?

A. Yes.

Q. And you were still guarding the crime scene?

A. Correct.

Q. At some point while you were guarding the crime scene, you had to take your eyes off the clothing that were on the floor, even momentarily.

A. I mean, yeah, I blink. I mean, it's not like I stood there and 100 percent just stared at the clothing.

Q. You had other jobs to do other than just watching

the clothing, right?

A. Not necessarily, no.

Q. You had to keep the crowd away, right?

A. Yes, and the crowd was kept away.

Q. When the crime scene unit arrived, you spoke to a detective?

A. Correct.

Q. And you filled him in on what was going on, or what had happened?

A. Along with others.

Q. That is other people spoke to the crime scene unit?

A. A detective from my precinct.

Q. And you watched the crime scene unit detectives do whatever it was -- do their job?

A. Exactly.

Q. And you were within five feet of where they searched Mr. Nosair's clothes?

A. When they searched it?

Q. When they searched it.

A. I was closer.

Q. You had a clear, unobstructed view of what they were doing?

A. Exactly.

Q. Was the crime scene detective who was searching

Mr. Nosair's clothes -- by the way, do you know who that was?

A. Detective Rinaldi?

Q. Was he wearing gloves when he did this?

A. I don't recall.

Q. I believe you testified yesterday that you saw a number of items being recovered from Mr. Nosair's pants.

A. Yes.

Q. Some keys, wallet, some bullets?

A. Correct.

Q. Did you handle any of those items there on the street?

A. Some of them I handled inside a plastic bag that Detective Rinaldi put them in.

Q. The crime scene unit officer put some of the materials inside a plastic bag?

A. Clear, about this size, basically a ziplock bag.

Q. An evidence bag?

A. It's a clear plastic bag. I don't know what they call it.

Q. And he had more than one of these bags, didn't he?

A. Yes.

Q. The clothing went in the bag?

A. The clothing went in a brown paper, basically a

shopping bag that you get in the supermarket.

Q. The keys went in a different bag?

A. In plastic.

Q. The money went in a different bag?

A. Correct.

Q. The bullets went in a different bag?

A. I don't know where the bullets went.

Q. The wallet went in a different bag?

A. I don't know where the wallet went.

Q. Did you see any gloves that night?

A. Any --

Q. Gloves.

A. From?

Q. The clothing.

A. No.

MR. PATEL: Your Honor, I don't have any further questions.

MR. KHUZAMI: Just brief, your Honor.

REDIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Detective Meury, where were the clothes positioned when you arrived at the -- withdrawn.

After Mr. Nosair was taken away by the ambulance, where were the clothes left?

A. Right on the ground where he was laying.

Q. Was that inside the crime scene?

A. Yes.

Q. That means it was within a taped-off area?

A. Correct.

Q. Prior to the arrival of the crime scene detective, Detective Rinaldi, where were you stationed or positioned in relation to the clothes?

A. I was in the general vicinity, I would say no more at any given time than 10 feet away.

Q. During that time, did anyone approach the clothes?

A. Absolutely not.

Q. Did any civilians come within the taped-off area?

A. No.

MR. KHUZAMI: No further questions.

MR. PATEL: Very briefly.

RECROSS-EXAMINATION

BY MR. PATEL:

Q. When you arrived at the scene, was the crime scene taped up?

A. No, it was not.

Q. When we say crime scene tape, that is yellow tape saying crime scene or police, something?

A. This was plain, I would say about an inch wide orange tape.

Q. And there were civilians in the area before the crime scene tape was put up?

A. In regards to -- there were civilians around all the time. Inside the crime scene, no.

Q. They were there before the tape was put up, right?

A. Nobody -- when I showed up on the scene, there was nobody, I mean, in the immediate vicinity of Mr. Nosair.

Q. Did you put up the tape?

A. I am not sure.

Q. Do you recall putting up a tape?

A. In the police office, when I say I created the crime scene, I pushed people back and put up the tape. I don't remember if I pushed people back, back, back, back, or assisted in putting up the tape, but the tape was put up.

Q. When you pushed people back, where were you in relation to the edge of the sidewalk?

A. I guess I could -- sort of a semicircle with the building line.

MR. PATEL: Could I ask the witness to step down for a moment, your Honor?

THE COURT: Yes.

Q. If the jury rail is the building line --

THE COURT: You are going to have to get a microphone.

MR. PATEL: I am sorry. There used to be one in the neighborhood.

Q. If the jury rail is the building line, that is, sidewalk ends, building starts, and this piece of tape -- not to scale but just for illustration purposes -- we say this is the sidewalk, and Mr. McCarthy would essentially be sitting in the street.

A. OK.

Q. Clothing are somewhere in the middle of the sidewalk?

A. Exactly.

MR. KHUZAMI: Objection to form, your Honor.

THE COURT: Overruled as to form, but talk into the microphone.

Q. Come a little closer. We have to share this thing.

The clothes are about where we are are standing now?

A. I believe so.

Q. And the crowd was in the street?

A. No.

Q. Where was the crowd?

A. There was traffic in the street. The crowd was at 48th Street on that side of the tape and 47th Street on that side of the tape.

Q. When you pushed the crowd back, where were you standing?

A. In sort of a semicircle. I pushed people, stood there and walked around, and pushed people back there.

Q. So at a time your back was to the clothing.

A. Maybe.

Q. Yes, no?

MR. KHUZAMI: Objection.

THE COURT: Was your back ever to the clothing when you were asking people to step back?

THE WITNESS: I would imagine so, yes.

MR. PATEL: Thank you. No further questions.

THE COURT: Anything else?

MR. KHUZAMI: Nothing further, your Honor.

THE COURT: Thank you, you are excused.

THE WITNESS: Thank you.

(Witness excused)

MR. KHUZAMI: The government calls Ralph Rinaldi, R-I-N-A-L-D-I, as its next witness.

THE COURT: I ask people not to shuffle papers when somebody is being sworn.

RALPH C. RINALDI,

called as a witness by the government,

having been duly sworn, testified as follows:

THE COURT: Go ahead.

MR. KHUZAMI: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Mr. Rinaldi, how are you employed?

A. By the Wackenhut Corporation.

Q. What is your general job description there?

A. I am a customs protection officer.

Q. Did you used to work for the New York City Police Department?

A. Yes, I did.

Q. When did you retire?

A. June of '94.

Q. What was your rank at the time you retired?

A. Detective.

Q. How long had you been a detective?

A. Since September of '89 through '94, June of '94.

Q. During the time that you were a detective, did you have a particular assignment?

A. Yes, I did. I was assigned to the crime scene unit at the New York City Police Department.

Q. Can you describe for the members of the jury what the function is of the crime scene unit?

A. The crime scene unit responds to locations where crimes have been committed, such as homicides, rape, robberies, burglaries -- serious crimes.

Q. What is the purpose in responding to those scenes?

A. At the scene, evaluate the scene, do a sketch of the area, recover evidence, take photographs, measure evidence, process scenes for fingerprints.

Q. What was your assignment before you served in the crime scene unit?

A. I was assigned to the Emergency Service Unit.

Q. Can you describe to the members of the jury what the Emergency Services Unit is?

A. The Emergency Service Unit is a unit that assists other members of the service, inclusive of citizens, naturally, but in rescue abilities, with equipment and specialized training. That is also inclusive of heavier weapons in case we needed them in hostage situations or barricaded violent --

MR. PATEL: Objection, your Honor.

THE COURT: Overruled.

A. Assist members of the service with equipment that is necessary in various situations that they couldn't handle.

Q. Directing your attention to the night of November 5 of 1990, were you working that tight night?

A. Yes, I was.

Q. Do you recall what your hours were that day?

A. Yes. They were from 2:00 p.m. to the next morning. That was 8:00 in the morning.

Q. And directing your attention to around 9:15 on the night of November 5, did you receive a call from the dispatcher at that time?

A. Yes, I did.

Q. Without telling us what was said, did you do anything as a result of receiving that call from the dispatcher?

A. Responded to 48th Street and Lexington Avenue.

Q. Do you recall approximately what time you arrived he at Lexington and 48th?

A. Approximately 10:00 p.m.

Q. Were you with anyone?

A. I was with Detective Romano.

Q. Who was he?

A. He was my assigned partner.

Q. What did you do when you first arrived at that location?

A. Spoke to the safeguarding officer at the location.

Q. Let had he me ask you one preliminary question. What was at the location?

A. At the location, there was evidence, there was bloody clothing on the sidewalk, there was blood on the

sidewalk --

MR. PATEL: Objection.

THE COURT: Overruled.

A. -- in front of 500 Lexington Avenue there was ballistics damage to the doorway of 500 Lexington Avenue.

Q. You indicated that you spoke to the safeguarding officer. Do you remember his name or her name?

A. That was Officer Meury.

Q. Can you describe what the scene looked like when you first arrived?

A. It was a cordoned-off area secured with crime scene tape. The sidewalk area in front of 500 Lexington Avenue had clothing on it which was bloodied, and there was a pool of blood amongst the items. The doorway to the 500 Lexington Avenue had bullet holes in it on the south side of the door.

Q. What is the first thing you did when you arrived after speaking to Officer Meury?

A. Evaluated the scene, did a sketch of the area, inclusive of the ballistics damage and the evidence.

Q. What did you include in that sketch?

A. The evidence on the sidewalk, also the ballistics damage in the doorway of 500.

Q. What did you do after making the sketch?

A. Took photographs of the area, inclusive of

closeups of the clothing on the sidewalk and blood.

Q. Did you take those photos yourself?

A. Yes, I did.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Detective Rinaldi, let me show you what have been marked as Government's Exhibits 6U, 6V and 6X for identification and ask you if you recognize them?

A. Yes, I do.

Q. Are those pictures that you took at the crime scene at 48th and Lexington Avenue on November 5, 1990?

A. That is correct.

Q. Are they fair and accurate depictions of the way the crime scene area looked at the time you took the pictures?

A. That's correct.

MR. KHUZAMI: Your Honor, I would move Government's Exhibits 6U, 6V, and 6X into evidence.

MR. PATEL: No objection.

THE COURT: Government's Exhibits 6U, 6V, and 6X are received without objection.

MR. KHUZAMI: I would ask that the jury be permitted an opportunity to examine them.

THE COURT: Ladies and gentlemen, you may look in your binders for those exhibits.

MR. KHUZAMI: That is 6U, 6V and 6X.

(Government's Exhibits 6U, 6V and 6X were received in evidence)

(Pause)

Q. Detective Rinaldi, what did you do at the crime scene after taking the pictures?

A. After taking the photos, I took measurements of the ballistics damage to the doorway of 500 Lexington Avenue.

Q. When you say ballistics damage, what do you mean?

A. There were bullet holes, two bullet holes in the doorway, the south side of the doorway.

Q. Can you describe what the doorway looked like?

A. It was silver metal on a door frame, doorway, double door situation.

Q. Did you take a picture of those bullet holes?

A. Yes, I did.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Detective Rinaldi, let me show you what has been marked as Government's Exhibit 6Y and ask if you recognize it?

A. Yes, I do.

Q. Did you take that picture?

A. Yes, I did.

Q. Is that a picture of the bullet holes in the doorway of 500 Lexington Avenue?

A. Yes, it is.

Q. Is that a fair and accurate picture of the way those bullet holes looked on the night of November 5, 1990?

A. That is correct.

MR. KHUZAMI: Your Honor, I would move Exhibit 6Y into evidence.

MR. PATEL: No objection.

THE COURT: 6Y received without objection.

MR. KHUZAMI: And, your Honor, I would ask that the jury be permitted to look at 6Y in evidence.

THE COURT: You can look at 6Y.

(Government's Exhibit 6Y was received in evidence)

(Pause)

Q. Detective Rinaldi, did you measure the location of those bullet holes?

A. Yes, I did.

Q. Do you recall where those bullet holes were placed in the doorway?

A. They were placed on the south side of the door, as you are looking at the door, on the left side of the door, doorway.

Q. Do you remember where they were specifically

placed in the doorway, how high up from the ground or how far up on the side?

A. I don't recall. The measurement was taken and is inclusive of part of my report.

Q. Is there a document that would refresh your recollection as to what those measurements were?

A. Yes, there is.

Q. What would that be?

A. That would be my crime scene report.

Q. Can you describe to the members of the jury what the crime scene report is?

A. It is a report that is prepared that is necessary for court presentation, to include evidence that is collected, photos that are taken, for specifically this purpose and time in court.

(Continued on next page)

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Detective Rinaldi, I wonder if you might take a look at what has been marked Government's Exhibit 3553A for identification. I ask you if you see anything in there that refreshes your recollection as to the measurements of the bullet holes in the doorway of 500 Lexington Avenue?

A. Yes, there was measurements for both bullet holes. The first one was 54 inches up from the ground --

MR. PATEL: Objection, your Honor.

A. -- and 19 inches out from the doorway.

MR. PATEL: Objection.

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

(At the side bar)

THE COURT: I don't want to turn this into an evidence seminar but there has been a fairly promiscuous use of the concept of refreshing recollection on both sides.

MR. KHUZAMI: I can lay a foundation of past recollection recorded.

THE COURT: And maybe we can talk generally what it means so we don't have to do it through the the trial.

(In open court)

(Continued on next page)

BY MR. KHUZAMI:

Q. Detective Rinaldi, at the time that you visited the crime scene on November 5, 1990, did you make any writings as to what you found at that location?

A. Yes, I did.

Q. What kind of writings did you make?

A. There were notes taken.

Q. Who took those notes?

A. Myself and Detective Romano.

Q. What do those notes reflect?

A. They reflect the information necessary to prepare a typewritten report.

Q. Were those notes a full and accurate reflection of the items that you found and the things that you observed at the crime scene that night?

A. That's correct.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. I show you what has been marked Government's Exhibit 3553A and ask if you can identify it.

A. Yes, I can.

Q. What is it?

A. It is a typewritten report and also the handwritten notes that were taken.

Q. Those pertain to the crime scene on November 5,

1990, at 500 Lexington?

A. The crime scene.

Q. Do you have personal knowledge pertaining to the information contained in that report and notes?

A. Yes, I do.

Q. Is that record full and complete and in the same condition it was when you created it back at that time?

A. Yes, it is.

Q. How soon after you were at the crime scene did you create your report?

A. Several days.

(Continued on next page)

MR. KHUZAMI: Your Honor, I would move Government's Exhibit 3553A into evidence.

MR. PATEL: May I have a voir dire?

THE COURT: May I see you both up at the side.

(At the side bar)

THE COURT: The drill on past recollection recorded is that the exhibit itself does not come in. It can be read in whole or in part but it can't come in as an exhibit.

Is this all, just to get the measurements?

MR. KHUZAMI: And there may be some other items.

THE COURT: Whatever else is there is.

Do you want to go into that on cross?

MR. PATEL: I would assume your Honor would have no -- Judge, I would object to this coming in. If he wants to quickly refresh his recollection as to the measurements, for what that is worth, I don't have an objection to that. He has already basically said what the measurements were.

MR. KHUZAMI: I think the document is properly qualified as his past recollection recorded. He is entitled to refer to it and read from it.

THE COURT: He is.

MR. PATEL: Actually, the document is not, because it is internally inconsistent.

MR. KHUZAMI: That goes to weight or his cross.

It doesn't go to whether or not he can testify from it.

THE COURT: It may be internally inconsistent as to some things and I am not going to get into that now. Let's get on with this.

(Continued on next page)

Q. Det. Rinaldi, utilizing your report, if necessary, can you please indicate what the measurements were of the two bullet holes that were in the doorway of 500 Lexington Avenue?

A. 54 inches up was the first one, and 19 inches out from the door. The second one was 67 inches up from the ground and 11 inches out from the door.

Q. Referring to Government Exhibit 6Y, the photograph, can you indicate from the photograph which of those bullet holes is referred to as number 1, and which is the bullet hole you referred to as bullet hole number 2?

A. Number 1 would be the lower of the two. Number 2 would be the upper one closer to the door.

Q. Now, what do you do after you took those measurements?

A. After those measurements, proceeded over to the evidence on the sidewalk, the bloody clothing.

Q. Was there any further investigation or analysis of the bullet holes done at that point?

A. Yes, there was. Emergency Service was requested to respond to the location with necessary tools to search for ballistics evidence that could possibly be in that door frame.

Q. Did the Emergency Services Unit eventually arrive at the location?

A. Yes, they did.

Q. Do you recall the name of any particular officer who arrived?

A. Officer Gomez from Emergency Service Unit Number 1.

Q. And do you know what Officer Gomez did when he arrived?

A. I spoke to Officer Gomez, told him that we have two bullet holes in the door frame and that he would have to utilize --

MR. STAVIS: Objection.

THE COURT: In any event, you had a conversation with Officer Gomez. What happened then?

A. Officer Gomez was instructed that there was bullets, possible ballistics evidence in the holes.

MR. PATEL: Objection, your Honor.

THE COURT: I'll allow it, go ahead.

A. And we left him to do his assignment.

Q. What did you do next?

A. Continued with my assignment as to the evidence on the sidewalk.

Q. And when you say evidence, what are you referring to?

A. There was bloody clothing and also there was evidence in one of the pockets or a couple, several of the

pockets in the pants that were on the sidewalk.

Q. What did you do when you first started examining the clothing?

A. Noted that there was blood on the sidewalk and also that there was, the clothing was bloody, the description of the pants, they were gray pants. There was a label Oakton. I think there was a 38 inch waist on them, 29 inch length. They were also cut, cut and mutilated. Checked the pockets of the pants. Discovered that there were ballistics in the left rear pocket of the pants, a pair of brown gloves in the left front pocket, and the wallet, the brown wallet was in the right rear pocket.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

MR. PATEL: I have an objection to this line, your Honor. Could we have a sidebar?

THE COURT: Yes.

(Continued on next page)

(At the sidebar)

MR. PATEL: Judge, I have a relevance objection to the introduction of what the government intends to --

THE COURT: Overruled.

(Continued on next page)

(In open court)

THE COURT: The objection is overruled.

Q. Det. Rinaldi, let me show you what has been marked as Government Exhibit 31 for identification and ask you to take a look at it.

A. Could I have a pair of gloves, please?

(Witness given gloves)

MR. KHUZAMI: Detective, try to not to rub the clothes against the microphone.

A. I try not to rub them on myself.

Q. You recognize those?

A. Yes, I do.

Q. What are they?

A. They're the pants that were noted and marked by myself on the evening of the event.

Q. Are those the pants that you examined on the sidewalk on the night of November 5, 1990?

A. That's correct.

Q. How do you recognize them as such?

A. The label that's in here. Also, I put a marking of R1 on the waistband.

Q. Are those pants in the same or substantially the same condition as they were on November 5, 1990?

A. Yes, they are.

MR. KHUZAMI: Your Honor, I would move Government

Exhibit 31 into evidence.

MR. PATEL: Previous objection, your Honor.

THE COURT: Same ruling. 31 is received.

(Government Exhibit 31 received in evidence)

Q. You can put those back in the bag. Det. Rinaldi, did you examine any other clothing on the sidewalk that night other than the pants?

A. Yes, there was a tweed sweater that was on the sidewalk and also a T-shirt.

Q. What do you recall about the tweed sweater?

A. It was a heavy tweed brown and blue sweater. It was bloodied and also cut up, mutilated.

Q. If you would pick up what is on the ledge next to you marked as Government Exhibit 32 for identification. Take a look at it and let me ask you if you recognize that.

Do you recognize it?

A. Yes, I do.

Q. What is it?

A. It's a, the sweater that was on the sidewalk that evening.

Q. How do you recognize it as that sweater?

A. By the description given by myself of the, and also photos that were taken of the item on the sidewalk.

Q. Is it in the same or substantially the same condition as it was when you saw it on November 5, 1990?

A. It's mutilated and it's blood soaked.

Q. Is that the way it was when you saw it?

A. That's correct.

MR. KHUZAMI: Your Honor, I move Government Exhibit 32 into evidence.

MR. PATEL: No objection.

THE COURT: 32 is received without objection.

(Government Exhibit 32 received in evidence)

Q. Officer Rinaldi, what did you do with those clothes after you completed searching them?

A. They were given to Officer Meury for purposes of vouchering to be sent to the Medical Examiner's Office for analysis.

Q. Now, you mentioned that you found some items in the pants. One of the items you mentioned you found some ballistics; is that correct?

A. That's correct.

Q. When you say ballistics, what do you mean?

A. There were 13 live rounds discovered in one of the pants pockets.

Q. When you say live rounds, what do you mean?

A. Full cartridges.

Q. Are those bullets?

A. Bullets are the actual projectile. The live rounds are cartridges, a full bullet and casing.

Q. And do you recall where you found those bullets?

A. In the left rear pocket.

Q. Did you personally take them out?

A. Yes, I did.

Q. What did you do when you took them out?

A. Took them out, described the head stamps to my partner Det. Romano. The head stamps were written down, which is inclusive of the caliber and also the manufacturer's name, and that was marked down in my notes. They were packaged and marked, I'm pretty sure, R5.

Q. What do you recall about the make or manufacture of the bullets?

A. There were --

Q. If you need to refer to your report, you may.

MR. PATEL: Objection.

THE COURT: Overruled.

A. There were ten 357 live rounds and three 38 caliber live rounds.

Q. A total of 13?

A. That's correct.

Q. Did you put any, did you give them any designation or marking?

A. May I refer to my report?

Q. You may.

A. Will I be handling any more clothing?

Q. You might.

A. They were designated as R for my initial of my last name, number 6, placed in an envelope, sealed up and the crime scene label was affixed to that, inclusive of the crime scene run number, my name, the date.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Let me show you, Det. Rinaldi, what has been marked as Government Exhibit 30 for identification and ask you to take a look at it.

Do you recognize what's in Government Exhibit 30?

A. Yes, I do.

Q. Before testifying here today did you have a chance to examine the contents of what has been marked as Government Exhibit 30?

A. Yes, I did.

Q. Where was that?

A. In your office on Tuesday night, the 14th of this month.

Q. How do you know what you're holding in your hand as Government Exhibit 30 is what you examined in the United States Attorney's Office?

A. After review of the information which matched my report, my initials were placed on there, inclusive of the date.

Q. Did you compare what's in that exhibit with your notes as to what you found at the crime scene that night?

A. Yes, I did.

Q. What did you conclude?

A. I concluded that there were three live rounds that weren't included in this inventory.

Q. How about the ten that are in there?

A. The ten, there were three 357 live rounds not included.

Q. The items that are in Government Exhibit 30, how do those correspond to the items you found in the pants on November 5, 1990?

A. They do correspond.

Q. How do you know that?

A. By the head stamps on the items and description given in my report.

Q. Did you compare the bullets, Government Exhibit 30, and the head stamps on them with the information in your report?

A. That's correct.

Q. And do you know what happened to the three bullets that are not in that exhibit?

A. Yes, I --

MR. PATEL: Objection.

THE COURT: May I see counsel at the side?

(At the sidebar)

THE COURT: Where is this going?

MR. KHUZAMI: Your Honor, he identified ten of the 13 bullets. The remaining three were used in ballistic testing by the following witnesses for comparison of Mr. Nosair's gun.

THE COURT: Did he participate in the testing?

MR. KHUZAMI: He did not.

THE COURT: Then he can say he knows, but he can't say what.

MR. KHUZAMI: I would ask him what his understanding was as what happened to the remaining three bullets.

MR. PATEL: I would object to that, your Honor.

THE COURT: I would sustain that objection.

MR. PATEL: Thank you.

MR. KHUZAMI: I am going to move the exhibits into evidence as I believe the foundation is proper.

THE COURT: That's a whole different story.

MR. PATEL: Your Honor, I am going to object to the admission of these exhibits through this witness. I don't believe there is a sufficient foundation. Clearly evidence has been modified from what he saw. There must be millions of bullets that have been recovered that have matched the same head stamps.

MR. STAVIS: Your Honor, in terms of bullets --

THE COURT: One lawyer.

MR. PATEL: I'm sorry, your Honor. Your Honor, I'm sorry, I didn't hear your Honor's ruling as to the admissibility of this exhibit just now.

THE COURT: You're admitting them to show what that they are in fact the bullets he recovered?

MR. KHUZAMI: That they are bullets he recovered.

THE COURT: No. You are going to have to show chain of custody if you are going to establish these as the bullets.

MR. KHUZAMI: Then I'll lay the foundation. And also included in the exhibit is the plastic seal that he wrote down where he got them from.

MR. PATEL: I have no problem with the plastic seal. I don't mean to sound --

THE COURT: All right.

(Continued on next page)

(In open court)

Q. Det. Rinaldi, do you see any items contained within Government Exhibit 30, any plastic envelopes or other such items that you recognize?

A. Yes, I do.

Q. What is it that you recognize?

A. There's an envelope, a clear plastic envelope that has crime scene --

MR. PATEL: Objection, your Honor, not in evidence.

THE COURT: Overruled.

A. There is a clear plastic envelope that has a crime scene sticker label on it, inclusive of the crime scene information, the run number, my name and information about where the evidence was recovered from.

Q. Is that the envelope that you placed the 13 rounds in on November 5, 1990, the night that you recovered them?

A. That is correct.

Q. Is that in your handwriting?

A. This is not in my handwriting.

Q. Do you know whose handwriting that is?

A. Det. Romano's.

Q. What was Det. Romano's role in collecting these 13 rounds?

A. Det. Romano's role was there to assist in any of my efforts, whether or not it was to take notes or to assist in the total process of the investigation.

Q. Where was he when you removed the 13 rounds from the pants?

A. Standing side, by my side.

Q. How do he know what information to write on that package?

A. I told him.

Q. And aside from the missing three rounds in that exhibit, are the remaining items the same or substantially the same condition as they were when you removed them from the pants on November 5, 1990?

A. Yes, they are.

MR. KHUZAMI: Your Honor, I would move Government Exhibit 30 into evidence.

MR. PATEL: Objection, your Honor.

THE COURT: You want a voir dire?

MR. PATEL: Yes.

THE COURT: Go ahead.

MR. PATEL: May I approach?

THE COURT: Yes.

MR. PATEL: May I do this from here?

THE COURT: Yes, as long as you use the microphone.

VOIR DIRE EXAMINATION

BY MR. PATEL:

Q. Detective -- Mr. Rinaldi?

A. Mister, thank you.

Q. There are in this, there are four shell cases in this exhibit. Is that correct?

A. That's incorrect.

Q. Am I using the wrong terminology? There's more?

A. You're incorrect, I can tell you that.

Q. What do you call this? What's the word for what I'm showing you?

A. I called it a live round. It can be called a cartridge.

Q. What is it now?

A. What is it now? It's a live round right now.

Q. Do you see -- did you scribe your initials on any of these items that night?

A. No, I did not.

Q. At any time after that night did you scribe your initials on any of these rounds or any of these things?

A. No, I did not.

Q. Is it fair to say that the manufacture of these -- these are, there are thousands, if not millions of identical items as these that were manufactured?

A. That's fair to say.

Q. And there is nothing on these items that indicates that these are the things you found that night?

A. Other than the head stamps and the description given, no.

MR. PATEL: Your Honor, I object at this time to the admission of these.

THE COURT: Objection sustained.

BY MR. KHUZAMI:

Q. Det. Rinaldi, you indicated that you also removed some gloves from the pants that you examined that night; is that correct?

A. Yes, that's correct.

Q. Do you recall where you removed them from?

A. Removed them from the left front pocket.

Q. Can you describe what they looked like?

A. Brown soft suede or leather gloves.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Let me show you what has been marked as Government Exhibit 33 for identification. Do you recognize that package?

A. Yes, I do.

Q. Have you seen it before?

A. Yes, I have.

Q. Prior to your testimony today did you have an

opportunity to examine the contents of that package?

A. Yes, I have.

Q. Where was that?

A. That was in your office on the 14th of this month. My initials were affixed to the envelope.

Q. Did you open the package contained within Government Exhibit 33?

A. Yes, I did.

Q. Did you recognize what was in there?

A. Yes, I did.

Q. What were they?

A. They were a pair of brown gloves marked with my initial R, and the number 5 on each one.

Q. How do you know that what you've got in your hand now are the items you examined in the United States Attorney's Office?

A. The manilla bag, there's a seal on it and my initials were placed on it along with the date.

Q. Were those gloves in the same or substantially the same condition when you saw them in my office as they were on November 5, 1990, when you pulled them out?

A. That's correct.

MR. KHUZAMI: Your Honor, I offer Government Exhibit 33 in evidence.

MR. PATEL: Your Honor, can I just have a very

brief voir dire?

THE COURT: Yes.

MR. PATEL: May I approach?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. PATEL:

Q. Mr. Rinaldi, you just mentioned that you placed your initials on the package. Is that the plastic bag holding Exhibit 33, or is it the item inside Exhibit 33?

A. My initials, well --

Q. You don't understand?

A. Yeah, I don't understand. You have to rephrase it.

Q. You went up to the U. S. Attorney's Office and you looked at this thing, correct?

A. Yes.

Q. You looked at Exhibit 33?

A. Yes.

Q. And you opened it up?

A. That's correct.

Q. And you put your initials when were you at the U. S. Attorney's Office on this exhibit.

A. The initials --

Q. Am I --

A. Go ahead.

Q. Is that correct?

A. On the exterior on the bag, on a piece of tape.

Q. So your initials were placed on the exterior of the bag, but you didn't place your initials on anything inside the bag when you were at the U. S. Attorney's Office?

A. That's correct.

MR. PATEL: Thank you. No objection.

THE COURT: 33 is received without objection.

(Government Exhibit 33 received in evidence)

BY MR. KHUZAMI:

Q. Det. Rinaldi, you also indicated you recovered a wallet from the pants on the sidewalk; is that correct?

A. That's correct.

Q. Can you describe that wallet?

A. A brown leather wallet.

Q. Did you examine its contents?

THE COURT: Excuse me. Can you come to a convenient break point?

MR. KHUZAMI: Certainly.

Q. Did you examine the contents?

A. The contents were, was examined at the scene.

Q. Did you examine them?

A. No.

Q. Did you give the wallet to anyone?

A. Yes, I did.

Q. Who did you give it to?

A. Gave it to Det. Pugliese.

MR. KHUZAMI: That's a convenient point, your Honor.

THE COURT: All right. Ladies and gentlemen, we're going to take a short break. Please leave your notes and materials behind you. Don't discuss the case and we'll resume.

(Continued on next page)

(Jury not present)

THE COURT: You may step down.

(Witness temporarily excused)

MR. PATEL: Just very briefly to clarify something on the record, your Honor, I had objected to the pants being introduced. I'm sorry, I don't have the exhibit number in front of me right now. Exhibit 31. And I was objecting essentially to this line of proceeding.

The fact that I did not object to the sweater being admitted, Exhibit 32, from which nothing was recovered, and I don't want your Honor to, or the record to, I wanted record to be clear that I was not waiving my objection to the pants.

THE COURT: The record will note your objection to the pants. Right, you made an objection which I overruled.

MR. PATEL: Thank you, your Honor.

THE COURT: Ten minutes.

(Recess)

(Continued on next page)

(In open court; jury present)

THE COURT: Mr. Khuzami.

MR. KHUZAMI: Thank you, your Honor.

BY MR. KHUZAMI:

Q. Mr. Rinaldi, what did you do with the 13 live rounds that you removed from the pants on the sidewalk after you sealed them up?

A. They were given to Officer Meury for purposes of vouchering.

Q. Do you recall whether that was Officer Meury or another officer?

MR. PATEL: Objection, your Honor.

A. It possibly could have been Jaen, if I can refer to my report.

THE COURT: I will allow it. Go ahead.

Q. Is there anything that would refresh your recollection as to who you gave it to?

A. Yes, there is.

Q. What is that?

A. My crime scene report.

Q. I would ask that you look at that and see if it refreshes your recollection as to who you gave the rounds of live ammunition to.

A. They were given to Officer Jaen, J-A-E-N, of the 17th precinct, for vouchering purposes --

Q. Detective Rinaldi, what did you do after you completed your search of the clothing on the sidewalk?

A. The clothing was packaged, they were given to the officer for vouchering purposes. After the assignment was completed, I responded up to 520 Lexington Avenue.

Q. What is at 520 Lexington Avenue?

A. That is the hotel.

Q. Where in the hotel did you go?

A. The second floor ballroom.

Q. What did you do when you arrived there?

A. Spoke to the safeguarding officer at the scene, spoke to several detectives, obtained some information as to some evidence that was at the location, did a sketch, drew a sketch of the ballroom area, took measurements of the ballistics evidence, took photos of the ballroom inclusive of the evidence.

Q. What was the first ballistics evidence that you found in the ballroom?

A. There were two pieces of ballistics evidence on the floor of the ballroom.

Q. Do you recall what type of ballistics those were?

A. There was a piece of copper jacket and a piece of deformed lead.

Q. Do you recall approximately where in the ballroom those were located?

A. They were closest to the south doors of the ballroom.

Q. What did you do when you found the ballistics there?

A. They were photoed in place, measurements were taken of the actual area where they were discovered. They were recovered, marked, and placed into envelopes which were sealed and a crime scene label affixed to the envelope and given to Officer Jaen for vouchering purposes.

Q. How did you mark these pieces of ballistics?

A. They were designated and numbered RR1 and RR2.

Q. How did you designate that on the ballistics?

A. Using a scribe, they were marked into evidence. Scribe, metal scribe.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Mr. Rinaldi, let me show you what have been marked as Government's Exhibits 38 and 37, which are contained in an envelope marked Government's Exhibit 39B, and ask you if you recognize them.

A. Yes, I do.

Q. What are those? Let's start with Government's Exhibit 37.

A. They are envelopes containing ballistics evidence.

Q. Do you recognize anything on the outside of the envelope?

A. The outside is marked with my initials, the date 2/14 of 95.

Q. Did you have an opportunity to look at the contents of Government's Exhibit 37 prior to your testimony today?

A. Yes, I did.

Q. Where?

A. In your office on the 14th of this month.

Q. What did you do when you looked at the contents?

A. I specifically looked for the description of the evidence, and also the markings on the evidence itself.

Q. Did you see the markings on the ballistics themselves?

A. Yes, I did.

Q. What markings did you see?

A. On number 37, I saw the RR1, and number 38, I saw RR2.

Q. Did you examine those with the aid of a magnifying glass?

A. Yes, I did.

Q. How do you know that the items that you have in your hand, Government's Exhibits 37 and 38, are the items that you examined in the United States Attorney's office?

A. After the examination, the envelope was sealed and my initials were affixed to it, inclusive of the date.

Q. When you examined the ballistics evidence, did it appear to be in the same or substantially the same condition as when you had recovered it from the lecture room at the hotel on 48th and Monday, November 5, 1990?

A. Yes, it did.

MR. KHUZAMI: Your Honor, I move the admission of Government's Exhibits 37 and 38 in evidence.

MR. PATEL: No objection.

THE COURT: Government's Exhibits 37 and 38 received without objection.

(Government's Exhibits 37 and 38 received in evidence)

Q. Did you find additional ballistics evidence in the lecture room on November 25, 1990?

A. I didn't personally recover any other ballistics evidence.

Q. What other ballistics evidence was recovered?

MR. PATEL: Objection.

THE COURT: Sustained.

Q. Were you given any additional ballistics evidence while you were in the lecture room on November 5, 1990?

A. Yes, I was.

Q. Can you describe how that occurred?

A. That occurred based on information obtained at the scene. We were able to find a bullet hole through a --

MR. PATEL: Objection.

THE COURT: At some point you found a bullet hole?

THE WITNESS: That is correct, sir.

THE COURT: Go ahead.

Q. How did you find that bullet hole?

A. Found it by doing a search of the crime scene.

Q. Can you describe how you went about that search?

A. Did a physical, a visual search of the area. We were unable to find any bullet holes. Communicated with a Detective Guerra --

(Continued on next page)

MR. PATEL: Objection.

THE COURT: Overruled so far.

A. Communicated with a Detective Guerra who was also assigned to the crime scene unit. His assignment was to respond to the morgue -- to the hospital and to ascertain the wounds of Mr. Kahane.

MR. PATEL: Objection.

THE COURT: Sustained.

MR. PATEL: Move to strike.

THE COURT: That last part is stricken.

MR. KHUZAMI: Your Honor, may we approach?

THE COURT: Yes.

(At the side bar)

MR. KHUZAMI: Your Honor, the government's position is that the statements he received from others are admissible because they are not being offered for the truth but to explain his conduct. What the witness would testify is that he received information about the entrance wound and the exit wound of Meir Kahane based on that information, plus a rough idea of where he was standing. They followed the trajectory up to the windowsill and found a bullet hole there. The hearsay is only to explain his conduct.

MR. PATEL: He said he did a visual survey of the place. Either he saw a bullet hole or he didn't.

THE COURT: No, I will permit it. Do you want an

instruction or don't you?

MR. PATEL: I definitely want an instruction. I believe there is hearsay, being admitted for the truth, not just to explain his conduct.

THE COURT: No, it isn't. I will allow it.

(In open court)

THE COURT: Ladies and gentlemen, this witness is going to be asked, or may be asked to testify to what other people told him or what he learned from other people. We had this happen once before. His testimony about what he heard from other people is not admitted to prove that what they told him is true. It is only admitted to explain why he did what he did, and that is the only purpose for which you may consider it.

Go ahead.

MR. KHUZAMI: Thank you.

(Continued on next page)

BY MR. KHUZAMI:

Q. Mr. Rinaldi, what information did you receive from Detective Guerra at the morgue that assisted you in locating the bullet holes?

A. The type of wound that Mr. Kahane sustained, the entry location and an exit location. Using that information along with his possibility positioning at the podium, we were able to ascertain that there was an entry into his left side of his jaw area and an exit on the right side of his temple area.

MR. PATEL: Objection.

THE COURT: Overruled.

A. With that information I turned to approximately the area that the trajectory would continue in and was able to look up into a curtain, and there was a bullet hole in that area which continued through that curtain and into a window box, in the same window.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

MR. KHUZAMI: Your Honor, the government moves the introduction of 6Z and 6CC, pursuant to stipulation.

THE COURT: Those are received pursuant to stipulation, 6C and ZZ.

(Government's Exhibits 6CC and 6Z were received in evidence)

Q. Mr. Rinaldi, I show you what have been marked 6Z and 6CC in evidence and ask you what those are.

A. They are photos taken by myself the night of the event.

Q. What do they show?

A. Showing a bullet hole in the curtain, and with the curtain open, showing a bullet hole in the window box.

Q. Did there come a time when a ballistics was recovered from that area?

A. Yes, there did.

Q. How did that occur?

A. Officer Gomez from emergency service responded up there. We used his service to search for ballistics evidence.

Q. Did there come a time when he handed you some ballistics evidence?

A. Yes.

Q. What did you do with that evidence?

A. That evidence was noted, the type of evidence it was. He told me where he recovered it from.

MR. PATEL: Objection.

THE COURT: Sustained.

A. The evidence was noted. It was marked and placed in an envelope for vouchering.

Q. How did you mark it?

A. That was marked RR5.

Q. Did he give it to you personally?

A. Yes, he did.

Q. If I might ask you -- excuse me. Might I approach, your Honor?

THE COURT: Yes.

Q. Let me show you what has been marked as Government's Exhibit 29 for identification and ask if you can identify it?

A. Yes, I can.

Q. What is it?

A. It is a manila envelope used for packaging purposes, with a crime scene sticker affixed to it inclusive of my name, the initials RR5, 17th precinct, and a date, also on the envelope --

MR. PATEL: Objection, your Honor.

THE COURT: Don't read the entries. Tell us what it is. You told us it is a crime scene envelope.

THE WITNESS: It is a crime scene envelope, yes.

Q. Did you have an opportunity to view the contents of that envelope before testifying today?

A. Yes, I have.

Q. Where?

A. In your office on the 14th of this month.

Q. What did you find when you examined the contents?

A. I found it to be the evidence that was marked RR5.

Q. How did you know that?

A. My initials were on the item and it matched the description that I noted in my report.

Q. How do you know what you have in your hand now as RR5 is what you examined in the United States Attorney's Office?

A. After reviewing it, observing the item, I sealed it and placed my initials on it inclusive of the date, 2/14/95.

Q. Is the item that you examined in substantially the same condition that it was when Officer Gomez gave it to you on the night of November 45, 1990?

A. That is correct.

MR. KHUZAMI: The government would move the introduction of Government's Exhibit 29 in evidence.

MR. PATEL: No objection.

THE COURT: 29 is received without objection.

(Government's Exhibit 29 was received in evidence)

Q. Did you receive any additional ballistics evidence from Officer Gomez, other than what has been marked Government Exhibit 29?

A. Yes, the ballistics evidence from the street area

was --

Q. When you say the street area, what do you mean?

A. From 500 Lexington Avenue.

MR. PATEL: Objection, your Honor.

THE COURT: Overruled.

Q. What did you do when you received it from him?

A. They were reviewed for the type of description, given an item number, RR3 and RR4, and marked and packaged in similar envelopes as to this.

Q. What exactly was it that he gave you?

A. For RR3, it was a piece of deformed lead and a piece of copper jacket, and for RR4 there was a piece of lead and a piece of copper jacket also.

Q. What did you do after you marked them and sealed them?

A. They were given to Officer Jaen for vouchering purposes, to be sent to ballistics for analysis and comparison.

MR. KHUZAMI: May I approach, your Honor?

THE COURT: Yes.

Q. Detective Rinaldi, let me show you what have been marked as Government's Exhibits 34 and 33, which are contained in an envelope marked Government's Exhibit 39A, and ask if you recognize them?

A. Yes, I do.

MR. KHUZAMI: I am sorry. I may have misspoken. Those are Government's Exhibits 27 and 28.

Q. What are they?

A. They are envelopes containing ballistics evidence.

Q. How do you know that?

A. They were reviewed in your office, matching up to my report, inclusive of the markings RR4 and RR3, sealed up, and my initials were placed on the tape that was used, inclusive of the date, 2/14 of 95.

Q. Did you personally see the markings RR3 and RR4 on those pieces of ballistics?

A. Yes.

Q. And they are in substantially the same condition as they were the night you got them from Officer Gomez?

A. Yes, they are.

(Continued on next page)

MR. KHUZAMI: Your Honor, I would move Government's Exhibits 27 and 28 into evidence.

MR. PATEL: Objection, your Honor. Foundation.

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

(At the side bar)

MR. PATEL: Judge, this witness neither recovered these items and ballistics nor was present.

MR. KHUZAMI: They can be introduced that these were the items recovered from Gomez --

THE COURT: I will take them subject to connection.

MR. PATEL: This witness was called out of order, I believe. It doesn't matter.

(In open court)

THE COURT: 27 and 28 are received subject to connection.

(Government's Exhibits 27 and 28 were received in evidence)

(Continued on next page)

THE COURT: Can you find out which is RR3 and RR4.

(Continued on next page)

BY MR. KHUZAMI:

Q. Detective Rinaldi, can you tell us what is the exhibit number of RR3?

A. That is number 27, and RR4 is number 28.

THE COURT: Go ahead.

MR. KHUZAMI: May I approach, your Honor?

THE COURT: Yes.

MR. KHUZAMI: Your Honor, pursuant to stipulation, the government would move the introduction of Government's Exhibits 6G, 6II, 6HH, 6GG, 6FF, 6EE, 6DD, and 6F.

THE COURT: That is on stipulation?

MR. PATEL: Yes, your Honor.

THE COURT: Those exhibits are received. Go ahead.

(Government's Exhibits 6G, 6II, 6HH, 6GG, 6FF, 6EE, 6DD, and 6F were received in evidence)

Q. Mr. Rinaldi, let me show you what have been introduced in evidence as 6G and 6II and ask you what is depicted in those pictures.

THE COURT: Jurors, you may look at them in your binders, 6G and 6II.

(Pause)

THE COURT: Go ahead.

Q. Mr. Rinaldi, would you first indicate what is

depicted in Government's Exhibit 6G.

A. 6G is showing a piece of copper jacket on the floor of the ballroom.

Q. Do you know which RR number that corresponds to?

A. I am not sure if it is 4 or 5, or 3 or 4. Excuse me.

Q. Look at your report to refresh your recollection, please.

A. The deformed lead is RR1 and the deformed copper jacket is RR2.

Q. Can you indicate where exactly in that picture, for the assistance of the jurors, the piece of ballistics is located.

THE COURT: Do you want to step down in front of the jury with the photograph and point to it.

THE WITNESS: Sure.

THE COURT: Excuse me, let's not have a private conversation. Just respond to the questions of Mr. Khuzami.

Q. Looking at Government's Exhibit 6G, can you describe to the jury where in the picture the piece of ballistics is located?

A. Almost dead center of the photo there is a gold metal type of piece of ballistics.

THE COURT: Hold the photograph up and point to it, would you.

Q. Why don't you point again.

And if you would get the other picture, please.

THE COURT: The other picture is 6II?

Q. Looking at Government's Exhibit 6II, let me ask you to hold that picture up and please point to where the piece of ballistics is located in that picture.

A. It is positioned several inches from the wall.

Q. Thank you. You may take your seat.

MR. KHUZAMI: Your Honor, I would ask the witness to mark on Government's Exhibit 6G and 6II where the ballistics are.

THE COURT: Circle them, you mean?

MR. KHUZAMI: Yes.

THE COURT: All right, go ahead.

Q. Mr. Rinaldi, if you might mark on those exhibits where the pieces of ballistics are that you just indicated with this pen?

A. Circle them?

Q. That is fine.

MR. KHUZAMI: Lastly, your Honor, I would like to have just a moment to set up a diagram of the Morgan D room.

THE COURT: Go ahead.

Q. You can step down, Mr. Rinaldi.

Mr. Rinaldi, do you recognize that diagram?

A. I recognize it as the --

Q. Please speak into the microphone.

A. Yes, the Morgan D ballroom on the second floor of the hotel.

Q. Did you take measurements of where RR1, RR2 and RR5 were found?

A. Yes, I did.

Q. Can you first indicate with a circle the approximate area where RR1 and RR2 were found?

Then can you next mark approximately where RR5 was found?

Would you please actually mark the words "RR1" and "RR2" next to the area that you indicated they were found, and do the same for RR5.

You may resume your seat.

MR. KHUZAMI: Your Honor, I would move the introduction of Government's Exhibit 2A, which is the plastic overlay that Mr. Rinaldi just marked on.

MR. PATEL: No objection.

THE COURT: 2A is received without objection.

(Government's Exhibit 2A was received in evidence)

MR. KHUZAMI: No further questions.

THE COURT: Cross.

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

CROSS-EXAMINATION

BY MR. PATEL:

Q. Mr. Rinaldi, when you were with the New York City Police Department assigned to the crime scene unit, you were stationed up in the Bronx? Is that where your office was?

A. That is correct.

Q. When you would go out on an assignment, you would go out in a car, a stationwagon marked "Crime Scene Unit," is that correct?

A. That is correct.

THE COURT: Excuse me, Mr. Rinaldi. Could you talk into the microphone. Thank you.

Q. That vehicle had all sorts of equipment for recording and recovering various kinds of evidence. Would that be fair to say?

A. Equipment was brought to the scene by myself.

Q. You would bring a camera with you?

A. That is correct.

Q. Evidence bags?

A. That is correct.

Q. Plastic bags, paper bags?

A. Yes.

Q. Rulers?

A. Yes.

Q. Pads of paper?

A. Yes.
Q. Pads of grided out paper?
A. Yes.
Q. Flashlight?
A. Yes.
Q. Gloves?
A. Yes.
Q. Swabs for doing gunshot resin tests?
A. There was a GSR test, yes.
Q. Gunshot residue is a test for -- withdrawn.
When a weapon is fired, gas escapes from the weapon, is that correct?
A. That is correct.
Q. And that gas contains certain elements from the primer and various parts of the bullet, is that correct?
A. That is correct.
Q. And when you say a gunshot residue test, that gas and those particles often go to the hand of the person who fired or handled the weapon, is that correct?
A. Not totally.
Q. The purpose of this it is, gunshot residue test, is to see if someone has fired or handled a weapon, is that fair to say?
A. Yes.
Q. You also in your car, you had fingerprint powder.

A. Yes.

Q. Did you have any other kind of equipment for doing fingerprint investigation?

A. Other than powders, no.

Q. What about lifting tape?

A. That would be inclusive of using powders and the whole procedure of it.

Q. I want to make sure the jury understands. When you want to examine a piece of evidence for fingerprints, you put powder of some kind on it?

A. That's a procedure, yes.

Q. And then you blow off the excess powder?

A. You use a feather duster and properly place it on the item that is being processed.

Q. And you then see the fingerprint in the powder, is that fair to say?

A. Can be.

Q. A latent print is a print that you can't see, is that correct?

A. With the naked eye, that is correct.

Q. And when you put the powder on it, then it becomes visible?

A. Can be, yes.

Q. Not only does it become visible but you can actually, using that lifting tape you can pick it up.

A. If there is a print, yes.

Q. What other kinds of equipment did you have with you in the Crime Scene Unit vehicle?

THE COURT: Are you asking for an inventory?

MR. PATEL: If he has any major --

THE COURT: Do you want to focus on some specific items?

MR. PATEL: I will move on, your Honor.

THE COURT: Thank you.

Q. When you left your headquarters in the Bronx that night, it was you and two other members of the Crime Scene Unit went with you, is that correct?

A. I know Detective Romano -- Detective Romano responded, and myself.

Q. And was there also a Crime Scene Unit sergeant that responded on the scene?

A. He responded. He didn't come down with us, no.

A. Who was the person in charge of the Crime Scene Unit that evening?

A. That evening, I would have to say Lieutenant Beatty, commanding officer of the unit.

Q. And he was on the scene as well?

A. I was not sure if he was on the scene or responded to the precinct.

Q. When you are all done, there is someone who

releases the scene, is that fair to say?

A. That is correct.

Q. Who was the person who released the scene? Let's take them one at a time. Let's just talk about the post office scene. Who was it who released the scene at the post office?

A. I wouldn't know that information.

Q. Was it you?

A. No, it wasn't.

Q. The purpose of going out to do a crime scene, Crime Scene Unit, is to investigate what happened, is that fair to say?

A. I am not comfortable with the term "investigate what happened."

Q. You were a detective, right?

A. That is correct.

Q. You weren't just there picking up pieces, you were there to do an analysis, is that fair to say?

A. No, that is not fair to say.

Q. So when you were there that night on November 5, you were just picking up the pieces?

A. I was recovering evidence at the time.

Q. You were at the post office for about maybe an hour?

A. Possibly more.

Q. Do you have the photographs there in front of you?

A. No, I don't.

MR. PATEL: Could I have 6Y?

May I approach, your Honor?

THE COURT: Yes.

MR. PATEL: Your Honor, may I ask that the ladies and gentlemen of the jury also look at paragraph 6Y, which I believe is in evidence?

THE COURT: It is, and they may.

Q. This photograph shows a piece of metal with two bullet holes in it, is that correct?

A. Piece of metal? I don't --

Q. That wall. You were there that night, correct?

A. That is correct, yes.

Q. And you examined that wall?

A. Yes, I did.

Q. And is it fair to say that that was some kind of metal?

A. Yes.

Q. And this photograph shows that metal and hole?

A. It shows the doorway with bullet holes.

Q. These bullet holes have different shapes, is that accurate?

A. I didn't measure the exact bullet hole itself,

the diameter of the hole.

Q. You can visually see different amounts of white in each of these holes, is that fair to say?

A. That is fair to say.

Q. Did you put an RR number -- withdrawn.

Is it fair to say that this section of wall was removed at some point?

A. No.

Q. Did you direct Officer Gomez to open up this part of the wall?

A. I directed Officer Gomez to search for the evidence that would possibly be in that wall.

Q. Were you present when he did that search?

A. No, I was not.

Q. Did you go back to the post office at any time that evening after you went to the Morgan D room?

A. No, I did not.

Q. Do you know if this wall was in the exact same condition as depicted in this photograph when you left that night?

A. When I left, yes, it was.

Q. It was in exactly this condition?

MR. KHUZAMI: Objection to form.

THE COURT: When he left where?

Q. When you left the scene?

A. No, when I left this scene.

MR. PATEL: Thank you, your Honor.

A. When I left the front of 500 Lexington Avenue, it was in this condition.

Q. When you left the post office?

A. That is correct.

Q. It was in this condition?

A. That is correct.

Q. When you left the hotel later that evening, was the post office still in the same condition as depicted in the photograph?

A. I couldn't tell you that.

Q. Mr. Rinaldi, in addition to the kinds of investigations that we discussed earlier, as a member of the Crime Scene Unit, you would investigate impressions of various kinds -- let me be more specific.

Would you investigate a footprint in blood?

A. Very possibly.

MR. PATEL: Do you have 6A in evidence?

May I approach, your Honor?

THE COURT: Yes. Also, could you come to a convenient break point in another five minutes?

MR. PATEL: Judge, we can stop now if you want or I can finish this.

THE COURT: Why don't you finish this now.

Q. Detective, I am showing you what has been marked in evidence as Government's Exhibit 6A, and drawing your attention to the area between the police officer's foot --

THE COURT: Could you lean into the microphone.

MR. PATEL: I am sorry, your Honor. I was trying to do that.

Q. -- between the police officer's foot and Mr. Nosair's sneaker. Do you see that area?

A. I see an area.

Q. Did you investigate that area that night?

A. The whole ballroom area was --

Q. This area right here on the side.

A. I can't recall.

Q. Is there anything in your report that indicates --

A. No, there is not.

Q. Does that appear to be an impression in blood?

A. I can't see the photo.

This looks like blood splatter to me.

Q. There is an area of forensics that deals with blood splat errs, is there not?

A. Yes.

Q. Did you investigate this blood splatter at all?

A. No.

MR. PATEL: Your Honor.

THE COURT: All right. We are going to break for lunch. Ladies and gentlemen, please leave your notebooks and other materials behind. Please don't discuss the case. We will resume at about 2:00.

(Jury excused)

THE COURT: You can step down.

(Witness excused)

THE COURT: I gave or caused to be given to Ms. London a brief memorandum that I drafted and signed today, or that I signed today. The record should reflect that I received a communication from her client in writing after that memorandum was prepared. It does not change in any way either the result or anything else in that memorandum.

See you at 2:00.

(Luncheon recess)

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

1:45 p.m.

(Pages 3138-3139 sealed)

(In open court; jury present)

RALPH RINALDI, resumed.

THE COURT: Good afternoon, ladies and gentlemen. Mr. Patel.

MR. PATEL: May I, your Honor?

THE COURT: Please.

CROSS-EXAMINATION(Continued)

BY MR. PATEL:

Q. Mr. Rinaldi, you testified this morning concerning the search of a pair of pants now in evidence. You recall that testimony?

A. Yes, I do.

Q. Do you recall testifying that the ballistics was recovered from the front left pocket; is that correct?

A. That's incorrect.

Q. Recovered from -- where did you recover it from?

A. The left rear pocket.

Q. Left rear pocket.

You testified in the grand jury in this matter, didn't you?

A. Yes, I did.

Q. And that was a few days after the incident?

A. Yes, it was.

Q. Sometime in early November of 1990?

A. Yes, it was.

Q. Do you recall being asked the following question and giving the following answer?

"Q. Can you tell us about these --

MR. KHUZAMI: Where, please?

MR. PATEL: I'm sorry, in page 74, line 9, through 21.

"Q. Can you tell us about these unspent rounds where you received them from, please?

"A. Okay. They were in the pants pocket of R1 was a gray pair of pants that was on the sidewalk, okay. There was a label in the pants Oakton, O-A-K-T-O-N, waist size 38 inseam 29. They were blood stained and mutilated.

"Q. And what was inside the pocket?

"A. Now, in the front pocket of the left side front pocket of the pants these 13 rounds were found."

Do you recall being asked those questions and giving those answers?

A. Yes, I do.

Q. I'd like to show you what has been marked 3553A, pages 15 and 17.

MR. PATEL: If I may approach? Your Honor, these pages have handwritten numbers on them 606 and 608.

THE COURT: All right, go ahead.

MR. PATEL: May I approach, your Honor?

THE COURT: Yes. Please use the microphone.

MR. PATEL: Yes.

Q. I'd like to show you these pages. Do you recognize this?

A. Yes, I do.

Q. Are those your notes that you took on the evening of November 5, 1990 or soon thereafter?

A. Not in total.

Q. When you say "not in total," you mean these are not all your notes?

A. That isn't necessarily the case.

Q. Are these your notes?

A. Yes, sir. Yes, they are.

Q. Did you make these notes on or about November 5, 1990?

A. Yes, I did.

Q. Do these notes concern incidents that you're testifying to here today?

A. Yes, they, yes.

Q. And do you see on these pages -- if I may for a moment -- where you crossed out the word --

MR. KHUZAMI: Objection.

THE COURT: Sustained.

MR. PATEL: Your Honor, I will offer these in evidence.

MR. KHUZAMI: Objection.

THE COURT: Sustained.

Q. Detective, are these notes in your handwriting?

A. Partial.

Q. I am going to indicate there is an asterisk --

MR. KHUZAMI: Objection.

THE COURT: I'll allow that.

MR. PATEL: Just indicating on the page.

Q. And then there is a line written. Is that in your handwriting?

A. No.

Q. The word "rear," is that in your handwriting?

A. Yes.

Q. Do you know whose handwriting the rest of that line is?

A. Det. Romano.

Q. Det. Romano. Did he make these notes as you dictated them?

A. Yes, he did.

Q. And you made the changes in the notes?

A. That's correct.

Q. When did you make these changes?

A. After testifying in the grand jury.

Q. Do I understand that after you testified -- you testified in the grand jury, that the ballistics were found in the front pocket and you changed your report to indicate that they were found in the rear pocket?

MR. KHUZAMI: Objection.

THE COURT: Sustained. That is not his testimony.

Q. Is it fair to say that after you testified in the grand jury that you changed your notes?

A. Yes.

Q. You changed your notes to indicate from front pocket to rear pocket?

MR. KHUZAMI: Objection to form.

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

A. From front pocket to rear pocket? Yes.

Q. And you made that change after you were told that Officer Fleming had frisked Mr. Nosair?

MR. KHUZAMI: Objection.

THE COURT: Were you told that Officer Fleming had frisked Mr. Nosair?

THE WITNESS: No.

Q. Now, at some point you went to the -- withdrawn.

You went to the hotel that night?

A. That's correct.

Q. And you went up to the Morgan D room?

A. That is correct.

MR. PATEL: Your Honor, may I show the witness what has been marked Nosair G? This is the model. I believe there is a stipulation.

MR. KHUZAMI: Stipulated to.

THE COURT: All right. Go ahead. You want to step down.

MR. PATEL: Would you come down here.

(Witness left the stand)

Q. Mr. Rinaldi, could you show us here on the model where you found the ballistics evidence on the floor in the Morgan D room? Just point to it.

A. You want me to mark it or point to it? There.

Q. Why don't you mark it.

(Witness complied)

THE COURT: Speak into the microphone, please.

Q. Could you indicate with R1 or whatever designation you gave of those pieces of bullets?

A. (Witness indicated)

Q. There was another piece of ballistics that you found with the assistance of Officer Gomez. Where was that recovered approximately?

A. Officer Gomez recovered the evidence.

Q. Right. You saw him recover that, did you not?

A. No, I didn't.

Q. You were not room when he recovered it?

A. I was in the room but I was busy.

Q. Okay. Now, did you examine the carpet in this area between these two marks that you made on the exhibit for any bullet holes or any other ballistic damage?

A. Correct.

Q. And did you find any?

A. No.

Q. Did you find any blood stains on the carpet in this area?

A. There was blood. There was blood on the rug.

Q. Did you take that carpet with you when you left that night?

A. No, I did not.

Q. Did you preserve that piece of carpeting in any way?

A. No, I did not.

Q. Did you request serological examination of that blood stain?

A. No, I did not.

MR. PATEL: As long as I have you here.

Q. Let me show you what has been marked Government Exhibit 6BB for identification. Did you take that photograph?

A. I took the photograph that is similar to this.

I'm not sure if it was that photograph. My stamp isn't on the back of it.

MR. KHUZAMI: We will get the original.

MR. PATEL: Thank you.

A. Could I refer to my report?

MR. PATEL: Sure. The witness has asked to look at his report to refresh his recollection, your Honor. May he use the report?

THE COURT: Yes.

MR. KHUZAMI: Government Exhibit 3553A.

Q. When you look at your report, does that refresh your recollection as to whether you took what has been marked as Government Exhibit 6BB for identification?

A. I took the photograph.

Q. Does that fairly and accurately depict the draperies that you saw in the Morgan D room on the evening of November 5, 1990?

A. That is correct.

MR. PATEL: Your Honor, I would offer this Government Exhibit, with the government's permission. I believe there is a stipulation.

THE COURT: With or without, Government Exhibit BB?

MR. PATEL: Yes, your Honor, 6BB.

THE COURT: I take it there is no objection.

MR. KHUZAMI: No objection.

THE COURT: 6BB is received.

(Government Exhibit 6BB received in evidence)

Q. Officer, could you indicate on the model where these drapes will be? Why don't you mark it with a BB.

MR. PATEL: For the record, the officer has made a mark on the wall on the north center window towards the west side of the window.

Q. Is that fair to say, sir?

A. Fair to say.

Q. Officer, those are blood splatters on those --

MR. PATEL: Your Honor, could I ask the jury to look at exhibit 6BB in their notebooks?

THE COURT: Go ahead.

(Pause)

Q. Mr. Rinaldi, are those blood splatters on those drapes in Government Exhibit 6BB?

A. Appears to be.

Q. Did you preserve those drapes?

A. No, I did not.

Q. Did you request a serological examination of those drapes?

A. No, I did not.

Q. Did you request a blood splatter analysis of those blood splatters?

A. No, I did not.

Q. I'd like to show you Government Exhibit 6EE in evidence and I'd ask the members of the jury to turn to 6EE.

Officer, did you take --

THE COURT: Mr. Patel.

MR. PATEL: I'm sorry, your Honor. Let me do it here.

Q. Do you see a red and white sign over the doorway on the right-hand side of Government Exhibit 6EE?

A. An exit sign? Yes.

Q. Yes. And could you indicate on the model where that exit sign appeared or where that doorway appears in EE?

That is on the north, toward the northeast corner of the Morgan D room?

A. Yes, it is.

Q. Did you do a fingerprint analysis of anything --

THE COURT: Mr. Patel.

MR. PATEL: I'm sorry, your Honor.

THE COURT: I don't hear you.

Q. Did you do a fingerprint analysis of anything on that doorway?

MS. STEWART: Can't hear him, Judge, sorry.

Q. Did you do any fingerprint analysis on that doorway?

A. No, I did not.

Q. Opposite the double door towards the rear of the Morgan D room, just across the hallway from that double doorway, the south doorway, I believe you described it as?

A. Yes.

Q. There's a flight of stairs; is that correct?

A. It appears to be in your model.

Q. Do you recall that from the -- well, let me show you Government Exhibit GG in evidence. Is that the entrance to the flight of stairs depicted in the model?

A. Could I see my photos?

MR. KHUZAMI: Would you get the original of Government Exhibit 6GG, please.

THE WITNESS: Could I see my report? Could you rephrase the question, please?

Q. Do you recall the stairway across from the double doors to the south of the Morgan D room?

A. By looking at the photo and refreshing my memory.

Q. Is that a yes?

A. Yes.

Q. Do you do a -- did you go up those stairways?

A. I don't recall.

Q. Did you examine any of the doorways for fingerprints that appear in those stairways?

A. No, I did not.

Q. I have removed the top part of the top floor. I

show you the exhibit now.

Do you see the lobby and the entrance from the hotel to Lexington Avenue on the diagram there, G in evidence, Nosair G in evidence?

A. You're saying the exit?

Q. Yes.

A. Yes.

Q. Did you do any fingerprint or any forensic analysis on any of the doors leading from the main lobby to Lexington Avenue at the Marriott Hotel that evening?

A. No, I did not.

MR. PATEL: I believe you can resume your seat.

(Witness resumed the stand.)

Q. Do you recall any blood stains on the floor in the hallway outside the Morgan D room that evening?

A. No, I do not.

MR. PATEL: May I approach the witness, your Honor?

THE COURT: Yes.

Q. Showing you what has been marked Government Exhibit 6L in evidence, does that refresh your recollection about any blood stains outside the hallway?

A. No, it does not.

Q. Did you recover any clothing or any evidence in the hallway outside?

A. No, I did not.

Q. You testified this morning about a bullet hole in a curtain. Do you recall that?

A. In the ballroom, yes.

Q. Was that bullet hole in the same curtain as blood spattered pictures that we discussed a little earlier?

A. No, it was not.

Q. Did you recover or preserve in any way the drapes that had bullet holes in them?

A. No, I did not.

Q. Did you recover the bullet hole in the wood paneling in the Morgan D room?

A. Would you rephrase that, please?

Q. Officer Gomez cut a hole, did he not, in the wood paneling, in the Morgan D room where the bullet hole was?

A. I'm not sure what Officer Gomez did.

Q. There came a time you were in the Morgan D room and Officer Gomez was in the Morgan D room; is that correct?

A. That is correct.

Q. And you heard him using a power saw; is that correct?

A. I'm not sure what tool he used.

Q. Did you preserve any pieces of wood from the Morgan D room that night?

A. No, I did not.

Q. Did you go to Bellevue Hospital that evening?

A. No, no, I did not.

Q. Did you request another crime scene unit to go to Bellevue?

A. A unit was assigned to the morgue and Bellevue.

Q. Did you request a gunshot residue test performed, to be performed on Mr. Nosair?

A. I did not personally request it.

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

(Pause)

MR. PATEL: Your Honor, I have no further questions.

THE COURT: Any redirect?

MR. KHUZAMI: Brief, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Mr. Rinaldi, Mr. Patel asked you some questions about where in the pants that you examined on November 5, 1990, you found the 13 rounds. Do you recall those questions?

A. Yes, I do.

Q. And you testified here today that you located those rounds in the rear pocket of the pants; is that correct?

A. That is correct.

Q. And he asked you whether or not you testified in prior proceeding that the bullets were located in a front pocket; is that correct?

A. That is correct.

Q. Why did you testify that they were found in the front pocket?

A. After reviewing my notes and typing up my typewritten report I, something triggered in my mind that that was incorrect, and I made the change that was the, was to be correct.

THE COURT: He asked you why you testified as to the front pocket.

A. Because that's where, that was incorrect, and the correct pocket was the rear pocket.

THE COURT: You're saying you made a mistake?

THE WITNESS: That's correct.

Q. Whose notes -- were you relying upon or using any notes when you testified in the prior proceeding that the bullets were found in a front pocket?

A. I was utilizing the handwritten notes.

Q. Whose notes were those?

A. Those were Det. Romano's writing.

Q. What did you do when you realized that there was a mistake?

A. I made the necessary changes and used that to type up my report.

Q. Did you fill out any documents or other materials at the scenery reflecting in which pocket those bullets were found?

A. Yes, I did.

Q. What type of writing or material was that?

A. On the envelope where the ballistic evidence was placed into there was a crime scene sticker affixed and on that sticker the actual location of which pocket was noted.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Det. Rinaldi, let me show you what has been marked previously as Government Exhibit 30 for identification, and ask you if you see in this document the sealed envelope you referred to in your prior testimony?

A. Yes, I do.

MR. KHUZAMI: Your Honor, with the Court's permission I'd like to request that Mr. Rinaldi open up with a pair of scissors this bag and pull out his envelope?

THE COURT: Go ahead.

MR. KHUZAMI: Your Honor, I'll separately mark that bag as Government Exhibit 30C.

(Government Exhibit 30C marked for identification)

I'll show it to opposing counsel.

Q. What is Government Exhibit 30C?

A. It's a clear plastic bag with a crime scene label affixed to it noting the crime scene information, and also from the rear pocket area where it was recovered from.

Q. Did you fill that out?

A. Det. Romano did.

Q. And were there any items that you placed in there on November 5, 1990?

A. Yes, the 13 live rounds.

MR. KHUZAMI: Your Honor, I would move Government Exhibit 30C into evidence.

MR. PATEL: May I have a voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. PATEL:

Q. That's not your handwriting, is it?

A. No, it's not.

MR. PATEL: Objection, your Honor.

BY MR. KHUZAMI:

Q. Mr. Rinaldi, do you recognize that handwriting?

A. Yes, I do.

Q. Whose is it?

A. It's Det. Romano's handwriting.

Q. Was he your partner that night?

A. That's correct.

Q. Did you give him the rounds to place in a sealed bag?

A. Yes, I did.

Q. Is that the sealed bag marked Government Exhibit 30C?

A. That is the bag we used that evening.

MR. KHUZAMI: I move the admission of Government Exhibit 30C.

MR. PATEL: Your Honor, I would simultaneously move the admission of pages 15 and 17 of Government Exhibit 3553A.

THE COURT: One at a time.

MR. PATEL: Shall we do this at sidebar, your Honor?

THE COURT: Why don't we just do it here?

MR. PATEL: The foundation is the same.

THE COURT: One at a time. You offer his first?

MR. PATEL: Yes.

THE COURT: Is there an objection?

MR. PATEL: There is an objection.

THE COURT: The objection is overruled. 30C is received.

(Government Exhibit 30C received in evidence)

In the middle of his examination you want to

offer that?

MR. PATEL: Yes.

MR. KHUZAMI: No objection, your Honor.

THE COURT: That's received without objection. That's 3553 which?

MR. PATEL: It's I believe the pages, the handwritten number --

THE COURT: Pages 15 and 17 of that exhibit are received without objection.

(Government Exhibit 3553A, pages 15 and 17, received in evidence)

THE COURT: Go ahead.

(Continued on next page)

BY MR. KHUZAMI:

Q. Just one last question. Mr. Rinaldi, would you please read from Government's Exhibit 30C, indicating where the 13 rounds were found in the pants.

A. "From perp's rear pocket."

Q. And that was written on the night, November 5, 1990, when the rounds were recovered?

A. That is correct.

MR. KHUZAMI: No further questions.

THE COURT: Mr. Patel.

RECROSS-EXAMINATION

BY MR. PATEL:

Q. Showing you 3553A, page 15, in evidence, is this --

MR. KHUZAMI: Objection, your Honor. I don't think that the page designation is accurate. 606.

MR. PATEL: 606.

MR. KHUZAMI: And 608, I believe.

Q. Showing you 606, did you cross out the word "front"? Is that your handwriting?

A. Yes, I did.

Q. What was the name of the detective who made this report in your presence?

A. It's not a report. It's the notes.

Q. Whose notes are that?

A. Detective Romano.

Q. When you did the search of these pants, there were a number of people present, correct?

A. I don't remember. I don't remember what you mean by numbers.

Q. Detective Pugliese was there, correct?

A. I am not sure.

Q. How about Officer Meury?

A. Meury possibly was there.

Q. You gave Pugliese some of the stuff that you found in the search, didn't you?

A. Pugliese was interested in the wallet.

Q. And he was there when you recovered the wallet?

A. Yes.

Q. He was there for the search?

A. I am not sure.

Q. Did you talk to him before he made these changes?

A. No, I did not.

MR. PATEL: No further questions.

MR. KHUZAMI: No further questions.

THE COURT: You are excused. Thank you.

THE WITNESS: Thank you.

(Witness excused)

MR. KHUZAMI: The government calls as its next witness Leonard Pugliese, P-U-G-L-I-E-S-E.

THE COURT: I ask everyone to remain seated and not do anything else when somebody is being sworn. Thank you very much.

LEONARD PUGLIESE,

called as a witness by the government,

having been duly sworn, testified as follows:

MR. KHUZAMI: May I proceed, your Honor?

THE COURT: Yes, please.

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Mr. Pugliese, how are you employed?

A. I am a private investigator.

Q. What did you do before you were a private detective?

A. New York City police detective.

Q. How long were you a detective?

A. Twenty years.

Q. Did you have a particular assignment during that time?

A. Narcotics division, and then 17th precinct detective squad, for the last 10 years.

Q. Directing your attention to November 5 of 1990, were you on duty that day?

A. Yes, I was.

Q. What hours were you working?

A. 4 in the afternoon to 1 in the morning.

Q. Directing your attention to around 9:00 p.m. that night, where were you?

A. In the 17th detective area, squad office.

Q. Did you receive a call directing you to go to some location around that time?

A. No.

Q. Did you at some point leave the 17th precinct and go to the crime scene?

A. Yes, I did.

Q. Where did you go to?

A. Marriott Hotel.

Q. Did you go with anyone to the Marriott Hotel?

A. Detective Haight.

Q. How did you get that there?

A. Car.

Q. Where is the 17th precinct located?

A. 51st Street and Third Avenue.

Q. Did you eventually arrive at the hotel?

A. Yes, we did.

Q. What did you do when you got there?

A. Walked in, went up to the second floor area.

Q. What was going on up there?

A. It was chaos. There was people all over, yelling and screaming.

Q. What did you do when you got there?

A. As soon as -- we were there approximately a minute when a civilian came up to Detective Haight and said something to him. Detective Haight said to me, let's go, the shoot is outside. At that time I didn't know what it meant.

MR. PATEL: Objection.

THE COURT: Sustained.

MR. PATEL: Move to strike.

THE COURT: Sustained.

Q. After that conversation, did you go outside?

A. Yes, we did.

Q. With did you go to?

A. A block away south on the opposite side of the street, on the west side of Lexington Avenue, by the post office.

Q. What did you do when you got there?

A. There was police over there, ambulances.

Q. What did you do?

A. Found out what was going on and secured the area.

Q. How did you secure the area?

A. I had -- it was already started but I had the police officers rope off the area of the crime scene. They tied orange ribbon to the radio cars from in front in a circular manner so that no one could come near the crime

scene itself.

Q. Did you see any injured persons when you arrived there?

A. Yes.

Q. Can you describe who you saw?

A. I saw one, someone was being put into the ambulance, one of the ambulances, and someone was on the sidewalk being worked on by the EMS. They were cutting clothes off.

Q. How long did you remain there?

A. I was there, I would say from what I remember now, hour and a half, two hours.

Q. The person that was lying on the ground, did there come a point when that person was taken away in an ambulance?

A. Yes, sir.

Q. During the time that he was there on the sidewalk, did you see any civilians approach him?

A. Yes.

Q. What did you see?

A. Detective Haight had the civilian that took us there walk over to him and look at him.

Q. Did you see any civilians actually make contact with him?

A. Repeat that, please.

Q. Did you see any civilians actually touch the man or make contact?

A. No.

Q. What did you do after the crime scene was set up?

A. I waited for Crime Scene Unit to respond.

Q. Did someone from crime scene respond?

A. Yes.

Q. Do you know who?

A. Detective Rinaldi.

Q. What happened after they arrived?

A. They took photos of the area and searched the clothes that were left on the sidewalk and searched for any evidence that was there.

Q. Were you present when the clothing was searched?

A. Yes, I was.

Q. Where were you positioned in relation to the clothing?

A. I was standing right by the clothing.

Q. Where was Detective Rinaldi?

A. Right there with the clothing also.

Q. What do you recall him taking out of the clothing if anything?

A. A wallet, bullets, set of keys. That's what I remember.

Q. Did you receive any of these items?

A. I received the wallet from him.

Q. What did you do when you received the wallet?

A. I opened it up and looked inside.

Q. Do you remember what you saw in there?

A. I remember some of the articles, yes.

Q. First, can you describe what the wallet looked like?

A. I believe it was a brown wallet.

Q. What were some of the items that you recall that were inside?

A. Well, it was miscellaneous papers, there was driver's licenses, registration, newspaper clippings, pictures, stuff of that sort.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Mr. Pugliese, I wonder if you might pick up what has been marked as Government's Exhibit 25, and I ask you if you recognize that?

A. Can I take it out?

Q. You may.

A. Yes.

Q. What is that?

A. This is the wallet that came out of from the clothing that was on the sidewalk.

Q. Is that the one that you were handed by Detective

Rinaldi?

A. Yes, it is.

Q. Did the other materials that are with that appear to be the items that were included inside the wallet when you received it?

A. Yes.

MR. KHUZAMI: Your Honor, the government would move Government's Exhibit 25 into evidence.

MR. PATEL: Could we have a side bar for clarification, your Honor?

THE COURT: Why don't you talk to Mr. Khuzami.

(Pause)

MR. PATEL: No objection, your Honor.

THE COURT: 25 is received without objection.

(Government's Exhibit 25 was received in evidence)

Q. Would you next look at what has been marked as Government's Exhibit 25A for identification, a newspaper clipping. Do you recognize that?

A. Yes, I do.

Q. Without telling us what it is, what do you recognize it to be?

A. The newspaper clipping that was in the wallet, that brown wallet.

Q. How do you know that?

A. Because I took it out.

Q. Did you read it at the time?

A. Yes, I did.

Q. Is what you read today the same as what you read that night?

A. Yes, it is.

Q. Is the clipping in substantially the same condition as it was that night?

A. Yes, it was.

MR. KHUZAMI: Your Honor, the government would move Government's Exhibit 25A into evidence.

MR. PATEL: No objection, your Honor.

THE COURT: 25A is received without objection.

(Government's Exhibit 25A was received in evidence)

Q. If you would next pick up Government's Exhibit 25B, also a newspaper clipping. Without telling us what that is, do you recognize it?

A. Yes, I do.

Q. What do you recognize it to be?

A. Newspaper clipping that came out of the wallet.

Q. Did you read it the night that you got it?

A. Yes, I did.

Q. Is what you read today the same as what you read that night?

A. Yes, it is.

Q. Is it in substantially the same condition?

A. Same condition.

MR. KHUZAMI: Your Honor, the government would move Government's Exhibit 25B in evidence.

MR. PATEL: Objection, your Honor.

THE COURT: Is that no objection?

MR. PATEL: Objection.

THE COURT: Objection?

MR. PATEL: Yes.

THE COURT: Overruled.

(Government Exhibit 25B was received in evidence)

MR. KHUZAMI: Your Honor, at this time I would request that the jurors be permitted to open up their binders to Government's Exhibits 25A and 25B.

THE COURT: This is in the thin binder, behind tabs 25A and 25B.

(Pause)

Q. Mr. Pugliese, one question. Is there a reference in Government's Exhibit 25A to the Halloran House?

A. Repeat the question, please.

Q. Is there a reference in that exhibit to the Halloran House?

A. Yes, there is.

Q. Do you know what the Halloran House is?

A. That was a different name of the Marriott. They changed names.

Q. Mr. Pugliese, I wonder if you might not pick up 25C, F, G, H and I. Do you have those five items?

A. Yes.

Q. Can you review them, please.

A. 25C --

Q. Just look at them and see if you recognize them.

A. Yes, I recognize all of them, except 25G I am not 100 percent on.

Q. As far as 25C and F, what do you recognize those to be?

A. 25C is a motor vehicle registration.

Q. Do you recall seeing that that night?

A. Yes, I do.

Q. How about 25F?

A. 25F is a business card from the Marriott, the hotel.

MR. PATEL: Objection.

THE COURT: Don't -- it's a business card. The rest is stricken. Go ahead.

Q. Did you see that business card that night?

A. Yes.

Q. 25H, without telling us what that is, did you see that when you examined the contents of the wallet that

night?

A. Yes.

Q. 25I, did you see that?

A. Yes, I did.

MR. KHUZAMI: Your Honor, the government would move the admission of 25C, H, F and I into evidence.

MR. PATEL: Objection to F.

THE COURT: Overruled.

Q. As to 25G, you indicated that you are not certain about that one?

A. How do I explain that? It looks familiar but I can't recall pulling it out of the wallet itself.

THE COURT: Then you have explained it.

C, H, F and I are received.

(Government's Exhibits 25C, 25H, 252F and 25I were received in evidence)

MR. KHUZAMI: Your Honor, I have no further questions.

THE COURT: Cross.

MR. PATEL: May I approach the witness, your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. PATEL:

Q. Mr. Pugliese, I am showing you what is marked as

Government's Exhibit 25J. Would you take a look at that.

A. Can I take the things out?

Q. Absolutely. Do you recognize those to be items that were in the wallet that evening?

A. I can't remember every single item that is here but I do remember several of the items, yes.

Q. Do you remember these photographs of children?

A. Yes, I do.

Q. Seven photographs of children?

A. I don't know how many photographs there were, but I do know there was photographs of children.

MR. PATEL: Your Honor, I would offer Government's Exhibit 25J, photographs of children.

MR. KHUZAMI: No objection.

THE COURT: Photographs received as 25J.

(Government's Exhibit 25J was received in evidence)

Q. Mr. Pugliese, would you take a look at these five business cards.

THE COURT: Exhibit --

MR. PATEL: This is also from 25J, your Honor.

THE COURT: Let's call it 25J1.

Q. Do you recall those coming from the wallet that night?

A. These specific cards?

Q. Yes.

A. No.

Q. These were with the other items that you do recall?

A. Everything was mixed up. Yes.

Q. Would it be fair to say that these were with the items that you do recall coming from the wallet?

A. Yes, sir.

MR. PATEL: Your Honor, I would offer these five business cards.

MR. KHUZAMI: Could we see them, Mr. Patel?

MR. PATEL: Absolutely.

Your Honor, I think pursuant to stipulation I am going to offer everything -- everything we have identified, that is, the five business cards --

MR. FITZGERALD: Government's Exhibit 25G.

THE COURT: And Exhibit 25G?

MR. PATEL: And Exhibit 25G.

THE COURT: 25G and what I have called 25J1 as those business cards are both received.

(Government's Exhibits 25G and 25J1 were received in evidence)

MR. PATEL: Your Honor, may I pass these photographs and business cards to the jury?

THE COURT: Now? No.

MR. PATEL: May I do it later?

THE COURT: We will see.

Q. Mr. Pugliese, when you went into the hotel that night, you spoke to a man named Ben Steiger. Do you recall that?

A. No, sir, I didn't speak to anyone.

Q. You said you didn't speak to anyone or you don't recall?

A. I didn't speak to anyone myself in the hotel, no. I don't recall that.

Q. Did you write down the names of any employees in the hotel?

A. I might have in my notes some witnesses I wrote down that were given to me in my note pad.

Q. You say you wrote down the names of people that you didn't speak to?

A. I didn't write down anything from the hotel. I wasn't in the hotel long enough to interview anyone.

Q. Did you write down "Ben Steiger, witness"?

A. I think I did, in my note pad.

Q. Ben Steiger works at the hotel?

A. I don't know, sir.

Q. This person who took you down to the sidewalk, the person's name was Ari Gottesmann, was it not?

A. That sounds familiar, sir.

Q. And Detective Haight walked right up on the sidewalk?

A. I don't recall.

Q. You left the hotel with them, correct?

A. Correct.

Q. Went out the front entrance of the hotel, correct?

A. Correct.

Q. You walked down, you walked south on Lexington Avenue, correct?

A. Correct.

Q. You went across the street to the west side of Lexington Avenue, correct?

A. Correct.

Q. And you stayed in the street?

A. I think I was talking to some of the officers on the scene. I don't recall.

Q. And they continued onto the sidewalk?

A. I don't remember where they were.

Q. Were you the first detective on the scene?

A. I don't know who else was there. On the outside crime scene you are talking about?

Q. Yes.

A. Yes, we were.

Q. And you took command, so to speak, of the scene?

A. That is correct.

Q. And you instructed the officers to set up the crime scene tape?

A. It was starting to be set up but I made sure it was put all the way around the scene, yes.

Q. You were present when the Crime Scene Unit arrived?

A. That is correct.

Q. Let me go back a minute. You were present when EMS was there, correct?

A. They were there ahead of us.

Q. Did you see anyone examine Mr. Nosair's hands in any way?

A. No, I didn't.

Q. And you were present when the Crime Scene Unit arrived?

A. Yes.

Q. And you watched the search of the clothing that was on the floor?

A. Yes.

Q. Would it be fair to say that you had a clear and unobstructed view of that search?

A. Yes.

Q. You were standing right there?

A. Right there.

Q. You took some notes?

A. A few.

Q. Do you recall writing down that some bullets were recovered?

A. Yes, I do.

Q. Do you recall writing down where those bullets were recovered?

A. No.

MR. PATEL: Your Honor, may I show the witness 3544A?

THE COURT: Go ahead.

MR. PATEL: It is a page written 831.

Q. Does that refresh your recollection that you wrote down "left front"?

A. Yes.

Q. Does that refresh your recollection that you saw the bullets recovered from the left front pocket?

A. I don't know if I saw them recovered from the left front pocket. As Detective Rinaldi took them out he either said left front or I saw them. I don't know, it's five years. But if I jotted down left front, they probably came out of his left front pocket.

Q. You saw him recover the wallet?

A. He took it out of the clothing.

Q. And he gave it to you?

A. Yes.
Q. And you put it in your jacket?
A. At one point I probably put it any my jacket.
Q. When he gave it to you it wasn't in a bag, was it?
A. I don't remember.
Q. And you opened it?
A. The wallet?
Q. Yes. Did he have to take it out of a bag before you opened it?
A. I don't remember if it was a bag.
Q. You kept possession of it for some period of time?
A. Yes.
Q. You kept it in your jacket pocket?
A. Yes.
Q. You were wearing a suit that day like you are wearing today?
A. Yes.
Q. At some point you were relieved of your command of the crime scene, is that fair to say?
A. Correct.
Q. And you went back to the hotel?
A. I don't know at what point I went back to the hotel. If I did, I wasn't there very long. I don't

remember when I went back to the hotel.

Q. Did you speak to anyone?

A. I spoke to people all night long.

Q. Did you take anyone's name down at that point?

A. I would have to check my note pad to see what names I wrote down. If I spoke to them, I don't know.

Q. Did you get any business cards that night from anyone at the hotel?

A. I don't recall that.

Q. You returned to the 17th precinct at some point?

A. Yes.

Q. And the wallet was still in your jacket?

A. My jacket, in my hand -- I had it.

Q. And you behave it to Detective Bailes?

A. That is correct.

Q. Do you recall putting that wallet in an evidence envelope at any point?

A. No, I didn't.

Q. At some point, you went to Bellevue that night, is that fair to say?

A. Yes, sir.

Q. And you went with Detective Bailes?

A. Yes.

Q. And Mr. Gottesmann?

A. Yes, I believe that is his name.

Q. And you were in Bellevue for about an hour, is that correct?

A. Approximately an hour, I guess an hour, yes.

Q. And you put on surgical garb?

A. Yes, sir.

Q. You, Detective Bailes and Mr. Gottesmann, is that correct?

A. That is correct.

Q. And you went into an operating room?

A. That is correct.

Q. The three of you went in the operating room?

A. The three of us went in. I don't remember if anyone else went in.

Q. There were doctors in there, right?

A. That is correct.

Q. And they were working on Mr. Nosair?

A. That's correct.

Q. And you and Detective Bailes asked the doctors to remove the sheet that was covering Mr. Nosair's head, right?

A. Right.

Q. And at that point you and Detective and Mr. Gottesmann had a clear view of his face, did you not?

A. I don't recall if he had a tube or an oxygen mask on his face at that point or not.

Q. But you could see his face?

A. Yes, we could.

Q. Do you remember looking at Government's Exhibit 25A? That is the newspaper clipping for the Halloran House.

A. That is correct.

Q. Do you know when the Halloran House changed its name to the Marriott?

A. No.

Q. In your 20 years in the New York City Police Department, is it fair to say that you frisked people? Withdrawn.

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

THE COURT: Yes.

Q. Did you receive some property, did you voucher some property that day?

A. Myself?

Q. Yes.

A. No, sir.

Q. I show you what has been marked 3544C.

MR. PATEL: May I approach, your Honor?

THE COURT: Yes.

Q. Is that your voucher?

A. Yes, it is.

Q. Does that voucher indicate that you vouchered some property that night?

A. Yes, I did.

Q. Is that the personal property of Meir Kahane?

A. Yes, it is.

Q. And you obtained that at the Marriott Hotel that night?

A. I don't remember if I filled out this voucher or it was filled out and I just signed the contents, which is common practice in the squads. Another detective or officer might have filled it out and I signed it. I don't remember where I got Kahane's personal property but I did sign this voucher, yes, and also that is my signature above, that's all mine.

Q. Is there some reason that the detective who filled this out wouldn't sign it?

A. No. We help each other. I might have just signed it. I don't remember taking the property and putting it in an envelope and typing -- see, that's my handwriting, that is my signature. Especially on a busy case, we help each other with paperwork, when you are endowed with paperwork, especially with a homicide. Everyone helps out. That's how detectives usually work throughout the city. It's very busy.

Q. The whole purpose of vouchering something is to find, be able to tell where something came from, is that correct?

A. Correct.

Q. If you sign someone else's voucher, doesn't that destroy the whole purpose?

A. You ask me if I remember. I don't recall doing that voucher.

Q. Your testimony, though, is that it is common practice for New York City detectives to sign vouchers that they didn't fill out?

A. No. What I said was, if I am busy, and we are all extremely busy, I may ask you or another partner to fill out that voucher. They type it, put it in, and we sign it.

Q. But it is typed for property that you recover?

A. I don't recall recovering that property.

Q. Do you recall speaking to Anton Najjar that night?

A. No.

(Continued on next page)

MR. PATEL: Your Honor, I have no further questions. May I show these items to the jury at this point?

THE COURT: Yes.

May I see counsel briefly at the side bar.

(At the side bar)

THE COURT: Could I have a proffer on the pictures and the cards? What are they designed to show?

MR. PATEL: The pictures and the cards are designed to show -- the cards relate to an injury to his hand, which is something that Mr. Stavis opened on.

THE COURT: Right.

MR. PATEL: The pictures relate to his family and who he is.

THE COURT: Thank you.

(In open court)

MR. PATEL: Your Honor, may I just ask the witness one or two more questions?

THE COURT: Yes.

(Continued on next page)

BY MR. PATEL:

Q. Mr. Pugliese, you met with Mr. Khuzami before you testified here today at some point, did you not?

A. Yes, I did.

Q. Did you see the personal property of Meir Kahane in the U.S. Attorney's Office?

A. No, I didn't.

Q. Do you have any idea where that property is now?

A. No, sir.

MR. PATEL: No further questions.

MR. KHUZAMI: No redirect, your Honor.

THE COURT: You are excused. Thank you.

(Witness excused)

THE COURT: After the jury is finished looking at those, we are going to take a short break.

(Pause)

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

(Jury excused)

THE COURT: Ten minutes.

(Recess)

(Continued on next page)

(In open court; jury not present)

THE COURT: Apparently the defendants took the position that because the break was too short, that they were interrupted in prayer, they are either starting all over anew, or don't want to come out, or whatever.

I take the position that anybody who isn't in here in five minutes is voluntarily absenting himself. We're going to go ahead without them. Whoever wants to go back there and put some sense in their heads is welcome to do it, but I'm telling you we're starting in five minutes, whether we've got defendants here or whether we don't. You can nominate the subcommittee and get in there right now.

(Recess)

(In open court; jury not present)

THE COURT: The Marshal said, in essence, that because they felt that disrespect was shown to them during their prayers being disrupted, and it was impossible to organize them to come back, I've asked the audio-visual system be turned on. It is on.

I am going to ask that Mr. Nosair's lawyer be taken back there to find out if he is willing to come back. Anybody else who wants to come back, obviously, they are free to come back. Anybody who doesn't, they can sit back there and watch it on television. You want to go back?

MR. PATEL: Yes.

MS. STEWART: Judge, could I just I am sensitive to this before the case began. It is Ramadan.

THE COURT: I don't care what it is. I gave a 20-minute break.

MS. STEWART: I don't think if someone said, "I don't care if it's Passover or not, you would take that very kindly." I wouldn't take it so --

THE COURT: Take it kindly or not, they were given twenty minutes. That's ample time. They were to be back here in twenty minutes, or we will go ahead without them. That's the way it is going to get done.

MS. STEWART: Judge, I --

THE COURT: Period.

MS. STEWART: You are talking about ten men having to use the bathroom, having to go through ablutions hand and foot before they pray. They pray together and everybody has to finish before they can start. I'm just saying that sometimes things don't work out perfectly.

THE COURT: It's been done before in other trials in a lot less time. We've had a problem with this before. This is the last time we're going to have it.

(Pause)

THE COURT: We are breaking at 4:45 today.

MR. PATEL: Judge, I am prepared for the next three witnesses. I want to try to give you heads-up on

that.

MR. RICCO: Your Honor, we went back. We spoke with the defendants. We explained to the defendants that you wanted them out here. They agreed to come back out here. The Court should know that. They want, they asked, they wanted to see you. The issues are --

THE COURT: I'm not talking to them.

MR. RICCO: Judge, I didn't state my position.

THE COURT: I don't care what issue they want to address me on. I've been the ombudsman of that condition at the MCC, and all it's gotten me, frankly is, a virtually daily torrent in the nonsense level, and it's going to stop.

MR. RICCO: Judge, if I can finish the sentence only because I think it's important for the Court to know what is being said.

THE COURT: Go ahead.

MR. RICCO: What they want to talk to you about is just having a reasonable opportunity to have time to pray and what that will mean --

THE COURT: They can talk to you. When they get done talking to you, you can tell me about it, and we can work it out. Thank you very much.

MR. RICCO: All right.

(Pause)

MR. MC CARTHY: Your Honor, I just would like the

record to reflect that the break started at approximately twenty after 3.

THE COURT: Twenty after 3. It's now five to 4.

MR. MC CARTHY: I'd like the record also to reflect that the last five-minute warning was at approximately five minutes to 4.

MS. STEWART: I would like to place on the record that the marshals couldn't get us through the door here to speak to the defendants which is what the --

THE COURT: Would you like to know the reason they couldn't get through the door?

MS. STEWART: I don't know if it's necessary for Mr. McCarthy to intrude --

THE COURT: He is not intruding. He is an officer of the Court, just the same way as you are. He's also going to have to defend this on appeal if the point gets made about it on appeal. So as far as I'm concerned it's not an intrusion at all. Thank you very much.

MS. STEWART: Judge, as long as we're making a record, although I don't mind speaking for the record having done that once before your Honor, and not gotten any reversal in the Second Circuit, I'm asking for a ruling. My client is elderly and has fasted since before dawn. If we don't break until 4 that that really puts a tremendous strain on him. He has --

THE COURT: Your client is most uniquely in the capacity to exercise moral suasion over other defendants.

MS. STEWART: When the Marshals walk in while they're praying, Judge, which is a factual, that is a problem, and they walked in, because the time constraints are so great in a nine-month trial that we have to get started on the exact moment.

MS. AMSTERDAM: Judge, I really can talk to the practical. I would ask the Court for the indulgence this one time, because I don't want too see an additional. problem --

THE COURT: Ms. Amsterdam, I've been indulgent for the last week and a half.

MS. AMSTERDAM: I know that.

THE COURT: As you know firsthand.

MS. AMSTERDAM: I know that firsthand. All I'm suggesting is let's get though today. Every one in the room gives the Court their assurance that they will speak with their clients over the weekend about this problem, but I, for one, don't want to see the week end on somebody having some explosion about the fact that we went over, you know, too long on the session. You have the power. You can do it. I'm just saying from a practical --

THE COURT: Are you speaking for every lawyer in this room?

MR. BERNSTEIN: I join in that.

MR. LAVINE: As I do, your Honor.

THE COURT: Any dissenting voices? Do you? You're in?

MR. JACOBS: I'm sorry?

THE COURT: I'm taking bids. You in?

All right. 4:30.

MS. STEWART: Thank you, your Honor.

MR. LAVINE: Thank you, your Honor.

(Pause)

MR. KHUZAMI: Your Honor, the government calls Henry Gomez as the next witness.

Your Honor, before the jury comes out, for the record we have one stipulation. Counsel for Mr. Stavis and the government have agreed --

THE COURT: I guess we have to wait until the jury comes in or let me know at a sidebar.

MR. KHUZAMI: -- have agreed to collectively mark and stipulate into evidence the remaining items in the wallet as 25J2.

THE COURT: You are going to advise the jury of that or do you want me to?

MR. KHUZAMI: Either way, your Honor.

THE COURT: Fine. I will advise them.

MR. PATEL: Thank you, your Honor.

(Government Exhibit 25J2 received in evidence)

(Jury present)

HENRY J. GOMEZ,

called as a witness by the government,

having been duly sworn, testified as follows:

MR. KHUZAMI: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Mr. Gomez, are you employed?

A. Not at this time.

Q. What was your previous employment?

A. New York City Police Officer.

Q. How long were you a New York City Police Officer?

A. 14 years.

Q. When did you retire?

A. Last September, September 30, 1994.

Q. Why did you retire?

A. I retired on accident disability.

MR. PATEL: Objection.

THE COURT: Overruled.

Q. Now, during the time you were with the New York City Police Department did you have a particular assignment?

A. That's correct.

Q. What was that assignment?

A. I was assigned to the Emergency Service Unit.

Q. For how long?

A. I was assigned to that unit nine years.

Q. Can you tell the ladies and gentlemen of the jury what the Emergency Services Unit is?

A. Yeah, the Emergency Unit it's a dual-purpose unit. On one hand, it's a rescue unit performing vehicle accidents, water rescues, dealing with emotionally disturbed individuals. On the other hand, it's backup to the patrol and the detective units where providing special weapons, things as tear gas, nonlethal weapons, providing lights for crime scene searches, providing special tools such as drills and saws for the patrol force.

Q. Directing your attention to November 5th of 1990 were you working on that day?

A. Yes, I was.

Q. Do you recall what hours you were working?

A. Yeah, I was working four to twelve shift.

Q. Where were you stationed with the Emergency Services Unit?

A. The Emergency Service Squad 1 where I was assigned is located on East 21st Street in Manhattan.

Q. And directing your attention to around 9 o'clock that night, did you receive some sort of communication that directed you to go to a certain area?

A. Yes, I did.

Q. Did you go to that area?

A. Yes, I did.

Q. Where was that?

A. I was ordered to respond to 500 Lexington Avenue in the borough of Manhattan.

Q. And did you go there alone or with anyone else?

A. I went with a partner.

Q. And do you recall his name?

A. Yeah. His name is Police Officer Lawrence Holloway.

Q. What kind of vehicle did you go in?

A. We had, we responded in a truck.

Q. What kind of equipment or material did that truck contain?

A. That truck contains various, quite a bit of equipment from, ranging from special weapons to all sorts of rescue equipment such as the jaws of life, air bags. It contains chain saws, circular saws, lights, equipment of that nature.

Q. What happened when you arrived at 500 Lexington?

A. When I arrived at 500 Lexington I was directed to the area which was a post office at that area. I was informed by Detective --

MR. PATEL: Objection.

THE COURT: Don't tell us what you were told.

Q. What did you do after you arrived?

A. I went directly in front of the post office.

Q. And when you say in front of the post office, what area do you mean?

A. Right in front of it. There was the entrance, the main entrance to the 500 Lexington Avenue was the post office.

Q. As a result of discussions with anyone did you do anything once you arrived at the front entrance?

A. Yes, I did.

Q. What was that?

A. I was told to -- there were --

MR. PATEL: Objection.

THE COURT: Again, don't tell us what you were told. Tell us what you did.

A. I took equipment off of my truck at this time in order to remove two bullet, two bullet holes that were in the panel on the front entrance of that location.

Q. Was there any members of the New York City Police Department crime scene unit there?

A. No, not at the time.

Q. Can you describe to the members of the jury how it is you went about examining the bullet holes?

A. There were two bullet holes. There was one higher than the other on the left panel of the wall. There

was a, it was a tin, there was a tin substance around the entrance, and what we decided to do was take a saw out, and we sawed a square circle, a square all around the both bullet holes. The tin was approximately 16th of an inch thick and we cut that in a full square at which point beneath that was plywood.

The plywood was approximately a quarter of an inch thick. We did the same exact thing there. We made a square cut. At that point we determined that beyond that was nothing but a concrete wall. So what we did at that point when we saw there was a concrete wall there, we went directly to the bottom and we made a square cut right at the bottom of the wall, and we removed the tin and the plywood.

Q. Did you find anything at the bottom of the wall?

A. Yes, I did.

Q. What was that?

A. I recovered two spent rounds and some copper jacketing.

Q. Do you recall what time you arrived at 500 Lexington that night?

A. I don't recall specifically.

Q. When you examined the concrete wall behind the tin and plywood, did you examine the wall to see whether or not there had been any penetration?

A. There was no penetration.

Q. What did you do with the ballistics that you recovered?

A. I recovered them and I brought them over to the Marriott Hotel. Specifically, I believe it was the second floor ballroom, where at that time I presented them to Det. Ralph Rinaldi of the crime scene unit.

MR. KHUZAMI: May I approach, your Honor?

THE COURT: Yes.

Q. Mr. Gomez, let me show you what has been received in evidence as Government Exhibits 27 and 28, and ask you if you recognize that envelope?

A. Yes, I recognize it, counsel.

Q. Did you have an opportunity to review the contents of those envelopes before your testimony here today?

A. Yes, I did.

Q. Where was that?

A. In the United States Attorney's Office.

Q. What did you find inside those envelopes?

A. I found what I had recovered that night at the crime scene.

Q. By the crime scene, you mean the post office doorway?

A. The post office doorway.

Q. Those are the items you gave to Det. Rinaldi?

A. That's correct.

Q. And did you initial those packages after you reviewed them in the U. S. Attorney's Office?

A. Yes, I did put my initials.

MR. KHUZAMI: Your Honor, I don't recall whether or not these are the items subject to connection, but I would offer them again for the record.

THE COURT: Which exhibits?

MR. KHUZAMI: This is Government Exhibits 27 and 28.

THE COURT: Those were the ones that were subject to connection.

MR. PATEL: May I have a brief voir dire, your Honor?

THE COURT: Yes, you may.

VOIR DIRE EXAMINATION

BY MR. PATEL:

Q. When you were in the U. S. Attorney's Office the other day did you examine the content of those envelopes?

A. That was today.

Q. Today?

A. That's correct.

Q. Did you make any marking on those items at the time you recovered them?

A. Did I? No.

Q. Is there anything on the items themselves that you made at any time any place to indicate that's what you found on November 11 -- November 5th -- excuse me?

A. That I made? No.

MR. PATEL: Your Honor, I object.

THE COURT: Objection is overruled. 27 and 28 are received for all purposes.

(Government Exhibits 27 and 28 received in evidence)

BY MR. KHUZAMI:

Q. Mr. Gomez, what did you do in the upstairs of the hotel after you handed those ballistics to Det. Rinaldi?

A. Directed to a window area where there had been, where there was a bullet hole in the upper left corner of the window, at which time we basically initialed the same procedure we did at the other location, attempted to retrieve the round.

We made a cut where the round went in, a square cut. This time though it was paneling that we cut through and right underneath the paneling was sheet rock. Once we cut through the paneling, we just punched through the sheet rock, and in between the sheet rock there was another concrete wall approximately a six-inch void between that. So at that time we proceeded, once again we went to the bottom, the bottom of the wall. We removed the entire

section at this point.

Q. And did you find anything there?

A. Yes.

Q. What was that?

A. I recovered a spent round.

Q. What did you do with that?

A. I handed that over to Det. Rinaldi of the crime scene unit.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Mr. Gomez, let me show you what has been marked as Government Exhibit 29, I believe in evidence, and ask you if you recognize that package?

A. Yes, I recognize it.

Q. What is it?

A. It's a package that contains the spent round that I recovered from the window at that particular evening.

Q. Did you have an opportunity to review that before your testimony here today?

A. Yes, I did.

Q. Where?

A. In the United States Attorney's Office.

Q. And did it appear to you to be the same round you recovered from the window box in the Morgan D room?

A. Yes, it was.

MR. KHUZAMI: Your Honor, I don't recall whether or not that was subject to connection as well, but I would offer it again for the record.

THE COURT: What was the exhibit?

MR. KHUZAMI: 29. I believe it may be in without restriction, your Honor.

THE COURT: I think it is.

MR. KHUZAMI: May I approach the witness?

THE COURT: Yes, you may.

Q. Mr. Gomez, let me show you what has been marked as Government Exhibits 42A, 42B, 42C and 42D, 42E, 42F, 42G, 42H, 42J, 42K, 42L and 42M for identification. I ask you to take a moment and look at those.

(Pause)

(Continued on next page)

THE COURT: While that is happening may I see counsel briefly at the side.

(At the sidebar)

THE COURT: I just found it. 29 was RR35 and that's in.

(Continued on next page)

(In open court)

Q. Mr. Gomez, did you have an opportunity to look at those photos?

A. Yes.

Q. Do you recognize those photos as photographs of the doorway at 500 Lexington Avenue that appeared on November 5, 1990.

MR. PATEL: Objection.

THE COURT: Sustained.

Q. Without telling us what's in those photographs, what do you recognize them to be?

A. The front of 500 Lexington Avenue, the post office.

Q. Is that as it appeared on November 5, 1990?

A. That's correct.

Q. Do those pictures reflect the work being done in that doorway?

MR. PATEL: Objection. May I have a moment with Mr. Khuzami?

THE COURT: Yes.

(Pause)

MR. KHUZAMI: Your Honor, I understand that those photographs will be admitted pursuant to stipulation.

THE COURT: The 42 series?

MR. KHUZAMI: That's correct.

MR. PATEL: That's correct, your Honor.

THE COURT: The 42 series is received on stipulation.

(Government Exhibits 42A through 42M received in evidence)

Q. Mr. Gomez, I wonder if you might just briefly give the Government Exhibit number of each photo and describe what is depicted in the photograph?

MR. KHUZAMI: Your Honor, these photos are not in the jury's binder, and I would just ask to publish them at a later time.

THE COURT: All right.

A. The first exhibit is Government Exhibit 42A and what it shows is the cut, the square cut, the initial square cut we made in the tin and here's the plywood. Here's the square cut we made through the plywood and in the rear you can see the concrete, the concrete wall.

MR. KHUZAMI: Your Honor, might I have the witness step down in front of the jury to give this explanation?

THE COURT: Yes, you may.

MR. KHUZAMI: Mr. Gomez, if you might step down.

(Witness left the stand)

Q. This is Government Exhibit 42A?

A. 42A, once again, this initial large cut we made

around here. That's the tin portion that we cut through. Right below is the plywood section. This is approximately a quarter of an inch thick. We made a smaller cut, a square cut right in there and right behind it, once we broke that out, that's the concrete wall.

Q. Government Exhibit 42B?

A. When we finished with that top cut we immediately went to the bottom of the wall and once again we made a tinier cut here through the tin. We cut the wood area out, the plywood underneath, and exposed the wall right at the bottom.

Q. Government Exhibit 42C?

A. This is a photo of one of the rounds through just the plywood. This is just of the plywood, one of the rounds through the plywood.

Q. Government Exhibit 42D?

A. This exhibit shows the bottom area once again where we cut a rectangular cut removing the tin and the plywood. Photo of the concrete there.

Q. Government Exhibit 42E?

A. This is the photo of the other round, the higher round, once again through the plywood.

Q. 42F?

A. Once again, a photo at the bottom area.

Q. 42G?

A. It's the square cut we made through the plywood at the top, and it is showing the concrete behind it. Concrete wall behind it.

Q. 42H?

A. Basically the same thing from another angle. You can see the concrete behind it.

Q. 42J?

A. This is what, this is what the wall in the post office at 500 Lexington Avenue looked like when we first arrived. Hole number 1, hole number 2 (indicating). One slightly higher than the other.

Q. 42K?

A. Closeup of that same photo. Round number 1, round number 2. (Indicating)

Q. 42L?

A. The bottom area once again after we got through with it.

Q. 42M?

A. Once again a picture of the wall as it looked before we started cutting through, two holes one higher than another.

MR. KHUZAMI: No further questions, your Honor.

MR. PATEL: Your Honor, I would like to cross-examine this witness. In light of the hour I request that we start at the next session.

THE COURT: I'll see counsel at the side.

(At the sidebar)

MR. PATEL: Your Honor, I understand you wanted to stop at 4:30.

THE COURT: How long is cross?

MR. PATEL: It's going to be a while. I've got to go through the whole --

THE COURT: You going to take the wall apart and put it back together?

MR. PATEL: No, I just want to find out what happened to both walls and go through it.

MR. KHUZAMI: That can be done in ten minutes. Far be it from me --

For the record his grandmother just died. I very much would like to have not to bring him back on Tuesday, but --

THE COURT: What's happening on Tuesday?

MR. KHUZAMI: His grandmother just died.

THE COURT: Is the funeral on Tuesday?

MR. KHUZAMI: The funeral's yesterday.

THE COURT: Are they sitting shiva?

MR. KHUZAMI: No.

THE COURT: Let's come back on Tuesday.

(Continued on next page)

(In open court)

THE COURT: Ladies and gentlemen, we're going to break for the day and the resting point for the long weekend, hopefully not as long a weekend as we had last week, but a long weekend nonetheless.

Please leave your notes and other materials behind. Have a pleasant evening. Please don't discuss the case. Please don't read, see or hear anything about this case or anything related to this case. In fact, forgot about this case.

We'll see you on Tuesday.

(Continued on next page)

(Jury not present)

THE COURT: You can step down.

(Witness temporarily excused)

THE COURT: As long as we're all into making records on things, Mr. Nooter, on Tuesday I believe you told me that your client had a high fever. In fact, you said it was 106?

MR. NOOTER: Your Honor, I realize that, but I think I also said that I felt his head myself and felt it was not 101. I realized that he must have meant 100.6.

THE COURT: Yes. It was 100.6. We're all grateful you didn't go to medical school.

MR. NOOTER: Yes. I'm very sorry about that. After I walked out of the robing room I thought to myself that seems too high.

THE COURT: Yes. The occasion for the adjournment was having been told he had 106. There is a difference between 106 and 100.6.

MR. NOOTER: I agree with that, but he was very ill in any event. That flu with the fever is going around.

THE COURT: I recognize it is debilitating.

Is there anything else? See you on Tuesday.

(Adjourned to Tuesday, February 21, 1995, 9:30 a.m.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
a/k/a "John Medley,"
CLEMENT HAMPTON-EL,
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.
----------x

S5 93 Cr. 181 (MBM)

February 21, 1995
9:40 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

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Southern District of New York
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ROBERT KHUZAMI
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BY: THOMAS H. NOOTER

(Pages 3214 through 3222 sealed by the court)

In open court; jury not present)

THE COURT: We have a juror problem. Juror number 6 has been hospitalized, called this morning, and I am going to seat an alternate.

MR. PATEL: I am sorry, your Honor.

THE COURT: Juror number 6 called this morning and said she was in the hospital, and I am going to call an alternate. She was having stomach trouble last week. I don't know what the nature and duration of this is, and we have had a substantial number of interruptions already. I am going to seat alternate number 1.

MS. AMSTERDAM: For the record, your Honor, I would oppose that until we have some further update on the juror's medical condition. If she were called this afternoon and were well enough to sit, I think it would be appropriate to go ahead. There is a lot of work to be done and the time would be well spent. I would oppose that until we have a further update.

THE COURT: I understand your view.

Mr. Stavis?

MR. STAVIS: First, I would join in Miss Amsterdam's application.

MR. BERNSTEIN: Is there any question --

THE COURT: I assume you all join.

MR. STAVIS: Last Thursday, at page 3050 of the transcript, I raised with your Honor an issue concerning a laboratory report that was delivered to me last Thursday, which concerned flattened ball double-based smokeless powder particles. Yesterday I was provided with 179 pages of backup material, which I had requested, your Honor.

THE COURT: I thought what we were going to do was give you whatever time you need to get that material reviewed. Is there any question about that?

MR. STAVIS: The question is the additional experts and the additional laboratory reports that I was provided with yesterday, your Honor.

THE COURT: Same disposition.

MR. STAVIS: Your Honor.

THE COURT: Go ahead.

MR. STAVIS: Most of the 179 pages concern metallurgical tests that were performed on items that were recovered from the] locker. The metallurgical tests are different from -- I assume that flattened ball double-based smokeless powder particles refer to gun powder of some sort and I am attempting to find an expert with regard to that. It is apparent to me now that I also need a metallurgical expert to employ the metallurgical tests that were done on these items, and they have one -- the lab report that was provided to me last night at 5:30 also refers to a pull ring

of a military igniter timed blasting fuse M60. I do not know what that is and I will have to get some sort of military expert in order to assist me --

THE COURT: I don't know that you need a military expert but you can certainly have whatever material it is examined by someone knowledgeable to tell you what it is. You might consult with Mr. Wasserman, who had some of the same kind of material involved in a seizure from the premises that concern his client, and he may be able to help you. Go ahead.

MR. STAVIS: I would be happy to do that, your Honor. I was present when what is referred to as a pull ring of a military igniter timed blasting fuse M60 was recovered and I am no expert -- it looked to mm like a key ring. So I am going to have to litigate that issue.

If I may cut to the chase, I am applying at this time, pursuant to Rule 403, that any items recovered from my client's locker in the December 1994 search, which is more than four years after the original search of the locker and more than four years after the FBI entered this case, be precluded because of the undue delay, confusion, and needless presentation of cumulative evidence that would be presented based on the December '94 search and my need in the middle of trial, your Honor, when I am preparing cross-examinations and expert witnesses that I already know

about to go out, find these experts, find somebody who is willing to serve as an expert on this case, and then litigate each and every one of these issues based on the December '94 search.

THE COURT: Do you want to be heard?

MR. FITZGERALD: Yes, your Honor. As far as scheduling, we will continue to abide by your Honor's direction that we agreed to last week so that he will have ample time to develop this. The locker was sealed since 1990. It is relevant, probative evidence. We can deal with it once. There is no claim that by finding what Mr. Nosair had in his locker in November 1990, that we should be precluded from that.

THE COURT: I said last week that I am going to permit him whatever time he needs to get people to examine that material. If he needs a metallurgist, he is going to have to get a metallurgist, and if that delays the point at which you would plan to introduce the evidence, that is unfortunate. You are not introducing the evidence until he has had a chance to analyze it. I am not going to preclude it. I will simply give him the time he needs. If you have to present the proof later, you will present it later.

So far as the M60, that is not the first time I have heard a reference to that kind of item. I don't know what kind of expert it takes to determine what that object

is, but in any event, he can talk to Mr. Wasserman.

MR. STAVIS: Your Honor, at such time as I do obtain experts to assist me with regard to this.

To this evidence I may and reserve the right to make individual Rule 403 --

THE COURT: Nobody is waiving anything, and I will tell the government in case they don't know it already that I am not interested in hearing cumulative evidence and I don't think anybody else is either.

THE COURT: Mr. Patel?

MR. PATEL: Yes, your Honor.

THE COURT: You are preparing to examine.

MR. PATEL: Exactly.

THE COURT: I thought you had an application.

MR. PATEL: I did some two cases to your Honor relative to certain hearsay.

THE COURT: Which items are you referring to?

MR. PATEL: That is exactly what I wanted to tell your Honor. During Mr. Gottesmann's testimony on February 8, 1995, starting at page 2576 --

THE COURT: If it was his testimony, then that was a man who said there he goes and also the cabdriver who pointed to the back seat?

MR. PATEL: Specifically it was a conversation with a, quote, Chinese man, unquote, on the street.

During Mr. Rinaldi's testimony, at 3115 -- that was on the 16th of this month, there was a double hearsay issue where he calls someone at the ME's office, a detective who gives him certain information. In both instances that was admitted, I would suggest improperly, for, I would suggest, the relevant background purposes.

THE COURT: I think I said that the first -- the jury was instructed that those were admitted only to explain what the witness did later on. I think the first two examples that you mentioned, namely the statements of Mr. Gottesmann, were both otherwise admissible. I didn't change the instruction to the jury and I am not going to. It would be more confusing than it is worth. However, I do think they are both admissible.

So far as the statement that the officer obtained, I believe all he said was that he heard something about an entry and an exit wound, and based on where the man had been in the room he then looked in a particular place. That is completely cumulative of other testimony, that is, testimony from the physician describing where the exit wound and entry wound was, and accordingly -- first of all, the jury was instructed that it was not admitted for the truth, but secondly, even if it was for the truth, it is totally cumulative of other evidence that is already in.

MR. PATEL: Your Honor, I would suggest that was

clearly hearsay, whether it is cumulative or not, and that your Honor's instruction, as the cases I cited -- your Honor in the instruction is requesting the jury to use some mental gymnastics that the Second Circuit has indicated may be beyond the pale of a normal juror. In fact what the cases that I submitted to the court suggest, it may not be possible to come up with an instruction that is sufficient to explain this.

Furthermore, your Honor, I would submit that this is not cumulative. There was testimony of an entrance wound and an exit wound but not their relative locations. So this was new.

THE COURT: He didn't testify to their relative locations. He testified that one was on one side and the other was on the other side.

MR. PATEL: That is a clear indication of Rinaldi's testimony.

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

MR. PATEL: Your Honor, the detective said that by analyzing where the bullet entered and the bullet left, they were able to find where the bullet ended, and there was nothing that the doctor said --

THE COURT: Look. The clear import of that testimony -- first of all, did you cross-examine him at all

on the question of trajectory analysis?

MR. PATEL: No, I did not.

THE COURT: Let me hear from the government.

MR. KHUZAMI: Your Honor, I am not quite sure what relief Mr. Patel is seeking right now, but as to the issue of cumulativeness, I think you are correct, and in fact there were medical examiner photographs admitted in evidence showing the entrance wound and the exit wound.

I think the court is correct that in fact the testimony of Detective Rinaldi is cumulative and I think the court is correct that he did not testify as to what he was told, just information provided to him by the detective at the morgue, and he then followed a trajectory to indicate where he found a particular bullet in the window box.

MR. PATEL: Your Honor, to answer Mr. Khuzami's initial question as to the relief I am seeking, your Honor initially sustained my objection. I am asking that your Honor reconsider, sustain my objection and strike that portion of the testimony.

THE COURT: I can think about it. It seems to me since he is off the stand I can think about is it at leisure.

MR. PATEL: Your Honor, that is why I submitted cases --

THE COURT: Fine. Then I will hear anything the

government wants to submit and I will look at anything the government wants to submit before I rule.

(Jury present)

THE COURT: Good morning, ladies and gentlemen.

Mr. Patel.

Mr. Gomez, you are still under oath.

(Continued on next page)

HENRY GOMEZ, resumed.

CROSS-EXAMINATION

BY MR. PATEL:

Q. Good morning, Mr. Gomez.

A. Good morning, counsel.

Q. My name is Andrew Patel. I represent Mr. Nosair.

We haven't met before, have we?

A. We haven't met, no.

Q. This is the third time you are testifying about this matter, is that correct?

A. If you are counting the grand jury, that is correct.

Q. Grand jury and then in the state trial?

A. That is correct.

Q. And now today?

A. That is correct.

Q. And last Thursday.

Every time you have testified you met with an assistant district attorney? Before you testified in the grand jury?

A. That is correct.

Q. And before you testified in the state trial you also met with ADA Greenbaum?

A. That is correct.

Q. And before you testified in this case, you spent

sometime with Mr. Khuzami?

A. That is correct.

Q. How much time did you spend with Mr. Khuzami before you testified at this trial?

THE COURT: I don't recall the exact amount of time.

THE COURT: Mr. Patel, if you could try talking into the microphone.

(Pause)

Q. On November 5, 1990, you arrived at the post office on Lexington Avenue, is that correct?

A. That is correct.

Q. And you took a saw off your truck, right?

A. That's correct.

Q. And you cut through a square of tin.

A. Correct.

Q. And there were two bullet holes in the middle of that square of tin.

A. That is correct.

Q. Before you cut that hole, did you take any photographs of that square of tin?

A. That's not my responsibility.

Q. Did you do it?

THE COURT: He didn't ask you whether it was your responsibility, he just asked whether you took any

photographs.

A. No, I did not.

Q. Did you take any measurements?

A. No, I did not.

Q. After you cut out the metal, did you initial that square or rectangle of metal in any way?

A. No, I did not.

Q. Did you have a scribe with you?

A. No, I did not.

Q. Do you know what a scribe is?

A. Yes, I know.

Q. A scribe, for the ladies and gentlemen of the jury, is for initialing on metal, is that correct?

A. That is true.

Q. Did you voucher that piece of metal?

A. No, I did not.

Q. Did you give it to my Crime Scene Unit officer?

A. No, I did not.

Q. Did you give it to any police officer with instructions to voucher it?

A. No, I did not.

Q. Did you bring it to the ballistics unit?

A. No, I did not.

Q. At any time did you request a trajectory analysis on that piece of tin?

A. No, I did not, and that is not my responsibility.
Q. But you didn't do it?
A. No.
Q. Under the tin there was plywood?
A. That is correct.
Q. In the plywood there were two holes?
A. That is correct.
Q. The photographs, Exhibit 42, do you remember looking at those photographs?
A. Yes.
Q. You can only see one hole in those photographs, right?
A. I don't recall at this time.
MR. PATEL: If I may approach the witness, your Honor.
THE COURT: Yes.
Q. I believe this is the whole stack. Could you see -- just look through them -- if there are any photographs where you can see both bullet holes at the same time in the plywood.
A. Just in the plywood, correct?
Q. In the plywood or in the sheetmetal.
A. No, there is none where you see both holes.
Q. Thank you.
These photographs, Exhibit 42, you weren't

present when those were taken, were you?

A. No, I wasn't.

Q. Do you know when those were taken?

A. I couldn't answer that.

Q. Do you know who took them?

A. I believe a member of the Crime Scene Unit. I am not -- I really don't know.

Q. Are you guessing or do you know that?

A. I say, I assume someone from the Crime Scene Unit. I don't know.

Q. You don't know?

A. No.

Q. Were there --

A. I was not present.

Q. This plywood, you cut that plywood out with a saw, correct?

A. That is correct.

Q. Did you take any photographs of the plywood showing both bullet holes?

A. I did not.

Q. Did you take any measurements of the plywood showing the location of those bullet holes?

A. I did not.

Q. After you cut it out, did you write your name, your badge number, or your initials on that plywood?

A. I did not.

Q. Did you voucher it?

A. I did not.

Q. Did you give it to a crime scene officer or any police officer to voucher it?

A. I did not.

Q. Did you bring it to ballistics?

A. I did not.

Q. Did you request a trajectory analysis of the holes in the plywood?

A. I did not, and that's not within the realm of my expertise.

Q. You have never requested laboratory analysis of any kind in your 16 years as a police officer?

A. Yes, I have.

Q. Do you know how to fill out the lab request form?

A. Yes, I do.

It's fourteen years, counsel.

Q. I am sorry.

Under the plywood there was a concrete wall, right?

A. Yes, there was a slight void and then there was a concrete wall.

Q. There was an empty space and then a concrete wall?

A. That is correct, counsel.

Q. There were marks on the concrete wall where the bullet hit the concrete wall, is that correct?

A. That is correct.

Q. Did you take any photographs that show those marks on the concretes wall?

A. I did not.

Q. Did you take any measurements of the location of those marks on the concrete wall?

A. I did not.

Q. Did you show those marks on the concrete wall to any Crime Scene Unit officers?

A. I don't recall that.

Q. You eventually found some bullets on the floor, is that correct?

A. That is correct.

Q. And you picked those bullets up, at the time you picked them up were you wearing gloves?

A. Yes, I was.

Q. And you put those bullets in a bag?

A. No, I did not.

Q. You pet them in an evidence envelope?

A. No, I did not.

Q. You put them in your pocket?

A. No, I did not.

Q. Did you hold them in your hand?
A. Yes, I did.
Q. Did you initial them?
A. No, I did not.
Q. Did you mark them with a scribe?
A. No, I did not.
Q. And you brought the bullets to Detective Rinaldi?
A. That is correct.
Q. Did you see him initial them?
A. I did not observe him initial them, no.
Q. The purpose of initialing something is so you can identify a particular item, what it is and where you found it, is that correct?
A. That is correct.
Q. You went up to the second floor of the Marriott Hotel, to the Morgan D room, is that correct?
A. That is correct.
Q. And you were directed to an area in the north end of the room, is that correct?
A. Yes, I believe there was a window sill there.
MR. PATEL: Your Honor, may I ask the witness to step down and show him the model?
THE COURT: Yes.
Q. Could you come down here, Mr. Gomez.
Could you indicate to the jury approximately

where it was --

THE COURT: Excuse me, Mr. Patel. You are off the air again.

MR. PATEL: I am sorry.

Q. Could you indicate for the jury, and I will get out of their way, where you were directed to go in the Morgan D room.

A. If I remember correctly, it was this location.

Q. Could I ask you to mark it, just put your initials there, if you don't mind.

MR. PATEL: Your Honor, for the record, the witness has placed his initials on the western-most of the three windows in the exhibit.

Q. Thank you. You can take your seat.

When you got to that location, you saw a curtain with a bullet hole, is that correct?

A. With a bullet hole, correct.

Q. That bullet hole is depicted in Government's Exhibit 6CC, is that correct?

A. I haven't seen it, sir.

MR. PATEL: May I approach the witness, your Honor?

THE COURT: Yes.

MR. PATEL: 6CC and 6Z.

Q. I am showing you 6CC. Is that the bullet hole in

the curtain? Is that depicted in that photograph?

A. That is correct.

Q. Showing you 6Z, is that the bullet hole in the wall?

A. That is correct.

Q. Thank you.

Did you take any measurements of where the bullet hole was in the curtain?

A. I did not take measurements.

Q. Did you take down that curtain?

A. I believe we did, in order for us to proceed with our operation.

Q. Did you voucher that curtain?

A. I did not.

Q. Do you know if anyone else vouchered that curtain? Do you know?

A. I do not know.

Q. Under that curtain, there is a piece of wood that is depicted in Government's Exhibit 6Z, correct?

A. That would be wood paneling, that is correct.

Q. And you cut a hole with your saw in that wood panel?

A. That is correct.

Q. A hole around that bullet hole, correct?

A. Square.

Q. After you cut that hole or that piece of wood out with the bullet hole in it, did you initial it?

A. I did not.

Q. Did you write your name on it?

A. I did not.

Q. Did you voucher it?

A. No.

Q. Did you give it to a crime scene officer or any police officer for them to voucher?

A. No.

Q. Vouchering is a process of preserving the evidence, is that correct?

A. That is correct.

Q. Did you bring it to ballistics?

A. I did not.

Q. Did you take the curtain or the piece of wood to ballistics and request a trajectory analysis?

A. I did not.

Q. Under this piece of wood there was sheetrock, correct?

A. That is correct.

Q. And there was a hole in the sheetrock.

A. That is correct.

Q. Did you take any measurements of where that hole in the sheetrock was?

A. I did not.

Q. Did you take any photographs showing the hole in the sheetrock?

A. I did not.

Q. Any crime scene officer take a picture of the hole in the sheetrock?

A. Pardon me.

Q. Did you see any crime scene officer take a picture of the hole in the sheetrock?

A. I don't recall.

Q. You cut out the sheetrock?

A. I believe we punched it out. I don't remember cutting it out. From the best of my knowledge, I remember we just punched it out to see what was behind it.

Q. So the sheetrock was destroyed?

A. That is correct.

Q. I guess you didn't bring it to ballistics.

A. That is correct.

Q. And there was a bullet mark on the concrete wall behind the sheetrock?

A. There was approximately a 6-inch void behind the sheetrock, which led to a concrete wall.

Q. And behind the void there was a bullet hole in the concrete?

A. To the best of my knowledge, that is correct.

Q. Did you take any photographs of the bullet mark on the concrete wall?

A. I did not.

Q. Any measurements?

A. I did not.

Q. Show it to Rinaldi?

A. I do not recall at this time.

Q. The bullet in the Morgan D room went through the curtain, through the panel, through the sheetrock, onto the concrete, is that correct?

A. I assume so.

Q. Was any trajectory analysis requested of the path of that bullet from the ballistics unit?

A. That's not my expertise.

THE COURT: He didn't ask you whether it was your function to do that, he simply asked you whether you did it. Did you?

A. I did not.

MR. PATEL: Your Honor, I have no further questions.

THE COURT: Anything else?

MR. KHUZAMI: Brief redirect, your Honor.

MS. AMSTERDAM: I have, your Honor.

THE COURT: Ms. Amsterdam, on behalf of Mr. Fares Khallafalla. Go ahead.

CROSS-EXAMINATION

BY MS. AMSTERDAM:

Q. Good morning, Officer. During your investigation of the Kahane murder charge, did you have any conversations with any FBI agents?

A. Not to my recollection, no.

Q. In preparation for the state trial, did any federal agents meet with you?

A. They did not.

Q. Did any federal agents show you any photographs of Mr. Nosair allegedly taken before the Kahane incident?

A. They did not, ma'am.

Q. Did any federal agents speak to you about any of the defendants in this room?

A. They did not, ma'am.

MS. AMSTERDAM: Thank you.

THE COURT: Anyone else? Any redirect?

MR. KHUZAMI: Brief redirect.

REDIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Officer Gomez, what unit were you working for on November 5, 1990?

A. New York City Police Department Emergency Service Unit.

Q. What are the duties and responsibilities of the

emergency services unit?

MR. PATEL: Objection, your Honor.

THE COURT: Overruled.

Q. You may answer.

A. As I stated in my last appearance here, the Emergency Service Unit is a twofold purpose unit. On one hand it is a full-fledged rescue unit, performing such functions as --

THE COURT: Is this something you brought out on direct?

MR. KHUZAMI: Yes, your Honor.

THE COURT: Then the objection is sustained. Anything else?

MR. KHUZAMI: Yes, your Honor.

THE COURT: Go ahead.

Q. Officer Gomez, as a member of the emergency services unit, do you have any responsibility for vouchering evidence that you find at a scene?

A. No, counselor, that is not our function.

Q. Do you know what unit is responsible for that?

A. Usually the detective unit or the policeman patrol unit on the scene.

Q. Do you have any responsibilities for requesting trajectory analysis or tests?

A. That is not our responsibility nor expertise.

Q. Do you have any responsibility for taking photographs?

A. We do not. We do not have responsibility.

Q. Do you have any responsibilities for taking measurements?

A. No, we don't, counselor.

Q. Do you have any responsibility for deciding what materials to preserve that you either alter or remove as part of your Emergency Services Unit responsibilities?

A. No, we don't, counselor.

MR. KHUZAMI: No further questions.

MR. PATEL: One or two.

THE COURT: Go ahead.

RECROSS-EXAMINATION

BY MR. PATEL:

Q. Mr. Gomez, who did have responsibility for preserving the evidence and requesting analysis from the lab?

A. As I stated, the detective unit that was at the scene. The Crime Scene Unit was present on the scene.

Q. To your knowledge, did they preserve any of the evidence we just went through or request any analysis?

A. That is not known to me.

MR. PATEL: Thank you.

THE COURT: You are excused.

(Witness excused)

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

(Jury excused)

THE COURT: This is going to be very short. The only purpose is that they didn't get to fill out luncheon menus this morning. So it is just a question of determining if their prior order --

DEFENDANT WAHID SALEH: I ask my lawyer to talk to you, he doesn't want to talk to you, your Honor.

THE COURT: That is his choice. Mr. Saleh, I will not hear from you. You are to remain silent. Thank you. We will take a short break.

(Recess)

(Continued on next page)

(Page 3249 sealed by the court)

(In open court; jury not present)

MS. STEWART: Your Honor, Mr. Wasserman is not here.

MS. AMSTERDAM: I know he had a matter in front of the magistrate, and if Mr. Rashid would agree, I will represent him.

DEFENDANT HAMPTON-EL: Good.

MS. AMSTERDAM: We will talk later.

(Jury present)

THE COURT: Mr. McCarthy.

MR. McCARTHY: May I approach with Miss Amsterdam?

THE COURT: Yes.

MR. McCARTHY: I withdraw the application.

THE COURT: Mr. Khuzami.

MR. KHUZAMI: Your Honor, the government calls Mr. Brian Fleming as its next witness.

THE COURT: I ask everybody to please pay attention when the witness is being sworn. Thank you.

(Continued on next page)

BRIAN FLEMING,

called as a witness by the government,

having been duly sworn, testified as follows:

THE WITNESS: Brian Fleming, detective, shield number 1336, of Bronx Narcotics.

MR. KHUZAMI: May I proceed, your Honor?

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Detective Fleming, how long have you been a detective?

A. Four days, five days.

Q. Prior to that, what was your rank?

A. Police officer.

Q. How long were you a police officer?

A. Eight years.

Q. What is your current assignment?

A. Bronx Narcotics.

Q. How long have you been assigned to Bronx Narcotics?

A. Twenty-seven months.

Q. What was your assignment prior to that?

A. 17th precinct.

Q. What area does the 17th precinct cover?

A. East side of midtown, from 29th Street to 59th

Street.

Q. Directing your attention to November 5 of 1990, what was your assignment on that day?

A. I was sector Adam.

Q. What is sector Adam?

A. It covers the southern end of the precinct.

Q. What was your assignment within sector Adam?

A. To respond to jobs inside that area of the precinct.

Q. Were you in a patrol car?

A. Yes, I was.

Q. Did you have a partner that night?

A. Yes.

Q. Who was that?

A. Police Officer Moran.

Q. What hours were you working November 5, 1990?

A. I was working 4 to 12.

Q. In the patrol car, were you the driver or was Officer Moran the driver?

A. I was the driver.

Q. How were you dressed that day?

A. In uniform.

Q. Did there come a time around 9:00 that evening that you received a call?

A. Yes, I did.

Q. Without telling us what the call said, did you do anything in response to receiving that call?

A. Yes, I did.

Q. What did you do?

A. I responded to the area of 49th Street and Lexington Avenue.

Q. Where were you when you received the call?

A. I was on 34th Street and Third Avenue.

Q. How did you get from 34th Street and Third Avenue to the location that you were directed to?

A. I went up Third Avenue and I made a left on 49th Street, and then I made another left of Lexington Avenue.

Q. What happened when you arrived at the scene?

A. I pulled up in front of the hotel and I saw a group of people pointing down towards 48th Street.

MR. PATEL: Objection.

THE COURT: Just tell us what you did. Go ahead.

A. I then responded down to 48th Street and pulled in front of a post office on the west side of Lexington Avenue, between 47th Street and 48th Street.

Q. Where exactly did you pull in in relation to the post office?

A. I pulled pretty much directly in front of the post office.

Q. Was there any other officers on the scene when

you arrived?

A. Yes, a postal officer.

Q. Were there any other officers with the New York City Police Department there?

A. No.

Q. What did you do after you arrived at the scene?

A. I exited the car, I went up to a postal officer that was standing there, and I asked him what happened.

Q. Without telling us what he said, can you describe the scene as you found it when you first exited your vehicle?

A. Mr. Nosair was laying on the ground. The postal officer was standing a few feet away from him and there was a gun laying on the ground near where the postal officer was.

Q. Do you recall where the postal police officer was standing?

A. In the doorway of the post office.

Q. Were there any other persons there aside from Mr. Nosair and the police officer?

A. Yes, there were other people in the general area, yes.

Q. Can you estimate how many people were in the general area?

A. Approximately 20, 25 people, somewhere around

there.

Q. What were they doing?

A. They were pretty much around the area. There were some people who were standing just north of where Mr. Nosair was laying, and there were some people who were just south of where the postal police officer was.

Q. How close was the person that was nearest to Mr. Nosair when you arrived?

A. Approximately three to five feet, I think.

Q. Did you see anyone touching Mr. Nosair when you first arrived?

A. No, I did not.

Q. At any time during the period that you were there in front of the post office, did you see anyone touching Mr. Nosair?

A. No.

Q. What happened after you approached the postal police officer?

A. I observed the gun on the ground. I left it there. I went over, I frisked Mr. Nosair to make sure he didn't have any other --

MR. PATEL: Objection.

THE COURT: Sustained as to "other." Go ahead.

A. -- to make sure he did not have any weapons.

MR. PATEL: Objection.

THE COURT: Overruled.

Q. Can you describe to the members of the jury how you went about frisking Mr. Nosair?

A. I did a quick patdown.

Q. What is a quick patdown?

A. Feeling his outer garments for anything bulky and hard.

Q. Aside from patting him down, did you search him in any other manner?

A. No, I did not.

Q. What happened after you did the patdown?

A. I believe I asked Police Officer Moran to handcuff Mr. Nosair.

Q. Did you see Officer Moran handcuff Mr. Nosair?

A. Yes, he did.

Q. Do you know where he handcuffed him?

A. In the front.

Q. Did you notice any injuries or wounds to Mr. Nosair?

A. Yes. He had blood around the neck area.

Q. Did you notice any injury or wounds to the postal police officer?

A. Yes. His, I believe it was his right arm he was holding.

Q. What did you do after Mr. Nosair was handcuffed

and you conducted a patdown?

A. I was mostly on the radio, attempting to get an ambulance, or a couple of ambulances to the scene.

Q. Were there any ambulances there when you first arrived?

A. No.

Q. How soon after you arrived did the ambulances arrive?

A. Approximately three minutes. Somewhere around there.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

MR. KHUZAMI: May I ask that the jury be permitted to turn to Government's Exhibit 6A in the thin binders?

THE COURT: OK.

Q. Detective Moran, I wonder if you might just look at that photo, Government's Exhibit 6A in evidence, for a moment.

A. Fleming.

Q. Excuse me, Fleming.

A. Yes.

Q. Do you recognize the scene in that photo?

A. Yes, I do.

Q. Starting with the individual on the ground, is

that Mr. Nosair, the man you saw the night you arrived?

A. Yes.

Q. And the person with the blue shirt speaking on the radio, do you recognize that person?

A. Yes. That was my partner, Police Officer Moran.

Q. And the person to the right of Officer Moran, do you recognize him?

A. Yes, that was the postal officer.

Q. Do you see the gun in the photograph that you testified about earlier?

A. Yes.

Q. Where is that?

A. That is near where the postal officer is standing, to the right of him.

Q. Now, did you ever do anything with the gun that was laying on the ground next to Postal Police Officer Acosta?

A. Yes.

Q. What did you do?

A. I eventually picked it up and put it in my waistband.

Q. How soon after you arrived did you pick it up?

A. Thirty seconds.

Q. Why did you pick it up?

A. Because it was a lot of people in the street and

I didn't feel it was safe to have it laying there.

Q. What did you do with it when you picked it up?

A. I put it in my waistband.

Q. What did you do after you put it in your waistband?

A. What did I do with the gun or what did I do --

Q. What did you do in general after that?

A. I was mostly on the radio attempting to get an ambulance there.

Q. Were you involved in setting up a crime scene at all?

A. No.

Q. Do you know whether a crime scene was in fact set up?

A. Yes.

Q. Did there come a time when the ambulances arrived?

A. Yes. Did you depart the scene with any of the ambulances?

A. Yes, I did.

Q. Who was in the ambulance that you left with?

A. Mr. Nosair.

Q. Where did you go?

A. To Bellevue Hospital.

Q. What happened after you arrived at Bellevue

Hospital?

A. We brought Mr. Nosair into the trauma room.

Q. What did you do next?

A. I was in the room. Eventually I went back to the precinct with the property to be vouchered.

Q. When you refer to the property, what are you referring to?

A. The postal officer's gun, the gun that was found next to the postal officer, and the decedent's clothing.

Q. Did there come a time -- what did you do with the -- let's start with the gun that was next to Postal Police Officer Acosta. What did you do with that after you arrived back at the precinct?

A. I vouchered it.

Q. How did you go about doing that?

A. I typed up a police department voucher form.

Q. Did you mark that weapon in any way?

A. Yes, I did.

Q. How did you do that?

A. With my initials.

Q. Did you examine the contents of the gun at all?

A. Yes, I did.

Q. What did you find?

A. I found that there were five empty case goes and I believe one live round.

Q. What did you do with the five empty cases and one live round?

A. I initialed them and vouchered them.

Q. Did you voucher those items on one voucher or on separate vouchers?

A. On one voucher.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Detective Fleming, let me show you what has been marked as Government's Exhibit 11 for identification and ask you if you can open that up and examine its contents.

A. Yes. This is the gun that I found next to the postal officer that night.

Q. You are referring to Government's Exhibit 11?

A. Yes.

Q. How do you recognize that as the gun that you found next to the postal police officer?

A. It has my initials scratched in it, and I also recognize the -- I don't know how you call it, almost looks like it was sawed off, the barrel was sawed off.

Q. Is that gun in the same or substantially the same condition as it was when you picked it up off the ground that night?

A. It's a little bit more rusty, but yes.

MR. KHUZAMI: Your Honor, at this time I would

move Government Exhibit 11 in evidence.

MR. PATEL: I believe it is already in, your Honor.

MR. KHUZAMI: I believe it was in for a limited purpose.

MR. PATEL: No objection.

THE COURT: 11 is received for all purposes.

(Government's Exhibit 11 was received in evidence)

Q. Detective Fleming, you mentioned that it looks like the barrel has been ground down or sawed off.

MR. PATEL: Objection.

THE COURT: The gun may have been shortened. Go ahead.

Q. When did you first recognize that the barrel was in that condition?

A. I believe at the precinct.

Q. That is the precinct on the morning of November 6, 1990?

A. Well, later that night.

Q. Later the night of November 5?

A. Yes.

Q. I wonder if you also might examine in the bag you have in front of you what have been marked as Government's Exhibits 11A and 11B for identification and ask if you

recognize them?

A. Yes, I do.

Q. What are they?

A. These are the empty casings that were found in this gun that night.

Q. Is that Government's Exhibit 11A or 11B that contains the empty casings?

A. 11A.

Q. Can you see your initials on those casings?

A. Yes.

Q. Have you had an opportunity to examine those casings before your testimony here today?

A. Yes.

Q. That was in the United States Attorney's Office?

A. Yes.

MR. KHUZAMI: Your Honor, at this time I would move into evidence Government's Exhibit 11A.

Q. If you would just examine the contents of 11B, please.

A. Yes. This appears to be the --

Q. I am sorry.

(Pause)

MR. PATEL: Your Honor, there is no objection to 11A.

THE COURT: 11A is received without objection.

(Government's Exhibit 11A was received in evidence)

Q. Just for the record, how many empty casings did you pull out of the gun that night?

A. Five.

Q. And there are five in Government's Exhibit 11A?

A. Yes.

Q. As to Government's Exhibit 11B, can you identify that?

A. This appears to be the live round that I found in the gun that night.

Q. How do you recognize that as a live round?

A. Because the casing is not empty, it's full.

Q. Did you mark that, the live round that came out of the gun that you found on the ground that night with your initials?

A. Yes.

Q. Do you see those initials in the exhibit that you have before you?

A. Yes.

Q. Is in a round in substantially the same condition as it was the night that you retrieved it from the gun?

A. I don't believe this "Q8" was here, and it has a black mark on it. Other than that, pretty much.

MR. KHUZAMI: Your Honor, I would move

Government's Exhibit 11B into evidence.

MR. PATEL: No objection.

THE COURT: 11B is received without objection.

(Government's Exhibit 11B was received in evidence)

Q. Detective Fleming, what did you do with the gun with one live round and the empty casings after you vouchered them?

A. I brought them to the lab.

Q. Which lab are you referring to?

A. At the police academy, the New York City Police Department lab at the police academy.

Q. Is that known as the ballistics lab?

A. Yes.

Q. You also mentioned that you received a gun from the postal police officer, is that correct?

A. Yes.

Q. What did you do with that gun?

A. I vouchered it.

Q. What did you do after you vouchered it?

A. I brought that also to the lab.

Q. And you also testified that you received some clothing, is that correct?

A. Yes.

Q. Who did you receive the clothing from?

A. I believe it was from a nurse at Bellevue Hospital.

Q. What did you do with that clothing?

A. I put it in a paper bag and brought it to the 17th precinct.

Q. What did you do after you brought it to the 17th precinct?

A. I brought it to the ME's office.

Q. By the ME, you mean the medical examiner?

A. Yes.

MR. KHUZAMI: No further questions, your Honor.

MR. KHUZAMI: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. PATEL:

Q. Congratulations.

A. Thank you.

Q. My name is Andrew Patel. We have never met before, have we?

A. I don't believe so.

Q. And you testified about what you testified here today in the state grand jury back in 1990?

A. Yes.

Q. Before you testified, you spoke to an assistant district attorney named Mr. Greenbaum, is that correct?

A. Yes.

Q. How much time did you spend talking to Mr. Greenbaum before your grand jury testimony?

A. I do not recall.

Q. And you also testified in the state trial before a jury down the block, is that correct?

A. Yes.

Q. Before you testified in the state court before that jury, you spoke with Mr. Greenbaum again?

A. Yes.

Q. How much time before the trial did you spend talking to Mr. Greenbaum in full?

A. You mean how many times, different occasions or altogether?

Q. Let's start with how many times.

A. I would guess five times, six times.

Q. About how much time would you say you spent with him on each of those five or six occasions? Was it five or six?

A. Yes, I guess five or six. A lot of the time I spent waiting down there, but in actual conversation with him, maybe half an hour each time.

Q. Total of about two and a half to three hours before your state trial testimony?

A. I guess. You know, I'm guessing.

Q. I don't want you to do that.

Before you testified in front of the state jury, did you review your grand jury testimony?

A. Did I do what?

Q. Review your grand jury testimony?

A. Yes, I did.

Q. You are testifying here today. This is the third time -- actually, you testified in a hearing, too, didn't you?

A. Yes.

Q. And before you testified in the trial, did you review your minutes, the transcript of your hearing testimony?

A. I believe so.

Q. Before you testified here in the federal court before this jury, you met with Mr. Khuzami, is that fair to say?

A. Yes.

Q. How many times did you meet with him?

A. I met with him twice -- I met with him once before the trial started and once a couple of Sundays ago, and I didn't really speak to him too much last week when I was supposed to testify Wednesday. I guess two or three times.

Q. How much time in total would you say you spent with Mr. Khuzami?

A. An hour each time.

Q. It would be fair to say, would it not, that before you testified here you reviewed your testimony from the grand jury and the state hearing and the state trial?

A. No, I did not.

Q. You haven't seen those transcripts at all?

A. No.

Q. You were assigned to a marked police car that night, were you not?

A. Yes.

Q. Before you became a police officer, you attended the police academy, correct?

A. Well, while I was a police officer I attended the police academy.

Q. That is a four-month, six-month training program?

A. Six months.

Q. You learned about -- withdrawn.

One of the things you learned about at the police academy is what is required of you as a police officer, is that correct?

A. Yes.

Q. And you learn certain guidelines and procedures?

A. Yes.

Q. And you learn about the patrol guide, New York City Police Department Patrol Guide, is that correct?

A. Yes.

Q. That is a book that tells you what as a patrol officer you are supposed to do in various situations, is that correct?

A. Well, it's a guide, like it says. Yes.

Q. You can be disciplined if you don't do what's in the book though, right?

A. Can you be disciplined? Yes, you can.

Q. On that night, November 5, 1990, before you got into that car you made sure there was certain equipment in the car, didn't you?

A. What equipment are you referring to?

Q. You made sure there was gas in the car, right?

A. Yes, I did.

Q. And you made sure there was evidence tape in the trunk?

A. No, I did not.

Q. How about a first aid kit?

A. No, I did not.

Q. Is a first aid kit something that you usually carry in a radio motor patrol car?

A. I don't remember, to tell you the truth. I haven't been on patrol for a couple of years now and I am not sure exactly what is supposed to be in a patrol car now.

Q. On November 5, do you recall whether there was a

first aid kit in that car?

A. No, I do not.

Q. How about blankets?

A. No, I do not.

Q. How about gloves, disposable gloves?

A. I do not recall.

Q. You were the first police officer, New York City police officer on the scene, is that correct?

A. My partner and I, yes.

Q. Actually, your partner was closer to the scene than you were.

A. Yes.

Q. You had to get out of your car and walk around the car to get to the scene.

A. Yes.

Q. There was a crowd there on the sidewalk?

A. Like I said, there were approximately 15, 20 people. I don't know if you would call that a crowd or not.

Q. Could it have been 25, 30 people?

A. It's possible, yes.

Q. And it was a chaotic scene?

A. Again, I don't know what you mean by chaotic.

Q. Do you remember describing the scene as chaotic at a previous hearing?

A. I do not recall.

Q. Do you remember testifying at a hearing at page 31:

"Q. And when you got there there was a pretty chaotic scene, wasn't it?"

Answer.

MR. KHUZAMI: Objection.

THE COURT: Is this an exhibit, 35 something?

MR. PATEL: Yes, your Honor, I apologize. It is a 3500 exhibit. This is, I believe, 3540I, page 31, line 2.

THE COURT: Do you want to show it.

Q. Do you remember being asked the following question --

MR. KHUZAMI: Objection.

THE COURT: Sustained. Do you want to show him the exhibit.

MR. PATEL: Absolutely. May I approach?

THE COURT: Yes.

Q. Detective, I am showing you the previously indicated page. Just read that to yourself.

A. Yes.

Q. Does that refresh your recollection about the scene being chaotic?

A. No, it does not.

Q. Does it refresh your recollection -- OK.

When you got there, there were some 15 to 30

people standing around?

A. Somewhere in that area, yes.

Q. These were not casual stroller bys, is that fair to say?

A. Some were.

Q. Some were not?

A. Yes.

Q. Some were very excited, right?

A. Yes, some were.

Q. Some were very upset?

A. Some were excited and upset.

Q. Some were screaming, some were yelling?

A. I believe there were a couple of people who you could describe as yelling and screaming.

Q. There were some people who you could describe as hysterical, couldn't you?

A. No, I wouldn't go that far.

Q. And these people were surrounding Mr. Nosair, who was lying on the sidewalk, correct?

A. No, they weren't surrounding him. The people near Mr. Nosair were five feet, maybe three to five feet away from his head. They weren't completely around him.

MR. KHUZAMI: Objection.

THE COURT: Did you finish?

THE WITNESS: Yes.

Q. They were closer than just being in the general neighborhood, fair to say?

A. What do you mean general neighborhood?

Q. They were interested in what was going on at that scene in front of the post office.

A. I can't say what was in their mind, if they were interested. They were looking in my direction.

Q. And they were circling around the defendant?

A. No, they weren't circling the defendant.

Q. Do you recall testifying at the same Exhibit 3540, page 32.

MR. KHUZAMI: Objection.

THE COURT: Overruled.

Q. Question, page 32, line 2:

"Q. And how many people, would you say, just as a round number?

"A. Were around, like circling the defendant?

"Q. Yes.

"A. Approximately 20 to 30 people."

Do you remember that?

A. No, I do not.

Q. Would you like to see it?

A. You can show it to me. I don't know if it is going to refresh my memory but I will look at it if you want.

(Pause)

A. I might have been thinking that they were around the scene.

Q. Is that the testimony that you gave under oath at the hearing?

A. I assume so.

Q. Thank you.

Did you take the names of any of those 25 to 30 people that were on the street that night?

A. No.

Q. Did you speak to any of them?

A. Briefly, yes.

Q. Take any statements, write any statements down?

A. No.

Q. When you patted down Mr. Nosair for bulky or large objects, you didn't feel anything, did you?

A. No, I do not remember feeling anything.

Q. Mr. Nosair was lying on the sidewalk and he was bleeding, is that correct?

A. Yes.

Q. There was a stream of blood coming out of his neck area?

A. It appeared that there was blood coming from his neck area, yes.

Q. And he was lying there, he wasn't moving?

A. No, I don't believe -- his eyes were open. He appeared to be conscious, but he was not moving.

Q. He was breathing?

A. His eyes were open and he appeared to be conscious.

Q. He was lying on his back, right?

A. Yes.

Q. Was he groaning?

A. I don't believe so.

Q. Was he moving?

A. I do not remember. I do not believe so.

Q. Was he roving around?

A. No.

Q. Was he groaning in pain?

A. I do not believe so.

Q. Did you give Mr. Nosair first aid of any kind that night?

A. No.

Q. Did you give him a hankerchief on his wound?

A. I don't believe I had a hankerchief.

Q. Any kind of pressure on his wound to stop the bleeding?

A. No, I did not.

Q. You are familiar with the patrol guide that says when you come upon a wounded person you are supposed to give

them first aid?

A. I would say yes, that is one of the things that you are supposed to do.

Q. At some point you picked up this gun, is that fair to say? That's what you said on direct testimony.

A. Yes.

Q. How did you pick up the gun?

A. I picked it up by the handle.

Q. Would you demonstrate for the jury how you picked up the gun.

A. Trying to touch, to keep my hand on the handle where the wood was.

Q. Did you unload the gun at that time?

A. No.

Q. You weren't wearing gloves at the time you picked up that gun?

A. No.

Q. You put the gun in the waistband of your uniform?

A. Belt, yes.

Q. When the ambulances arrived, how many police officers were on the scene at that time?

A. I do not recall. I don't remember if there were any police officers at the scene.

Q. Other than you and Officer Moran, did any other officers arrive at that time?

A. I do not remember.

Q. Did you ask any of the EMS people to swab Mr. Nosair's hands for gunshot residue?

A. No, I did not.

Q. When you got to Bellevue, did you ask any of the people at Bellevue to swab his hands for gunshot residue?

A. No. I am not familiar with that procedure.

Q. Whether you got to Bellevue, there were a lot of people, right? It's a big place?

A. A lot of people, I don't know what you mean by a lot of people.

Q. There were doctors there, right?

A. Yes, there were doctors there.

Q. Nurses?

A. Yes.

Q. There were various attendants moving people in and out?

A. I do not remember if there were attendants.

Q. Did you ask anybody for a bag to put the gun in?

A. No, I did not.

Q. Did you meet Officer Walsh at Bellevue?

A. Yes, he was at Bellevue.

Q. Did you hand him the gun?

A. Yes, I did at one point, for a short time.

Q. When you handed him the gun, was he wearing

gloves?

A. I do not remember. I don't believe so.

Q. Was the gun in a bag when you handed it to Officer Walsh?

A. No.

Q. The gun was essentially in the same condition that it is here today except that the cylinder was closed, is that accurate?

A. And it was loaded.

Q. It was loaded.

At sometime you left the hospital, correct?

A. Yes.

Q. And you left the hospital with Detective Haight, correct?

A. Yes.

Q. You handed the gun to Detective Haight at one point, is that correct?

A. Yes.

Q. Was Detective Haight wearing a glove when you handed him the gun?

A. I do not believe so.

Q. Was the gun in a bag?

A. No.

Q. Had you asked either Detective Haight or Officer Walsh to get you a bag for the gun?

A. I do not remember.
Q. You vouchered the gun, correct?
A. Yes.
Q. When you vouchered the gun, you etched your initials on it, correct?
A. Yes.
Q. And the whole purpose of etching your initials on it was so that you could come here today in front of this jury and say Government's Exhibit 11 is the gun I recovered that night, correct?
A. Yes.
Q. When you etched your initials on that gun, you used a scribe, correct?
A. Used a what?
Q. A scribe?
A. I am not familiar with what --
Q. What did you use to put your initials on the gun?
A. I do not remember.
Q. You used some kind of implement that is in the police precinct to scratch your initials on the gun?
A. I don't remember what I used.
Q. Do you remember doing it?
A. Vaguely, vaguely.
Q. You didn't do it with a felt-tip pen, did you?
A. No, I did not.

Q. It is scratched into the metal?

A. Yes.

Q. When you did that, were you wearing gloves?

A. I do not believe so.

Q. You unloaded the bullet and the casing at the precinct, correct?

A. The casings, yes.

Q. That was the first time that you had emptied the gun?

A. Yes.

Q. When you unloaded the gun at the precinct, were you wearing gloves?

A. I do not believe so.

Q. When you etched your initials on the bullet and the casings, which are now in evidence as Government's Exhibit, I believe, 11A and B, were you wearing gloves?

A. I do not believe so.

Q. You brought the gun to the ballistics lab, right?

A. Yes.

Q. The gun and the bullets to the ballistics lab?

A. Yes.

Q. The ballistics lab is in the police academy on 22nd Street, is it?

A. Yes.

Q. And you requested a ballistics analysis of the

weapon, did you not?

A. I filled out a request for ballistics and I dropped it off.

Q. Did you fill out a request for fingerprint analysis on either the gun, Government's Exhibit 11, or the bullet or the casings, 11A and B?

A. I do not believe so, no.

Q. The fingerprint lab is right down the hall from the ballistics lab, isn't it?

A. I do not know.

Q. It would be fair to say that on the evening of November 5, you went from 500 Lexington Avenue to Bellevue Hospital, you spent some time at Bellevue Hospital and then you went back to the precinct? Is that an outline of your motions on that night?

A. Where on Lexington Avenue?

Q. From the post office on Lexington Avenue, to the hospital, to the 17th precinct?

A. Yes.

Q. And during that time you had a loaded .357 magnum in your waistband, is that correct?

A. Yes -- I am sorry. Repeat the question.

Q. You had a loaded .357 magnum in your waistband.

A. There were two loaded 357 -- because when I left Bellevue Hospital, I gave the gun that was found next to the

postal officer to Detective Haight.

Q. And he then gave it back to you?

A. At the precinct, but I did not take it to the precinct. We were in the same car but Detective Haight held on to that gun from Bellevue Hospital to the 17th precinct.

Q. And you had another .357 magnum in your waistband, is that fair to say?

A. Yes.

Q. So the entire time that you were doing the route you described before, post office, hospital, precinct, you had a loaded .357 magnum in your waistband.

A. I do not remember if the other gun that I had was loaded when I took it from Bellevue Hospital to the 17th precinct.

Q. When you received the other gun, did you check to see if it was loaded?

A. I cannot remember.

MR. PATEL: May I have a moment?

Q. You testified that you spoke to a number of people on Lexington Avenue briefly.

A. I believe I spoke to one or two people.

Q. Do you know who they were? Do you know their names?

A. No.

Q. Do you know what they look like?

A. Not really. I know the postal officer was one.

Q. Other than the postal officer, was there anyone else that you spoke to?

A. Yes, there were one or two pedestrians, one or two people, civilians on the street that I did speak to briefly.

Q. Following this incident, you didn't receive a police reprimand for failing to give Mr. Nosair first aid, did you?

A. No, I did not.

Q. It is fair to say that you did nothing during that night to preserve fingerprints on that gun, Government's Exhibit 11, did you?

A. Yes, I did.

Q. Let's see. Did you put it in a bag?

A. No, I did not.

Q. You handed it to two other officers, correct?

A. Yes.

Q. None of whom were wearing gloves?

A. I don't believe so.

Q. And you put it in your waistband?

A. Yes.

Q. Is that the authorized procedure for preserving fingerprints?

A. I don't believe there is an exact way to handle a

loaded firearm on a crowded street.

Q. You told us just before that you did something to preserve fingerprints but you never requested the fingerprint analysis, did you?

A. No, but I did attempt to preserve it when I arrived on the scene.

Q. At the scene, but later on you did not.

A. The entire time I attempted to handle it just on the wooden handle, when I arrived at the scene I did not pick it up right away, I attempted to leave it there, realizing that that was not a smart idea --

Q. When you arrived at the scene, you attempted to leave the gun on the scene?

A. Yes.

Q. So there were 20 to 30 people, some of whom, you have said, were upset, and you left a gun on the ground?

A. I attempted to stand over the gun when we first arrived to the scene.

Q. Didn't you just say on direct testimony that you picked the gun up 30 seconds after you got there?

A. Yes.

Q. Never requested any fingerprint analysis of this weapon, did you?

A. I do not believe so.

Q. As far as you know as you sit here today, has

anyone ever tested that weapon for fingerprint analysis?

A. I do not know.

Q. You weren't reprimanded for carrying a loaded gun in your waistband as you traveled around the city, were you?

A. No.

Q. You were reprimanded, however, for having your tie undone, were you not?

A. Yes.

MR. PATEL: Thank you, your Honor. I have no further questions.

THE COURT: Anyone else? Any redirect?

MR. KHUZAMI: Briefly, your Honor.

REDIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Detective Fleming, can you describe where on Mr. Nosair's body you conducted the patdown as he was laying on the sidewalk?

A. Just all, you know, down his body, no specific area.

Q. Was he on his back or on his stomach when you did that?

A. He was on his back.

Q. Did you turn him over at all and pat down his back side?

A. I do not believe so.

Q. You testified that Postal Police Officer Acosta was also injured when you arrived on the scene, is that correct?

A. Yes.

Q. Did you give him any first aid?

A. No.

MR. KHUZAMI: No further questions.

RECROSS-EXAMINATION

BY MR. PATEL:

Q. You patted down Mr. Nosair's front pockets, is that fair to say?

A. I do not remember exactly where I patted him down.

Q. You patsed him down from the waist down?

A. I do not remember.

Q. You patted him down around the waist?

A. I don't remember.

Q. You patted him down?

A. Yes, I patted him down.

Q. You came in physical contact with some part of his body?

A. Yes.

Q. Can you tell the jury what part of his body, if any, you came in contact with?

A. I believe, I know I was checking around his

waistband area looking for a gun, and I don't remember where else I patted him down.

Q. Is it fair to say that in your experience as a police officer, in addition to their waistbands people sometimes have weapons in their pockets? Is that true?

A. It's kind of hard to put a gun in a pocket. It's possible, yes.

Q. Is it fair to say that you quickly checked that area?

A. I would say I probably patted down that area. I don't remember, though.

Q. And you don't remember feeling anything hard either in his waistband or wherever you patted down?

A. I do not remember, no.

MR. PATEL: Thank you. No further questions.

MR. KHUZAMI: Nothing further.

THE COURT: You are excused.

(Witness excused)

MR. KHUZAMI: Your Honor, the government calls Police Officer Gabriel Jaen as its next witness.

GABRIEL C. JAEN III,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. How are you employed?

A. I am a New York City police officer, sir.

Q. How long have you been a New York City police officer?

A. Approximately 11 years, sir.

Q. If you could just lean forward a little bit and speak into the microphone.

A. I am sorry. Eleven years.

Q. What is your current assignment?

A. I am a patrol officer in the 17th precinct, sir.

Q. How long have you been a patrol officer in the 17th precinct?

A. Ten years, sir.

Q. Directing your attention to November 5 of 1990, were you working on that day?

A. Yes, sir.

Q. Do you recall what hours you were working?

A. I was working a tour of 4 to 12, sir.

Q. Did you have a particular assignment that night?

A. Lieutenant's operator.

Q. What does it mean to be a lieutenant's operator?

A. The lieutenant was the supervisor for that evening and I drove him around, sir.

Q. How were you dressed that day?

A. I was in uniform, sir.

Q. Directing your attention to around 9:00 p.m. that night, did you go somewhere with the lieutenant?

A. Yes, sir.

Q. Where did you go?

A. I went to Lexington Avenue, I believe it was a Marriott Hotel, approximately 48, 47 on Lexington Avenue.

Q. When you say 48, 47, you mean the streets 48th and 47th Street?

A. Yes, sorry.

Q. What was the lieutenant's name that you were working for that night?

A. Lieutenant Gallo.

Q. Did there come a time when you entered the hotel?

A. Yes, sir.

Q. What happened when you entered the hotel?

A. There was a shooting in the hotel, second floor.

MR. PATEL: Objection.

THE COURT: Sustained and stricken. Don't tell us what happened.

Maybe you can focus your question.

Q. What did you see when you arrived in the hotel?

A. There were several police cars parked in front and we went inside and investigated.

Q. If you could speak a little closer into the microphone.

Did you go upstairs into the hotel?

A. Yes, sir.

Q. How long did you stay up there?

A. Approximately about four hours, sir.

Q. Did you come into contact with any detectives in the Crime Scene Unit while you were there?

A. Yes, sir, I did.

Q. Do you recall the name of any particular detective?

A. Detective Rinaldi, sir.

Q. Did Detective Rinaldi give you anything that night?

A. Yes, sir, he did.

Q. What did he give you?

A. He gave me some evidence he collected from the scene, sir.

Q. Do you recall what the evidence was?

A. Yes, sir. It was 13 rounds, five pieces of metal, lead jacketing from the ammo, the clothing, a pair of pants, belt, black pants, and gloves, sir, and -- sorry -- money.

Q. Starting with the 13 rounds, where were you when Detective Rinaldi gave you that?

A. I was in the second floor Morgan D room, sir.

Q. What did you do when you received them?

A. I took them and vouchered them in the precinct, sir.

Q. When did you do that?

A. After the crime scene was finished, sir.

Q. Did you package them at all when you vouchered them?

A. Yes, sir, I did.

Q. What kind of package did you put them in?

A. I put them in a security envelope, sir.

Q. What did you do after you packaged them in a security envelope?

A. The rounds were taken to police academy, to the eighth floor, to the laboratory, sir.

Q. Is that the ballistics lab?

A. Yes, sir.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Officer Jaen, let me show you what has been marked Government Exhibit 30 for identification and ask if you recognize it?

A. Yes, sir.

Q. What is it?

A. This is 10 of the 13 rounds that I received, plus the security envelope I placed the rounds in, sir.

Q. Can you take out of that exhibit what you have

identified as the security envelope.

MR. PATEL: Objection, your Honor.

Q. Is that marked with an exhibit number?

A. Yes, sir.

Q. Is that Government's Exhibit 30D as in dog?

A. Yes, sir.

Q. How do you recognize that as the security envelope that you placed the 13 rounds in?

A. That is my handwriting, sir.

(Continued on next page)

MR. KHUZAMI: Your Honor, at this time I would move into evidence Government Exhibit 30D.

MR. PATEL: Objection, your Honor. Could we be heard briefly at the side?

THE COURT: I will receive 30D. Overruled. Go ahead.

(Government's Exhibit 30D received in evidence)

Q. Officer Jaen, do you recognize the rounds that are contained in Government's Exhibit 30 as some of the rounds that you received --

MR. PATEL: Objection.

Q. -- from Detective Rinaldi?

THE COURT: May I see counsel at the side.

(At the side bar)

THE COURT: As I understand it, with regard to these there are no initials, correct?

MR. PATEL: Correct.

MR. KHUZAMI: That is correct.

THE COURT: The bag in any event he has identified. That is in. Are you going to have somebody who opened the bag?

MR. KHUZAMI: The person who opened the bag -- it was taken -- Government's Exhibit 30D contained the 13 rounds, he took them to the ballistics lab. The next witness is the one who opened up the bag, took out three,

and he wrote on the outside of the bag. But I would think they would come in at this point because the bag is sealed, he recognizes this bag as the one he put them in, Rinaldi testified that he gave them --

THE COURT: He is still challenging that these are the bullets.

MR. PATEL: Exactly, Judge.

MR. KHUZAMI: That goes to weight. These were sealed and the chain has been followed uninterrupted.

THE COURT: No. The bag is open, correct?

MR. KHUZAMI: The bag was opened in my office by Detective Rinaldi, who signed and sealed it.

MR. PATEL: I think we are talking about different bags here.

THE COURT: At some point the bag with the 13 rounds was opened and three were removed, correct?

MR. KHUZAMI: That is correct.

THE COURT: We haven't gotten to that yet?

MR. KHUZAMI: That is correct.

THE COURT: So all he can say is that the 10 look like the rounds that he put in the bag. At the point where you have somebody opening the bag, taking out the 3, putting it in another bag and opening it up, then I think the chain is complete, but it's not complete yet.

MR. PATEL: I would certainly agree that it is

not complete now. I have a question whether it can ever be completed in light of Detective Rinaldi's inability to say anything other than that these are like a million other bullets that he has ever seen.

THE COURT: Not at all, but we can argue that when we have to.

(In open court)

BY MR. KHUZAMI:

Q. Officer Jaen, in addition to the 13 rounds, did you receive other ballistics from Detective Rinaldi at the hotel?

A. Yes, sir.

Q. What were those?

A. I received some pieces of copper jacketing and some lead.

Q. Were those in sealed containers?

A. Yes, sir.

Q. Do you recall how many you received?

A. There were five pieces, sir.

Q. What did you do after you received them from Detective Rinaldi?

A. They were also vouchered, sir.

Q. After you vouchered them, what did you do with them?

A. They were taken down to the lab also, sir.

Q. Is that the ballistics lab?

A. Yes, sir.

Q. Did you also indicate that you received some clothing? Is that correct?

A. Yes, sir.

Q. What clothing was that?

A. A pair of pants and a belt, sir. I believe the pants were black.

Q. What did you do with those items?

A. Those items were taken down to the medical examiner's office, sir.

MR. KHUZAMI: No further questions.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. PATEL:

Q. Good morning, Officer.

A. Good morning, sir.

Q. My name is Andrew Patel. We have never met before, have we?

A. No, sir.

Q. This is the third time you have testified about this subject, right?

A. I believe so, yes, sir.

Q. Grand jury, state trial, today, right?

A. Yes, sir.

Q. Every time before you testified, either in the grand jury, the state trial or today, you met with a prosecutor, correct?

A. Excuse me, sir.

Q. You met with a prosecutor before you testified?

A. Yes, sir.

Q. How much time did you spend with the state prosecutor?

A. On the average, about 10 minutes, sir.

Q. Other than the average of 10 minutes per visit?

A. I actually spoke to him about 10 minutes on one occasion, so the other time he didn't have a chance to talk with me, sir.

Q. So you only met with him once?

A. Yes, on this particular --

Q. Is that before the grand jury?

A. I believe that was after the grand jury, sir.

Q. Before you testified at the trial, did you review your grand jury testimony?

A. No, sir, I did not.

Q. Before you testified here today, did you look at your trial testimony or your grand jury testimony?

A. No, sir, I did not.

Q. Mr. Khuzami didn't give you a copy of your grand jury testimony?

A. No, sir, he did not.
Q. Did you look at your memo book?
A. I believe I glanced over it, yes, sir.
Q. Did you look over the vouchers you filled out?
A. Yes, sir, I did.
Q. What else did you look at?
A. Some of the evidence, sir.
Q. Some of the physical evidence?
A. Yes, sir.
Q. What about other police reports?
A. The only police reports I looked at were probably the vouchers, sir.
Q. When you got there that night, there were a lot of police officers there, right?
A. Yes, sir, there was.
Q. And you were with the lieutenant?
A. Yes, sir, I was.
Q. He was essentially taking command of the crime scene?
A. Yes, sir.
Q. There were other police officers from the 17th precinct on the scene?
A. Yes, sir.
Q. These are guys you knew, right?
A. Yes, sir.

Q. Who was there?

A. One of the police officers whose name was Jimmy Moran, the other police officer's name was Brian Fleming.

Q. When you got to the scene, Officer Fleming was still --

A. No, sir, he was not. His partner was there.

Q. He was down the block at the post office, right?

A. Actually, when we got there, I believe he was on his way to the hospital, sir.

Q. My question is, which officers from the 17th precinct, guys you work with every day, who was at the Marriott Hotel?

A. I don't recall, sir. I don't recall which ones were there.

Q. Do you recall how many police cars were outside the hotel?

A. No, sir, I do not.

Q. Do you recall speaking to any FBI agents that night?

A. No, sir, I do not.

Q. When you got upstairs -- you went upstairs, right?

A. Yes, sir, I did.

Q. Would it be fair to say that there was pandemonium up there?

A. Jest.
Q. People screaming?
A. I don't believe anyone was screaming, sir.
Q. Crying?
A. Yes, there were a couple crying.
Q. The place looked -- chairs had been knocked over? There was a scene of disarray?
A. I wouldn't say that, sir.
Q. Was everything neat and orderly?
A. No, everything wasn't neat and orderly. There was chairs were moved about and things like that. It was pretty controlled.
Q. Pretty --
A. Pretty controlled.
Q. When you got upstairs, how many police officers were upstairs?
A. I don't exactly recall that, sir.
Q. Were you assigned to guard the crime scene upstairs?
A. I was there for a while. I was watching the stairway, preventing anyone from coming up, from going down, but I wasn't ever in any of the actual rooms.
Q. You never went in the actual room?
A. Later on and once we first got there, but as far as guarding the room, I didn't actually guard the room, sir.

MR. PATEL: Your Honor, may I have the witness step down to the model?

THE COURT: Yes.

Q. When you first -- Officer, let's both try to keep your voices up. When you first arrived on the scene, where were you assigned to go? Can you show us on this diagram.

A. When I first arrived at the scene, I wasn't assigned anywhere at that particular moment. I was following the lieutenant.

Q. Where did the lieutenant go?

A. He first went to let Morgan D room and then went back outside to interview the postal officer.

Q. At some point you came back upstairs?

A. Yes, sir.

Q. And you spent four hours upstairs?

A. Approximately, yes, sir.

Q. In those four hours were you assigned to any particular place?

A. Yes, I spent sometime approximately right over here, sir.

Q. Could you describe for the record, that is the top of the stairs at the south end of the corridor?

A. Yes, sir.

Q. Could you mark your initials on that spot?

At some point you said you met Detective Rinaldi.

A. Yes, sir.

Q. Where did you meet Detective Rinaldi?

A. In Morgan Room D, sir.

Q. After you were assigned there you went into the Morgan D room?

A. Yes, sir.

Q. How much time did you spend in the Morgan D room?

A. About an hour, hour and a half, sir.

Q. At any point did you go up these stairs towards the north corridor?

A. I don't think so, sir.

Q. Did you see Detective Rinaldi or any Crime Scene Unit go to this exit on the north corridor?

A. No, sir.

Q. Did you see any police officer investigate this front door here of the Morgan D room?

MR. KHUZAMI: Objection to form.

THE COURT: Rephrase it.

Q. At any point, Officer, did you see -- do you see this door here, indicating on the model an initial EE, at the northeast end of the room?

A. Yes, I see it.

Q. Did you see any crime scene officer investigate the area around that door?

MR. KHUZAMI: Objection to form.

THE COURT: Did you see anybody looking in that area?

A. Not that I recall, sir.

Q. Do you remember anybody dusting this door for fingerprints?

A. No, sir.

Q. What about this door here in the north corridor? Did you see anybody dust that door for deposits?

A. Not that I recall, sir.

Q. Why don't we retake the stand. Thank you.

You spent quite a bit of time in that corridor outside the Morgan D room, is that correct?

A. Yes, sir.

Q. And there were some blood stains outside on the carpet there, sir?

A. I don't recall, sir.

MR. PATEL: May I have a moment with Mr. Khuzami, your Honor?

THE COURT: Yes.

MR. PATEL: Your Honor, may I approach with Exhibit 6GG in evidence?

Q. Can you take a look at that, Officer.

THE COURT: And would you move the microphone so it is pointing at you.

MR. PATEL: 6GG.

Q. Officer, taking a look at that, does that refresh your recollection about any blood stains in the carpet in the hallway?

A. Yes, sir, I see the blood stains.

THE COURT: His question is not whether you see the blood stains in the carpet right now. The question is whether looking at that picture it makes you remember that there were blood stains in the carpet when you were there.

A. I don't recall that, sir.

Q. Thank you. Do you recall seeing any crime scene officers do any investigation outside the double doors at the south end of the Morgan D room?

A. No, sir.

Q. Anybody give you any carpeting to voucher from outside the Morgan D room?

A. No, sir.

Q. Anybody give you any carpeting from inside the Morgan D room to voucher?

A. No, sir.

Q. Anybody give you any pieces of wood paneling with bullet holes to voucher?

A. No, sir.

Q. Vouchering is part of your job, right?

A. Yes, sir.

Q. Anybody give you any pieces of metal with bullet

holes in it to voucher?

A. Are you referring to like a large piece of metal as part of the wall or are you referring to metal in general?

Q. Exactly.

A. No, sir.

Q. Did anybody give you any pieces of the post office that had bullet holes in it to voucher?

A. No, sir.

Q. Plywood with bullet holes to voucher?

A. No, sir.

Q. You went down to the post office. Do you remember it?

A. I was down there at the scene. I didn't see any bullet holes.

Q. Did anybody give you anything from the post office?

A. I recovered from items from the post office but nothing that you asked.

Q. Nothing with bullet holes in it?

A. No, sir.

Q. No metal, no plywood?

A. No, sir.

Q. And you didn't voucher any curtains from the Morgan D room?

A. No, sir.

Q. Curtains with bullet holes?

A. No, sir.

Q. Curtains with blood on them?

A. No, sir.

Q. Did anybody give you anything in the hallway to voucher?

A. I don't believe so, no, sir.

Q. You brought various things to the ballistics labs for examination?

A. Yes, sir, I did.

Q. Obviously you didn't bring any plywood, metal, curtains or wood molding to the ballistics lab.

A. That is correct, sir, I didn't bring any of that.

Q. And there was no request made for any kind of trajectory analysis either in the post office or the Morgan D room by you of the ballistics lab, was there?

A. No, sir, there was not.

Q. Did you request that any of the items that you did voucher be fingerprinted?

A. No, sir, I did not.

MR. PATEL: Thank you, your Honor. I have no further questions.

THE COURT: Anything else?

MR. KHUZAMI: No redirect.

THE COURT: Thank you. You are excused.

(Witness excused)

MR. KHUZAMI: The government calls as its next witness John Solowsky.

JOHN SOLOWSKY,

called as a witness by the government,

having been duly sworn, testified as follows:

MR. KHUZAMI: May I proceed, your Honor?

THE COURT: Please.

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. How are you employed?

A. I am employed by a recycling company in Hunts Point, Bronx.

Q. If you could speak into the microphone, if you might, so that everybody can hear you.

How long have you been so employed?

A. About six months.

Q. What was your occupation prior to that?

A. I was a detective assigned to the ballistics squad with the New York City Police Department.

Q. How long were you assigned to the ballistics squad?

A. Fifteen years.

Q. What were your duties and responsibilities as a

detective assigned to the ballistics squad?

A. My duties were to test fire and examine guns that were confiscated by the police department and to examine and classify evidence in the field of ballistics that was confiscated by the police department.

Q. Approximately how many guns did you test per year while you were assigned to the ballistics squad?

A. A little over 2,000 guns per year.

Q. Directing your attention to November 6 of 1990, did you receive some ballistics evidence from a case arising out of the 17th precinct at that time?

A. Yes, I did.

Q. Do you recall what you received?

A. I received a voucher containing a .357 magnum caliber firearm. Also one live cartridge and five discharged shells. And I received a second voucher containing 13 rounds of ammunition.

Q. When you say you received it, where actually, physically did you get these items from?

A. It was delivered to my office by a Police Officer Fleming from the 17th precinct on November 6, 1990.

Q. If you -- may I approach, your Honor?

THE COURT: Yes.

Q. If I might show you what have been introduced in evidence as Government's Exhibits 11, 11A and 11B and ask if

you can identify them.

A. Yes. This is the firearm I received on November 6, 1990, at the ballistics office --

THE COURT: This being which? Exhibit 11?

Q. What is the exhibit number on the revolver?

A. 11, yes. Also the one live cartridge which was 11B.

MR. PATEL: Objection, your Honor. The witness seems to have some paper that he is referring to.

THE WITNESS: These are copies of my reports also enclosed in the plastic bag with the firearm and the ammunition.

Q. Officer Solowsky, why don't you put those aside and review the physical evidence.

A. Also the one live cartridge that I received with the gun, marked Exhibit 11B, and the five discharged shells marked 11A.

Q. Did those items, the revolver, the one live round and the five empty cases, all come to you in one voucher?

A. Yes, they did, sir.

Q. You also testified that you received 13 rounds, is that correct?

A. I did, yes, sir, another voucher.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Let me show you what has been marked for identification as Government's Exhibit 30 and ask you to take a look at that, please.

A. These are 10 of the 13 rounds I received on the same day I received the firearm, on a different voucher.

Q. What did you do when you received the 13 rounds?

A. The 13 rounds, I took three of those rounds out for test firing this particular gun.

Q. When you say took them out, what did you do?

A. They were sealed in the precinct's security envelope. I removed them and used them for test firing.

Q. What did you do after you removed the three rounds for test firing?

A. I sealed the remaining 10 live rounds in the security envelope I received with the ammunition and a copy of my report and this plastic bag.

Q. Do you see your signature on that outer plastic bag?

A. Yes, I do.

MR. KHUZAMI: Your Honor, at this time I move Government's Exhibit 30 into evidence.

MR. PATEL: Your Honor, may I see Government's Exhibit 30?

THE COURT: Yes.

MR. PATEL: Your Honor, I have two objections to

Government's Exhibit 30, one which we have discussed previously and one of which we have not.

THE COURT: Is this a short conversation or a long conversation?

MR. PATEL: A short conversation.

THE COURT: Let's come on up.

(At the side bar)

MR. PATEL: Judge, the new objection is to the report, which is clearly hearsay.

THE COURT: The report is not coming in.

MR. KHUZAMI: I am happy to remove the report. That's fine.

THE COURT: Good.

MR. PATEL: Because I gather there is another report of his --

THE COURT: It was in the bag, he pulled it out. The report is not coming in. It is just the stuff inside the bag -- the bullets inside the bag.

MR. PATEL: I renew my objection to the bullets coming in. There is no way to tell these bullets from any other bullets. He identified them as the bullets he recovered.

THE COURT: I think I understand your objection, but the testimony is the bullets were put in the bag, the bag is sealed, it is taken down to the ballistics lab, it is

opened, three are pulled out for testing, the others are put pack, it is sealed and it is then opened in his office.

MR. PATEL: The problem, your Honor, is with the first step, not the last step. In other words, the chain is fine, assuming these are the bullets that he got, and there is no way to tell these are the bullets he got.

MR. KHUZAMI: There is testimony as to the chain from Rinaldi to Jaen to the ballistics lab to Solowsky. Any other objection goes to weight.

MR. STAVIS: He is talking about Rinaldi specifically and Rinaldi couldn't identify as starting the chain.

THE COURT: Rinaldi testified as to what he did with the 13 bullets. The objection is overruled.

(In open court)

THE COURT: The objection is overruled. 30, other than any reports in it, is received.

(Government's Exhibit 30 was received in evidence)

BY MR. KHUZAMI:

Q. Mr. Solowsky, can you explain to the members of the jury what it is that you did when you fired three of the what was 13 rounds that were originally in Government's Exhibit 30?

A. I took three of the 13 rounds I received, placed

them into the firearm, and I fired it into a water recovery tank at the ballistics range. That is merely a large stainless steel tank containing about 6 or 700 gallons of ordinary water. I recovered the bullets from the water and the shells from the gun. I placed two of these bullets and shells in an envelope which were passed on to the microscopic examiner for microscopic tests.

Q. What gun did you use to fire those two rounds?

A. The .357 magnum Ruger I received.

Q. That is Government Exhibit 11?

A. Yes.

MR. KHUZAMI: May I approach, your Honor?

THE COURT: Yes.

Q. Mr. Solowsky, let me show you what have been marked Government's Exhibits 30A and 30B for identification and ask you to take a look at them, please.

Have you had an opportunity to look at those?

A. Yes, sir.

Q. Starting with Exhibit 30A, can you identify what that is?

A. As I stated, I fired three of the 13 cartridges I received. Two I placed in the envelope and the other one --

MR. PATEL: Objection.

THE COURT: Tell us what 30A is.

THE WITNESS: 30A is one of my test firings, the

bullet and the discharged --

MR. PATEL: Objection.

THE COURT: Identify it and tell us what he knows. Go ahead.

A. My initials JS appear on the base of the bullet and my initials JS appear on the side of the discharged shell.

Q. Did you have an opportunity to examine those prior to your testimony yesterday?

A. Yes, sir.

Q. Where was that?

A. In your office, sir.

MR. KHUZAMI: Your Honor, I would move Government's Exhibit 30A into evidence.

MR. PATEL: Objection, your Honor.

THE COURT: Overruled.

MR. PATEL: May I be heard on that later on?

THE COURT: Yes.

(Government's Exhibit 30A was received in evidence)

Q. Mr. Solowsky, do you recognize what has been identified as Government's Exhibit 30B?

A. Yes, sir.

Q. What is that?

A. These are two of my test firings, the two bullets

and two discharged shells I fired from the original 13 rounds I received. Also in the envelope are two extra tests I took.

Q. Did you fill out the envelope that those items are contained in?

A. Yes, I did.

Q. How do you recognize the envelopes that you filled out?

MR. PATEL: Objection.

THE COURT: Is your signature on the envelope?

A. Yes, it is, sir.

Q. Did you fill out the information on the envelope?

A. I did.

Q. You indicated that in addition to two test firings of two of the bullets you removed from the 13 you received, there were also some additional test firings, is that correct?

A. That is correct.

Q. What are the additional test firings that are in Government's Exhibit 30B?

A. There are two .357 magnum caliber copper-jacketed bullets.

Q. Where did you get those bullets from?

A. From ballistics supply, from my desk.

Q. What firearm were those items fired from?

A. The firearm I received that day.

Q. That is Government's Exhibit 11?

A. That is correct.

Q. Why did you obtain two additional bullets to test fire out of that gun in addition to the ones that were contained within the 13 rounds that you received?

A. I had found out that the evidence in this case received, the bullet evidence was copper jacketed.

MR. PATEL: Objection, your Honor.

THE COURT: Sustained.

MR. KHUZAMI: At this time, your Honor, I would move Government's Exhibit 30B into evidence.

MR. PATEL: Objection.

THE COURT: That is sustained for the moment. Go ahead.

Q. After conducting these test firings, what did you do next, Mr. Solowsky?

A. I made my report out and I sealed the evidence in a plastic bag supplied by ballistics.

Q. You indicated that you fired these shells out of Government's Exhibit 1, is that correct?

A. Yes, sir.

Q. Did that gun function properly?

A. I found the gun to be operable.

MR. PATEL: Objection.

THE COURT: Did it fire?

THE WITNESS: It did.

Q. In addition to firing the gun, did you conduct any other examination of Government's Exhibit 11, the .357 magnum revolver?

A. Yes. Before firing the gun, I did a visual inspection of the chambers of the gun, looking for evidence of discharge. I am looking for particles of unburned powder and discoloration in the chambers of the gun. I did find evidence of discharge in all six of the chambers of this gun.

Q. Did you conduct that test before or after you conducted your test firings into the water recovery tank?

A. Before.

Q. Can you describe what you saw on the gun that led you to conclude that the gun had been operated?

A. I found discoloration in the --

THE COURT: Overruled.

A. -- discoloration in the face of the chambers. They looked like black rings, caused by the burning powder.

Q. How would that compare to a gun that had not been fired?

A. That is, your surface would be clean, no black marks on it at all.

Q. Did you conduct any other tests of Government's

Exhibit 11?

A. Yes. In April of 1991, I was requested to do a trigger pull test and a safety feature test on the firearm.

Q. Can you describe for the jury what a trigger pull test is?

A. A trigger pull test is a test to determine the amount of pressure it takes to pull the trigger. This particular gun works in two modes, single action -- that's by cocking the hammer and pulling the trigger -- and double action, which is merely pulling the trigger.

I held the gun facing upward, holding the barrel, I attached a rod to the trigger, I cocked the gun, I attached a small cloth bag to the end of the rod, and I added weights in half-pound increments to determine how much pressure it would take to pull the trigger in single action mode. Once the hammer fell forward, the trigger was sufficiently pulled to the rear, I measured the weights -- and if I could refresh my memory, sir.

Q. Let me ask you first, do you recall specifically how much weight was required to engage the trigger if you had the hammer of the gun cocked back?

A. I believe it was 3 pounds to 3 and a half pounds pull.

Q. Do you recall what weight was necessary to engage the trigger in a double action test where the hammer was not

cocked?

A. If I may refresh my memory.

Q. What would you need to look at to refresh your recollection?

A. A copy of my report.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Mr. Solowsky, let me show you what has been marked as page 2 of Government's Exhibit 3555A and ask you if that refreshes your recollection as to the amount of weight needed for your double action trigger pull test?

A. Yes, sir.

Q. How much weight is that?

A. Thirteen to 13 and a half pounds pull.

Q. Did you conduct any tests of the safety features of Government's Exhibit 11?

A. Yes, I checked the safety features of the gun to make sure they were intact and working, and both safety features were intact and working.

Q. When you say both safety features, what are you referring to?

A. The first safety feature would be the trigger guard, this item right here which does what it says, guard the trigger.

Q. When you say this item here, what are you

referring to?

A. To the circular thing around the trigger housing, trigger guard. It was here and not damaged at all.

Q. When you say you tested that, what do you mean?

A. Visual inspection to make sure it was present.

Q. What did you look for when you were visually inspecting the trigger guard?

A. To make sure it wasn't damaged, causing any malfunction in the trigger.

Q. Was it in fact intact?

A. It was, sir.

Q. Did you conduct any other safety tests of that weapon?

A. Yes, this particular firearm has a safety bar inside the mechanism, back here in front of the hammer. This can only be activated by pulling the trigger. If the hammer is cocked or not cocked and the gun is dropped on the hammer, it will not discharge unless the trigger is pulled.

Q. Can you just explain what the purpose of this safety bar is?

A. As I just stated, to prevent accidental shooting of the firearm without pulling the trigger.

Q. How does it prevent accidental firing?

A. There is a -- well, it causes the gun not to fire when the trigger is not pulled.

Q. How is it that you examine that to determine whether or not it is functional?

A. I merely pulled the hammer back, I viewed the safety bar, I pulled the trigger to make sure the safety bar was coming up -- or was down in the down position. In the up position it is not safe to shoot. This is caused by pulling the trigger. The safety bar was there, intact, and working.

Q. Mr. Solowsky, are you familiar with what types of ammunition Government's Exhibit 11, that type of weapon will accept?

A. Yes. This is a .357 magnum caliber firearm. It will accept, of course, .357 caliber.

Ammunition. It will also accept .38 special caliber ammunition without altering the firearm or the ammunition.

Q. What is the difference between .357 magnum caliber ammunition and .38 special caliber ammunition?

A. The bullets are exactly the same, interchangeable. The difference in the casings, the .357 magnum caliber casing is one tenth of an inch longer than the .38 special caliber casing.

Q. Did you have an opportunity to examine the type of ammunition that you received in what has been marked as Government Exhibit 30 in evidence that came with the gun

into the ballistics lab?

A. Yes.

Q. What type of ammunition was contained in there?

A. The ammunition I received with the gun? One live .357 magnum caliber cartridge and five .357 magnum caliber discharged shells.

Q. And they would all fit inside Government's Exhibit 11?

A. Yes, sir.

Q. How about the 13 rounds that you received? What make or model of ammunition was that?

A. Nine of the 13 were .357 magnum caliber cartridges and four were .38 special caliber cartridges.

Q. Would all those fit into Government's Exhibit 11, the weapon that you received?

A. Yes, sir.

Q. Are you familiar with the term hollow point ammunition?

A. Yes, sir.

Q. What is that?

A. Hollow point ammunition is a bullet with a hole drilled in the front of it at the manufacturer. This is to cause the bullet to expand on entering its target. It makes a small hole in the front and if it exits it makes a larger hole in the back.

Q. Was any of the ammunition that you received hollow point ammunition?

A. Yes, I believe the one remaining live cartridge with the firearm was a hollow point.

Q. Did you do a physical examination of Government's Exhibit 11, the .357 magnum revolver?

A. Yes, sir.

Q. Did you notice anything about the revolver?

A. Yes. I noticed that the muzzle or the front of the barrel was ground down somehow, over here.

(Continued on next page)

Q. Do you know what the purpose is of grinding down the barrel and muzzle of a revolver?

A. I could think of a couple purposes, to --

MR. PATEL: Objection, your Honor.

THE COURT: May I see counsel at the side.

(At the side bar)

THE COURT: Where is this going?

MR. KHUZAMI: Your Honor, the witness will testify that in his experience the grinding down or the threading of the barrel is used either to replace a silencer or extension line to the weapon.

MR. PATEL: He is going into the realm of pure speculation, your Honor. He is guessing. He does not know why this gun was ground down in this form.

THE COURT: If it goes to a technical aspect of the performance of the gun, I will allow the testimony.

MR. PATEL: One further thing, your Honor. There is absolutely not a drop of evidence about the use of a silencer with this gun on that night. This is, I would suggest this what is coming in now should be taken out as 403. It is purely prejudicial.

THE COURT: Does this connect up with anything else?

MR. KHUZAMI: Independent evidence of whether or not a silencer was used or contemplated in this case? At

this point no.

THE COURT: Or found?

MR. KHUZAMI: Not found either.

THE COURT: You say at this point.

MR. KHUZAMI: At this point.

THE COURT: If there is anything at a later point you can recall him. I am not going to let you do it now.

MR. KHUZAMI: Your Honor, this was a murder weapon used at close range.

THE COURT: I understand that, but there is no evidence that a silencer was present at the time that it was used, and I don't see the probative value in this case. If there is any evidence relating to either the finding of a silencer or a conversation about a silencer in connection with this act, then we can revisit it at that time, but I don't have a proffer now that there is such evidence.

MR. KHUZAMI: Your Honor, may I have one moment to consult with one of my colleagues about this, just to find out if there may be some --

THE COURT: I will let you prove it at that time. At this time I am going to sustain it.

MR. KHUZAMI: OK. I would raise one other matter, concerning Exhibit 30B, which you sustained an objection to. As I understood it, the objection to part of the question was why he decided to test fire a copper

jacketed bullet. His answer would have been that the bullets fired at the scene were copper jacketed and it is easier to compare copper jackets to copper jackets.

THE COURT: Is there any other testimony to show that the bullets were copper jacketed?

MR. KHUZAMI: Yes. They are in evidence.

THE COURT: But has anybody testified that they are copper jacketed?

MR. KHUZAMI: I would have to go back and look at the record. I believe Detective Rinaldi went through each piece and described what they are and they are physically visible in the evidence.

THE COURT: Why don't you show him the exhibit that is already in and see if he can identify it as copper jacketed.

MR. KHUZAMI: I don't understand in any event why they would keep the exhibit out of evidence. Why he included additional copper jacketed bullets is relevant to whether or not the exhibit is admissible.

MR. PATEL: There is another point, which is that Rinaldi never even saw in this courtroom those bullets to identify them as the ones that -- I mean, we don't have the beginning of the chain.

MR. KHUZAMI: Which bullets are you talking about?

MR. PATEL: I believe it is A and B.

MR. KHUZAMI: This is weeks later.

THE COURT: The casings recovered at the scene were copper jacketed?

MR. KHUZAMI: Yes. One was recovered only the deformed lead but other pieces had both the lead and the copper jacket.

MR. PATEL: Your Honor, the casings, just to get the ballistic nomenclature correct, is the part of the bullet left in the gun after it is fired. The copper jacketing is the covering over a lead core that is dispelled when the gun is fired.

MR. KHUZAMI: At this point he testified that he test fired them and placed them in an envelope and signed them. I don't know what more is needed to get that exhibit into evidence.

THE COURT: That is true, although what it proves, if anything, comes later on, is that correct?

MR. KHUZAMI: The next witness will testify that he did the comparison.

THE COURT: Then 30B is in.

(In open court)

MR. KHUZAMI: Your Honor, at this point I would move Government's Exhibit 30B into evidence.

THE COURT: That is received over objection.

(Government's Exhibit 30B was received in evidence)

MR. KHUZAMI: If I might have one moment, your Honor.

THE COURT: Yes.

BY MR. KHUZAMI:

Q. Mr. Solowsky, aside from what you testified about concerning the barrel of Government's Exhibit 11, is there any other part of that weapon that you need when you visually examined it? Aside from the barrel is there any other part of that weapon that you noted when you made a visual examination of it?

A. No, sir.

Q. Did you notice anything about the front sight?

MR. PATEL: Objection, your Honor.

THE COURT: Overruled.

Q. You may proceed.

A. Part of the front sight is ground off.

Q. What is the purpose of a front sight?

A. To aim the firearm, to assist in shooting it.

MR. PATEL: Objection, your Honor.

THE COURT: Sustained. Get off of that.

MR. KHUZAMI: No further questions.

THE COURT: Cross?

MR. PATEL: Yes, your Honor. Do you want me to

start now?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. PATEL:

Q. Detective, you worked in the ballistics squad for 15 years, correct?

A. Yes, sir.

Q. You tested an average of 2,000 guns a year, right?

A. Correct.

Q. Working about 250 days a year, that is about eight guns a day, right?

A. Yes, approximately.

Q. For 15 years, that works out to about 30,000 guns.

A. That is correct.

Q. And you remember as you sit here today test firing this particular weapon?

A. Not without reviewing my notes, no, my report.

Q. So it is your notes that you recall, not the actual firing of this weapon.

A. The report, that is correct.

Q. Whether you testified about firing this weapon, you are testifying about your general way in which you test fired a gun, would that be fair to say?

A. That is correct.

Q. And your general procedure is to take the gun, put some bullets in it, put on the earphones, go into a room, put on the water tank, fire a gun.

A. That is correct.

Q. But as you sit here today, you have no recollection, do you, of doing that with Government's Exhibit 11?

A. That is correct.

Q. This is not the first time you have testified about this case, is it?

A. That is right.

Q. You testified in the grand jury in state court?

A. Yes, sir.

Q. And you testified at a trial?

A. Yes.

Q. Did you look at your testimony either at the grand jury or the state trial before you testified here today?

A. No, sir.

Q. You met with Mr. Khuzami?

A. I did.

Q. Did he review your prior testimony with you?

A. No.

Q. Did he review your notes with you?

A. I had no notes, only my report.

Q. Did he review your report with you?

A. Yes.

Q. Prior to your examining this gun, did you have it examined for fingerprints?

A. No.

Q. To your knowledge, was this weapon ever examined for fingerprints?

A. I have no idea.

Q. Is there anything in your report about its being examined for fingerprints?

A. There is none.

Q. You worked in the ballistics lab at the New York City Police Department, correct?

A. Yes, sir.

Q. That is on the eighth floor of the police academy?

A. It is, sir.

Q. On 22nd Street, is it?

A. 20th Street.

Q. 20th Street, and the fingerprint lab is down the hall from the ballistics lab?

A. Yes, it is.

Q. Same floor?

A. Yes, it is.

Q. The New York City Police Department ballistics squad keeps a library of ammunition, does it not?

A. We have a supply of ammunition, yes.

Q. The 13 cartridges that you received, those were -- there were some wad cutters in there?

A. That is correct.

Q. And a wad cutter is a kind of bullet that police frequently use for target practice, is that fair to say?

A. Yes, it is.

Q. What else did you have in there?

A. I had .357 magnum caliber cartridges.

Q. And there are law enforcement officers who use that as their standard issue, do they not?

A. .357 magnum caliber cartridges, I assume so. I don't know of any but I assume some jurisdictions do.

Q. Until recently, didn't the FBI use a .357 magnum as its standard weapon?

A. I don't know what the FBI used.

Q. You don't know what kind of gun the FBI uses?

A. No.

Q. Did you hear anything about the FBI's attempt to get into 10 millimeter guns?

A. I read something about that, yes.

Q. And it was a dismal failure, wasn't it?

A. I have no idea, sir.

Q. You don't recall anything about them recalling any of those guns that they ordered because they didn't work?

MR. KHUZAMI: Objection.

THE COURT: Sustained and stricken.

Q. Did you know that the FBI for many years used .357 caliber guns as their standard issue weapon?

MR. KHUZAMI: Objection.

THE COURT: I will allow this question, no other. Did you know?

A. No, I did not.

Q. When you test fire a revolver like that -- by the way, it's a Ruger .357 magnum, right?

A. That is correct.

Q. There were thousands if not millions of those manufactured, is that fair to say?

A. Yes, sir.

Q. When you fire a gun like that, things come out of -- a bullet comes out the barrel, correct?

A. Correct.

Q. And various gases come out the barrel?

A. Correct.

Q. And particles of unburnt gun powder?

A. Yes, sir.

Q. The weapon is also designed to discharge gases

through the chambers next to the one that is firing, is that fair to say?

A. It discharges gases through the chamber lined up with the barrel. Some gases do escape through the sides.

Q. And some gases come out the back of the gun.

A. I have never heard of gases coming out the back of a gun.

Q. But you have heard of a gunshot residue test, haven't you?

A. Yes.

Q. A bullet, a live round, has the brass casing, right?

A. Correct.

Q. And it has the bullet, whatever kind, copper jacketed, whatever it is?

A. Correct.

Q. And it has powder inside?

A. Correct.

Q. And it has primer?

A. That is correct.

Q. Primer is the little part in the middle that the firing pin hits.

A. That is correct.

Q. And there are some unique chemicals in that primer.

A. There are.

Q. And some of those, when a person handles or fires a gun, some of those unique elements come out the back of the gun, right?

A. The front and the sides of the gun.

Q. And when you hold the gun, they go on your hand, right?

A. That is possible.

Q. A gunshot residue test is designed to test for those elements from the primer of the bullet.

A. That is correct.

Q. You talked about a trigger hold, right?

A. Yes.

Q. That is how much force it takes to squeeze the trigger to make it fire, correct?

A. That is correct.

Q. When you fire a gun, the energy is directed out the front, right?

A. Yes, sir.

Q. Bullet comes out the front.

A. That is correct.

Q. There is such a thing called recoil, isn't there?

A. That is correct.

Q. That is what kicks the gun back, right?

A. Yes.

Q. Did you measure the recoil on this gun?

A. No, sir.

Q. .357 magnum has, your experience, a good kick to it, doesn't it?

A. It does, yes.

Q. Are you right handed or left handed?

A. I am right handed.

Q. Did you ever fire a .357 magnum with your left hand?

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

Q. You don't recall?

A. I doubt it.

Q. Doubt it, because it would be difficult to hold onto with your left hand, wouldn't it?

A. I am right handed, why would I shoot with my left hand?

Q. But it would be difficult to fire it with your left hand?

A. More difficult than with my right hand.

Q. Thank you.

.357 magnums are made by Ruger and other companies, right?

A. Yes.

Q. Who else makes the .357 magnum?

A. Smith and Wesson makes them, Colt Firearms

Company makes them, Taurus makes them. Numerous companies make .357's.

Q. Does anyone make a semiautomatic .357 magnum?

A. Yes, about two or three manufacturers, I believe, do.

Q. A semiautomatic weapon throws the fired casing out of the gun and loads another bullet in, correct?

A. That is correct, yes.

Q. So the discharged casing would be left at the scene.

A. If it wasn't picked up, yes.

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

(Pause)

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

THE COURT: Yes.

MR. PATEL: With Government's Exhibits 6II and 6G. May I use the originals?

Q. Showing you 6G, does there appear to be a casing of a bullet on the floor there, in the photograph?

A. I don't see any.

Q. There is sort of an area --

MS. STEWART: We can't hear the question or the answer.

Q. There is an area that is circled where I am

indicating with my finger. It is kind of small. Does that appear to be a casing?

A. It could be. It may not be. I can't make it out.

Q. Let me show you 6II. I think you can see the circle on there a little better, in the middle. Does that appear to be a casing?

A. I can't tell by this picture.

(Continued on next page)

MR. PATEL: Thank you.

THE COURT: If you come to a convenient break point in the next five minutes or so. Is this convenient?

MR. PATEL: Sure.

THE COURT: Ladies and gentlemen, we are going to break for lunch. Please leave your notes and other materials behind. Please don't discuss the case. We will resume at 2:00.

(Jury excused)

(Witness excused)

MR. PATEL: Your Honor, I have an application to strike the testimony of this witness. He has absolutely no recollection of what happened at all. He is testifying purely from his report. The government wants to seek to introduce his report as a business record. If they can meet those requirements, fine and well, but I believe the testimony of this witness should be stricken.

MR. KHUZAMI: Your Honor, I believe the witness testified on direct without objection as to the findings when he analyzed these items. Any further objection goes to the weight of the testimony that Mr. Patel seeks to try and argue --

THE COURT: His testimony on cross was that he has no current recollection, correct?

MR. KHUZAMI: I would be happy on redirect to

introduce his report as past recollection recorded, but I believe his testimony on direct was that he recalled these events. He reviewed the notes in the United States Attorney's Office which refreshed his recollection --

THE COURT: He reviewed the report.

MR. KHUZAMI: That is correct. He recalled the events in question.

MR. PATEL: I would also point out to the court that when he first looked at the weapon, the first item of evidence that he was asked to identify, there was an objection, and he was reading from his report at that point.

THE COURT: He had taken the report out of the bag because apparently they were in the same bag.

MR. PATEL: And he had them open on his lap and was reading from them.

MR. KHUZAMI: Your Honor, the witness sealed that report himself, and secondly, it is the same report that he reviewed in the United States Attorney's Office.

MR. PATEL: Your Honor, I am not suggesting that there is some fraud with the report, I am suggesting that he has no memory of what happened here and that he is testifying from the contents of that report, which denies me the ability to do anything with him, really, except test what is in his report.

THE COURT: You would agree, would you not, that

if he were put on the stand, asked as to his normal procedure, and he testified as to what his normal procedure was, and he testified that he made the report in the normal course, then if it came in as past recollection recorded he could get up and read it, right?

MR. PATEL: The report?

THE COURT: Yes.

MR. PATEL: Yes.

MR. KHUZAMI: And I think he could also explain what the report meant, which is essentially what he did on direct.

MR. PATEL: Not what he did. What he did on direct was testify about doing something with this gun, not about his general conduct.

THE COURT: We can revisit this, if you want, after lunch. I will take a look. However, it seems to me you can argue in essence what you have argued to me to the jury. I don't understand why that isn't a jury argument that you can make just as easily without -- there is no need, it seems to me, to strike testimony. He wanted to do it over. I doubt that you want that, do you? He can do it over.

MR. PATEL: No. Your Honor, I have made my request for relief. If he doesn't remember, he shouldn't be testifying about things that he doesn't remember. If they

want to introduce his report that is fine and well, if they can make the requirement.

THE COURT: We can consider it further after lunch. I will consider the possibility of striking his direct but having him testify again on a new direct examination as to his report, and going through those numbers. If he can do it, fine. If he can't do it, fine, too. Or simply permitting you to argue it. I take it you want the direct stricken and redone.

MR. PATEL: Yes.

MR. KHUZAMI: I don't see the need for that exercise, your Honor. Also, I would note that the time to object was on direct.

THE COURT: No, because there was nothing on direct other than the fact that at one point he looked at the report to indicate that he had no recollection, and Mr. Patel made the objection at the time that he noticed him looking at the report, and he told him not to look at the report.

MR. KHUZAMI: The time to do that would have been voir dire of the witness, I expect, not on cross-examination.

THE COURT: No. I will consider making him do it again.

Mr. Stavis.

MR. STAVIS: Your Honor, I have an additional application. When I arrived in court this morning, Mr. McCarthy gave me a letter indicating that he expects to turn over the bulk of Mr. Salem's 3500 material by Friday. I wish to formally request that any reports or papers concerning Mr. Salem's polygraph examination by the Federal Bureau of Investigation be included with that material.

MR. McCARTHY: Your Honor, I think I already committed that we would turn that over.

THE COURT: Mr. Jacobs.

MR. JACOBS: Your Honor, the subpoenas to the FBI and CIA that are returnable until today, Ms. Amsterdam and I agreed to postpone that until Thursday afternoon when they would have a response, but I would like a response --

THE COURT: You want to talk about it at the end of the day Thursday?

MR. JACOBS: Yes.

THE COURT: That is a problem. Can we talk about it on Friday?

MR. JACOBS: Fine. I am not sure about all counsel. In any event, the government said they would respond by Thursday and I said no problem.

THE COURT: We will have a conference at some point on Friday about that.

(Luncheon recess)

AFTERNOON SESSION

2:15 p.m.

(In open court; jury not present)

THE COURT: I am sorry to have taken more than the allotted time but it may have saved some time. Before we get started, do you want to be heard any further, Mr. Patel?

MR. PATEL: As to --

THE COURT: As to this witness? It is my inclination to strike the testimony. I also don't think there is any way you can get it in, given the current state of the record, but that is something that you can explore at another time. I don't know whether you are aware, there are a few cases, one called United States versus Oates, O-A-T-E-S. That is at 560 F.2d, and it is an oldie. The relevant discussion rambles on a bit, but the thrust of that is that ---

MR. LAVINE: Judge, it is very hard for us to hear you back here.

THE COURT: It is United States versus Oates, at 560 F.2d. It begins at page 45 but the relevant discussion is up at the 70's, that is, the page 70's. It says in essence that you can't get in -- or confirms the fact that under Rule 803.8 you cannot get in police reports except against the government. Police reports are not admissible

as an exception to the hearsay rule except against the government. That would apply both to past recollection recorded and to business records.

Notwithstanding that this record was made by somebody in a laboratory rather than somebody who was out on the street, it would appear that Oates applies, because Oates itself involved a chemist's report.

That opinion, frankly, has been much criticized. But as recently as United States versus Rosa, R-O-S-A, 11 F3d, around pages 331, 332, 333, the Second Circuit has been navigating around Oates and has never repudiated it. The lines around this courthouse being what they are, I am bound by Oates. I will hear you on any distinguishing argument you want to make about whether that decision is applicable or not, but if it is applicable then I believe it applies to bar this witness's testimony.

Is there something that you wanted to add, Mr. Patel?

MR. PATEL: No, Judge.

MR. KHUZAMI: Your Honor, just one clarification. Does the court's ruling apply not only to his testimony but the foundational exhibits that were introduced in evidence, specifically 30A and B, which were the test firings from the weapon, and 10 of the 13 rounds that were introduced in evidence? He saw his signature on the --

THE COURT: I think that he can do but I would like to consider that at relative leisure. There is no need, it seems, to pass those around, is there?

MR. KHUZAMI: No, it is just relevant to the next witness's testimony, who took those firings and made test firings.

THE COURT: Mr. Patel?

MR. PATEL: Does the next witness recall this or is he just relying on notes?

MR. FITZGERALD: Your Honor, the next witness is Robert Cotter and I spoke to him over the lunch. He told me that he has done 5,000 bullets but this one was different in his mind because it was the Kahane case. I asked him if I asked you three months ago the results of your firing, and he did have to refresh his recollection. That is the proffer of what he would say.

MR. PATEL: Your Honor, I objected to the introduction of the bullets, even to the foundation by Mr. Solowsky. I am at a bit of a disadvantage, your Honor.

THE COURT: Actually, you are at a bit of an advantage at the moment, as near as I can tell.

MR. PATEL: Your Honor, it would be my contention that the witness's testimony should be stricken and the exhibits admitted through him should also be stricken.

THE COURT: It seems to me that the question of

whether he did or did not do things, like identify his signature on a bag, which he clearly can and did, are different from the substantive part of the testimony relating to evaluation or procedures that he followed. So that to the extent that he is a mere -- not so mere -- link in the chain, then I think that does not have to be stricken. However, the procedures that he followed and the good learning about whether the bullets -- well, no. The general lore upon whether .38 caliber bullets fit .357 magnums is something that he knows. I think it is simply the procedures that he followed that are out, his test firing of the gun, those procedures are out. It might be helpful -- I am sorry.

MR. FITZGERALD: I think our intention would be, because the exhibits are in, would be to proceed with the next witness, who would testify as to his recollection of the results and would also testify as to the practice he follows and how he analyses exhibits.

THE COURT: The exhibits that were received through this witness are of two kinds.

MR. PATEL: Your Honor, I am sorry, but for some reason the microphone makes it very difficult -- it is somehow manipulating sound.

THE COURT: Is it easier if I shut it off?

MR. PATEL: I can actually understand you better

without the microphone.

THE COURT: They can't hear me.

MR. PATEL: It is somehow muffling the sound.

THE COURT: What if I sit further back?

MR. PATEL: That is better.

THE COURT: There were two kinds of exhibits that were received through that witness. One were the various items of evidence recovered on the night of the events in question and that are in the same form that they were in before. As to those, he is simply in essence a link in the chain of custody. The other exhibits are exhibits that result only from his having followed procedures that he can't testify about.

MR. KHUZAMI: Your Honor, the two sets of test firings, one he marked his initials on them, JS -- that was Government's Exhibit 30A -- and the second, 30B, were test firings done by him, placed in an envelope which he signed and dated. As to those, I think our position would be that there is an independent foundation, independent of his testimony that those in fact are what they purport to be. You are right as to the --

THE COURT: The foundation is what?

MR. KHUZAMI: Is, of his initials and his signature on the sealed ballistics bag.

MR. STAVIS: Except that the test firings, your

Honor, are part of the procedures that he is not permitted to testify about.

THE COURT: Wait a second. Let's assume that he were not in the picture at all. He is the only person, it seems to me, who has the test firings as having been fired from that weapon. That is the problem and that is what links those exhibits to the testimony of the next witness. All he can do is say that his signature is on the bag. He can't testify, because he has no recollection, to the fact that those bullets are in fact the product of the test firing of that weapon.

MR. KHUZAMI: He could certainly testify from his regular practice that that is what he does, and I believe the information --

THE COURT: But I believe that United States versus Oates bars that.

MR. KHUZAMI: Doesn't that bar the report as opposed to his testimony? If he can testify to his regular practice --

THE COURT: Wait a second. He can testify to his regular practice, but when you say his regular practice with regard to those test firings, he has no recollection of those test firings, and the only thing that he is testifying about when he testifies to those test firings is what is in his report.

MR. KHUZAMI: What if he testifies in every case when he does test firing, he puts it in a ballistics envelope, signs it, files it away so the next witness can do the comparison. In addition, there is information on the ballistics envelopes which he fills out in his --

THE COURT: That is straight past recollection recorded, which I believe is barred under the rationale of Oates.

Given the way this problem arose, and my general desire not to make decisions like this with the wind blowing in my face as it is now, I am certainly not going to admit the testimony of any witness whose testimony hangs on his, as the record stands now. If you want to go over this and go over Oates and go over Rosa and any other decisions you think are relevant at what passes jokingly for leisure in this case, I will do it. But as it stands now, nothing that hangs on his testimony is coming in.

MR. McCARTHY: Your Honor, can we have a minute to regroup?

THE COURT: Yes.

(Pause)

THE COURT: I don't like to keep jurors waiting for no apparent reason. I would like to get them out here, tell them that we have a problem that we have to solve, that we are addressing the problem and send them back?

MR. KHUZAMI: I think we are ready to proceed, your Honor.

MR. JACOBS: Do you have to bring them out?

THE COURT: Yes. I usually do bring them out.

MR. KHUZAMI: We can not call back Detective Solowsky, not call Mr. Cotter, call Detective Bettenhauser who did serial work on the weapon and independently remembers the gun in question.

One other matter that I wanted to bring to the court's attention, Franklin Garcia who was the cabdriver on November 5, 1990, unfortunately passed away. I have proffered his prior state testimony with proposed redactions, side bars, etc. We have agreed as to what we would read to the jury with the exception of two matters.

THE COURT: You still need my guidance, which is to say, bring the jury out --

MR. KHUZAMI: We could do it at the break.

THE COURT: What break? As I understand it, there will be one witness and then we get to that. Correct?

MR. KHUZAMI: That is correct.

THE COURT: I guess the question then becomes what we tell them at this point about Solowsky's testimony. Do I hear a suggestion?

MR. PATEL: Yes, your Honor. I would ask that you instruct the jury that his testimony -- may I have a

moment, your Honor?

(Pause)

MR. PATEL: Your Honor, perhaps we should revisit this after we bring the jury out and send them back in.

THE COURT: I have a suggestion, but let's get them out and then send them back.

There is actually another case, if anybody is taking citations, United States versus Yakobov, Y-A-K-O-B-O-V, 712 F.2d 20, discussion at pages 26 and 27.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

THE COURT: I don't like to have you sitting back there for long periods of time when you expect to start at a particular time when we are not starting at a particular time without an explanation. So what I am going to offer you is an explanation and send you back out. We have some legal matters to resolve and it is taking longer than I thought, and it is going to take a little bit longer. So I am going to send you back. Please don't discuss the case and we will be with you soon. Thanks.

(Jury excused)

MR. McCARTHY: Your Honor, I would like to take a couple of minutes to think about this, but I think we may be able to discuss the possibility of putting on the witness's

state testimony under Rule 804. He has testified in the state. If his memory is in fact exhausted, which I understand the claim is by Mr. Patel as developed on cross-examination, I think he is unavailable for purposes of Rule 804A. So that the prior testimony which was --

THE COURT: Then of course we get into the question of whether his state testimony was or wasn't based on an existing recollection.

Was that the point you were going to make, Mr. Patel?

MR. PATEL: Exactly.

THE COURT: If it was based on existing recollection, you may have something to talk about. If it wasn't --

MR. McCARTHY: I hear you.

THE COURT: -- we are, as the phrase goes, chasing our tails.

MR. McCARTHY: We will take a look at it. I just wanted to put that on the table in addition to everything else.

THE COURT: Fine. I guess the question is what if anything I was going to tell them. I can tell you what my inclination is.

MR. STAVIS: We will hear your inclination and then we will tell you. How is that, your Honor?

THE COURT: My inclination is to tell them little if anything, because since they are told generally that they are not supposed to form any opinions until all the evidence is in, then fine. At the most I think I would tell them that whether they are going to be considering that witness's testimony or not, and if so how much of it, is something that I have to resolve with the lawyers, and that they are not to draw any conclusions one way or the other about any item in his testimony until I give them further direction.

MR. STAVIS: Is it my understanding that the issue has not been resolved, your Honor?

THE COURT: The issue -- which issue is it?

MR. STAVIS: The issue with regard to the striking of portions of this witness's testimony concerning the testing and the procedures he followed --

THE COURT: My belief is that it is going to be resolved to strike it based on Oates. I would like some leisure to read that case. I would like to hear from the government as to whether they have a different reading of that case or whether there are other cases that I didn't find over the lunch hour. If I were a betting man, I think I would bet that that's the way it is going to come out, but I would like to hear from them.

MR. STAVIS: If the posture of the issue is that your Honor has not ultimately determined it, then your

instruction that you suggested be given to the jury is satisfactory to the defense.

MR. KHUZAMI: That is fine with us, your Honor.

THE COURT: You have another witness, other than the person -- other than the trapeze artist who hangs by his testimony?

MR. KHUZAMI: No, this witness is on the ground.

I would like to quickly raise the issue of Mr. Garcia's testimony.

THE COURT: Right.

MR. KHUZAMI: There are two areas within that that the government and counsel for Mr. Nosair dispute. The first is that Mr. Garcia in his prior state testimony identified Mr. Nosair as the man who entered his cab that night and then fled out of the cab. Mr. Stavis's position is that that should not be admitted. The government's is that it comes in in general under the unavailability exception, and in addition, a prior identification, I believe, as an independent grounds is an exception to the hearsay rule under 801(d)(1)(C).

THE COURT: Go ahead. I understand your position.

MR. KHUZAMI: The second issue concerns Mr. Garcia's authentication of five photographs, four of which were pictures of the interior of his cab, the fifth of

which was a picture of, I believe the Bunny Deli, which was close to the hotel on Lexington Avenue. In the state court trial he identified those five photographs. They had People's Exhibit numbers 20 through 24. They now have different government exhibit numbers. The government's position would be that they are the identical photos, that they have the original exhibit notices, and that if they come in his entire testimony should.

THE COURT: Why don't I hear the contrary argument.

MR. STAVIS: I understand 804(d)(1)(C) and I understand that former testimony can be admitted. My objections go first toward the identification. Mr. Khuzami has cited an exception under the hearsay rule. I don't think that there is any question that with the defendant sitting next to his counsel at a one-defendant trial that an identification is suggestive, your Honor. There is a case that deals with right to counsel in a courtroom identification and that case is Moore versus Illinois, 98 Supreme Court 458, which says an in-court identification is subject to the same rules regarding suggestiveness and reliability as any out-of-court statement.

Your Honor, I did not have an opportunity to cross-examine this witness, but the witness was cross-examined, so I understand under the rule that it is

going to come in. But if I am bound by somebody else's cross-examination, what I am asking the court to do is to stick to what the testimony is and not to change the testimony with things like an identification where is judge says -- a judge, not the witness -- after the identification, "indicating the defendant." And I would also ask the court to exclude having the government change exhibit numbers now in rereading the testimony so that photographs can be introduced through a deceased person, because the testimony is as it is, and if I have to be bound by it, your Honor, I think they should as well.

THE COURT: Come on. They are bound by the substance of it, and what the record reflected the record reflected. There was no dispute certainly from his client that the person that was identified was the defendant. If you want me to instruct the jury that the exhibits had different tags on them at the state trial, I will be happy to do it. I don't see that it is a matter of substance. The exhibits will come in and so will the identification. That is after the witness would testify?

MR. KHUZAMI: Yes, your Honor. We would propose to call the witness and then read the testimony.

THE COURT: I guess we get the jury back.

One other item. Should the jury be advised or should they not be advised that the witness is deceased?

MR. STAVIS: I would ask that they not be advised.

MR. KHUZAMI: Unavailable.

THE COURT: I will just say that he is unavailable.

(Jury present)

THE COURT: Two things. First of all, ladies and gentlemen, again I am sorry for the delay. Second, with regard to the testimony of Mr. Solowsky, who was on the stand before lunch, one of the things that we were talking about when you were out is how much if any of that testimony will wind up being received and considered by you. So what I am asking you at this point is please do not draw any conclusions from that testimony or based on it until I give you further instruction about how much if any of it you may consider.

Mr. Khuzami.

MR. KHUZAMI: Yes, your Honor. The government calls Stephen Bettenhauser as the next witness.

(Continued on next page)

STEPHEN BETTENHAUSER,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. How are you employed?

A. I am employed by the New York City Police Department.

Q. What is your current rank?

A. My current rank is that of a detective.

Q. Where are you assigned?

A. Currently I am assigned to the Crime Scene Unit.

Q. For how long have you been assigned to the Crime Scene Unit?

A. About seven months now.

Q. What was your previous assignment?

A. Previously I was assigned to the New York City Police Department ballistics squad.

Q. What were your duties and responsibilities with the New York City Police Department ballistics squad?

A. My duties and responsibilities there were that of a firearms examiner. Basically that entails examination of firearms, trajectory examinations and serial number restorations.

Q. What sort of training do you have in the

examination of firearms?

A. Apart from firing in the ballistics squad, we are given an on-the-job training course that is given by the senior members. In addition, I am a certified armorer for Smith & Wesson and Sturm & Ruger in automatic revolvers and semiautomatic revolvers. I am also a certified rifle and pistol and shotgun instructor. I am also an apprentice gunsmith. I am also certified by the State of New York as a licensed die maker and engraver.

Q. During the time that you worked in the ballistics squad, did you have any particular specialty or expertise that you had?

A. I was the primary detective doing serial number restorations at the time.

Q. Can you explain to the jury what the serial number restoration is?

A. Serial number restoration is an effort to obtain a serial number that has been obliterated from a firearm by means of grinding or scratching off, in an effort to disguise the serial number that was originally printed on the gun by the manufacturer.

Q. What is a serial number on a firearm?

A. A serial number is a series of numbers or letters being printed on a firearm, which is individual to that firearm, which identifies it in some cases by model and

caliber and manufacturer, but in any case is identifies that firearm individually so that all firearms of that make, model and caliber have the same serial number.

Q. If you know the serial number, in general what kind of information can you get about the firearm that it pertains to?

A. In certain cases when you have the serial number you can find out the actual factory the gun was manufactured in, where the gun was sold, where it was shipped to, and consequently what ownership in particular with that firearm, how many people actually owned the gun can be traced.

Q. Can you explain how a serial number is actually placed on a gun?

A. It is done so by mechanical stamping, by machine or by hand in some cases. A series of metal stamps are put together in certain sequences alphabetically or numerically, and they are imprinted or stamped and pressed into the gun.

Q. What are the various methods that you have used to restore a serial number that has been obliterated or erased from a firearm?

A. Various methods are used, primarily acid etching process, which is done by many agencies. There is also glycerin immersion test, which is basically iron filings that are immersed in glycerin and an electron magnet is done. Primarily it is done by acid etching process.

Q. Can you describe primarily what the acid etching process entails?

A. Basically the acid etching removes metal from the gun. The gun is first polished so that any scratches that may influence the examiner are taken away from the gun. So that the metal is polished. The acid is applied to the surface of the firearm, so that where the metal has been stamped into the gun is actually harder, the metal surrounding it is softer. Basically the analogy would be, if you have ever walked on a beach and taken steps in sand --

MR. PATEL: Objection.

THE COURT: Overruled.

A. You take steps in sand, the water comes and washes it away, you can still see the imprint of your foot. It is the same type of thing with the firearm. When the gun is stamped it creates a stress. When you apply the acid, it eats away the soft metal and leaves the impression where the serial number used to be.

Q. Directing your attention to November 1990, did you conduct any serial metal testing on a gun that was taken in connection with the shooting of Rabbi Meir Kahane?

A. Yes.

Q. Do you recall what?

A. It was a Ruger .357 magnum revolver.

MR. KHUZAMI: May I approach, your Honor?

THE COURT: Yes.

Q. Detective, let me show you what has been received in evidence as Government's Exhibit 11 and ask if you could take it out and look at it. Do you recognize that?

A. Yes, I do.

Q. What is it?

A. This is the .357 Ruger revolver which I performed a serial number restoration on in connection with that case.

Q. When you received that weapon from the ballistics squad, did it have a serial number?

A. No, it did not.

Q. Can you describe for the jury what condition the area was in where the serial number would normally be found?

A. Basically the gun was in the same condition except in the butt portion of the gun, which is over here where the grips are, there was a gouge that was caused by either a grinding --

MR. PATEL: Objection.

THE COURT: You say there was a gouge?

THE WITNESS: Yes, there was.

MR. PATEL: To that, no objection.

THE COURT: You can't say what caused it.

Q. Can you describe what you saw in addition to the gouge on the bottom of the gun that you examined?

A. It appeared to be actually roughed out. It was ragged, much in the same manner as the barrel of the gun is, and it appeared to be caused by the same type of tool.

Q. Were any of the numbers on the serial number readable on that weapon when you received it?

A. No, they were not.

Q. Can you describe to the jury what steps you took -- withdrawn.

Did you try and restore that serial number?

A. Yes, I did.

Q. Can you describe what steps you took to do that?

A. Basically what I did was first move down the surface where the gun was defaced, the butt portion. I tried to use the metal filing iron test on it, which again is using electromagnetics in an effort to have the iron filings attract themselves to where the serial number was. Failing that, I used an acid etching method and did obtain some numbers off the gun.

Q. Were you able to successfully read any of the numbers as a result of your use of the metal filings method?

A. No, I was not.

Q. Were you able to read any of the numbers as a result of your acid etching test?

A. Yes, I was.

Q. Do you recall what those numbers were?

A. No, I do not.

Q. As a result of obtaining those numbers, did you take any additional steps?

A. Yes, I did. I contacted the manufacturer in this case, which was Sturm & Ruger, and asked them for a printout of particular firearms of this make and model and serial numbers, to see if they would actually coincide, which they did.

Q. What did you do after that?

A. I forwarded that information to my commanding officer and then I placed the gun in the evidence room.

Q. Can you indicate to the jury what your confidence was that the numbers that you were able to raise from that weapon were accurate?

MR. PATEL: Objection.

THE COURT: Sustained.

Q. Detective, could you see all of the numbers that you raised clearly when you undertook your acid etching test?

A. No, I could not.

Q. How many numbers or how many digits were in the serial number for this weapon?

A. In this particular firearm there are five digits and a dash in between a three-digit prefix number.

Q. I am sorry. There are three digits first?

A. Three digits first and five additional numbers with a dash in between.

Q. A total of eight numbers?

A. A total of eight numbers.

Q. Out of those eight numbers, how many were you able to view clearly as a result of your attempts to restore the serial number?

A. With any degree of absolute certainty, I would say maybe two or three of the numbers. The rest I would say I was probably no more than 70 percent certain on.

Q. How many times did you conduct this acid etching test in an effort to raise the serial numbers?

A. I conducted it several times. I first performed the acid etching test on it and reduced the findings of that examination to a report. I then really wasn't certain again after conferring with the manufacturer and then redid the test, possibly thinking that I may have missed something or I went too fast, or whatever the reason was, and I came up with a few different numbers. Again, as you do the acid etching test, the numbers flash. They don't always stay constant.

Q. When you say flash, what do you mean?

A. Basically as the acid etches the metal, there are certain layers of metal material in this gun. Some are harder than others. So as the material is etched away by

the acid, it will be momentarily visible and actually almost flash. The number would actually come up in the metal and then disappear almost immediately as you see it.

MR. KHUZAMI: No further questions, your Honor.

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

CROSS-EXAMINATION

BY MR. PATEL:

Q. You mentioned on direct that when you were assigned to ballistics you did trajectory analysis. Did you do one in this case?

MR. KHUZAMI: Objection to form.

Q. Did you do.

Q. Could you explain to the ladies and gentlemen of the jury what a trajectory analysis is?

A. A trajectory examination is done when there are two fixed points of bullet impact either at a crime scene normally or in a building or an area where a crime was committed by a firearm.

Q. So, for example, if you had a place where a bullet passed through a curtain and passed through a wood paneling, you could do a trajectory analysis from that?

A. No, you couldn't.

Q. Why not?

A. There would have to be two fixed points of impact, a primary and secondary point of impact. A curtain

is a movable object and wouldn't be considered stationery, and --

Q. If you had a wood paneling in a concrete wall both with bullet impacts, could you do a trajectory analysis from that?

A. If they were in line with one another, you could.

Q. Did you do a trajectory analysis in this case?

A. No, we did not.

Q. You stated that you are a certified instructor of some kind?

A. Rifle, pistol and shotgun.

Q. And you are certified by the National Rifle Association?

A. That is correct.

Q. That's the NRA?

A. Yes.

Q. So you train people in how to shoot weapons?

A. Yes, I do.

Q. Have you ever been to the Calverton range?

A. Yes, I have.

Q. Did you train people in how to fire weapons there?

A. At Calverton, no.

Q. Did you fire weapons yourself there?

A. Yes, I have.

Q. Handguns?

A. Yes.

Q. Rifles?

A. Yes.

Q. When you went there, you paid a $5 fee?

A. No, I did not. I belong to a club which sublet the back of the range.

Q. So you went with a group of people?

A. Yes.

Q. This is a social outing where you went and fired weapons?

A. That is correct.

Q. As you sit here today with Government's Exhibit 11, you can't see the serial number on that gun, can you?

A. No, you can't.

Q. The acid -- withdrawn.

You say these numbers flash and then they disappear?

A. That is correct.

Q. And you could only identify two of those numbers?

A. No, I didn't say that.

Q. I don't mean to put words in your mouth, but with absolute certainty how many of the numbers could you identify at the time you filled out that report?

A. With absolute certainty, I would say maybe three

or four.

Q. How many numbers did you include in your report?

A. I included eight.

Q. Does your report indicate that you could only identify half or less of those numbers with absolute certainty?

A. No, it does not.

Q. You know that your report is relied on by others as an investigatory tool, don't you?

A. Yes, that is true.

Q. And you knew that that report is potentially inaccurate?

A. No, it is a rendering of my opinion.

Q. And you found out later -- you attempted to trace the serial number that you included in your report, right?

A. No, I did not.

Q. Did you contact ATF and ask them to do that?

A. Yes, I did.

Q. And they told you that that was part of a shipment of weapons to India?

A. No. I was told nothing by ATF at all.

Q. You never got a report back from them?

A. No, I did not.

Q. When you were in ballistics, ballistics uses ATF to trace their weapons?

A. Ballistics does not perform traces on firearms. That is done by individual detective squads.

Q. You contacted ATF on your own?

A. Yes, I did.

Q. ATF is the Bureau of Alcohol Tobacco and Firearms, is that correct?

A. That is correct.

Q. And that is a branch of the Treasury Department, correct?

A. That is correct.

Q. And that is a branch of the federal government.

A. That is correct.

Q. Was it your practice to contact the federal government to trace firearms?

A. Not ordinarily, no.

Q. In this case you did?

A. In this case I did.

Q. And they never called you back?

A. No.

Q. Did you have any other attempts to trace this weapon?

A. By myself, no.

Q. Did you ask other officers to trace this weapon?

A. No, that was not my job.

Q. You were part of the ballistics squad, weren't

you?

A. That is correct.

Q. And the whole purpose of your specialties was to find out where this weapon came from.

A. No. My specialty was to raise the serial number. My specialty is not to trace this firearm.

Q. You don't raise a serial number just because you want to see what numbers are on the gun, though. There is a purpose.

MR. KHUZAMI: Objection.

THE COURT: Sustained.

Q. There is a reason that you do what you do, is that correct?

A. That is correct.

Q. And it is part of an investigation.

A. That is correct.

Q. You examined this weapon in November of 1990, is that correct?

A. That is correct.

Q. And you subsequently examined it again, is that correct?

A. That is correct.

Q. When was that?

A. My examination was maybe a few days afterwards, or the day afterwards.

Q. Did you prepare a second report?

A. Yes, I did.

Q. Where is that report?

A. That report is probably, the original copy is probably on file with the ballistics laboratory.

MR. PATEL: May I approach the witness, your Honor, with 3537B?

THE COURT: Yes.

Q. I am showing you this. Is that your original report?

A. I believe it is, yes.

Q. Is this form the form that you used to make ballistics reports?

A. Yes.

Q. You filled out another form just like this one?

A. Yes.

(Continued on next page)

MR. PATEL: May I have a moment with the government?

Your Honor, could we have a brief side bar?

(At the side bar)

MR. PATEL: I would like the other report, Judge. If he has to go someplace to find it, I would like it.

MR. KHUZAMI: There is no other report that I am aware of except for this which incorporates results from additional testing.

THE COURT: Have you established that there was a prior written report?

MR. PATEL: I just established that this was his first report, and there was a second report in the same format. This is your standard New York City ballistics squad report, your Honor.

THE COURT: There was an earlier one --

MR. PATEL: This is the first one. He just said there was an initial one. There is a later one.

MR. STAVIS: That was his testimony.

MR. KHUZAMI: Might I suggest that you question him however you want to question him about his subsequent testing and then we will attempt to get the report, find out if the second report exists, and they can call him back if they want to do that.

THE COURT: Let's proceed.

(In open court)

BY MR. PATEL:

Q. When you prepare a report as part of your official duties as a member of the ballistics squad, how many copies of that report do you prepare?

A. Five.

Q. Where do each of those five copies go?

A. One copy is forwarded to the district attorney's office, one copy is put on file.

Q. On file in ballistics?

A. Yes. Another copy is put in the bag with the gun, the investigator gets one copy, and there was another copy sent to Alcohol Tobacco and Firearms.

Q. I am sorry. I didn't hear the last thing you said.

A. The last copy goes to Alcohol Tobacco and Firearms.

Q. So the federal government receives one copy and the ballistics department certainly has another copy.

A. That is correct.

Q. And you did that with both of the reports that you prepared as to the serial number on this weapon?

A. That is correct.

Q. You talked about the metals being harder where the weapon is stamped, is that correct?

A. That is correct.

Q. There are other methods or there are numerous methods -- withdrawn. If you used a drill press, that would remove the metal entirely, is that correct?

A. Yes, it would.

Q. And then you would be unable to restore the serial number at all.

A. If enough material was removed, yes, that would be correct.

Q. That wasn't done in this case?

A. No, it was not.

Q. But as you sit here today, having examined this weapon -- how many times did you perform the test the first day? That was what, November 7?

A. The first day I performed the test once.

Q. Just once, and which test did you perform once?

A. What test are you referring to?

Q. You did something with iron filings?

A. Yes.

Q. Didn't work?

A. No.

Q. And you did the acid etching test?

A. That is correct.

Q. You did it once?

A. Yes.

Q. And you based your first report on that?
A. That is correct.
Q. Something caused you to redo that test, right?
A. That is correct.
Q. Because you found out that the numbers you got couldn't have been the numbers from that gun, right?
A. That is right.
Q. And you redid the test and you came up with another group of numbers.
A. That is correct.
Q. And you changed your report.
A. Yes, I did.
Q. If you did the test again, you might come up with yet another group of numbers, is that fair to say?
A. No, that wouldn't be fair to say, because there was enough material removed at that point from being ground down and also from being etched that any further etching would be pointless.
Q. Any further etching may have removed the number entirely.
A. Entirely, yes.
Q. So you are saying as that weapon sits here now, no one could recheck your work.
A. I don't believe so, no.
Q. Because all that material, the hard material

underneath where it was stamped initially has now been removed.

A. That is correct.

Q. So it is fair to say that you have essentially obliterated this weapon by acid etching it completely?

MR. KHUZAMI: Objection.

A. Yes, that would be fair to say.

THE COURT: Overruled.

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

THE COURT: Yes.

MR. PATEL: Nothing further, your Honor.

MR. KHUZAMI: Brief redirect, your Honor?

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Detective Bettenhauser, you testified that you first tried to use a metal filing to raise the serial number, is that correct?

A. That is correct.

Q. And that was unsuccessful?

A. That is correct.

Q. And after that you used an acid etching test?

A. That is correct.

Q. Is it inherent in the acid etching test that some of the material on or around where the serial number is

removed or obliterated as a result of conducting the test?

A. Yes, that is correct.

Q. Is there any way that you know of with the metal filings test not having worked to attempt to raise the serial number and at the same time leave the metal in the exact same condition as it was before you did the test?

A. Not with that particular examination.

MR. PATEL: Objection.

THE COURT: Overruled.

Q. I am sorry.

A. Not with that examination. It would be impossible.

MR. KHUZAMI: No further questions.

THE COURT: Anything else?

MR. PATEL: Your Honor, could I reserve any recross subject to what we discussed at side bar?

THE COURT: Yes.

MR. PATEL: Thank you.

THE COURT: You are excused. Thank you.

(Witness excused)

MR. KHUZAMI: Your Honor, at this time the government's next witness is the reading of the testimony.

THE COURT: The name of that witness is what?

MR. KHUZAMI: Franklin Garcia.

THE COURT: The testimony of this witness is

going to be presented to you based on his testimony at a prior trial. That witness is unavailable but his testimony from that trial is legally admissible. Therefore it is going to be read to you from that prior trial and you should give it whatever weight you think it deserves as if he had in fact testified here before you.

MR. KHUZAMI: Thank you, your Honor.

THE COURT: Are you going to have somebody do the witness?

MR. KHUZAMI: I was going to propose to read it myself, your Honor.

THE COURT: How long is it?

MR. KHUZAMI: It is approximately 67 pages, but there are a number of redactions.

THE COURT: Get somebody up there to read the other part.

Mr. Fitzgerald is going to read -- obviously it is Mr. Fitzgerald and not Mr. Garcia. Mr. Fitzgerald is going to read the answers of the witness as if he were Mr. Garcia. Go ahead.

MR. KHUZAMI: Starting at page 742, line 16:

"Q. State your name, spell your last name.

"The Witness: Spelling it, Franklin, F-R-A-N-K-L-I-N.

"Court officer: Last name?

"The Witness: G-A-R-C-I-A.

"Court officer: County of residence?

"The Witness: Queens."

Skipping to page 743, line 21:

"The Court: Mr. Garcia, I am informed that you understand English and I am asking whether you would like to testify in English rather than in Spanish.

"The Witness: OK.

"The Court: You would?

"The Witness: Yes.

"The Court: We will keep the interpreter here in the event that there is some question that you have with regard to the language so that you can straighten it out with her.

"The Witness: OK."

Proceeding to page 744, line 19:

"Q. Mr. Garcia, where were you born?

"A. Mexico.

"Q. What is your first language?

"A. Spanish.

"Q. Do you speak English?

"A. Yes.

"Q. Can you tell us how well you speak English?

"A. To understand my job.

"Q. What is your job?

"A. Riding taxi.

"Q. What kind of cab do you drive?

"A. A New York City taxi.

"Q. What color is it?

"A. Yellow taxi.

"Q. Do you own your own cab?

"A. Yes.

"Q. Now, if any questions that I or anyone else who questions you today asks you is unclear, please ask us to repeat it or ask for help from the interpreter.

"A. OK.

"Q. On your job, are you able to speak to your customers in English?

"A. Yes.

"Q. And you generally understand them?

"A. Yes.

"Q. Calling your attention to November 5, 1990, at about 9:00 in the evening, were you working?

"A. Yes.

"Q. Where were you?

"A. I was on 49th and Third Avenue.

"Q. Were you in your cab?

"A. Yes.

"Q. 49th and Third Avenue?

"A. Yeah."

(Continued on next page)

THE COURT: Excuse me, Mr. Khuzami. Can you stop for a moment. May I see counsel briefly at the side.

(At the side bar)

THE COURT: If this is going to go on for 67 pages, they are due for a break and they get a snack at 3:15. So I am inclined to break now and let them have their break and resume.

MR. KHUZAMI: That is fine.

THE COURT: Ladies and gentlemen, we are going to take an afternoon break. Please don't discuss the case. Leave your notes and other materials, and don't discuss the case. We will resume in a few moments.

(Jury excused)

THE COURT:

(Recess)

(Jury not present)

MR. NOOTER: Your Honor, before we resume, my client has an application for your Honor.

THE COURT: I am not hearing any application from him right now.

MS. AMSTERDAM: Your Honor, with Mr. Hampton-El's consent, I will be filling in for Mr. Wasserman.

THE COURT: Does that meet with your approval, sir?

DEFENDANT HAMPTON-EL: Yes.

THE COURT: The record should reflect that he nodded yes.

I guess the witness can resume the stand.

(Jury present)

THE COURT: Ready to resume?

MR. KHUZAMI: Yes, your Honor.

THE COURT: Go ahead.

(Continued on next page)

MR. KHUZAMI: Beginning again at page 746, line 5:

"Q. Did you have a passenger at that time?

"A. No.

"Q. Had you had a passenger before that?

"A. Yes.

"Q. Where was that?

"A. On 48th, Third Avenue.

"Q. I am sorry. You what?

"A. I leave the passenger 48th and Third Avenue.

"Q. You left someone there?

"A. Yes.

"Q. Where did you go from 48th and Third Avenue?

"A. I make a left on 49th, going to Lexington.

"Q. And in what direction, what that be?

"A. Going to west side.

"Q. And what avenues were you in between?

"A. Lexington and Third Avenue.

"Q. Which one were you headed towards?

"The Court: The witness just said Lexington Avenue.

"A. Could you repeat that?

"Q. What avenue were you headed to?

"A. (Through the interpreter) to Lexington.

"Q. Can you tell us what happened at that time?

"A. A man got in my taxi from the back.

"The Court: A man got in the taxi from where?

"A. A man got in the taxi on the rear door, right side.

"Q. Did you see the man before he got into the taxi?

"A. No.

"Q. Where was your cab when he got into your cab?

"A. Three quarters to Third Avenue.

"Q. Were you closer to Third Avenue or closer to Lexington?

"A. Closer to third Avenue.

"Q. Closer to Third Avenue?

"A. Yes, closer to Third Avenue.

"Q. Were the doors to your cab open or locked at that time?

"A. Open.

"Q. Where did the man go in your cab?

"A. In the back door, in the back seat, rear door.

"Q. Did he say anything when he got in?

"A. Yes. He say go, go, take the light.

"Q. Did he make any hand movements when he did that?"

Proceeding to page 748, line 3.

"Q. Did he move his hands at all?

"A. Yes. He told me to go straight."

Proceeding to page 748, line 8.

The witness is indicating with his fingers pointing.

"Q. Is that what the man does?

"A. He pointed to go straight, to take a light."

Proceeding to page 428, line 15:

"Q. Now, what if anything did you say at that point?

"The Court: If anything.

"Q. If anything?

"A. Excuse me.

"Q. What if anything did you say at that point?

"A. I say, this is a red light, it's traffic.

"Q. Was there a red light in the vicinity?

"A. It's on Lexington and 49th.

"Q. And how was traffic on 49th Street at that point?

"A. It was a lot of traffic.

"Q. And how many cars were in front of you?

"A. Approximately five, six.

"Q. Were you stopped or moving at that point?

"A. Moving slowly.

"Q. Now, did you get a chance to look at the man after he entered your cab?

"A. On the mirror, on the car. I focused all the back seat.

"Q. Where is that mirror in your cab?

"A. (Through the interpreter) right in the middle, flat in the middle of the front glass window. I could see everything in back from the mirror.

"Q. What if anything did you see in your mirror

"A. I see the man was breathing hard."

Proceeding to page 749, line 21:

"Q. Did you notice anything else?

"A. It was looking around all over.

"Q. By the way, do you have a partition in your cab?

"A. Yes.

"Q. Was it up or down at that point?

"A. Down.

"Q. Did you see the man's hands?

"A. Repeat again.

"Q. Did you see the man's hands?

"A. Yeah, I see.

"Q. Did you see anything else?

"A. I see something silver, but I can't tell it was that.

"Q. Where was that silver thing?

"A. I don't know where is that.

"Q. Where did you see it?

"A. I see it in his hands.

"Q. Where was his hands when you saw a silver thing in his hands?

"A. It was -- I seen his head holding over there."

Proceeding to page 751, line 5:

"A. Where one rests one's head, that's where I could see his hands.

"Q. Now, can you describe the man you saw in your mirror? What did he look like?

"A. He was, he was round faced, he had a round face like me, mustache a little bit.

"Q. What color was his hair?

"A. Black.

"Q. Was it curly hair or straight hair?

"A. Curly hair.

"Q. About how old was he?

"A. Thirty-five, 40.

"Q. About what size was he, his body size?

"A. Like me, heavy, medium sized.

"Q. And what was his position when you looked at him in the mirror?

"A. Was front of the seat and hold like this from the car.

"Q. Was he sitting backward in his seat or forward?

"A. Forward.

"Q. Did you notice anyone else in the vicinity of your cab?

"A. Could you repeat that.

"Q. Did you notice anyone else around your cab on 49th Street?

"A. (Through the interpreter) yes, there were many people running to Third Avenue. One was close to to my car with a little cap here.

"Q. The man with the little cap, how close did he come to your cab?

"A. Like approximately from here to the lady, that much.

"Q. Indicating the court reporter.

"The Court: This one right here?

"A. This lady.

"The Court: Indicating the court reporter.

"Q. And this man with a little hat who came near your cab, where if anywhere was he looking?

"A. Again.

"Q. Where did he appear to be looking?

"A. He was looking all over. When he passed by me I pointed with my left hand like this.

"Q. Indicating behind you?

"A. Yes.

"Q. What if anything did that man with the little cap do?

"A. He continued to go, he continued.

"The Court: He continued what, Mr. Garcia?

"A. (Through the interpreter) he kept walking.

"Q. Did he go past your cab?

"A. Yes.

"Q. All right. Did there come a time when you removed your cab from 49th Street?

"A. Yes."

Proceeding to page 753, line 21:

"Q. What happened when you moved the cab?

"A. When I moved the car, I go like this because a little faster and I feel something but I don't know what's that.

"Q. What did that something feel like?

"A. I feel something cold and hard on my back.

"The Court: What part of your head did you feel that hard thing?

"A. Around right here.

"The Court: The rear of your led?

"A. Yes.

"Q. Where did you go next?

"A. I make a left on Lexington.

"Q. Can you describe what 49th Street looked like west on Lexington Avenue.

"A. It was dark, no people, no light on 49th.

"Q. Can you describe what Lexington Avenue looked like at that time?

"A. There was so many people, so many lights.

"Q. Where did you drive your cab?

"A. Going south, Lexington.

"Q. What if any building was on your left on Lexington Avenue when you turned your cab?

"A. It's the Marriott Hotel.

"Q. Were there any other people in front of it?

"A. Yes, there were a lot of people.

"Q. Where did you go?

"A. I go south, stay on my left side.

"The Court: You went where, Mr. Garcia?

"The Witness: South, Lexington.

"Q. What if anything did the man in the back of your cab do when you turned onto Lexington Avenue?

"A. When I close to the hotel, he laid down completely on the back seat.

"Q. Could you see him in your mirror any more?

"A. No, no more.

"Q. Did you ever hear the doors of your cab open at that point?

"A. No.

"Q. Did you see anyone on the streets that you recognized at that point?

"A. I seen the man before that have a little hat. I see that again and I pointing again like this with my left hand.

"Q. Indicating behind you.

"A. Yes, behind me.

"Q. Where did you see the little man that time -- excuse me, the man with the little cap that time? Where was he?

"A. He was coming from Lexington going north, and I was there.

"Q. And what happened next?

"A. When I get to the light, I park the car,

open the door, and I pointed to the back seat right here. I see the man in the car."

Proceeding to page 756i line 7:

"Q. Can you tell us what if any light or where this light was that you stopped at?

"A. Say again.

"Q. Where was the light that you stopped your cab at?

"A. 49th and Lexington, 48th Street.

"Q. Where did you stop your cab? Where in relation to the east side of Lexington Avenue?

"The Court: Mr. Garcia, what side or portion of Lexington Avenue did you stop your car?

"A. It's on left side, second lane.

"Q. When you say the left side, what side would that be?

"The Court: It means the left side.

"A. Northeast side.

"Q. And you got out of your cab. Were there people around your cab?

"A. Yes.

"Q. Did you recognize anyone?

"A. I see again the man with the little hat.

"Q. Now, what did you do after you got out of your cab?

"A. I tried, I tried to go to the deli, but so many people, I can't get in. So I go like going east side.

"Q. Where was the deli?

"A. 48th Street, northeast side.

"Q. And at any point did you turn around?

"A. Yeah. I see your man getting, get, getting out from the taxi.

"Q. When did you turn around?

"A. When I was on the sidewalk.

"Q. Was that before you got to the deli or after?

"A. Before.

"Q. And what did you see?

"A. I see the man that was getting out from the taxi.

"Q. Did you recognize that man?

"A. Yeah, that was the man that was in my taxi.

"Q. What did you see?

"A. I see he got a gun in his hand.

"Q. Which hand? Do you remember?

"A. No, I don't remember.

"Q. What did the gun look like?

"A. It was silver.

"Q. Can you show us how he was holding it?

"A. He was running and pointing back.

"Q. When you say back --

"A. Back, like pointing to the taxi.

"Q. Was it pointing it at any person?

"A. I think he points to the man with the little hat.

"Q. Where was the man with the little hat, the time that the man from the cab pointed the gun at him?

"A. He was next to my taxi, the rear door, right side.

"Q. OK. Now, after you saw that, what did you do?

"A. I tried to go -- excuse me -- (through the interpreter) -- where I say the weapon, bent down like this and I went by the cars towards Third Avenue.

"Q. And on what street was that?

"A. 48th Street.

"Q. Was anything happening to you physically at that time?

"A. I get so scared, I make, wet my pants.

"Q. What happened after that? Did you hear anything?

"A. Yeah, I hear some shots.

"Q. How many did you hear about?

"A. Approximately five, six:

"The Court: When you heard the shots, where were you, Mr. Garcia?

"A. I was -- excuse me (Through the interpreter) I was hiding underneath the cars.

"The Court: Where were those cars that you were hiding under?

"A. It was on 48th and Lexington, the left side car parking.

"Q. What direction did the shots come from?

"A. Come from across the street.

"Q. When you say across the street, what street?

"A. 48th, west south corner.

"Q. Of 48th and what?

"A. 48th Street.

"Q. And what avenue?

"A. Lexington.

"Q. Did you look in that direction?

"A. Yeah, I look across the street.

"Q. What if anything did you see?

"A. I see the -- a man was in my taxi on the ground, post officer, and the lady.

"Q. The man who was on the ground, where was he on the ground?

"A. Repeat again.

"Q. The man who was on the ground, where exactly was he on the ground?

"A. (Through the interpreter) up in front of the post office.

"Q. Where is the post office?

"A. It is between 47th and 48th, Lexington, on the right side.

"Q. That is the right side as you are facing downtown?

"A. Say again.

"Q. Is that the right side of the street as you are facing downtown?

"A. Yes.

"The Court: Is that the west side of the street?

"A. West side of the street, yes.

"Q. Now, did you do anything at that point? Did you go anywhere?

"A. Yeah, I crossing across street.

"Q. Where did you go?

"A. Across street on 48th Street southwest corner.

"Q. What if anything did you see there?

"A. I see the man who was in my taxi on the ground, post officer and the lady.

"Q. Can you explain the position of the man

who was lying on the ground? Where were his feet? Where was his head?

"A. Feet was pointing to the post office, head pointing to the street.

"Q. Was he on the street or on the walk?

"A. On the sidewalk.

"Q. How close were his feet to the post office?

"A. I think that much.

"The Court: Can you estimate in feet or yards?

"A. (Through the interpreter) I can't say, about half a meter.

"The Court: All right.

"Q. What was his condition?

"A. I see he had a lot of blood on his body.

"Q. Did you see anything on the ground?

"A. I see the gun next to the body.

"Q. Where was it?

"A. It was on the left side.

"Q. How was the man lying on the ground? Was his face up, face down, on his side?

"A. Face up.

"Q. How far from the left side of the body was the gun?

"A. Like from here to the chair.

"Q. Can you tell us what color it was?

"A. Silver.

"Q. Now, you said a moment ago that you also saw a postal person.

"A. Post officer.

"Q. Yes?

"A. A lady. I see again the man with the little hat.

"Q. Where was the postal officer?

"A. He was -- (Through the interpreter) he was at the post, he was at the post office doors. They were like opened.

"Q. What if anything was he doing?

"A (Through the interpreter) he was leaning on the lady.

"Q. where was the man with the little hat?

"The Court: Did you see at that time the man with the little hat?

"A. Yeah, I see close over there.

"Q. Where was he? Do you remember?

"A. I don't remember, but he was around there, close.

"Q. What was he doing?

"A. He was screaming."

Proceeding to page 762, line 25:

"Q. Now, what did you do next?

"A. I go back to the taxi and stay there.

"Q. Did you do anything after that?

"A. The detectives.

"Q. Pardon me?

"A. The detectives coming to me.

"Q. After the detectives came, where if anywhere did you go?

"A. Say again.

"Q. Did there come a time when you left your cab?

"A. Yes.

"Q. Where did you go?

"A. I go across the street again.

"Q. Where across the street did you go?

"A. 48th, Lexington, with the post office close over there.

"Q. And who if anyone did you see there?

"A. I see again the post officer, lady, a man with a little hat, police from New York police.

"Q. Did you see anyone on the ground?

"A. The man was in my taxi.

"Q. How close did you get to him?

"A. Like from here to there. (Through the interpreter) from here to there where it begins.

"The Court: The beginning of the --

"A. Yes, the beginning there.

"The Court: The jury separation.

"Q. Can you tell us whether his eyes were open or closed at that point?

"A. He was open.

"Q. Did you notice his facial expression?

"A. He was smiling.

"Q. Now, did you see the gun this time?

"A. Yeah, I see the police officer.

"Q. I am sorry. Who had it?

"A. A New York police.

"Q. Where did the police have the gun?

"A. He put it over here (Indicating)

"The Court: In his belt?

"A. Yeah, in his belt.

"Q. Aside from the postal officer and the man and the lady lying on the ground, who else did you see?

"A. Also I see the man with the little hat.

"Q. Where was he?

"A. He was screaming.

"Q. Where was he in that area, though?

"A. He was around there.

"Q. Now, the man you saw on the ground, do you think you could recognize him if you saw him again?

"A. Probably.

"Q. Could you look around the courtroom and tell us whether you see him anywhere in the courtroom today?

"The Court: You can get up if you want to.

"A. I think the man with the little cap, white cap, white shirt.

"The Court. You may be seated. The record will reflect the reference to the defendant.

"Q. Mr. Garcia, have you ever seen any photographs of the defendant or any pictures of him?

"A. No.

"Q. Have you ever seen anything on television with respect --

"A. Yeah, on TV.

"Q. When?

"A. I don't remember. I think a week or two weeks.

"The Court: Hold on. A week or two weeks after it happened or a week or two weeks from now?

"A. From now.

"Q. And do you recognize him today based on the person you saw on November 5, 1990, or based on what you saw on TV?

"A. Excuse me.

"Q. Do you recognize him today based on what

you saw on November 5, 1990, or based on what you saw on television?

"A. November 5."

At this time I would like to have marked as Government's Exhibit 6M. Proceeding to page 767, line 2.

"Q. Mr. Garcia?

"The Court: Permit Mr. Garcia to take a look at it. Take a look, Mr. Garcia.

"Q. Mr. Garcia, do you recognize that?

"A. Yeah, that's my taxi.

"Q. Is that what your taxi looked like on November 5, 1990?

"A. Yes."

I would offer in evidence Government's Exhibit 6M.

"The Court: Please show it to defense counsel."

MR. STAVIS: Your Honor, are these exhibits coming in now?

THE COURT: Yes, they are.

MR. STAVIS: Are we reading the testimony as written?

THE COURT: Let me explain to the jurors, in the state court trial the exhibits in question had different exhibit numbers. Mr. Khuzami is reading the exhibit numbers that are going to be used at this trial rather than the

exhibit numbers that were used at the state trial. That is the only difference. Instead of saying People's Exhibit whatever, he is saying Government's Exhibit 6M, which is the way, assuming the exhibit is received, it will be received here. That is the only difference in the way the testimony is being read.

Go ahead.

MR. KHUZAMI: Counsel for Mr. Nosair: No objection.

The Court: There being no objection, Government's Exhibit 6M for identification received in evidence as Government's Exhibit 6M.

I would like to have this marked as Government's Exhibit 6N for identification.

Proceeding to page 768 line 11.

"Q. Mr. Garcia, do you recognize that?

"A. Yes, that's the back for my taxi.

"Q. I am sorry. What?

"A. The taxi seat for my taxi.

"Q. Is that the way it looked on November 5, 1990?

"A. Yes."

I offer into evidence as Government's Exhibit 6M

The Court: Please show it to counsel.

MR. STAVIS: Your Honor, I am going to object to

the legal colloquy being added in addition to the testimony.

THE COURT: Just read the testimony, don't read the colloquy.

MR. KHUZAMI: Your Honor, shall I read that the item was admitted into evidence?

THE COURT: Yes.

MR. KHUZAMI: The Court: There being no objection, Government's Exhibit 6M for identification received in evidence as Government's Exhibit 6N.

I would like to have this marked as Government's Exhibit 6O for identification.

The Court: Take a look at it if you will, Mr. Garcia.

The record says perusing document.

"Q. Do you recognize that?

"A. Yes, that is part of my taxi.

"Q. What part of the taxi

"A. Front seat where I drive.

"Q. Is that the way it looked on November 5, 1990?

"A. Yes."

"The Court: There being no objection, Government's Exhibit 6O for identification received in evidence as Government's Exhibit 6O.

"Q. Do you see anywhere in that photograph the

mere he that you testified a moment ago in your cab

"A. Right here.

"The Court: The mirror as shown in the photograph?

"(Indicating)

"The Court: Thank you. Can you hold that picture up to the jury and just show the jury, please."

The record says indicating and then mirror here.

"Q. Is there anything different or unusual about that mirror?

"A. This mirror is a little bigger.

"Q. What area does it allow you to see?

"A. The whole seat and the back.

"Q. Thank you."

I would like to have marked as Government's Exhibit 6P for identification.

"Q. Do you recognize that, Mr. Garcia?

"A. Yes.

"Q. What is it?

"A. That's my taxi.

"Q. Is that the way it looked on November 5, 1990?

"A. Yes.

"The Court: There being no objection, Government's Exhibit 6P for identification marked into

evidence as Government's Exhibit 6P.

Finally, I would like to have this marked as Government's Exhibit 6JJ for identification.

"Q. Do you recognize that photograph, Mr. Garcia?

"A. Yes. That's the deli.

"Q. And is that the deli you testified about today?

"A. Yes.

"Q. Is that the same way it looked on November 5, 1990?

"A. Yes.

"The Court: There being no objection, Government's Exhibit 6JJ for identification received in evidence as Government's Exhibit 6JJ.

"Q. Mr. Garcia, could you mark on that photograph where you parked your car on Lexington Avenue that day. Thank you very much."

Proceeding to page 777, line 17:

"I have nothing further, Judge.

"The Court: Thank you very much, Ms. Worth."

Now starting cross-examination.

"Q. Mr. Garcia, I hope you can understand me. My name is William Kunstler and I am one of the attorneys for Mr. Nosair, and I want to ask you first, do you remember

giving a statement to the police on November 5, that evening?

"A. Yes.

"Q. And you were interviewed, questioned by a detective, were you not?

"A. Yes.

"Q. When you were interviewed by the detective, where did that take place, the interview??

"A. At the precinct.

"Q. At the precinct, and that was the 17th precinct, if you remember? Do you remember that name?

"A. Yes.

"Q. That number?

"A. No.

"Q. OK. It was a police precinct?

"A. Police precinct."

Defendant's Exhibit N marked for identification.

"The Court: Mr. Garcia, take a look at that. Read it to yourself for a few moments.

"A. I cannot read English.

"The Court: Would the interpreter help Mr. Garcia with the Spanish translation.

"The Interpreter: Where do you want me to begin reading, your Honor?

"The Court. The entire thing, quietly.

"Q. Do you remember giving that statement to the police?

"A. Yes."

Going ahead to page 784, line 9:

"Q. Mr. Garcia, when you were questioned by the police officer that night, did he ask you who you saw on the street that night?

"A. No.

"Q. He never asked you that question? You are sure of that?

"A. Yes.

"Q. Did there come a time when you appeared before a grand jury?

"A. Yes.

"Q. And Ms. Worth questioned you, didn't she, at that grand jury?

"A. Yes.

"Q. And before you testified before that grand jury, did Ms. Worth tell you the name of a man by the name of Gottesmann?

"A. Repeat.

"The Court: Before you went before the grand jury, did Miss Worth tell you anything about a gentleman by the name of Gottesmann?

"A. I don't remember.

"Q. Did you learn before you went to the grand jury, weren't you told the name of Mr. Gottesmann by Miss Worth or Mr. Greenbaum?

"A. I cannot pronounce that name, Gottesmann. For me it's very hard.

"Q. Do you know the name Gottesmann now?

"A. Yes.

"Q. Who told you about this man named Gottesmann?

"A. I met him at the precinct.

"Q. Did you meet him at the precinct?

"A. Yes.

"Q. Did you talk to him at the precinct?

"A. Excuse me.

"Q. Did you talk to him at the precinct?

"A. I don't remember.

"Q. Did you hear him say anything at the precinct?

"A. I don't remember.

"Q. Did you know his name was Gottesmann at the precinct?

"A. Yes.

"Q. How did you know his name? Did he tell it to you? Did he tell you his name?

"A Yes.

"Q. When you testified in front of the grand jury, then you knew his name, is that correct?

"A. Yes.

"Q. And before you testified in front of the grand jury, did you have a talk with Ms. Worth or Mr. Greenbaum?

"A. Yes.

"The Court: What is the answer?

"A. Yes.

"Q. And in that talk, did they tell you what they were going to ask you in the grand jury?

"A. I don't remember.

"The Court: When you spoke, before you went in the grand jury with the district attorneys, did they tell you the questions they were going to ask you?

"A. Yes.

"Q. Was the answer yes?

"A. Yes.

"Q. And did they talk to you about Mr. Gottesmann, that they were going to ask questions about him?

"A. No.

"Q. They never mentioned him?

"A. No.

"Q. What did they talk to you about before you went to the grand jury?"

That is page 788, line 2.

"A. Who spoke to me?

"Q. Well, did Miss Worth speak to you or Mr. Greenbaum before you went into the grand jury?

"A. Before?

"Q. Yes.

"A. I can't say. They asked me the questions inside the grand jury.

"The Court: Mr. Garcia, before you went into the grand jury and they asked you questions with them, had you just before then spoken with any of the district attorneys about the case?

"A. Yes.

"The Court: All right. With whom did you speak?

"A. I don't know what the man's name is, the lady.

"The Court: All right.

Q. Ms. Worth, and when she spoke to you did she go over with you what she was going to ask you in the grand jury?

A. No.

Q. Well, what did she talk about with you?

A. I came to the office and then I went to the grand jury.

Q. Did Miss Worth talk to you at all before you went

to the grand jury?

"A. Yes.

"The Court: All right. Mr. Garcia, when you spoke with Ms. Worth before you went in the grand jury, did she speak to you about the kinds of questions that she would ask when you went in?

"A. I don't remember.

"Q. Do you remember at all what you talked about with Ms. Worth

"A. If I remember -- could you tell me again?

"The Court: All right. Mr. Garcia, and perhaps you should translate this into Spanish: When you spoke with Ms. Worth before you went into the grand jury, did she talk to you about your testimony?

"A. Yes.

"The Court: All right.

"Q. Now, when did she talk to you about your testimony? What did she say to you?

"A. I don't remember exactly.

"Q. Did she mention the man with the cap, Mr. Gottesmann plan?

"A. Yes.

"Q. OK. Now, taking you back to that night, when you turned your cab on to Lexington Avenue, you saw a lot of people on the street, isn't that correct?

"A. Yes.

"Q. And did you, did you try to point to people or try to inform them that there was a man in the back seat of your car?

"A. I pointed, the man was closer to me, the man with the little hat.

"Q. Right.

"A. I pointed like this.

"The Court: What did you do, Mr. Garcia?

"A. I pointed with my left hand like this.

"Q. What did he do?

"A. He looked at me and he continued to go."

Proceeding to page 791, line 7:

"Q. When you were interviewed by the police officer on that very night, November 5, Mr. Garcia, didn't you tell the police officer that interviewed you that you pointed to the people on the street about the man in the car and nobody saw you?"

Proceeding to page 791, line 18:

"A. Can you repeat it?

"The Court: The reporter will read it once again, perhaps translated into Spanish."

Proceeding to page 792, line 24.

"The Court: Do you recall having told that to the detective that night?

"A. Yes.

"Q. And that was the truth when you spoke to him, wasn't it? You told him the truth?

"A. Yes.

"The Court: Was it accurate? That was accurate? That was accurate when you said that that night?

"A. Yes.

"Q. Thank you. Now, with reference to the man you have identified as the man with the little cap -- and you now know from Ms. Worth his name was Mr. Gottesmann, is that correct?

"A. Yes.

"Q. When the man was in your back, the back of your car, and you were driving past the Marriott Hotel going south on Lexington Avenue --

"A. Yes.

"Q. Now, you saw this man with the little cap at this time, didn't you, when you were driving down Lexington Avenue between 49th and 48th Street?

"A. Yes, I saw him.

"Q. And when you saw Mr. Gottesmann at that time, which direction was he going?

"A. Going north.

"Q. He was going north?

"A. Yeah, 48th, 49th.

"Q. Right, and then you proceeded down to 48th Street, where you have indicated you stopped your cab, is that correct?

"A. Yes.

"Q. And from the diagram, you stopped your cab almost in the middle of the street?

"A. No, in the corner.

"Q. But how far from the curb?

"The court: What lane did you stop the taxi?

"A. The second lane.

"Q. And that's when you put your car, your taxi in park, is that correct?

"A. Yes.

"Q. You moved the lever to park, and then you left the cab, is that right, you got out?

"A. Yes.

"Q. By that time the man had gone, correct? He had left the cab before you stopped the car?

"A. He opened the door, the rear door, right.

"The Court: Did he open the door after you stopped or before?

"A. When I stopped."

Proceeding to page 795, line 19:

"Q. And that's when you got out yourself?

"A. Yes.

"Q. And when you got out, you went on 48th Street, didn't you?

"A. Yes.

"Q. And you went east on 48th Street?

"A. Yes.

"Q. How far did you go?

"A. Corner to Lexington, went east.

"Q. And did you get to Third Avenue?

"A. No.

"Q. How near were you from Third Avenue?

"A. I was only like approximately two, three cars from Lexington.

"Q. And then you stopped, is that correct?

"A. Yes.

"Q. And you turned around?

"A. Yes.

"Q. And when you turned around, did you see the passenger that had been in your car?

"A. No. I see before.

"Q. Well, I know you saw him before, but when you turned around on 48th Street, where was he? Could you see him?

"A. No, I don't see.

"Q. And then I take it you talked back towards your cab.

"The Court: Well, what did you?

"A. After I heard the shots.

"Q. After you heard the shots?

"A. Yes.

"Q. And how many shots did you hear?

"A. Approximately five, six.

"Q. Five or six.

"The Court: Is it five or six or might have have been five?

"A. Five.

"Q. OK and after you heard the shots, you turned around and came back to your cab, towards the direction of your cab?

"A. No, I see across the street.

"Q. I am trying to find out where you walked to. You walked towards Lexington Avenue?

"A. I walked to the corner.

"Q. To the corner.

"The Court: When you got to the corner, where did you go, if anything?

"A. I go across the street where the post office.

"Q. So you crossed the street diagonally this way?

"A. Uh-huh.

"Q. Across the street, and then you saw the man. That was when you saw the man lying on the ground?

"A. Yes."

Proceeding to line 9:

"Q. Did he have a cap on his head that night?

"A. No.

"Q. Did he have a beard that night?

"A. A little bit.

"Q. Little beard, not like he has now?

"A. No, less than that.

"Q. What about the mustache? Did he have a mustache?

"A. A little bit more.

"Q. Now, two weeks ago you saw him on television, is that correct?

"A. Yes.

"The Court: Did you see him on television two weeks ago?

"A. Yes.

"Q. When he was on television, did he have the cap on? Didn't he?

"A. No.

"Q. And on television, did he look the way he looks now?

"A. No.

"Q. What was the difference?

"A. Now is more skinny and lighter.

"Q. And at what station did you see him?

"A. I don't remember.

"Q. Well, was it a news station?

"A. Yes, news station.

"Q. And it was in color?

"A. Yes."

Proceeding to line 19:

"Q. In any event, your television was in color?

"A. Black and white."

Proceeding to line 25.

"Q. It was on some news station?

"A. Uh-huh.

"Q. How many times did you see him on the news station?

"A. One time, seconds.

"Q. And after the incident, after November 5 did you ever see him in the newspaper?

"A. No.

"Q. Did you read about it in the newspaper?

"A. No, I don't read.

"Q. Did you see it on television?

"A. No.

"Q. This was an incident you were involved in. You didn't see it on television or read it in the newspaper at all?

"A. No.

"Q. OK.

"A. No time.

"Q. So I take it the first time you saw any news about this was two weeks ago.

"A. I saw because my children play with the TV with the channels.

"Q. Right.

"A. And I see the man who was in my taxi.

"Q. I am saying --

"The Court: About how long a view did you have of the television?

"A. How long?

"Q. Yes.

"A. Second.

"Q. What I am asking, Mr. Garcia, except for seeing him on television two weeks ago, is it your testimony that between two weeks ago and November 5, you never read or saw or heard anything about this case?

"A. No.

"Q. With reference to your cab, you own the medallion, do you not?

"A. Yes.

"Q. Do you own the cab?

"A. I still owe money in the bank.

"Q. I understand about the bank.

"A. I own it, yes.

"Q. You took a mortgage to get the medallion because it cost a lot of money?

"A. Yes.

"Q. On that night, November 5, after you stopped your cab at 48th Street and Lexington, did you ever yell out or scream to the people outside, the man's in my cab or anything like that?

"A. No. I got out and I pointed to the back seat.

"Q. And you never yelled out?

"A. Yeah, I say there is a man here in the taxi.

"Q. You yelled that out, didn't you?

"A. Yes.

"Q. To whom did you yell it out?

"The Court: Well, did you yell it to any particular person or persons?

"A. Yes.

"The Court: To whom did you yell?

"A. The man with the little hat, and there

were so many people by the sidewalk.

"Q. When you were questioned by the police and you told, you told them that you yelled out, you told them that you yelled out to the man in the little hat, isn't that correct?

"A. Repeat again.

"Q. When you were questioned on that night by the detective, you told him you stopped your cab on the northeast corner of 48th Street and Lexington, and you yelled out to the man in the little cap that he was in the -- the passenger was in the back seat.

"A. No, I was never asked by the police.

"Q. What did you tell the police about to whom you yelled at that night?

"A. They never asked me.

"Q. You told the police that you yelled out, didn't you, that night?

"A. I don't remember."

(Continued on next page)

THE COURT: Excuse me. May I see counsel briefly at the side.

(At the side bar)

THE COURT: How much more?

MR. KHUZAMI: Probably 10 or 15 minutes.

MR. STAVIS: It would be my preference, being the Ramadan holiday, that we break if we have to go over time. It would present a problem for the defendants.

MR. KHUZAMI: Whatever the court's preference.

THE COURT: If we break, we have to pick up with some kind of continuity. We can break and figure out where we pick up tomorrow.

(In open court)

THE COURT: We are going to break for the day, ladies and gentlemen. Please leave your notes and other materials behind. Please don't discuss the case. We will see you tomorrow as close to 9:30 as I can make it. Good night. Please don't discuss the case or read about the case or hear about the case or any related matter on the outside. Thank you.

(Jury excused)

MR. PATEL: Your Honor, could I have an instruction that the witness be instructed not to discuss his testimony with Mr. Khuzami?

THE COURT: It's a standing instruction.

Tomorrow morning. We are adjourned.

(Proceedings adjourned until 9:30 a.m., Wednesday, February 22, 1995)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
a/k/a "John Medley,"
CLEMENT HAMPTON-EL,
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.
----------x

S5 93 Cr. 181 (MBM)

February 22, 1995
9:30 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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(In open court; jury not present)

THE COURT: Are we set to go?

MR. McCARTHY: We would like to take up the issue of other witnesses when the Court wants to get around to it.

THE COURT: How much more of the reading do we have?

MR. KHUZAMI: We have about ten pages, approximately.

THE COURT: Do we have another witness after that?

MR. McCARTHY: We have a short witness.

THE COURT: Let's do the reading and the short witness and then take up the other matter.

MR. PATEL: Who is the short witness?

THE COURT: Mr. Patel has asked who the short witness is.

MR. McCARTHY: I may have made a mistake.

I am sorry, your Honor. We don't have a short witness after that. We have other witnesses, but it takes us off into a different area from the gun. We have other witnesses to call, but it takes us into another area.

THE COURT: Why don't I hear from Mr. Patel, then. Did you get their letter?

MR. PATEL: I am on the first paragraph of the second page.

MR. STAVIS: I have had the letter faxed to me and I have read it, your Honor.

THE COURT: Well, fair is fair. You had time to respond to this and I want them to have time to respond to your letter. You will have to go off into something else, and if we have to come back to it we will, in some fashion. The jury will be able to follow it. But I am not going to simply have him respond to a letter he is on the second page of, or have Mr. Stavis respond when it was Mr. Patel's witness.

How long do you need? Not to read the letter; to read, think about, and respond.

MR. PATEL: Tomorrow morning, your Honor?

THE COURT: Fine.

THE CLERK: Shall I bring in the jury?

THE COURT: Yes.

MR. McCARTHY: For counsel's benefit, after Garcia's testimony is read, we will call special agent John Lewczko.

(Jury entered courtroom)

THE COURT: Good morning, ladies and gentlemen.

We are going to resume with the cross-examination in the state case of the witness Franklin Garcia, the witness who is the taxi driver.

Go ahead.

MR. KHUZAMI: Picking up on page 801, line 23.

"Q Now, when, on that night, November 5th, after you stopped your cab at 48 Street and Lexington, did you ever yell out or scream to the people outside, 'The man's in my cab,' or anything like that?

"A No. I got out and I pointed to the back seat.

"Q And you never yelled anything?

"A Yeah. I say, there's a man here in the taxi.

"Q You yelled that out, didn't you?

"A Yes.

"Q And to whom did you yell it out?

"The Court: Well, did you yell it to any particular person or persons?

"A Yes.

"The Court: To whom did you yell it?

"A The man with the little hat, and there was so many people on the sidewalk.

"Q When you were questioned by the police and you told them that you yelled out, you told them that you yelled out to the man in the little hat, isn't that correct?

"A Repeat again."

MR. FITZGERALD: I think we read this yesterday.

MR. KHUZAMI: We are just backtracking briefly to keep the same context.

"Q When you were questioned on that night by the detectives, you told him you stopped your cab on the northeast corner of 48 Street and Lexington and you yelled out to the man in the little cap that he was in the passenger, was in the back seat?

"A No, I was never asked by the police.

"Q What did you tell the police about to whom you yelled out that night?

"A They never asked me.

"Q You told the police that you yelled out, didn't you, that night?

"A I don't remember."

MR. KHUZAMI: Proceeding ahead to page 809, line 2.

"Q Mr. Garcia, when you yelled out of your cab something about the man's here or the man's in the cab, did you yell that out to the man with the skull cap or the little cap on his head?

"The Court: Did you see at that time the man with the cap?

"A Yes, he passed by.

"Q Then you yelled something out when you got out of the cab?

"A. No. I say, the man's here.

"The Court: I don't hear you.

"A I just say, the man's here. There's a man in my taxi.

"The Court: What did you do or say?

"A What did I do or say?

"The Court: Yes.

"A I pointed to the back seat.

"The Court: Okay.

"Q Did you do that to the man in the little cap?

"A He was closer. There was a lot of people on the sidewalk.

"Q But you saw him there too, the man with

the little cap?

"A Yes."

MR. KHUZAMI: Proceeding to line 13.

"Q Just lastly, Mr. Garcia, did the police ever dust your cab for fingerprints?

"A (Through the interpreter) They took the taxi and I never knew where they took it.

"Q How long did they keep the taxi? When did you get it back?

"A (Through the interpreter) Around 9:00 o'clock in the morning, 9 o'clock in the morning

"Q When you got it back, did you notice any smudges on it any, little marks that weren't there before?

"A (Through the interpreter) I never checked it. I just went back to work.

"Q But you don't remember now noticing any marks on it that weren't there before?

"A (Through the interpreter) I never checked. I kept working.

MR. KHUZAMI: Picking up with redirect examination.

"Q Mr. Garcia, when you were interviewed by the police that night, the night of November 5th, was there a Spanish translator present?

"A No, no Spanish.

"Q Now calling your attention for a moment to the point where you turned your cab on to Lexington Avenue, did you see anyone on the street that you recognized?

"A (Through the interpreter) Repeat that."

MR. FITZGERALD: Then through the interpreter, after it was reread:

"A The man with the little cap.

"Q And what, if anything, did you do at that point?

"A I pointed again like this to the back seat, pointed to the seat, back seat.

"Q What, if anything, did the man with the little hat do at that point?

"A He looked at me and he continued.

"Q Did he look in the back seat at that point?

"A No."

MR. KHUZAMI: Proceeding ahead to 813, line 9.

"Q At the point that you exited your cab and before you approached the deli, did you look anywhere?

"A I look across the street.

"Q Before you approached the deli?

"A Before I looked at a taxi and and I see the man that was in my taxi get out, and he kept running.

"Q Did you see anything in his hand at that

point?

"A Yes.

"Q What did you see?

"A I see the gun."

MR. KHUZAMI: Now proceeding to recross.

"Q Mr. Garcia, when you were interviewed by the police on November 5th, they asked you what you saw that night, didn't they

"A Yes.

"Q And you understood that question, didn't you?

"A Yes

"Q And you told them what you saw?

"A I tried to explain in English, but some he understands some no understand, and I think he no understand because I was so nervous.

"Q Then, just one moment. You have testified that when you got out of your cab and you saw the man running across the street, the passenger, that you saw a gun in his hands?

"A Yes.

"Q Do you remember being asked these questions and giving these answers in front of the grand jury under oath?

"The Court: Let's try one question and one

answer at a time.

"Q QUESTION: And what, if anything, in brief, did do you do next?

ANSWER: I stopped on 48 Street. The have the red light, and one hand I just for -- what you call that? For that to put a parking.

Did you remember giving that answer to the question?

"A Yes.

QUESTION: You put the car in park?

ANSWER: Yes. And the other thing I put open the door. I open the door and I running. I go like half a block from 48th going East Side.

QUESTION: So that's from 48th and Lex towards the East Side?

ANSWER: Yeah. I left the car in the corner and I running, yeah.

QUESTION: And in brief, what happened next?

ANSWER: I hear some shootings, and as I hear some shootings I stop and I go, I get to the car, and I see from the corner to the post office, the other side of the street and man lay on the ground.

Do you remember giving those answers to those questions?

"A (Through the interpreter) Yes.

"Q Those questions were true when you answered them, were they not?

"A Yes."

MR. KHUZAMI: Proceeding now to redirect examination.

"Q Mr. Garcia, at the moment before you reached the deli when you turned around and looked and saw the man with the gun, where was he?

"A (Through the interpreter) He was running, crossing, going towards 48th, going in the direction like to the Post Office.

"Q In what direction was he holding the gun at that point?

"A (Through the interpreter) He was pointing to that side, the man with the little hat.

Sorry. He was pointing the gun to was my taxi to the man with the little hat."

MR. KHUZAMI: That's the conclusion of the testimony.

Your Honor, at this time I would request -- there were five photos admitted in evidence. Four of them are in the jury's binder and one is not. We request an opportunity to have them examine the four that are in the binder and to pass the fifth one to the jury.

THE COURT: My notes show M, N, O, P, and JJ, all in the six series.

MR. KHUZAMI: 6M, N, O, and P are the ones in had the thin binder.

THE COURT: Those are received, as well as JJ.

(Government's Exhibit 6M, 6N, 6O, 6P, and 6JJ for identification received in evidence)

THE COURT: Do you have copies?

MR. KHUZAMI: Just one, your Honor.

THE COURT: You may pass it.

MR. PATEL: Could we approach briefly while the jury examines photographs?

(Continued on next page)

(At sidebar)

MR. PATEL: The reason I asked to approach is my concern is that, from looking at the 3500 material for the next witness, some of his testimony was based on Detective Solowsky's work.

MR. FITZGERALD: I will proffer to the Court Mr. Lewczko, when he received the gun at issue and the five questioned bullets, he fired his own rounds. And that is how he knows it came from the gun. He fired his own rounds and compared what he found against the bullet. That is why we call him and put Detective Cotter on the shelf for moment, who did rely upon the test firing by Solowsky.

MR. PATEL: Okay.

THE COURT: As long as I have a captive audience, in the future when you introduce documentary exhibits, photographs or anything else, please provide copies because it consumes time. Obviously we have used the time, but we can't always be this lucky.

(Continued on next page)

(In open court)

THE COURT: Proceed.

MR. FITZGERALD: The government calls John Lewczko.

JOHN LEWOCZKO

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Mr. Lewczko, this is a pretty big courtroom. Please keep your voice up or speak close to the microphone so everyone can hear you.

Tell the jury what you do for a living.

A. Special agent with the FBI.

Q. For how long have you been a special agent with the FBI?

A. Approximately twelve years, I believe.

Q. And for how long have you worked for the FBI?

A. Be 20 years this coming May.

Q. Briefly describe for the jury your assignments with the FBI.

A. Prior to becoming a special agent with the FBI, I was assigned to the FBI's firearms and tool marks unit within the FBI laboratory in Washington, D.C. While there, I served in the capacity as a physical science technician.

In this capacity, I assisted a firearms examiner in his day-to-day routines of examining evidence, and particularly firearms and tool marks related evidence.

After becoming a special agent of the FBI, I was assigned to the Mobile, Alabama office, Newark office, and was transferred back to the FBI laboratory to the firearms and tool marks unit where I underwent a one year's training period, and after my training period I was qualified to do, conduct firearms and tool marks examinations, which I did for approximately 7 years.

After that, I was transferred to the Memphis, Tennessee office where I am now.

Q. You mentioned you were assigned as a special agent to the firearms unit for about 7 years and also mentioned tool marks. Can you explain to the jury what you mean by "tool marks"?

A. Tool marks, first of all, tool marks examination is basically an attempt for a microscopic comparison to determine if a particular mark was made by a particular tool, or, by examining the mark, what type of tool could have produced that mark.

Q. Can you describe what you specifically mean by "tool"?

A. Tool is any instrument that is used to do work, if you will. Whether it be a pair of pliers, a machine that

stamps out pennies, a hammer, they are all considered in the general class as a tool.

Q. Can you describe generally what your duties were when you were assigned to the firearms unit and doing firearms and tool mark examinations?

A. As an examiner, I would examine evidence submitted into our unit which required tool mark or firearms examinations. I would examine the evidence, render a report, and then at the time of trial, such as this, I would go out and testify to my results.

Q. Have you testified in court as an expert witness before?

A. I have.

Q. Can you give us a rough idea of how many times?

A. Over the 7-year period, probably in excess of 100 times.

Q. Can you explain to the jury how a bullet works, not a bullet cartridge, and what the different components of a cartridge are?

A. A cartridge is that projectile, if you will, or part that you place into the firearm. It consists of a bullet, which is the portion that actually leaves the firearm, a cartridge case containing the powder and primer, and when they are placed into a firearm, the hammer or firing mechanism strikes the end of the cartridge, the

powder burns, creating pressure and forcing the bullet out of the barrel of the firearm.

Q. So, as between the primer, the casing, the gun powder, and the projectile, at the end, only the projectile leaves the gun?

A. That's correct.

Q. And the powder, most of it burns?

A. That is correct.

Q. What happens to the casing if the gun in question is a revolver?

A. If it's a revolver, that is, the part that contains the carriages revolves, it's a cylinder. When they are fired, they remain in the firearm until such time as they are physically removed by the shooting.

Q. Is that any different for an automatic gun?

A. Automatic or semiautomatic firearm is the type of firearm where, on each firing, the cartridge case, after the bullet leaves it, is physically extracted from the firearm, ejected out of it, with another cartridge being loaded into it from the magazine.

Q. Now the part that leaves the gun, which you called the bullet, projectile part, does that ever have two different components?

A. Yes. If you have a jacketed bullet, you would have a jacket or a copper piece of metal actually placed

around a lead core. If it's just a lead bullet, you usually have just the lead bullet itself with no copper jacket placed around it.

Q. For a copper-jacketed round, if you compare it to an M&M, would the copper be the outside or the inside?

MR. PATEL: Objection.

THE COURT: I will allow it. Go ahead.

A. In that reference, it would be -- the copper jacket would be the candy coating that is physically placed over the M&M, if you will. It is the copper that is on the outside of the bullet.

Q. And the lead is on the inside?

A. That's correct.

Q. Are you familiar with bullet sizes?

A. Yes.

Q. What size bullets would fire with a .357 revolver?

A. .357 revolver, first of all, the number designation is usually -- in most cases refers to the bullet diameter. .357, if you were to measure a .357 bullet, it would be .357 inches in diameter. A .357 magnum caliber revolver could fire also .38 caliber or .38 Special caliber cartridges and bullets. The .38, although the number designation is a little higher than .357, is the same diameter as .357, and it can fire a .38 Special bullet.

Q. A .357 revolver can fire either a .357 cartridge or .38 special cartridge?

A. That's correct.

MR. GOODMAN: Objection.

THE COURT: Overruled.

Q. But a .38 caliber revolver can only fire a .38, so a .38 cannot fire a .357?

A. That's correct.

MR. PATEL: Objection.

THE COURT: Overruled.

Q. Can you explain to the jury what rifling is?

A. When a firearm is manufactured, particularly the barrel portion, grooves are cut inside the barrel. The barrel is first drilled. A piece of metal stock is drilled out and rifling is cut into it. And all the rifling does, if you were to look down the barrel of a firearm, you would see grooves cut into the interior of a barrel in a twisting motion. It would be like looking down the inside of a candy cane, if you will, or a barber pole. You would see twisting spirals inside the barrel itself. That is the rifling which is cut into it.

Q. You mentioned the term grooves. What do experts in the field call those marks inside?

A. Landed grooves, markings.

Q. For a particular model of a gun made by the

particular manufacturer -- let me back up a second. Do the twists go either right or left?

A. Depending on manufacturer, they can.

Q. For the same model gun by the same manufacturer, will they all twist in the same direction?

A. That's correct.

Q. Is there a number you can ascribe as to the number of landed grooves in a particular gun?

A. Right. Manufacturer's sometimes vary the number of grooves they cut inside the barrel.

Q. For a particular model, will all the guns of that model have the same number of landed grooves?

A. That's correct.

Q. Now, each particular gun, are there any individual characteristics to a gun manufactured by that manufacturer that will distinguish that gun's bore from any other gun?

A. Once you get past the actual cutting of the grooves -- or should I say during the cutting of the grooves in the manufacturing of any firearm, individual or microscopic marks are placed in that firearm. Say in this particular case, the barrel. As that cutting tool is pulled through the barrel, it is under a tremendous amount of pressure and heat.

As it cuts into the metal, as it is pulled

through, the cutting surfaces on that tool as it is pulled through the barrel actually change, or if you will becomes duller as it is pulled through because of the cutting action, just like a house knife or pocket knife has to be sharpened. Through use, it wears. Through the wearing and cutting process, the marks are continually changing, that is, the microscopic marks are continually changing. As it is pulled through the barrel, these marks are unique to that particular firearm.

You can take two firearms manufactured one right behind another, compare them microscopically, and the marks will be different, because the cutting tools changing. That is why the tools have to be changed and sharpened periodically because of the great amount of wear they go through during the cutting process.

Q. The bullet actually fired through the gun that leaves the projectile, how does the size of that bullet compare with the size of the barrel or the bore?

A. It's approximately a little larger than the bore itself. That enables the bullet to rip the rifling. As it is fired down the rifling, it twists down the barrel. As it twists down the barrel, the bullet is actually engaged in it, due to the size difference in the rifling, which also causes the bullet to start to twist as it goes down the barrel.

This gives the bullet stability. After it leaves the barrel, it continues to twist, like say is a football being thrown, putting spin on it, giving it stability as it is thrown through the air.

Q. As the bullet is forced through the bore which is slightly smaller, what marks are left on the bullet as it leaves the gun?

A. Those microscopic manufacturing marks, those individual marks. As it travels down the barrel, it is picking up those microscopic marks left in that barrel during its manufacturing process.

Q. Are you familiar with the process an expert goes through to compare bullets to see if they were fired from the same gun?

A. I am.

Q. Can you explain to the jury how that is done?

A. A hypothetical case --

MR. GOODMAN: Objection.

Q. Take this case, for example.

THE COURT: Overruled. He can use a hypothetical.

The question was to explain how it is done. Go ahead.

Q. Say, for example, firearms submitted to the laboratory, to me, to be examined. One of the questions

they might ask -- there is a firearm and several bullets with cartridge cases, and the question they would ask, Can you determine if the bullets submitted to the laboratory had been fired from that firearm? First thing I would do is microscopically examine the bullets to determine if, first of all, there were any microscopic marks left on the bearing surface or outer surface of the bullet that were sufficient enough for identification purposes.

Secondly, or during the process, I would make sure that the caliber of that bullet was compatible with the firearm that I received. In other words, if I had a .38 caliber firearm with .22 caliber bullets, I would know at that point in time the bullets were not fired from that gun, and I would take it another step further and determine if the rifling left on those bullets are the same as the rifling in the firearm that I received. In other words, if the bullet indicated that it was fired from a barrel rifled with five grooves right-hand twist, I would expect to see that in both the firearm and the bullet itself.

If all those are the same, then I would take it the additional final step and test fire the firearm, and during this process. I would literally take two cartridges, place it in the firearm, and test fire it into a water recovery tank. That allows me to retain the bullets. I would take those bullets I personally test fired and compare

them microscopically to the bullets I received on the case, using a comparative microscope.

All this does is allow you to look at my test bullets and the submitted bullets at the same time so you can do a size-by-size microscopic comparison to see if the individual marks on the outside of that bullet's surface are identical, by matching them up.

Q. Just keep your voice up or stay a little closer to the microphone.

MR. FITZGERALD: Let me, if I may, your Honor, approach with what is premarked Government Exhibit 11 in evidence.

THE COURT: Go ahead.

MR. FITZGERALD: As well as 39A, 39B, and 27, 28, 29, 37, and 38.

Showing you Government Exhibit 11 in evidence, have you seen that before?

A. I have, sir.

Q. How do you know it is a gun you have seen before?

A. By my marks which appear upon it.

Q. Where are your marks marked on that gun?

A. I place it inside the trigger guard.

Q. What marks are they?

A. It is my initials, and what I refer to as a case specimen listing, in other words, a known item, and I call

it K2.

Q. Let me show you what is premarked Government Exhibit 39A, an envelope containing Government Exhibits 27 and 28. And I ask to you look at the envelope and see if you recognize anything about it.

A. I do, sir.

Q. What do you recognize?

A. Once again, my marks and initials which appear upon it.

Q. Let me show you what has been premarked and received in evidence as Government Exhibit 39B, which is an envelope containing Government Exhibits 29, 37, and .38. Look at each of those three envelopes to see if you recognize them.

A. I do.

Q. And how do you recognize them?

A. Once again, by my marks and initials which appear upon them.

Q. And have you performed any tests on 28, 27, 28, 29, 37, and 38?

A. I did, sir.

Q. Can you tell the jury what you did when you received those five ballistic exhibits and the gun marked Government Exhibit 11?

A. First of all I microscopically examined them

during my initial stage. In the case of Government Exhibit 37, I determined it to be a lead core without the copper jacketing. On Government's Exhibit 38, my examination determined that it was a bullet jacket, a copper bullet jacket, minus the bullet core. On Government Exhibit 29, 28, and 27, I determined that there were once again jacketed bullets which had the core.

Q. So 27 through 29 were the bullet and the core having the jacket and the core together?

A. That's correct.

(Continued on next page)

Q. And 37 is just the core and 38 is just the jacket?

MR. PATEL: Objection as to form, your Honor.

THE COURT: Overruled.

A. That is correct.

Q. What did you do next?

A. I then did all the other intermediate examinations, namely, were they consistent in caliber, and had the same number of rifling. Based on that I also determined that they had sufficient marks of value on them for me to do a comparative examination. I then took Government's Exhibit 11, the revolver, test fired it, and then did my microscopic comparisons with the specimens that I obtained, to the submitted items.

Q. If you could also, for the record, if you look at Government's Exhibit 27, if you could just read out -- there is an RR number on it.

A. I am sorry.

MR. FITZGERALD: Actually, your Honor, I would like to put up a chart at this point, if I could. It is already in evidence, with the RR numbers marked on it.

THE COURT: OK.

MR. FITZGERALD: Your Honor, may I read the RR numbers into the record corresponding to the government exhibits that he is testifying about?

THE COURT: Yes.

MR. FITZGERALD: Government's Exhibit 27 is marked RR3. Government's Exhibit 28 is marked RR4. Government's Exhibit 29 is marked RR5. Why don't we start with those for the moment.

With regard to -- I will finish. Government's Exhibit 37 is RR1. And Government's Exhibit 38 is RR2.

Q. Agent Lewoczko, you testified about 37 being the core and 38 being the jacket.

A. That is correct.

Q. That would be RR1 and RR2, for the record.

Moving ahead to RR5, which was Government's Exhibit --

THE COURT: 29.

Q. -- 29, can you tell the jury how you determined whether or not Government's Exhibit 29 was fired from Government's Exhibit 11, the gun you were given?

A. Once again, by the comparison of the microscopic marks which were left on it and to the test firings that I conducted in the laboratory.

Q. Was Government's Exhibit 29, RR5, fired from Government's Exhibit 11?

A. Yes.

Q. Moving ahead to Government's Exhibit 27, which is RR3, and Government's Exhibit 28, which is RR4, what

determination did you make about those two items?

A. That see I recall, that was the lead core and --

Q. No, I am talking about 27 and 28, copper jacket and core together.

A. If you could refer to those as my Q numbers that would be better.

Q. Q6 and Q5.

A. Once again, I determined that those two projectiles had been also fired from Government's Exhibit 11, which was the revolver.

Q. Now referring to just the copper jacketing and not the lead core, which is Government's Exhibit 37 --

THE COURT: 38.

MR. FITZGERALD: Yes, your Honor. Thank you, Judge.

Q. -- Government's Exhibit 38, what determination did you make concerning that copper jackets?

A. I determined that that copper jacket also had been fired from the barrel of Government's Exhibit 11, the revolver.

MR. FITZGERALD: I think, your Honor, he can resume his seat, and I will take the chart down.

Q. What if any analysis did you perform with regard to just the lead core, Government's Exhibit 37?

A. First of all, by physical characteristics and

examination of them, I determined that it was a lead core, which originated from a .38 or a .357 magnum bullet.

Q. How did you determine that?

A. By the measurements and the overall remaining physical characteristics of that.

Q. Did you do any further analysis at that point?

A. Yes, I did.

Q. Tell the jury what you did.

A. On examination of that lead core, I noted that it retained individual characteristics at the base portion of it. I then examined those to determine, if I could, the origins of those marks. Upon examining the bullet jacket, I determined that the base of that bullet jacket had identical individual marks left in the bullet jacket during its manufacturing process.

Q. Are you familiar with the manufacturing process for copper jackets?

A. Yes, I am.

Q. Can you tell the jury how that is done?

A. During the manufacturing of a copper jacket, it is basically stamped out on a machine, originates as a copper slug, if you will, smaller than a bullet, about the size of a dime but thicker, and the machine literally takes and stamps it or swages it into a mold and the stamping process which elongates it, conforms the pocket for the lead

portion of itself.

Q. Do different machines leave different marks when they stamp out the copper jacket?

A. They do.

Q. What happens in the manufacturing process of the bullet once the copper jacket is made?

A. The copper jacket is made, then just nothing more than a lead wire, if you willing, is swaged or stamped, pushed into that bullet core under a lot of force and pressure. Being that the lead is a softer and more malleable material, it is pushed into the copper jacket, just like, if you would, you take modeling clay and push it back into the container and force it in. It conforms to the shape and size of the container that it is being placed into. The lead is pushed in there, under stamping or a lot of pressure which forces it to conform to the confines of the copper jacket.

Q. What markings are left on the lead core as a result of that process?

A. The lead core picks up any of the microscopic marks left in the copper jacket during the manufacturing process of that copper jacket.

Q. What did you determine after examining Government's Exhibit 37, the lead core, and comparing it with Government's Exhibit 38, the copper jacket?

A. Based on my examination, I determined the marks on the base of the lead core were identical to the marks left in the base of the copper jacket during the manufacturing process.

Q. What does that mean about what relationship the lead core in Government's Exhibit 37 has to the copper jacket, Government's Exhibit 38?

A. It originated from a copper jacket which was manufactured on the same machine.

MR. FITZGERALD: Could I have one moment, your Honor?

I have nothing further, Judge.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. PATEL:

Q. Good morning, Agent.

A. Good morning.

Q. I am sorry. Could you pronounce your last name?

A. My name is Agent Lewoczko.

Q. My name is Andrew Patel. We haven't met before, have we?

A. No, sir, not to my knowledge.

Q. You testified a few minutes ago that the lead core and the copper jacket were manufactured by the same machine, is that correct?

A. Not the core was manufactured as the same machine as the copper jacket. It was placed in a core which was manufactured by the same machine.

Q. In other words, the lead core and the copper jacket remain in the same factory, is that your testimony?

A. That is correct.

Q. Along with probably several million other bullets of the exact same caliber?

A. That certainly could be correct.

Q. You worked for the FBI for a number of years before you became a special agent?

A. That is correct.

Q. To become a special agent, you went to the FBI training school at Quantico, Virginia, correct?

A. That is correct.

Q. And it is fair to say that when you entered the training program at Quantico, Virginia, your expectation was to return to the FBI lab in some capacity?

A. It wasn't necessarily my expectation, but it was certainly, if you will, written on the wall, since my prior service and training were in the laboratory.

Q. It was unlikely that the FBI was going to throw out, what, seven years of experience in the lab?

A. That is correct, sir.

Q. As part of your training at the FBI in Quantico,

you were instructed in giving testimony in court, is that correct?

A. That is correct, sir.

Q. And when you testified in that mock trial with the mock judge and the mock jury, were you questioned about ballistics?

A. No, sir.

Q. You have testified about ballistics how many times?

A. Probably in excess of a hundred.

Q. Over a hundred times?

A. Yes, sir.

Q. About how many times a year do you testify about ballistics?

A. Usually it averages about two or three times a month when I was in the laboratory.

Q. And how many examinations do you do in the lab?

A. Individual exams?

Q. Yes.

A. Thousands.

Q. Per year?

A. That is correct. Not cases, you understand. A case like this, for example, had numerous examinations on one case. There are some indications where you may have hundreds of pieces of evidence in and of itself.

Q. So you performed several thousand microscopic comparisons per year?

A. That would be correct.

Q. About 2,000 a year, is that a fair number?

A. I think that might be overstating it, certainly.

Q. A thousand a year?

A. I think that is more accurate.

Q. For the last how many years?

A. It was close to seven years.

Q. Seven years?

A. Yes, sir.

Q. So you have done about 7,000 comparisons?

A. I would say close to that, yes, sir.

Q. And as you sit here today, it is your testimony that you recall doing the examination of these particular items?

A. I do now, yes.

Q. You do now?

A. Yes.

Q. Does that mean at some point you did not?

A. No, I remember the case.

Q. Just a moment a ago you said you do now. Did someone refresh your recollection about the examination?

A. The prosecutor and I both had a pretrial, yes.

Q. And you spent some time with Mr. Fitzgerald?

A. That is correct, sir.
Q. How much time did you spend with Mr. Fitzgerald?
A. Probably 15 minutes.
Q. And you went over your report?
A. Yes, sir.
Q. And you went over each item of evidence?
A. Yes, sir.
Q. Is it fair to say that that is what refreshed your recollection?
A. Certainly.
Q. When you walked into Mr. Fitzgerald's office, you just knew you were coming to testify about an examination?
A. No, not just an examination, this particular one.
Q. You knew it was this particular examination?
A. Yes.
Q. Did you remember this particular envelope, holding up Government Exhibit 38?
A. Certainly not.
Q. Do you remember the contents?
A. No, I did not.
Q. So it is fair to say until you met with Mr. Fitzgerald, you didn't recall the specifics of this?
A. No, not the exact specifics, that is correct.
Q. Mr. Fitzgerald asked you some questions about M & M's, and you mentioned something about football. That is

pretty standard ballistic analogy, isn't it?

A. No, but what it does is give a realistic comparison to a layperson sitting in a jury.

THE COURT: He asked you only whether it was a standard ballistic analogy. Is it, as far as you know?

THE WITNESS: It is not standard but it is certainly one that could be used.

Q. But you have heard other ballistic experts would you the M & M analogy?

A. I haven't, no.

Q. How about the barber pole analogy, to explain rifling?

A. I have used that.

Q. You have heard others?

A. No,

Q. How about the football analogy?

A. I like it.

Q. Other people like this?

Q. You are an expert in this field?

A. In firearms, yes, sir.

Q. And you have heard other experts explain this to people, is that right?

A. Not in the manner that I have, no, sir.

Q. I am sorry. I am having trouble --

THE COURT: He said not in the manner he does.

Q. You testify three times a month on average?
A. That is correct.
Q. Is that 36 times a year?
A. I would guess that would be correct.
Q. You spend a lot of time on the road?
A. Too much, yes.
Q. This is part, testifying is part of your profession?
A. That is correct.
Q. Are you an NRA certified instructor, firearms instructor?
A. Yes, sir, I am.
Q. How long did you spend in the Newark office?
A. Approximately three years.
Q. Did you ever give instruction at the Calverton range?
A. I am sorry, sir.
Q. Did you ever give firearms instruction at the Calverton range?
A. No, sir.
Q. Have you been there?
A. I can't recall. I used the North Bergen County range, whichever one that is.
Q. I am sorry. Could you move a little closer --
A. We used the North Bergen County firearms range.

Q. You testified on direct that the only projectile that leaves the gun is the bullet?

A. That is correct.

Q. You are familiar with gunshot residue?

A. Yes.

Q. Gunshot residue is part of the primer, some of the elements from the primer of the bullet?

A. Among other things, that's correct.

Q. That comes out of the back of the gun, right?

A. It can come out of the back and the front as well.

Q. And if you have handled the gun, some of those metals, elements will be on your hand, is that correct?

A. It can.

Q. And the purpose of a gunshot residue test is to see if those items are on a person's hand, correct?

A. It is specific for gunshot and other elements as well.

Q. So some of that gunshot residue comes out of the weapon as well as the bullet?

A. That is correct.

Q. When you fire a gun it makes a sound, right?

A. That is correct.

Q. That sound is made by compressed gas leaving the bullet, right?

A. That is right.

Q. And that compressed gas carries things other than the bullet?

A. That is correct.

Q. For example, unburnt gun powder?

A. That is correct.

Q. And unburnt gun powder has ballistic significance, does it not?

A. In relative terms, it does.

Q. Relative terms, for example, gun powder pattern testing is something that you do at the lab to determine how far away a gun was from a target?

A. It can be done.

Q. The more gun powder on whatever it is you are examining generally speaking, the closer the gun was to that target?

A. There is a lot of intervening factors that come in, but in a general --

Q. Let's talk about them. Humidity, that is an intervening factor?

A. Let's talk about general terms, such as an intervening object, the distance away the firearm actually is -- yes.

Q. So it would be fair to say the closer you were to whenever it hits earth, the more gun powder will come out of

that gun and be on that object?

A. Usually that is the case within five feet or so.

Q. Excuse me.

A. Usually that is the case within five feet.

Q. Five feet?

A. Yes.

Q. Did you do any examinations of anything for gun powder residue?

A. No, sir.

Q. How about any trajectory analysis?

A. No, sir.

Q. Any of the items that you talked about here today, were any of those to examine fingerprints?

A. Not to my knowledge.

Q. Is it fair to say that the FBI lab in Washington has the capacity to examine things for fingerprints?

A. That is correct.

Q. It's a pretty sophisticated operation, isn't it?

A. I do not work there but that is correct.

Q. You went through the training and you know it is not just put powder on stuff, right?

A. I am not a fingerprint examiner, no, sir.

Q. No, but you are familiar with the techniques, aren't you?

A. Yes, sir.

Q. And you know that they have all kind of microscopes and lasers, the latest techniques for bringing out fingerprints, right?

A. That is correct.

Q. None of those, to your knowledge, was used on any of these things?

A. To my knowledge, no.

Q. You talked about this comparison microscope, right?

A. Yes, sir.

Q. It is basically two microscopes in one.

A. That is correct.

Q. And sort of the theory of what you do is that if you line these things up, you can see where they match.

A. That's correct.

Q. Before you do that, you have to calibrate the microscope, right?

A. That is correct.

Q. You calibrate your microscope how often?

A. Approximately once a week.

Q. How much previous.

Q. How long before you did this examination had you calibrated the microscope?

Do you understand the question?

A. Yes. Within a week.

Q. Within a week, so it could have been within seven days?

A. That is correct.

Q. And so it could be that you did the examination and calibrated the microscope again?

A. That is correct.

Q. And calibrating the microscope is what makes this process work?

A. No, sir, it is not.

Q. If the microscope is not calibrated, you can get an inaccurate reading?

A. That is correct.

Q. Did you take any photographs through your microscope?

A. I can't recall.

Q. Do you have any here?

A. No, sir, I do not.

Q. Your microscope, the microscope you used in the FBI lab, has the capacity to take photographs?

A. That is correct.

Q. That is a photograph through the microscope that shows both bullets side by side.

A. That is correct.

Q. So you could come into court, make a blow-up of that photograph, show the jury, say here it is, this is how

these things match up.

A. I have never used a photograph.

Q. That is the capacity --

THE COURT: He didn't ask whether you had used one. He asked whether the instrument could produce a photograph that would allow you to do what he just said. What is the answer to that?

THE WITNESS: It could be, yes.

Q. You have seen lots of those comparative microscope photographs?

A. Yes.

Q. And your testimony is you don't recall whether you took one of those photographs or not?

A. That is correct.

Q. If you took a photograph, what would you have done with the negative?

A. It would have gone into the file at headquarters.

Q. When you take these photographs, is this like a photograph that is a one-shot deal?

A. That is correct.

Q. Do you have your file with you?

A. No, sir, I do not.

Q. Your file is in the U.S. Attorney's Office?

A. No, sir, it is in Washington, D.C.

Q. How long would it take you to get that file?

A. Probably several days.

Q. That is the only way you know whether or not you took a photograph?

A. That is correct, sir.

MR. PATEL: Your Honor, I would like that file checked, to see if there are any photographs.

MR. FITZGERALD: Your Honor, we can raise it later. We can check but I think we can deal with Rule 16 later.

THE COURT: Fine.

Q. Bullets that have been fired through a weapon are by definition deformed, is that fair to say?

A. From their pristine state they would be, that is correct.

Q. Let's talk about that pristine state for a minute. There are variations in manufactures of bullets, are there not?

A. To what degree?

Q. To a microscopic degree.

A. The diameter of bullets is standardized.

Q. The bore of a weapon is standardized but your testimony is that each one of those has individual characteristics?

A. Microscopic characteristics.

Q. When a bullet is manufactured, it also has

individual characteristics, does did not?

A. To its manufacturing process -- I am not too sure I understand you.

Q. If you examine a bullet -- you remember we talked earlier about those millions of bullets that were manufactured at the same time these bullets were manufactured?

A. Correct.

Q. If you examine those bullets microscopically, because it is metal meeting metal, when metal meets metal there is erosion; is that right?

A. That is correct.

Q. So each one of those bullets will have microscopic differences.

A. That is right. They won't be different in amongst themselves but they will be different to that machine that they are manufactured on.

Q. Each bullet will have some individual characteristics?

A. Produced by a machine, that is correct.

Q. And you see those when you look through your microscope?

A. You can see them, yes. I am not sure I understand --

Q. You weren't looking for them when you looked

through your microscope, were you?

A. No. When you examine a bullet to identify it to a firearm, you don't rely on the individual marks that are on a bullet during its manufacturing process.

Q. So that you don't take the difference from bullet to bullet in consideration at all?

A. That is correct.

Q. We were talking about deformed bullets. A bullet that has been fired, picks up lands and grooves and whatever else is in the barrel?

A. That is correct.

Q. And whatever else is in the barrel, be it dirt, rust, gun powder, whatever, gets marked on that bullet?

A. To a certain degree, yes.

Q. To a microscopic degree?

A. Yes.

Q. Every time you fire a gun it is going to pick up -- there is going to be different stuff in that barrel.

A. There can be, yes.

Q. And even if you fire two bullets in a row, they will not be identical.

A. They are identical to the point of identification but they do -- and that's the whole process of identification of a bullet, is that not only is there individual marks on that barrel but they change through a

period of time due to the wearing of the barrel itself.

Q. Is it fair to say that the answer to my question is yes, that two bullets fired sequentially will have different markings?

A. Right, you expect to see that, that is correct.

Q. Bullets that hit things pick up additional markings, right?

A. That is correct, but they are distinguishable between the marks left on the bullet as when it was fired, to the --

Q. A bullet that passes through metal picks up striations, right?

A. Very gross and usually opposite to the striations produced by the firearm itself.

Q. How do you know that gross striations aren't from the gun?

A. Because the manufacturing process of the firearm itself finishes the barrel in such a way that you do not get gross marks in them.

Q. Some guns, though, over the course of time, are not necessarily very well cared for, is that correct?

A. Yes, but you would not pick up the gross marks through contact, out of the barrel.

Q. Every time a bullet comes in contact with a surface, it picks up some degree of striation, is that fair

to say?

A. It could.

Q. So a bullet that passes through fiberglass or a heavy curtain may pick up some striations?

A. More so than fiberglass.

Q. Wood paneling?

A. Certainly might.

Q. A bullet that hits concrete is going to be extremely deformed, is that fair to say?

A. You would expect.

Q. And it is probably the most difficult kind of bullet to match?

A. Not necessarily so, no.

Q. Or it is very difficult?

A. I have seen cases where it is hardly deformed at all.

Q. These bullets that you examined here.

A. These bullets were deformed, that's right.

Q. They were pretty banged up, right?

A. That is correct.

Q. Is it when you examine a very badly damaged bullet -- let me just withdraw that for a minute.

There are certain organizations of people who do what you do, is that fair to say?

A. That is correct.

Q. There is the American Association of Firearms and Tools Examiners?

A. That is an organization of different laboratory examiners.

Q. Are you a member of that?

A. I was.

Q. You are no longer?

A. That is correct.

Q. There are a number of journals about this kind of forensic stuff, correct?

A. That is correct.

Q. There is the journal of forensic science?

A. That is correct.

Q. And the journal of the Forensic Science Society?

A. I am not familiar with that.

Q. Do you get those? Do you subscribe to any of those journals?

A. The laboratory did, yes.

Q. You read them at work?

A. I did, yes.

Q. I am sorry. I am having trouble --

A. Past tense. I did. I am no longer assigned to the laboratory.

Q. When you worked for the lab you read them then?

A. That is correct.

Q. And you read them at work?
A. That is correct.
Q. Have you read any articles about examining badly damaged bullets?
A. I can't recall any specifically.
Q. Would it be fair to say that badly damaged bullet is -- withdrawn.
That is a Ruger .357 magnum.
A. Yes.
Q. All .357 magnums manufactured by Ruger have the same class characteristics, is that right?
A. That is correct.
Q. And when you say class characteristics, that means it has five grooves and a right twist?
A. That is correct.
Q. So when you say something is a 5 right twist it tells you that it is one of millions of .357 magnum Rugers?
A. That is correct.
Q. You were talking earlier about the associations and -- would it be fair to say that when you look through the comparison microscope there are lots of different scratches?
A. There are numerous striations, yes.
Q. And that there is no standard for your opinion -- and you are testifying about an opinion today.

A. That is correct.

Q. It is your opinion that these bullets were fired from that gun.

A. Absolutely.

Q. And it is based on a comparison between a test bullet and these bullets that were recovered?

A. That is correct.

Q. And in your opinion there is no standard for a minimum number of matching lines, is that fair to say?

A. That is correct.

Q. So there may be differences between examiners.

A. There could be.

MR. PATEL: Your Honor, I have no further questions.

MR. FITZGERALD: I have brief redirect.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Agent Lewoczko, when you make the comparison of two different ballistic fragments under the comparison microscope, how many dimensions are you analyzing the evidence in?

A. Three dimensions.

Q. And a photograph, how many dimensions does that have?

A. Two dimensions.

Q. Do you find photographs useful in making comparisons of fragments?

MR. PATEL: Objection.

THE COURT: Overruled.

A. You can't utilize a photograph to make a comparison.

Q. Would you make a comparison based on photographs alone?

A. No, sir, I would not.

Q. You were asked questions about whether you could tell if a bullet or jacket were made at the same factory. Let me focus just on the copper jacket for a moment.

A. Yes, sir.

Q. You examined the lead core, Government's Exhibit -- the lead core you examined, which you determined to have the same markings identical to the copper jacket.

A. Yes, sir.

Q. Strike that. Let me ask it in a normal way.

If there is a factory with two different machines, can you tell whether the copper jacket was manufactured from a particular machine in that factory?

A. Yes, sir.

Q. So copper jackets made from different machines will be distinct?

A. That is correct.

Q. Are the changes from the same machine, if it punched out two copper jackets one after the other, are the changes significant enough for someone to detect?

A. No, sir.

Q. The lead core you examined, was that determined to be identical -- the copper jacket that must have been around it, did that have to be made in the same factory or the same machine?

A. Same machine.

Q. Finally, the fragments in question here, you said, were badly damaged. Were the entire fragments damaged or was the damage limited to any particular area?

A. Mostly the nose portion.

Q. The nose in a bullet, where would that be?

A. That's the front end that would first strike the object.

Q. And the markings that you used to identify the lead core as coming from a copper jacket made by the same machine as the other copper jacket, where were those striations?

A. Inside the copper jacket.

Q. And on the lead core?

A. Yes, the base of the lead core.

Q. At the end away from the extensive damage?

A. That is correct.

MR. FITZGERALD: Nothing further, Judge.

MR. PATEL: Very briefly.

RECROSS-EXAMINATION

BY MR. PATEL:

Q. How many million bullets a year does a machine manufacture, if you know?

A. I have no idea.

MR. PATEL: Nothing further.

THE COURT: You are excused. Thank you.

THE WITNESS: Thank you, your Honor.

(Witness excused)

MR. KHUZAMI: Your Honor, the government calls Jose Rosario as its next witness.

JOSE RAMON ROSARIO,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Mr. Rosario, how are you employed?

A. With the New York City Police Department.

Q. What is your current rank?

A. Detective.

Q. What is your current assignment?

A. The homicide investigations.

Q. Are you assigned to a particular precinct?

A. I am assigned to the Manhattan South Homicide Squad.

Q. How long have you been assigned there?

A. Approximately nine years.

Q. How long have you been a detective?

A. I have been a detective for approximately 14 years.

Q. Directing your attention to November 5, 1990, do you recall whether or not there was a murder that occurred in the area around the 17th precinct, in the area that the 17th precinct covers?

A. Yes.

Q. Do you recall the name of the murder victim?

A. Yes.

Q. Who was that?

A. Meir Kahane.

Q. On or around that time, did you receive any instructions pursuant to any investigation related to that murder?

A. Yes.

(Continued on next page)

Q. What were your instructions?

MR. STAVIS: Objection, your Honor.

THE COURT: May I see counsel at the side.

(At the side bar)

THE COURT: Since I don't know what is coming.

MR. KHUZAMI: He received instructions to search for a certain vehicle with a certain license plate. It is not coming in for the truth.

MR. STAVIS: Why don't you ask him what he did.

MR. KHUZAMI: It is not coming in for the truth.

THE COURT: There is no truth or falsity in the direction. If that is the objection, I am going to overrule it. Is that the only thing that he was instructed to do?

MR. KHUZAMI: That is correct.

THE COURT: All right.

(In open court)

THE COURT: The objection is overruled. Go ahead.

(Continued on next page)

BY MR. KHUZAMI:

Q. Detective Rosario, what instructions did you receive?

A. My instructions were to canvas a specific area for a car.

Q. As a result of that instruction, what did you do?

A. I canvassed the area from 42nd Street to 55th Street, First Avenue to Fifth Avenue, and I was looking for a 1983 green 4-door Oldsmobile with New Jersey registration FMR22X. I was also given an additional plate: CNB44N.

Q. Can you describe for the members of the jury how you went about conducting that search?

A. Myself, and there were three other detectives, a Detective Glenn Wepley from my office; a Detective Carl Steigel, also from my office; and there was a detective from the 9th precinct. His name was Polignac, I believe. Myself and Detective Polignac, we covered an area actually from 40th Street to the south side of 49th Street, First to Fifth Avenue, and Detective Wepley and Steigel covered the north side of 49th Street to 55th Street, also from First to Fifth Avenue.

Q. Can you describe for the jury how you physically went about conducting this search?

A. Myself and Detective Polignac, what we did was we drove from First Avenue to Fifth Avenue, following the flow

of traffic, and we inspected every car, every motor vehicle, anything with wheels and license plates on the street, in garages, parking lots, as well as the avenues.

Q. Did you start your search at the southernmost portion of the area you described or the northernmost portion?

A. The southernmost portion.

Q. That would be 40th Street?

A. That would be 40th Street, that is correct.

Q. Can you describe, starting from 40th Street, what route you took to cover the area that you have described?

A. I believe we went from Fifth Avenue over to First Avenue and started zigzagging back and forth.

Q. Working your way northward?

A. Working our way north as we went east to west and west to east.

Q. How did you inspect the intervening avenues between First Avenue and Fifth Avenue?

A. We would circle the block. Whenever we reached the end of an avenue we would circle and then continue on either westward or eastward travel.

Q. Do you recall what time of the day you commenced this search?

A. At approximately 5:00 a.m.

Q. Do you recall what time you completed the search?

A. At approximately 9:00 a.m.

Q. Can you describe how it is that you examined parking garages or other areas for the vehicle with those license plates?

A. Yes. We would drive into the garage or the parking lot, explain to the attendants what we were looking for, which particular vehicle we were looking for, and at that point they would unlock the elevators if it was a multilevel garage, and gave us free range to inspect all the vehicles.

Q. Did you complete the search of the entire area that you described?

A. Yes.

Q. Did you find the vehicle with the license plates that you were looking for?

A. No, sir.

Q. Can you estimate what time during your search that you searched the area around Second Avenue and 44th Street?

A. I would estimate sometime between 7, 7:30.

Q. What did you do after you completed your search?

A. I returned to the 17th precinct.

MR. KHUZAMI: No further questions.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Detective Rosario, you searched for about almost five hours for a car?

A. That is correct.

Q. You didn't find one?

A. I didn't find a vehicle with the license plates that were given to me.

(Continued on next page)

Q. You found other cars though?

A. There were plenty of cars out there.

Q. Hundreds and hundreds of cars.

Are you on a detail known as night watch?

A. At that time, I was. I worked the night watch tour.

Q. Explain to the ladies and gentlemen of the jury what the night watch is.

A. The night watch tour is a team of eight detectives who are assigned to the Manhattan South Homicide Squad, and they perform -- at the time, we performed midnight to 8 a.m. tour. The reason for that is the detectives that work in precincts normally work from 8 a.m. to 1 a.m., so if anything happens between 1 a.m. and 8, the night watch detectives would respond, conduct a preliminary investigation and, at 8 a.m., they turn the case over to the detectives who are working, who come on at 8.

Q. Is there an expression in police lingo known as "catching" the case?

A. Yes.

Q. And that is when someone in the precinct detective unit and a supervisor or whatever says, "This is going to be your case," right?

A. You are assigned a case and it is referred to as catching a case.

Q. Now, who caught this case?

A. Detective Beale -- Neil Bailes, correction.

Q. Did the detective who caught this case have a partner also working on this case?

A. He had several partners working on it.

Q. Please give the ladies and gentlemen of the jury the names of the partners of the Detective Bailes who worked on the case.

A. I can give you the names of two detectives that I know of who I believe worked in his team, but I also saw other detectives who worked in that office who were present that evening. Detective Gordon, and the other gentleman is also -- he is retired. It begins with a P.

Q. Pugliesi?

A. Pugliesi. Thank you.

Q. And how many other detectives were there besides those two who --

MR. STAVIS: Withdrawn.

Q. You used the word before "precinct detective unit." Explain to the jury when a precinct detective unit is.

A. A precinct detective unit, each precinct has an investigative division, and there are detectives assigned to that division within that precinct. And there -- they are generally divided into three teams and they work from 8 a.m.

until 1 a.m. in the morning, generally. If something -- if it is a major investigation or it requires going past 1:00 o'clock, then certainly they will work past 1:00 o'clock in the morning.

Q. How many detectives were there working with Detective Bailes and Detective Pugliesi and the others out of the precinct detective unit of the 17th Precinct?

A. I wouldn't know the answer to that.

Q. Can you estimate that for us?

A. No, I can't.

Q. Now, you used the word when you were testifying on your direct examination that you "canvassed" the area. Do you recall that?

A. Yes.

Q. Can you explain to the ladies and gentlemen of the jury what it means to canvass an area?

A. It means to search an area, interview people, basically.

Q. And Detective Rosario, do you know if Detective Bailes and the other precinct detective unit detectives were doing a canvass of the Marriott Hotel?

A. No, I don't.

Q. Do you know if Detective Bailes and the other detectives at the precinct detective unit spoke to any witnesses concerning this case?

A. No, sir.

Q. In other words, you just don't have any knowledge?

A. I don't know, no. I don't have any knowledge of that, no, sir.

Q. And the detectives that you have previously testified about, that is Steigel, correct?

A. Steigel, yes.

Q. Steigel. Whepley?

A. Yes.

Q. And Koleniak?

A. Yes.

Q. Those are all night watch detectives?

A. No.

Q. Who was night watch and who wasn't night watch?

A. Koleniak was not night watch.

Q. But you, Whepley and Steigel were night watch detectives?

A. That's correct.

Q. So you weren't going to catch the case, you were just assisting the people who were investigating the people that night, is that correct?

A. That is correct.

Q. When you were canvassing this area, you had a license plate number, is that correct?

A. Two license plates.

Q. And you had a make and model number of a car, correct?

A. That's correct.

Q. And a year and everything else?

A. Yes.

Q. And you were just looking around for that particular car, correct?

A. Yes.

Q. I have asked you questions about the precinct detective unit. During the time that you were assisting in this investigation, did you come in contact with any detectives from the crime scene unit?

A. I may have but I don't remember.

Q. Now, what does the crime scene unit do, as opposed to the precinct detective unit?

A. The crime scene unit, essentially their job is to document the crime scene, to process it for evidence, fingerprints, ballistic evidence, what have you.

Q. Do you know whether there was a crime scene unit detective assigned to this case?

A. No, sir.

Q. Now, during the -- was it that one evening, November 5th through November 6th, that you were working on that case?

A. Yes. I came on duty at on November 5th as 11:45 p.m.

Q. And you started your canvassing at 5 a.m.?

A. At 5 a.m., yes.

Q. And completed on the 9:45 a.m., is that correct?

A. Approximately at 9 or shortly thereafter yes.

Q. Well is it 9, shortly thereafter, or 9:45 a.m.?

A. I don't have my complaint followup report that would indicate the time that I completed it.

MR. STAVIS: May I approach the witness, your Honor, with 3561B?

THE COURT: Yes.

A. At 9:45 a.m., I completed the canvass.

Q. During that period of time, you were looking for a 1983 Oldsmobile, is that correct?

A. That's correct.

Q. Weren't looking for a taxicab, were you?

A. I was given two license plates and one was supposedly assigned to a 1983 Oldsmobile.

Q. Were the license plates that you were assigned or the description that you were given of a taxicab?

A. I was led to believe it was a passenger vehicle, a private owned vehicle.

Q. And a passenger private owned vehicle is not a taxicab, correct?

A. It shouldn't be.

MR. STAVIS: Thank you. I have no further questions, your Honor.

MR. KHUZAMI: No redirect, your Honor.

THE COURT: Thank you.

You are excused.

(Witness excused)

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

(Jury left courtroom)

MR. FITZGERALD: For the benefit of the Court and counsel, the next witness is Lt. Fernando Duran, who did the search of Mr. Nosair's car.

I want counsel to know that, but I also want to alert the Court that Mr. Stavis submitted a letter this morning seeking to preclude the government from introducing a double-edged commando knife that was seized from under the driver's seat in that car. I am prepared to argue that if you like.

THE COURT: Mr. Stavis, do you have anything other than what is in your letter that you want to tell me?

MR. STAVIS: Your Honor has read my letter?

THE COURT: I have.

MR. STAVIS: Did you say you did.

THE COURT: I did, yes.

MR. STAVIS: It states my position. A hunting knife is not related in any way, shape or form, and I move under 403 to preclude it.

MR. FITZGERALD: It goes to the conspiracy. The car was missing immediately after Mr. Kahane was killed and only appeared several days later, and, when found, there are elements in the car indicating that Mr. Nosair, with others, was planning a violent act.

Concerning the commando knife, there will be forensic evidence linking the car with other people, and our point is to show that Mr. Nosair went there that night with intent to commit violence. It was part of a conspiracy with others, and was intentional.

I think this rebuts that and rebuts the opening that Mr. Nosair was only someone --

MR. JACOBS: We can't hear.

MR. FITZGERALD: Rebuts the defense that he is merely an air-conditioning repairman who went there to hear a speech. This has to do with Jihad waging a war of urban terrorism. These are tools of the trade -- knives, weapons. The car had a stolen license plate. Clearly, the people in the car were bent on committing an illegal act. It is probative, it is not unduly prejudicial. It is about a

Jihad in New York, not in Afghanistan.

MR. STAVIS: I would like to state for the record that Mr. Fitzgerald's theory that he just stated to the Court, I'm learning about that for the first time.

I would note that in count 7, the murder has not been indicted as a conspiracy to murder, although it does name Mr. Nosair and others known and unknown to the grand jury.

Mr. Fitzgerald has said that it somehow relates to Jihad in America, a hunting knife. Your Honor, it might not be, in New York City or even in the surrounding environs, an uncommon occurrence to find a hunting knife.

THE COURT: What is the prejudice?

MR. STAVIS: The prejudice of the hunting knife is that the government is going to argue that it is somehow sinister to have a hunting knife and that it was going to be used to kill someone.

THE COURT: And you will argue it is not uncommon to find a hunting knife in the New York area, right?

MR. STAVIS: I believe that the prejudice of that outweighs its probative value. I don't believe that Mr. Fitzgerald has made a case for the probative value of a hunting knife in a vehicle, in a car.

THE COURT: Does this tie into anything specific later on?

MR. FITZGERALD: I will be up front about it. It ties into the exam relating it to the Mohammad Salameh case, and it is circumstantial evidence that indicates they are in the car.

THE COURT: A hunting knife?

MR. FITZGERALD: I say, it shows what their intent was in the car. Count 7 is a conspiracy charge, unlawfully, willfully and knowingly conspired --

THE COURT: I know. Does the hunting knife tie into anything specific later on?

MR. FITZGERALD: No, Judge. What the hunting knife indicates is the people in the car that night had a stolen license plate and a weapon, indicating that the car at the murder scene the get-away car, had weapons in it, making this much more probative.

Unless he stipulates to intent with the existence of a conspiracy, we are bound to prove he was working with others with the intent to carry out a murder, and this is probative of that and is not unfairly prejudicial. He can argue what it doesn't mean to the jury. We are trying to show he worked with others who were intent on killing Mr. Kahane. The getaway car that was supposed to be there that night was returned several days later, found with their prints and with other things indicating they were present.

I'm sorry. Returned the next day.

MR. STAVIS: Your Honor, there are no prints recovered from the knife. There are prints recovered from the car, which is the foundation for this theory being spun here before the Court. Of course, we don't know when the prints got there, but those are jury issues, your Honor. But in terms of tying it into the people that Mr. Fitzgerald is attempting to tie it into, you have a fingerprints on a window and on the vanity mirror of the car.

MR. FITZGERALD: Your Honor, the car was only owned by Mr. Nosair less than two months.

THE COURT: That goes to the prints.

MR. FITZGERALD: I would point out, 403 indicates it should only be excluding if the probative value is substantially outweighed by the danger of unfair prejudice, of which we see none here.

MR. STAVIS: I see a great deal of unfair prejudice. Perhaps I am a little more sensitive to that issue than Mr. Fitzgerald.

THE COURT: You get paid to be sensitive to that issue. You should see it.

MR. STAVIS: Conceded, your Honor.

THE COURT: I am serious.

I don't see the substantial prejudice. I really don't. You will argue it one way, he will argue it another. I will be amazed if either of you spends very much time on

it. I will let it in.

Anything else? Mr. Jacobs?

MR. JACOBS: Mr. Patel is standing.

THE COURT: Mr. Patel?

MR. PATEL: You gave us until tomorrow to submit whatever I want to submit concerning the detective who testified yesterday.

THE COURT: Right.

MR. PATEL: And the following detective.

THE COURT: Right.

MR. PATEL: I would like to talk a little bit about the following detective. It seems to me that Detective Cotter, who did microscopic analysis of the gun, which is essentially, if not identically --

THE COURT: You are saying it is duplicative.

MR. PATEL: Exactly.

MR. McCARTHY: We may not call him.

MR. PATEL: Just looking to save time.

THE COURT: You are preaching to the converted.

MR. JACOBS: Very quickly, your Honor.

As I think we are going to be getting into the fingerprint evidence of Mohammad Salameh and others, so the record is clear, these are the World Trade Center defendants. I have moved previously, and I think everybody joined me, that there should be a severance of this World

Trade Center. I have outstanding Brady requests and subpoena requests, and note the following.

The Government charges Mohammad Salameh, Yousef, and others committed the World Trade Center. I have yet to have certain compliance requests with my subpoena as who Yousef's associates may have been. I object at this time, since I can't decide what strategy I should use with respect to the fingerprint evidence coming in without having all these requests complied with.

I think that the fingerprint evidence should not come in until the government's specifically articulates, and I can't find in their opening how the World Trade Center connects with the defendants in this case, specifically what offer of proof they have that these defendants orchestrated or authorized the World Trade Center bombing. I didn't see it in their opening, and haven't seen it yet and haven't seen it on any of the tapes I have gotten.

I put the government on notice in my opening statement and put it in Brady requests to them and in subpoena requests to them that I am not in a position to cross-examine the fingerprint people until I have compliance with my letter and my subpoenas, because I don't know what other fingerprints there are, the government hasn't told me what other associates Yousef has, and I am not in a situation where I can make an intelligent decision whether I

should contest the fingerprint evidence at this time.

MR. FITZGERALD: I will deal with the substance of his motions demanding the names of all Mr. Yousef's associates tomorrow. I will say now that he is not entitled to it.

In his opening, he elected a strategy and told the jury there was no link between the Kahane homicide and the World Trade Center, and precisely when the fingerprint examiner will say the people who blew up the World Trade Center were in the car outside that day he wants to object. He has elected his strategy and we are entitled to prove our case.

THE COURT: I don't understand the conundrum about cross-examinations on the fingerprints. It seems to me you don't have to have an exhaustive list of all the alleged associates in order to cross-examine on whether two of the alleged associates' fingerprints were found on the car. It doesn't have to have been a car in which they all traveled simultaneously.

MR. JACOBS: Just so the record is clear --

THE COURT: The record may be clear in the sense of reflecting what you said; it isn't clear in the sense of reflecting an issue that I can understand and rule upon.

MR. JACOBS: The connection between Salameh, Nosair and these defendants, I don't think is clear based

upon the proof we have gotten so far. I am not in a situation --

THE COURT: That's what the case is about. They can only put in their proof one item at a time, as I told the jury earlier.

MR. JACOBS: As I am sure you know, I have made certain requests of the government by subpoena and letter, and we have agreed this will not be complied with or contested until tomorrow afternoon --

THE COURT: Mr. Jacobs, it will be discussed on Friday. If there is anything either in that discussion or any later discussion that requires that -- who is the witness?

MR. FITZGERALD: Belcastro.

THE COURT: -- that he be recalled, he will be recalled.

MR. JACOBS: I don't want the World Trade Center evidence coming in without my objections being noted. As far as I am concerned, Mohammad Salameh has no connection with the charges in this case.

THE COURT: That, it seems to me, is for you to argue in summation.

MS. AMSTERDAM: I want to echo Mr. Jacobs' sentiments.

THE COURT: Please don't, if all you are doing is

echoing. It is understood you join in the motion.

MS. LONDON: Obviously. It was on my name.

But I would like to add to that. I am not only just concerned about the ability to cross-examine these witnesses. I am concerned, if the World Trade Center part of the case should fall out of the case, we are going to be in a situation where there is a tremendous amount of spillover prejudice from having this jury alerted to the fact that the World Trade Center defendants somehow --

THE COURT: If the World Trade Center part of the case falls out of the case, you will be, as they say, in fat city.

MS. AMSTERDAM: I will wait for it, your Honor.

MS. STEWART: On that note, I rise.

Next Wednesday and Thursday is the holiday of Eid, the end of Ramadan. I know your Honor will be happy because it will mean we can work until 5:30 thereafter. However, I have been asked to request of the Court that we not sit on those two days.

THE COURT: Both days?

MS. STEWART: Yes.

THE COURT: Okay. I mean, when I say "okay," that I understand the request.

MS. STEWART: I was going to sit down quickly.

THE COURT: Do you mind if I make some

independent inquiry and then get back to you on which one or both?

MS. STEWART: Not at all. It may come at the appropriate time, because I think there may be some discovery problems with Mr. Salemeh that may have to be resolved as well.

THE COURT: There is no need to occupy my dance card with discovery problems in order for me to take a holiday if my independent expert tells me it is okay.

MS. STEWART: Withdrawn then.

THE COURT: If you want to do something to occupy the time that has to be done, fine. But I am not going to decide it on that basis.

MR. SERRA: I intend to answer briefly, in a two-page letter or less, Mr. McCarthy' letter I received yesterday as far as the instruction on the --

THE COURT: In other words, you are going to answer his answer to your letter?

MR. SERRA: That's why I said briefly. I will have it to the Court tomorrow morning, and I ask the Court not to make any ruling before then.

THE COURT: Believe me, I am not looking to make any rulings I don't have to before I have to make them.

Thank you.

(Recess)

(In open court; jury not present)

MR. FITZGERALD: Your Honor, one procedural note. Because Mr. Duran is testifying way sooner than we thought, the photographs have been reproduced for the jury but not assembled, so I will not display them for the jury this morning. I will simply open them and display them this afternoon.

MS. LONDON: We couldn't hear Mr. Fitzgerald.

MR. FITZGERALD: Because he is testifying out of order, the photographs have been reproduced but not put in the binders. We will not ask the jury to open their binders until this afternoon, when we will have them, hopefully, over lunch. The same with one other copy. The rest we will display.

(Jury present)

MR. FITZGERALD: The government calls Fernando Duran.

(Continued on next page)

FERNANDO DURAN,

called as a witness by the goverment,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Mr. Duran, are you retired?

A. Yes, I am.

Q. What did you do before you were retired, became retired?

A. I was a New York City police detective.

Q. For how many years?

A. I was assigned to the police department for 25 years, as a detective in crime scene 21 years.

Q. Were you assigned to the Crime Scene Unit in November of 1990?

A. Yes, I was.

Q. Let me direct your attention to a particular day, November 7 of 1990. Were you working that day?

A. Yes, I was.

Q. Were you assigned to analyze anything in particular on that day?

A. Yes.

Q. Can you tell the jury what that was?

A. Yes. There was a vehicle to be processed, a vehicle which was recovered, and it was pursuant to a search

warrant.

Q. Where did you do the processing and analysis of this car?

A. In the 6th precinct police station.

Q. Is there a garage area there?

A. Yes, there is.

Q. Would you describe to the jury what you recall the car looked like?

A. It was an Oldsmobile. It was like a greenish bluish gray in color.

Q. When you looked at this car, did you take photographs of it?

A. Yes, I did.

Q. Let me approach you with what have been premarked as Government's Exhibits 52A through 52F, as in Frank, for identification. If you could just take a moment to look at each photograph front and back, and tell us whether or not urban them. Do you recognize those six photographs?

A. Yes, I do.

Q. Are those photographs that you took yourself?

A. Yes.

Q. Are they photographs of the car that you talked about just a moment ago?

A. Yes, it is.

Q. Are those pictures fair and accurate photographs

of what the car you analyzed looked like on November 7, 1990?

A. Yes, it is.

MR. FITZGERALD: Your Honor, I would offer Government's Exhibits 52A through F.

MR. STAVIS: Just one question.

VOIR-DIRE EXAMINATION

BY MR. STAVIS:

Q. Did you take additional photographs on that day?

A. Yes, I did.

Q. Of that car?

A. Yes.

MR. STAVIS: Are you going to offer them as a two-step process?

THE COURT: No. He is offering A through F. Do you object?

MR. STAVIS: No, I have no objection.

THE COURT: A through F are received.

(Government's Exhibits 52A through 52F received in evidence)

MR. FITZGERALD: I will put on the record that copies of the photographs will be available for the jury's inspection after lunch.

THE COURT: Go ahead.

BY MR. FITZGERALD:

Q. For the moment, can you describe what 52A is composed of?

A. 52A is an overall view of the vehicle from the right rear facing towards the front.

Q. And 52B?

A. 52B is an overall view of the vehicle right side front to back.

Q. 52C?

A. Is an overall view of the front portion interior of the vehicle from the side.

Q. Is that an inside shot of the car? Is it a photo taken from inside the car, of the inside of the car?

A. Yes, it is.

Q. And 52D?

A. Also an overall view of the interior portion of the front of the vehicle. That would be from the left side of the vehicle.

Q. Taken from the opposite side?

A. Yes, it is.

Q. 52E. This is an overall view of the vehicle rear interior from the right side.

Q. And 52F?

A. This is an overall view of the vehicle rear interior from the left side.

Q. After photographing the car, did you participate in a search of the car?

A. Yes, I did.

Q. Can you tell the jury what you did?

A. Yes. I conducted a fingerprint search and I also conducted a physical search for evidence.

Q. Were you present when any physical items were recovered other than fingerprints?

A. Yes, I was.

Q. Do you recall the items that were recovered?

A. There was a knife. There were torn pieces of paper. There was a green-covered notebook. There was a license plate. There was plastic bags. That's as much as I recall.

Q. Let me approach you -- if I may, Judge -- with some exhibits.

THE COURT: Go ahead.

Q. Let me show you what has been premarked for identification as Government's Exhibit 53, and I ask you to take a look at it and tell me if you recognize it? If you need to take it out of the bag, you can.

A. Yes. This is a knife that I recovered from the interior of the vehicle, on the floor underneath the seat driver's side, and I put my markings on it.

MR. FITZGERALD: Your Honor, I would offer

Government's Exhibit 53.

MR. STAVIS: I didn't hear what he said about markings.

THE COURT: His initials on are on it, I believe he said.

MR. STAVIS: I have no objection other than the objection previously stated on the record, your Honor.

THE COURT: That objection is overruled, so 53 is received.

(Government's Exhibit 53 was received in evidence)

Q. Let me show you what has been premarked as Government's Exhibit 60 for identification, and ask you if you recognize that?

A. This is a New York State plate which was recovered from the trunk of the car.

Q. Do you know where in the trunk it was recovered?

A. I don't recall.

Q. Let me show you what has been premarked as Government Exhibit 56 and ask you if you recognize that? Let the record reflect he opened the brown bag to look inside what is Government's Exhibit 56.

A. Yes. This is two green plastic trash bags which I recovered from the rear of the vehicle in the trunk.

Q. And let me show you what has been premarked as

Government's Exhibit 55 and I ask you to take a look at that --

MR. STAVIS: Your Honor, can I ask a question? Are the green bags contained inside those other bags?

THE COURT: Contained in the paper bag?

THE WITNESS: Yes.

Q. So the record is clear, the green bags were found without the paper bag?

A. That is correct.

Q. And the paper bag was used to hold the green bags for evidence?

A. Yes.

Q. If you would look at Government's Exhibit 55. Tell us whether or not you recognize it.

A. Yes. This is a clear plastic bag containing torn pieces of paper which I recovered from the ashtray of the front portion of the vehicle, interior.

Q. Finally let me show you what has been premarked as Government's Exhibit 54. Let me show you what has been premarked as Government's Exhibit 54 and ask you if it looks familiar to you? Does it look familiar to you?

A. It appears to be a notebook recovered from the trunk of the car.

Q. What did you do with the items once you recovered them?

A. I gave them to Detective Gordon Haight.

Q. Would that be Haight as in H-A-I-G-H-T?

A. Yes.

Q. One last question on Government's Exhibit 55. When you covered the pieces of paper on Government's Exhibit 55, did they have the reddish, purplish coloring?

A. No.

Q. Are you familiar with a with what those colors?

A. Yes, it is chemical called inhydrant, which is used to recover fingerprints.

MR. FITZGERALD: At this time, your Honor, the government would offer Government's Exhibit 54, 55, 56 and 60.

MR. STAVIS: I object to the introduction of Exhibits 54, 55 and 56, your Honor.

THE COURT: Overruled. 54, 55, 56 and 60 are received.

(Government's Exhibits 54, 55, 56 and 60 were received in evidence)

Q. You mentioned earlier that besides the physical search, you also conducted a search for fingerprints. Can you tell the jury how you went about doing that?

A. Yes, I did. I used the mechanical method, at which time I used a contrasting powder that I applied to the surfaces in the exterior and interior surfaces of the

vehicle, using a feather duster and white powder.

Q. When you dusted the outside of the car, did you discover any latent prints?

A. No, I did not.

Q. Can you describe the surface materials on the inside of the car?

A. Yes, the surface material was very limited. It was cloth and it was a stippled surface on the dash, rough surface.

Q. That was on the interior, the dash?

A. Yes, the dash, the steering wheel and -- that's it.

Q. In your experience, do stipple surface and cloth lend themselves to retaining fingerprints?

A. No.

Q. Did you find any fingerprints in the interior of the car?

A. Yes, I did.

Q. Can you tell the jury where you found those fingerprints?

A. Yes. I recovered two lifts from the right rear window interior of the vehicle, and I recovered one lift from the visor, from the vanity mirror.

Q. Why don't you explain to the jury how one finds a print and how one lifts it.

A. Yes. When I apply the powders, basically the powder adheres to the moisture and the oils that are normally left by a person. The powders will adhere and it will make the print visible.

Q. Once you put the powders and the print appears visible because it adheres to the oils, what do you do to preserve the print?

A. Yes. I will use a special tape, a fingerprint tape. I will put the tape over the powder, I will lift the print, and I will transfer it over to a clear backing or to a contrasting backing.

Q. If you are looking for a print on a black surface, what color powder do you use?

A. I would use white powder for a black surface.

Q. And for a white surface black powder?

A. Yes.

Q. Did you make lifts of the three latent fingerprints you discovered inside the car?

A. Yes, I did.

Q. Let me show you what has been premarked as Government's Exhibits 57, 58 and 59 for identification. I ask you to take take look at those items and tell us whether or not you recognize them?

A. Yes, I do.

Q. How do you recognize them?

A. Because of the handwriting on the backing and also because the lift themselves are marked with my initials.

Q. And the handwriting at the top of each of these items, whose handwriting is that?

A. That is my handwriting.

Q. What are these three items that I hold in my hand?

A. Those are fingerprint lifts.

Q. Are those the fingerprint lifts that you took from the car that day?

A. Yes, they are.

MR. FITZGERALD: Your Honor, I would offer Government's Exhibits 57, 58 and 59.

MR. STAVIS: May I see the exhibits, your Honor?

THE COURT: Yes.

MR. STAVIS: I have no objection, your Honor.

THE COURT: 57, 58 and 59 are received without objection.

(Government's Exhibits 57, 58 and 59 were received in evidence)

Q. Mr. Duran, now that these are received in evidence, would you tell us where each individual lift was taken from in the car?

A. Yes. Lift number 1 was recovered from the

vehicle, right rear window interior.

Q. Is that Government's Exhibit 57?

A. Yes, it is.

Q. And Government's Exhibit 58?

A. That was also recovered from the vehicle rear window interior.

Q. And finally Government's Exhibit 59.

A. This was recovered from the vehicle, vanity passenger mirror.

Q. When you searched searched the car, did you find any car keys in the car?

A. No, I did not.

MR. FITZGERALD: Your Honor, if I may have one moment.

I have nothing further, Judge.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Detective Duran, we have never met -- Mr. Duran, we have never met before, have we?

A. No.

Q. And have we ever spoken?

A. No.

Q. Have you had occasion to meet with Mr. Fitzgerald, the prosecutor?

A. Yes, I did.

Q. When was the first time that you met with Mr. Fitzgerald?

A. That was on the 20th.

Q. The 20th of this month?

A. Yes, it is.

Q. February 20?

A. Um-hum.

Q. Approximately how long did you meet with him?

A. I met with him approximately about an hour.

Q. Did you meet with Mr. Fitzgerald on any other occasions?

A. No.

Q. When you met with Mr. Fitzgerald on the 20th, did he review with you the questions he was going to be asking of you when you testified?

A. In partial, yes, not the answers but basically the presentation of the evidence.

Q. But you told him the answers at that time, is that correct?

A. Yes, I did.

Q. Mr. Duran?

A. Yes, I did.

Q. And when he asked you the questions that he was going to be asking, did he have a black book like this

anywhere near him?

A. I don't recall.

Q. At the time that you met with Mr. Fitzgerald on the 20th, did he show you the lifts that have been introduced into evidence as Government's Exhibits 57, 58 and 59?

A. No, not the lifts.

Q. When was the last time -- withdrawn.

Had you seen those lifts introduced into evidence as Exhibits 57, 58 and 59 prior to this morning?

MR. FITZGERALD: There is objection to form.

THE COURT: No, I will allow it, if he can understand it.

Have you seen those three lifts before this morning?

THE WITNESS: When I lifted them.

Q. That was on November 7 of 1990, is that correct?

A. That is correct.

Q. When you lifted them, you filled out a form that goes with those lifts, is that correct?

A. Yes, sir.

Q. And your name is on that form, is that correct?

A. That is correct.

Q. Having your name on that form helped you to remember those lifts, is that fair to say?

A. Yes.

Q. Because without the accompanying information, one fingerprint sort of looks like another fingerprint, right?

A. The information on the card would basically trigger my memory.

Q. But without the information on the card, just looking at a lift, basically they all look similar, right?

A. Yes, they do.

Q. And in your 21 years as a Crime Scene Unit detective, you have seen thousands of fingerprint lifts, is that fair to say?

A. Yes, sir.

Q. And you have testified -- let me ask you. Have you testified before about fingerprints?

A. Yes, I have.

Q. Approximately how many times have you testified before about fingerprints?

A. Approximately about 60 times.

Q. And each time you testified before, the prosecutor showed you that card with your lift, is that correct?

A. No, sir.

Q. What did the prosecutor show you the 60 previous times -- please allow me to finish my question. What did the prosecutors show you on the 60 times that you have

testified about fingerprints?

A. On occasions, what they show me is a Polaroid copy of the lift.

Q. Not the lift itself, a Polaroid copy?

A. Yes.

Q. Do you have occasion to make Polaroid copies -- withdrawn.

When you were a Crime Scene Unit detective, did you have occasion to make Polaroid photographs of fingerprint lifts?

A. Yes.

Q. Tell the ladies and gentlemen of the jury why you did that on those occasions.

A. That is normally for preservation, in case we lose the lift.

Q. Mr. Duran, what do you mean by preservation in case you use the lift?

A. In case we lose the lift or the lift get misplaced.

Q. If it is misplaced?

A. If it gets misplaced.

Q. Then you have the photograph?

A. Yes.

Q. The photograph also shows the same thing that is in the lift, correct?

A. That is correct.

Q. And the photograph is also taken at the same time as the lift is taken, is that correct?

A. No, after the lift is lifted, it's taken after.

Q. How long after the lift is taken is the photograph taken?

A. That same day when I get back to my office.

Q. Where is your office -- withdrawn.

When you were a Crime Scene Unit detective, where was your office?

A. It was located in Fordham Road in the Bronx.

Q. Is that a particular precinct?

A. No. It was an office building.

Q. Crime Scene Unit?

A. It was an office building. The Crime Scene Unit was located there.

Q. Did you take photographs of the lifts that have been introduced into evidence as Government's Exhibits 57, 58 and 59?

A. Yes, I did.

Q. May I have them?

A. I don't have them.

(Continued on next page)

Q. Where are they?

MR. FITZGERALD: Objection, Judge.

THE COURT: Sustained.

Q. Do you know where the photographs are?

THE COURT: Sustained.

MR. STAVIS: May I be heard at the side bar, your Honor?

THE COURT: Yes.

(At the side bar)

MR. STAVIS: Your Honor, I believe that I am entitled to those photographs whatever method your Honor prefers that I obtain them. I am perfectly willing to abide by the court's ruling.

THE COURT: Gee, that's great. I am glad you told me that.

MR. FITZGERALD: I am happy to get him photographs. I don't think he should be asking in front of the jury.

THE COURT: Neither do I. I don't understand why he needs the photographs. I get a document and I make a backup copy in case I lose the original. I don't understand the point of this.

MR. STAVIS: I would refer your Honor to the New York State Police scanner case concerning taking items to put pieces of evidence on, where several police officers

were indicted, where photographic lifts was a recommended procedure to guard against that eventuality.

THE COURT: He wants the photographs, fine.

MR. FITZGERALD: I would just ask that he not ask for other items of materials from a witness on the stand. If there are Rule 16 items we will raise it, but not in front of the jury.

MR. PATEL: Sometimes it comes up unexpectedly.

THE COURT: When it comes up unexpectedly, there is a way to deal with it.

(Continued on next page)

(In open court)

BY MR. STAVIS:

Q. Detective Duran, did you take any photographs of the latent prints that came up before you lifted them off of the surfaces?

A. No, sir.

Q. Isn't it a recommended procedure in the New York City Police Department to take a photograph of the latent print before it is lifted off of the surface?

A. No, it's not, sir.

Q. Isn't it the recommended procedure to have a witness present at the time that a latent print is lifted off of a surface?

A. No, sir.

Q. At the time that a latent print is lifted off of a surface -- withdrawn.

A latent print is invisible, correct?

A. That is correct.

Q. Then you put the powder on, right?

A. Yes, sir.

Q. And then it becomes visible?

A. Yes, sir.

Q. And then you press a piece of tape on, correct?

A. That is correct.

Q. And then you pull up the piece of tape, correct?

A. Yes, sir.

Q. And the fingerprint it now on the piece of tape, correct?

A. That is correct.

Q. When you have the piece of tape with the fingerprint on it, you can put that piece of tape on something, can't you?

A. Yes.

Q. You can put it on a piece of cellular substance like in Government's Exhibit 57, 58 or 59, correct?

A. Yes, sir.

Q. You could also put it on any other surface, smooth surface, can't you?

A. Yes, you could.

Q. And you have known in your experience of cases where detectives have done that, have taken the tape and put it on surfaces other than the cellular surface that they are preserving for a trial, isn't that correct?

MR. FITZGERALD: Objection, your Honor.

THE COURT: Sustained.

Q. A print, a fingerprint is essentially transferred, is that correct?

A. Yes, it is.

Q. It is transferred from the surface where you pick it up, to another surface, correct?

A. Yes.

Q. And it could be transferred from the surface where you pick it up to any other surface, correct, that will accept fingerprints?

A. Yes.

Q. Like glass is a very good surface, correct?

A. Yes.

Q. Paper is sometimes a good surface?

A. Yes, it is.

Q. And you can lift those prints from where they come from and put them on to any surface that a fingerprint will adhere to, correct?

A. That is correct.

Q. You could even lift them off and put them on things that might be considered evidence in a case, is that correct, Mr. Duran?

A. No, sir.

Q. Can't do that?

A. No.

Q. The tape won't adhere to something that is going to be considered evidence?

A. Well, you know, it could possibly be done, but it's not done, sir.

Q. You testified concerning some pieces of paper that you recovered from the car. Do you recall that

testimony?

A. Yes, I did do.

Q. Is it possible to take fingerprint tape, lift a fingerprint off of the rear right shield interior window, and place it on a piece of paper like that piece of paper that you recovered in the car?

A. You could place the tape at that particular location, yes.

Q. Then that would put the fingerprint on that paper, correct?

A. With the tape.

Q. With the tape.

A. Yes, sir.

Q. Detective Duran -- excuse me, Mr. Duran, or retired Detective Duran -- have you ever testified in this case?

A. On this case?

Q. Yes, before today.

A. I don't recall.

MR. FITZGERALD: Object to form.

A. I don't really recall.

THE COURT: When you say "on this case" --

MR. STAVIS: I will withdraw it.

Q. The things that you are talking about in your testimony today, have you ever testified before concerning

those events and things that you did to this car?

A. Yes, I have.

Q. When was that?

A. That was in state court.

(Continued on next page)

MR. STAVIS: If I may have a moment, your Honor.

May I be heard at the side bar, your Honor?

THE COURT: Yes.

(At the side bar)

MR. STAVIS: Your Honor, I wasn't aware whether or not the witness had testified. If he is incorrect there is no 3500 material but if he is correct then there is. I would make an application for it.

MR. FITZGERALD: My understanding was that he had not testified. That is why we didn't produce the testimony. He may be confused. I will doublecheck the transcript.

MR. PATEL: Is it possible that he testified in grand jury in state?

MR. FITZGERALD: I will doublecheck. My understanding was that he had not testified at either the grand jury or the trial. I can have him stay around at lunchtime.

THE COURT: Why don't you have him stay around, depending on what the check shows.

MR. FITZGERALD: Fair enough.

(In open court)

(Continued on next page)

BY MR. STAVIS:

Q. Did you speak to a prosecutor before the last time you testified about these events?

A. Yes, I have.

Q. Do you know the prosecutor's name?

A. I don't recall.

Q. Do you know whether you testified before the grand jury or at a trial?

A. I don't recall, sir.

Q. Do you recall approximately when that took place, the testimony?

A. It was several years back.

Q. You were assigned to the Crime Scene Unit at the time that you processed this vehicle?

A. Yes, I was.

Q. Who gave you the assignment to process this vehicle?

A. It's normally done by telephone.

Q. Excuse me?

A. It's done by telephone. We get a telephone notification from the detective and we will respond.

Q. Who was the detective who notified you by telephone?

A. I don't recall.

Q. Did you report to anyone in the police department

concerning the task that you performed about the car?

A. I responded to the 6th precinct and there were detects tiffs there at the scene.

Q. Who were the detectives who were there?

A. Gordon Haight was there, and others.

Q. Who are the others?

A. I don't recall the other members. They were from the 17th squad.

Q. And you say 17th squad. That is the precinct detective unit?

A. Yes.

Q. Or PDU?

A. Um-hum.

Q. And you are Crime Scene Unit, correct?

A. That is correct.

Q. You are CSU?

A. Yes.

Q. Explain to the ladies and gentlemen of the jury the difference between the Crime Scene Unit and the Precinct Detective Unit.

A. Yes, sir. In our unit we normally respond to the scene of the crime and we do the photographs, the fingerprints, and the evidence collection. The precinct detectives, they actually do the field work. They do their investigations, they do the arrests of their investigations.

Q. During the course of your 21 years in the Crime Scene Unit, you have had approximately how many crime scenes that you responded to?

A. Thousands.

Q. Do you usually take like a stationwagon that is marked Crime Scene Unit when you go to those crime scenes?

A. Yes, we do.

Q. Is there any special equipment in the Crime Scene Unit stationwagon that you take out to crime scenes during the time that you were a Crime Scene Unit detective?

A. Yes, there were.

Q. What kind of stuff was in there?

A. We have cameras, we have items to process scenes, we have bags, we have items that we normally would use to conduct our crime scene investigations.

Q. The cameras, what are the cameras for?

A. To take photographs of the scene.

Q. How do you make a determination as a Crime Scene Unit detective as to what to take a photograph of?

A. Basically I would get information from the detective of the investigation, of the primary investigation that he conducted, and based on what he told me I normally would take a photograph of the scene.

Q. You also have fingerprint kits in the Crime Scene Unit vehicle when you go to a crime scene?

A. What was that.

Q. Do you also have a fingerprint kit?

A. Yes, we do.

Q. It is very common that you take fingerprints at a crime scene, correct?

A. If it is required to do so, we will.

Q. How do you make a determination as to what to take fingerprints of when you go to a crime scene?

A. If there are items to be processed, we will process at the scene. If there is a street scene and basically no surface to conduct a fingerprint search of, there will be no fingerprint search conducted.

Q. How about if it is an indoor scene? Might you take photographs at an indoor crime scene?

A. We take photographs, yes.

Q. In the thousands of crime scenes that you responded to while you were a crime scene detective, did you ever take fingerprints off of a door handle?

A. Yes, I have.

Q. Is a door handle a good surface to get a fingerprint from?

A. Not all the time, no, sir.

Q. Sometimes?

A. Sometimes.

Q. How do you determine when it is a good surface

and when it is not a good surface?

A. Basically the door handle is constantly handled, and sometimes the fingerprint will not adhere to that particular surface because it's over handled.

Q. Have you had occasion to take fingerprints off of door handles?

A. Yes, I have.

Q. Approximately how many times during your 21-year career as a Crime Scene Unit detective have you had occasion to do that?

A. I don't recall.

Q. Can you estimate for us?

A. No.

Q. It wasn't uncommon, was it?

A. It was uncommon, yes.

Q. It was uncommon?

A. Yes, it was.

Q. But you did it?

A. Yes.

Q. How about weapons? During the 21 years that you were a Crime Scene Unit detective, did you have occasion to take fingerprints off of handguns?

A. Yes, I have.

Q. Was that a fairly common occurrence when you were a Crime Scene Unit detective?

A. No, it's not a very common occurrence either.

Q. But it happened?

A. Yes, it does.

Q. Can you estimate for us how many times you were able to get fingerprints off of a weapon?

A. No, not that many times.

Q. How about bullets? Did you ever get a print of any sort off of a bullet during the time that you were a Crime Scene Unit detective?

A. No, sir.

Q. During the time that you were a crime scene detective, did you ever have occasion to recover bullets at a crime scene?

A. Yes.

Q. Did you have something with you when you went to a crime scene, known as a scribe?

A. Yes.

(Continued on next page)

Q. And explain to the ladies and gentlemen of the jury what a scribe is.

A. Yes. Basically, a tool that we use to mark the evidence.

Q. During those occasions when you were a crime scene unit detective and went to a crime scene and recovered bullets, did you use the scribe to put your initials into those bullets?

A. Yes.

Q. And the reason that you did that was in case the bullets ever had to be introduced into evidence at a trial, you would be able to say these are the bullets that I found on such and such a date, correct?

A. That's correct.

Q. Now, you mentioned Detective Haight. How is that pronounced?

A. Gordon Haight.

Q. Did you also speak to a Detective Bailes in this case?

A. I don't recall, sir.

Q. Do you know if Detective Bailes was the assigned detective in this case?

A. Yes, he was.

Q. Is the only work that you did on this case on November 7th, when you searched the car?

A. Yes, sir.
Q. And that occurred on November 7th, correct?
A. Yes, sir.
Q. Please answer. November 7th, right?
A. November 7th, yes, sir.
Q. November 7th of 1990?
A. That's correct.
Q. November 7th is one day -- November 7, 1990 is one day after November 6, 1990, is that correct?
A. Yes, it is.
Q. Did you also speak to a Detective McGovern in this case?
A. Yes, I did. He's my partner.
Q. He was your partner?
A. Yes, sir.
Q. Was he present for the search?
A. Yes, he was.
Q. Did he take any photographs?
A. No, sir.
Q. What is his role in the search?
A. To take the information down on paper.
Q. So you were searching and he was taking the information down?
A. No, he also assisted me with the search, but his primary function is basically to record the information I

give him.

Q. How did he assist you on the search?

A. He would look around. Basically, we would both physically search for the vehicle.

Q. Did you have contact with the Police Officer Kennedy concerning this case?

A. Not that I recall, no.

Q. When you saw the car, was the car brought to you or did you go to the car?

A. The car was brought to us.

Q. Who brought the car to you?

A. It was flatbedded into the precinct.

Q. What do you mean by flatbedded in?

A. Basically, it was a truck, it was trucked in from whatever location it was recovered.

Q. Who was driving the truck, or who was it that brought the car to you?

A. I don't know.

Q. Do you know if it was an Emergency Services unit person who brought the car to where you were so that you could search it?

A. I don't recall, sir.

Q. Is that the kind of thing that Emergency Services unit does?

A. I don't recall that. I don't know what,

basically, on the towing of cars.

Q. Did you have occasion to speak to any FBI agents concerning the work that you did on that case?

A. No, sir.

Q. Did you have any contact whatsoever with the FBI concerning the work that you did on this case?

A. No, sir.

Q. Did you have occasion to interview any witnesses with regard to the work that you were doing on this case?

A. No, sir.

Q. Do you know of your own personal knowledge if any witnesses were interviewed with regard to this case?

MR. FITZGERALD: Objection to scope, your Honor.

THE COURT: Sustained.

Q. Did you have occasion to voucher any of the evidence that you recovered when you searched the car?

A. No, sir.

Q. Do you know if any of the evidence you recovered when you searched the car was vouchered?

A. Yes, it was.

Q. Do you know who did that vouchering?

A. Gordon Haight.

Q. Do you know when that vouchering was done?

A. No, I don't.

Q. Was the detective present when you were doing the

search of the car?

A. Yes, he was.

Q. Who else was present beside you, Detective McGovern and Detective Haight?

A. There were members of the Emergency Service squad and other uniformed members of the service.

Q. Approximately how many other members?

A. I don't recall how many.

Q. Can you estimate for us?

A. I would say approximately about from six to eight.

Q. Did you have any contact with a Detective Sergeant Finnegan on this case?

A. Yes, I did.

Q. Was he your supervisor?

A. Yes, he was.

Q. Did you have any contact with a Detective Mullalley concerning the search of the car in this case?

A. Not that I recall.

Q. Did you have any contact with a Detective Medina concerning the search of the car?

A. I don't recall, sir.

Q. Now, when you searched the car, did you notice if it had a license plate affixed to the front and rear of the car?

A. Yes.
Q. Had a New Jersey license plate?
A. That's correct.
Q. And it had a license plate number FMR22X, is that correct?
MR. FITZGERALD: I will stipulate.
THE COURT: All right.
Q. And it had the registration in the windshield, the part that is affixed to the windshield?
A. I don't recall, sir.
Q. Now, you mentioned on your direct examination that there was a license plate inside the car?
A. Yes, sir.
Q. Did you hand over that license plate to Detective Haight to be vouchered?
A. Yes, I handed it to my partner, my partner, Detective McGovern, and McGovern handed it to Gordon Haight.
Q. When you finished your search, you filled out a forensic report, correct?
A. Yes, I did.
Q. Did you indicate in that report that you had recovered a license plate in the car?
A. No, I did not.
Q. But you had recovered a license plate in the car?
A. Yes.

Q. When you fill out a forensic report, there is a section where you fill out the evidence that you have recovered, right?

A. Yes, there is.

Q. And you filled out -- you wrote in that, you had the plastic bags that you recovered?

A. Yes.

Q. The plastic garbage bags?

A. Yes, sir.

Q. And the ripped pieces of paper?

A. Yes.

Q. And the knife?

A. Yes.

Q. And the green notebook?

A. No. I didn't put down the green notebook, no.

Q. So you left out the green notebook and the license plate when you filled out your report, is that fair to say, Mr. Duran?

A. Yes, it is.

Q. And you did that because they didn't appear important to you at the time, is that fair to say?

A. No, sir, no.

Q. But you left them out?

A. Yes, I did.

Q. And as a crime scene unit detective, you have to

pay very careful attention to everything you see at a crime scene, isn't that right?

A. Yes, sir.

Q. Because some day after you go to that crime scene, you may sit on the witness stand like this and come and testify before people in a trial, correct?

A. That's correct.

Q. So you have to get all your facts down, right?

A. Yes, sir.

Q. And you have got to get all your evidence down, right?

A. Yes, sir.

Q. You have to know it inside and out, right?

A. What was that?

Q. You have to know all this stuff inside and out, right?

A. Well, the evidence I recovered normally gets included in my report.

Q. But not the green notebook and not the license plate?

A. No, sir.

Q. Right?

A. That's correct.

Q. How many photographs did you take of this car?

A. I took a series of photographs. I don't recall

how many.

MR. STAVIS: May I approach the witness, your Honor, with 3556C?

THE COURT: Yes.

Q. Mr. Duran, I ask you just to take a look at this to yourself and I will ask you a question when you get finished.

Having examined that piece of paper, does that refresh your recollection as to how many photographs you took that day?

A. Yes, it does.

Q. How many did you take?

A. Twelve.

Q. On that day, did you take any photographs of the right rear window interior?

A. Not a closeup, no, sir.

Q. And the right rear window interior is where you recovered Government Exhibit 57, that fingerprint, is that correct?

A. That's correct, yes.

Q. And when you were taking pictures, did you take any other pictures from the right rear window interior?

A. Not closeups. I took an overall view of the vehicle.

Q. And that area would be where Government Exhibit

58 was lifted, is that correct?

A. Yes.

Q. Did you take any photographs of the vanity mirror?

A. No, sir.

Q. And the vanity mirror would be where Government Exhibit 59 was taken, is that correct?

A. Yes.

Q. And do you know as you sit there today where on the right rear window Government Exhibits 57 and 58 came from?

A. They came from the interior portion of the glass.

Q. And where on the interior portion of the glass did they come from?

A. I don't remember. I don't know.

Q. Now, when fingerprints adhere to a surface, they stay there?

A. Yes. If it is a conducive surface, it will show a print.

MR. STAVIS: May I approach the witness for a second, your Honor?

THE COURT: Yes.

Q. If I pick up this pitcher here, and I have my whole hand around it, this area where I have my thumb, I am going to leave a pretty good print on this surface, is that

fair to say?

A. No, sir.

Q. Because it is smooth?

A. No, sir.

Q. Okay. What would be a good surface to leave a fingerprint on?

A. A smooth hard surface like that particular item there.

Q. This is or is not a good surface?

A. It is.

Q. It is?

A. Appears to be.

Q. Okay. So if your fingerprint is on a surface like that surface on that pitcher over there, it will stay on that surface for approximately how long?

A. It will stay there for an indefinite period of time.

THE COURT: If you can come to a convenient break point in the next five minutes --

MR. STAVIS: This would be a convenient break point, your Honor.

THE COURT: We are going to break for lunch. Please leave your notes and other materials behind. Please don't discuss the case.

Have a pleasant lunch.

(Jury left courtroom)

THE COURT: You may step down.

(Witness left stand)

THE COURT: We will resume at 2:00.

(Luncheon recess)

(Continued on next page)

AFTERNOON SESSION

2:05 p.m.

(In open court; jury not present)

MR. PATEL: Your Honor, I come bearing good news, I think. Rather than submit for your Honor a ruling on our pending motion to strike the Solowsky testimony, I think we may be able to come to an agreement with the government. His testimony, for lack of better analogy, in light of the agent's testimony this morning, has become somewhat cumulative ex post facto, and we may be able to work something out.

THE COURT: I am trying to avoid saying anything that will ruin the chance for agreement.

MR. PATEL: Thank you.

MR. STAVIS: Well, there is some good news and there is some bad news, your Honor.

THE COURT: Here comes the bad news.

MR. STAVIS: It is not bad news, actually, it's an application, your Honor. The government has indicated to us that they will be calling a fingerprint expert by the name of Peter Belcastro, and they indicated to us that he will be coming later this afternoon. I think we were told by the government late yesterday afternoon that this would be their expert. As your Honor knows, I asked for expert disclosure in this case formally by letter, I believe of

February 18, 1994. In a letter of January 18, 1995, at page 5, Mr. Fitzgerald identified someone by the name of Carol Ann Edelen, E-D-E-L-E-N, as the FBI fingerprint specialist who would be testifying at this case. Since we are now hearing not from Karen Ann Edelen but from somebody by the name of Peter Belcastro, who we have yet to see anything of, although Mr. Fitzgerald will speak to this, he sent last evening some material, which I did not receive. In any event, since the witness that is going to be called was not in the Rule 16(a)(1)(E) expert witness disclosure of the government of January 18 of 1995 --

THE COURT: In short form -- go ahead.

MR. STAVIS: I would move to preclude the testimony of Peter Belcastro as a fingerprint expert.

MR. FITZGERALD: Your Honor, Mr. Stavis is correct that we identified Ms. Edelen as our expert, who we thought we would be calling. She will be testifying as to the World Trade Center proof. Mr. Belcastro made these analyse. What happened last night, when I indicated to Mr. Stavis and Mr. Patel that we would get to the fingerprint examiner today, they indicated that they did not have 3500 material --

MR. JACOBS: Mr. Fitzgerald, could you slow down and speak a little louder.

MR. FITZGERALD: I indicated it was the reports

that they had for sometime. Mr. Stavis indicated that he wanted the underlying worksheets. I told him Mr. Castro was coming to my office and I would let him know whether they existed and fax them. I obtained the worksheets and redacted them appropriately and called Mr. Stavis to tell them they would be coming in a half hour. My recollection is that it was more than a half hour but they were faxed.

Rule 16(a)(1)(E) requires the government to disclose a written summary of the testimony that should include the witness's opinions, the bases and the reasons therefor, and the witness's qualifications. I think they had in substance the notice. Had we known we would have Mr. Castro we would have disclosed that information. The bottom line is that they have known that the prints of Mohammed Salameh were found in the car and that is what we were expecting.

MR. STAVIS: Rule 16(e) requires the witness's qualifications, and we were given Karen Ann Edelen as the witness. The witness's qualifications are something that we do not have in this case because we did not have the name of the witness. As your Honor knows, with regard to an expert witness, if I wish, I can investigate the witness, articles and treatises that that expert witness has published. I can obtain prior expert testimony that has been given by that particular expert witness. Here, the name of that expert

witness was not disclosed to me in a timely fashion.

With regard to the reports that Mr. Fitzgerald made reference to, I checked the reports. They do not have a name on them, your Honor.

THE COURT: Mr. Fitzgerald, are both Edelen and Belcastro with the FBI?

MR. FITZGERALD: Edelen is retired. Mr. Belcastro is with the FBI and will be available should Mr. Stavis require.

THE COURT: The application to bar the testimony is denied.

THE COURT: Do we have the witness who was on?

FERNANDO DURAN, resumed.

(Jury present)

MR. JACOBS: Your Honor, the record should indicate that we were just handed 3598, which are apparently the worksheets of the FBI --

THE COURT: The application to keep his testimony out has been denied. He can be recalled if there is any additional questioning to be done.

MR. JACOBS: That wasn't my application, your Honor. There are some redactions here. I would like to discuss them with the gang -- I would like to discuss them with Mr. Stavis.

THE COURT: You will have all the opportunity you

need to discuss it with Mr. Stavis, and the witness will be subject to recall.

MR. PATEL: Your Honor, I am sorry. This is a little double teaming, your Honor --

THE COURT: Is this on the same subject?

MR. PATEL: Yes.

THE COURT: No.

MS. AMSTERDAM: Could we take a break after this witness is done, your Honor, so counsel can confer?

MR. FITZGERALD: Mr. Belcastro is not the next witness. There are four before him.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

Mr. Stavis.

MR. STAVIS: Thank you, your Honor.

(Continued on next page)

CROSS-EXAMINATION continued

BY MR. STAVIS:

Q. Mr. Duran, the latent fingerprints that you testified about this morning have been introduced into evidence as Exhibits 57, 58 and 59, is that correct?

A. Yes, sir.

MR. STAVIS: I would ask, your Honor, if the witness could come off the witness stand so that we can show the items to the jury and then I can ask him questions.

THE COURT: Go ahead. Just take the microphone with you, please.

Q. Mr. Duran, these are the prints that you lifted from various places in the car, is that correct?

A. That is correct.

Q. You don't remember the prints themselves but the top portion of the car where it has your name is how you refreshed your recollection concerning the prints, is that correct?

A. The print also has my markings, on the acetate.

Q. From the acetate markings on the bottom here, you don't know precisely where -- we are looking at Government's Exhibit 57 -- you don't know where on the window, right window interior this print here, Government's Exhibit 7, came from, do you?

A. Not the exact location, but it came from the

window interior.

Q. That is the rear window of the car?

A. Yes, right rear.

Q. And you didn't take any photographs of the place where the fingerprints were taken, did you?

MR. FITZGERALD: Objection.

THE COURT: Sustained. This was established this morning. Let's go.

Q. Is it indicated on Government's Exhibit 57, 58, and 59, the precise location where the fingerprints were taken?

MR. FITZGERALD: Same objection.

THE COURT: Same ruling.

Q. You can resume your seat.

Q. You testified this morning concerning a license plate that was contained in the trunk of the vehicle. Do you recall that testimony?

A. Yes, I do.

Q. Did you take fingerprints of the license plate?

A. I dusted it for fingerprints.

Q. Did you come up with anything?

A. No.

Q. Did you indicate in your report that you dusted the license plate for fingerprints?

A. No.

Q. And your report is a very important document, is it not?

A. Yes, it is.

Q. And you have to put all the things that were important --

THE COURT: Sustained.

MR. STAVIS: Was there an objection, your Honor?

THE COURT: There was a ruling. Did you hear that?

MR. STAVIS: Yes, your Honor.

THE COURT: That is usually the important part. Please move on to something else. This is duplicative.

Q. Did you check any other cars for fingerprints, either on November 7 or thereafter with regard to this case?

A. No.

Q. Did you check any taxicabs for fingerprints with regard to this case?

A. No.

MR. STAVIS: I have no further questions, your Honor.

THE COURT: Anything else?

MR. FITZGERALD: Brief, Judge.

REDIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Mr. Duran, do you recall the questions by

Mr. Stavis as to whether or not in your forensic report you indicated that a notebook had been recovered in the car? Do you recall those questions?

A. Yes, I do.

Q. Let me approach you with what has been premarked as 3556D as in David.

(Continued on next page)

MR. STAVIS: I would object to the procedure, your Honor, and I would ask to be heard at the side side bar.

THE COURT: I will hear you.

(At the side bar)

MR. STAVIS: Your Honor, there is no failure of recollection on the part of this witness and no need to refresh his recollection.

THE COURT: Do you want to refresh his recollection?

MR. FITZGERALD: I want to correct a misleading impression. He put in that report that he collected a notebook and the jury has been led to believe there was not a notebook.

MR. STAVIS: That was his testimony, your Honor.

THE COURT: I will allow it.

(In open court)

THE COURT: The objection is overruled.

(Continued on next page)

BY MR. FITZGERALD:

Q. Mr. Duran, do you recognize that document?

A. Yes, I do.

Q. What is it?

A. This is the forensic report that I prepared in relation to this case.

Q. Did you sign that document?

A. Yes, I did.

Q. Looking at that report, can you tell us whether or not in fact you included the green notebook in that forensic report?

MR. STAVIS: Objection, your Honor, reading from an item not in evidence.

THE COURT: Overruled. Go ahead.

A. Yes.

Q. Did you see do you see it there in the document?

A. Yes, I do.

Q. One last question. On November 7, 1990, when you were in the car removing those scraps of paper from the ashtray, did you have any idea who Mohammed Salameh was?

MR. STAVIS: Objection, your Honor.

A. No. Staff.

MR. FITZGERALD: Thank you.

THE COURT: Anything else?

MR. STAVIS: No, your Honor.

THE COURT: You are excused. Thank you.

(Witness excused)

MR. KHUZAMI: Your Honor, the government calls Ada Ramos as its next witness.

ADA HORACIO-RAMOS,

called as a witness by the government,

having been duly sworn, testified as follows:

THE COURT: Excuse me. If you could try to lean forward and talk right into the microphone so you can be heard. Thank you very much.

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Ms. Horacio-Ramos, how are you employed?

A. I work for the New York City Department of Transportation as a deputy director of the investigations unit.

MR. JACOBS: I am sorry, Judge. I can't hear you.

Q. If you would speak into the microphone and talk a little louder.

A. I work for the Bureau of Transportation. I am the deputy director of the office of investigations and controls.

Q. How long have you been employed by the Department of Transportation?

A. Eleven years.

Q. Can you describe for the jury the function of the Department of Transportation?

A. It is basically to keep the traffic, issuing parking summons to vehicles that are impeding the flow of traffic.

Q. Can you describe what position or positions you have held within the Department of Transportation?

A. I first started as a traffic enforcement agent issuing parking summonses. Then I became a supervisor for agents writing parking summonses. Then I went to the internal affairs unit where I was chief investigator. From there I went on to captain of a unit that writes -- in charge of agents writing parking summons, to deputy director of investigations.

MR. KHUZAMI: Your Honor, may I approach?

THE COURT: Yes.

Q. Ms. Horacio-Ramos, I show you what have been marked for identification as Government's Exhibits 50A through 50D, and 51A and 51B, and ask you to take a look at those.

A. Yes.

Q. Do you recognize what those are?

A. These are copies of summonses issued to vehicles.

Q. Are those issued by the New York City Department

of Transportation?

A. Yes, they are.

Q. Some of those are carbon originals and some of those are copies, is that correct?

A. Exhibit 51A and 51B are carbon. They are not microfiche copies, they are carbons that are handed to the motorist. Exhibit 50A is a microcopy of the original that is issued by the traffic agent, which is taken to the office for processing. 50B and 50C and 50D are also copies of summonses that are put on the vehicle or given to the motorist.

Q. Have you had an opportunity to review these prior to your testimony here today?

A. Yes.

Q. Did you review the names of the traffic enforcement agents who signed each of those exhibits?

A. Yes, I did.

Q. Do you recognize those persons as persons who are employed by the Department of Transportation as traffic enforcement agents in or around November 1990?

A. Yes, they are.

Q. Is it the duty of a traffic enforcement agent to write parking tickets?

A. Yes, it is.

Q. Do they write the parking ticket at or near the

time that they cite a vehicle for violation?

A. Yes, they do.

Q. Does the traffic enforcement agent have knowledge of the facts which give rise to the violation at the time they write the ticket?

A. At the time, yes.

(Continued on next page)

Q. Do they copy those tickets and file a copy or copies with the Department of Transportation?

A. Yes, they do.

MR. KHUZAMI: I move into evidence Government Exhibits 50A through D and 51A and B.

MR. STAVIS: Objection, your Honor. Foundation.

THE COURT: Let's have a sidebar.

(Continued on next page)

(At sidebar)

THE COURT: Where do these things come from?

MR. KHUZAMI: Traffic tickets.

THE COURT: I know they are.

MR. KHUZAMI: Issued to --

THE COURT: I am asking you where this material comes from. I didn't hear you get that.

MR. KHUZAMI: Where these particular tickets came from. She identified two as being microfiche copies on file at the DOT, and the remainder as those that are left with the vehicle at the time that the traffic ticket is written. Carbon originals.

THE COURT: The actual thing?

MR. KHUZAMI: Yes, that is left.

THE COURT: Mr. Stavis, what is your objection?

MR. STAVIS: I withdraw my objection.

THE COURT: Okay.

(Continued on next page)

(In open court)

THE COURT: 50A through D and 51A and B are received without objection.

(Government's Exhibit 50A through D, and 51A and 51B for identification received in evidence)

Q. Ms. Horacio-Ramos, I wonder if you might start with Government Exhibit 50A.

A. Yes.

Q. Please indicate for 50A through 50D the license plate number of the vehicle that the ticket was issued to, the date and time of the issuance, and the location where the vehicle was?

A. 50A, license plate number is FMR22X. The time of issuance is 9:30 a.m. on November 6, 1990. The location is in front of 831 Second Avenue within the 17th Precinct confines.

THE COURT: That is the 72nd precinct?

THE WITNESS: 17th precinct, one-seven.

THE COURT: I'm sorry.

A. Exhibit 50B, plate number FMR22X. The time of the violation is at, I believe, 9:54 a.m. on November the 6th, 1990 in front of 831 Second Avenue, within the 17th Precinct confines.

50C, plate number FMR22X. Time is 6:12 p.m., November 6, 1990 in front of 831 Second Avenue in the 17th

Precinct.

50D, plate FMR22X, and the time of issuance is 6:15 p.m., November the 6th, 1990, in front of 831 Second Avenue in the 17th Precinct district.

Q. As to 51A and B?

A. 51A, plate number is FMR22X. Time of issuance is 8:10 a.m., 11/7/1990, November the 7th, 1990, in front of 831 Second Avenue, 17th Precinct.

51B, plate number is FMR22X, time of issuance 8:10 in the morning on November the 7th, 1990, in front of 831 Second Avenue in the 17th Precinct.

MR. KHUZAMI: No further questions, your Honor.

MR. STAVIS: Just a few.

THE COURT: Go ahead.

MR. STAVIS: May I have the exhibits, please?

Thank you.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Good afternoon, Ms. Ramos.

A. Good afternoon.

Q. The earliest of these series of traffic tickets is from November 6th 1990 at 9:30 a.m., is that correct?

A. That's correct.

Q. That is Government's Exhibit 50A?

A. I believe so.

Q. Now, the address on all of these exhibits is the same, is that correct, ma'am?

A. Yes, it is.

Q. And that is 8831 Second Avenue?

A. Yes.

MR. STAVIS: No further questions, your Honor.

MR. KHUZAMI: No redirect.

THE COURT: Thank you. You are excused.

(Witness excused)

MR. FITZGERALD: The government calls Martina Figueroa.

MARTINA FIGUEROA

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. If you can, please keep your voice up or sit close to the microphone so everyone can hear you. What country were you born in?

A. El Salvador.

Q. Since you have come from El Salvador to this country, have you ever had occasion to have your license plate stolen?

Let me try it again.

Have you owned a car?

A. Yes.

Q. Did you ever go to your car and notice that the license plate was missing?

A. Yes, the plate was missing.

Q. Excuse me?

A. The plate was missing.

Q. Okay. Do you recall approximately about when, what year it was that you went to your car and noticed the license plate missing?

A. It was five years ago.

Q. How do you remember it was about five years ago?

A. Well, because I had -- I had two children, but when I had the second one it was a little child.

Q. So you remember it by the memory of how big your baby was at the time?

A. Yes, because she is now five years.

Q. As you sit here today, do you remember the exact date that it happened?

A. No.

Q. Do you remember the numbers and letters of the license plate?

A. Yes. It was KNR211.

Q. Let me approach you with what is Government Exhibit 60 in evidence. You can take a look at that.

Is that the license plate that you used to have?

A. Yes.

Q. Now, do you recall what time of year it was that you noticed the license plate was missing, the season, if you recall?

A. No.

Q. Where was your car parked on the day that you noticed that the license plate was missing?

A. No, I don't remember.

Q. Okay. Let me make sure I asked it right.

The day you went to your car and noticed the license plate was missing, do you know where your car was?

A. Oh, yes.

Q. Okay.

A. It was one block up -- I live on 42nd Street, and I leave the car on 43rd street on the corner, and 8th Avenue.

Q. 43rd street and 8th Avenue?

A. Yes.

Q. So we are clear, that is Brooklyn?

A. Yes.

Q. What did you do on the day that you went to your car on 43 Street and 8th Avenue and noticed the license plate was missing?

A. Well, I saw that the plate was missing, but I didn't do anything.

Q. Did there come a time -- did you ever do anything about the missing license plate, did you ever tell anyone?

A. No.

Q. Had you given anyone permission to take the license plate?

A. No.

Q. Had you lent the license plate to anyone?

A. No.

Q. And you are married?

A. Yes, I am.

Q. As far as you know, did your husband lend the license plate to anyone?

A. No.

Q. Did you ever tell the police that the license plate was missing?

A. I went a few days later when I saw that somebody lost my plate.

Q. And where did you go?

A. To the precinct, 72.

Q. So you went to the precinct a few days later to let them know that the license plate was missing, is that correct?

A. Excuse me?

Q. You went to the police precinct a few days after you found the plate missing?

A. Yes.

Q. And did you tell the police at the precinct that the plate was missing?

A. Yes.

Q. Did they fill out a report while you were there?

A. Yes.

Q. As you sit here today, you do not know the exact date when you noticed the plate was missing, is that correct?

A. I don't remember. I don't know.

Q. At the time you went to the police station, did you tell the police officer the day that you noticed the plate was missing?

A. Oh, yes. Uh-huh.

MR. FITZGERALD: I have nothing further, Judge.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Good afternoon.

Do you know who took your license plate, ma'am?

A. No, I don't.

Q. Now you went to the 72nd Precinct and reported that it was stolen?

A. Yes.

Q. And it the -- the 72nd Precinct is a New York City police precinct?

A. It's in Brooklyn.

Q. But it is New York City Police, do you know?

A. It is a precinct. I don't know.

Q. After you did that, did the FBI agents come to your home and visit you?

A. Yes.

Q. Was one of the names of those FBI agents John Antachef?

A. No. I don't know. After, when I go to the -- went to the precinct, they went some FBI, but I don't know the names.

Q. This was five years ago, ma'am?

A. Yes.

Q. Thank you very much.

A. Uh-huh.

MR. FITZGERALD: Nothing further, Judge.

I'm sorry.

THE COURT: Mr. RICO for Mr. El-Gabrowny.

CROSS-EXAMINATION

BY MR. RICO:

Q. Good afternoon. Two FBI agents came to your house, isn't that correct?

A. Yes.

Q. You said you don't recall their names?

A. Right.

Q. Okay. They showed you a picture though while they were at your house, didn't they? Did they show you a photograph?

A. The FBI?

Q. Yes.

A. The picture of the FBI?

Q. Yes. Did they show you a picture and ask you did you recognize the person in the picture?

A. No, no, no.

Q. They didn't?

A. No.

Q. Also, when the police were at your house, they came there because they wanted to know whether or not you gave your permission for someone to use your license plate, isn't that right?

A. Repeat again.

Q. Okay. When the FBI agents came to your house, they wanted to ask you some questions, right?

A. Uh-huh.

Q. And the questions they wanted to ask you was about your license plate, isn't that correct?

A. Yes.

Q. They wanted to know, for example, did you lend it to anybody, right?

A. Uh-huh.

Q. They wanted to know whether or not you gave anybody permission to use your license plate, isn't that right?

A. Uh-huh.

Q. You told them you had not, you told them no, isn't that right?

A. Yes.

Q. Now, when the FBI agents came to your house to ask you those questions, did they have guns out?

Did they have their guns in their hands when they came to your house?

A. No.

Q. At any time during the time period they were asking you questions about your license plates, did any agents put you against a wall and search you?

A. Yes, the little plate.

Q. No. Let me ask the question again.

When the agents came to your house and asked you the questions, did they ever put you against the wall and put your hands against the wall and search you?

A. No.

Q. In fact, they were very nice to you isn't that right?

A. Yes.

Q. They were very civil, isn't that right?

A. Yes.

MR. RICO: No further questions.

MR. FITZGERALD: Just one.

REDIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Before you let the FBI agents in the house, did you punch any of them?

A. No.

Q. Okay. Thank you.

THE COURT: You are excused. Thank you.

You can leave. You are excused. Thank you.

THE WITNESS: Okay.

(Witness excused)

MR. FITZGERALD: The government calls Russell Pennington.

RUSSELL PENNINGTON,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. What do you do for a living?

A. Deputy United States Marshal.

Q. For how long have you been a deputy United States Marshal?

A. For approximately 23 1/2 years.

Q. Let me approach with what is premarked Government Exhibit 671B.

Having looked at 61B, is it something you recognize?

A. Yes, it is.

Q. How do you recognize it?

A. I recognize it by my signature in the box, my badge number, and my method of printing information on it.

Q. What is it?

A. It's a fingerprint card.

Q. Are those fingerprints you took from someone?

A. Yes, they are.

MR. FITZGERALD: I offer 61B, your Honor.

MR. JACOBS: May I see it?

MR. FITZGERALD: Yes.

MR. JACOBS: May have a voir dire, your Honor.

THE COURT: Mr. Jacobs, representing Mr. Mohammed Saleh. Go ahead.

VOIR DIRE EXAMINATION

BY MR. JACOBS:

Q. This is the fingerprint card of Mohammad Salameh, correct?

A. Yes.

Q. You took his prints on March 4, 1993?

THE COURT: Mr. Jacobs, please use the

microphone.

Q. You took his fingerprints on March 4, 1993?

A. I did. I took them in 1993, whatever date is reflected on the card.

Q. And there is various information that is filled out in addition to the prints that you took on this card. Am I correct that this is information you received from Salameh?

A. I don't have an independent recollection of whether he gave me that information or if I just transcribed it from another document taken by the arresting agent.

Q. In addition to the information --

MR. JACOBS: If I can approach the witness?

THE COURT: Mr. Jacobs, please don't talk until you are in front of a microphone. They can't hear.

Q. Does that apply to the information on the back, that is either received from the arresting agent or from the defendant Salameh?

A. Yes.

MR. JACOBS: I have no objection to the prints. I would like to be heard at sidebar with respect to other information.

MR. FITZGERALD: I can limit the offer.

THE COURT: Are you offering it for anything other than the prints?

MR. FITZGERALD: The prints, the signature of the person printing it, and the date. That's it. No other information.

MR. SERRA: I'm sorry?

THE COURT: He is offering it for the prints, the signature of the person whose prints they are, and the date.

MR. FITZGERALD: And the printed name of the person whose prints they are. Other than that, no other information.

MR. JACOBS: Excuse me. May I speak with Mr. Fitzgerald for a moment?

BY MR. JACOBS:

Q. Mr. Pennington, did Salameh sign this in your presence?

A. Yes, he did.

MR. JACOBS: Nothing further.

MR. FITZGERALD: Your Honor, I offer that portion of the Exhibit 61B, including the printed name of the person fingerprinted, and the signature, which says signature of person fingerprinted, and the date.

MR. JACOBS: No objection to that.

THE COURT: Does anybody have an objection?

MR. STAVIS: No, your Honor.

THE COURT: Then 61B is received only for those items of information and nothing else.

(Government's Exhibit 61B for identification received in evidence)

MR. FITZGERALD: Thank you, Judge.

CONTINUED DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. One last question, Mr. Pennington.

On that fingerprint card where it says the signature of the person fingerprinted, how did Mr. Salameh write his name, what letters do you say?

A. The letters MOH, apostrophe, D.

Q. And that is it that you see?

A. That's correct.

MR. FITZGERALD: Nothing further, Judge.

THE COURT: Cross?

MR. STAVIS: No cross, your Honor.

THE COURT: Mr. Jacobs?

MR. JACOBS: No.

THE COURT: Thank you, Mr. Pennington. You are excused.

(Witness excused)

MR. FITZGERALD: The government calls John Svinos, S-V-I-N-O-S.

JOHN SVINOS,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Mr. Svinos, what do you do for a living?

A. I am a deputy U.S. Marshal.

Q. For how long have you been a deputy U.S. Marshal?

A. Approximately three years.

Q. Let me approach with what is premarked Government Exhibit 63A.

Would you look at 63A and tell me whether or not you recognize it?

A. I do.

Q. How do you recognize it?

A. It has my signature on it.

Q. What is it?

A. It's a fingerprint card of Bilal Alkaisi.

Q. Are those fingerprints you took of Mr. Bilal Alkaisi?

A. Yes.

Q. What day did you take those fingerprints?

A. March 25 of '93.

MR. FITZGERALD: I will show it to counsel and only offer the fingerprints -- the name, the fingerprints, and the date.

THE COURT: Go ahead.

Do you want to establish that?

MR. FITZGERALD: Yes. I will offer both signatures.

THE COURT: Would you like to establish that he signed it?

MR. FITZGERALD: Yes.

Q. Does your signature appear on that document?

A. Yes, it does. Right there.

Q. Is there any other signature on the document?

A. Right above mine.

Q. Whose signature is that?

A. Bilal Alkaisi.

MR. FITZGERALD: I offer the fingerprints, the name, the date, and both signatures, of Mr. Svinos and Mr. Alkaisi, and the date.

And I believe the date was offered on the prior exhibit.

MR. JACOBS: No objection to that.

THE COURT: All right. Then the same items of information are received as to 63A, namely the two signatures, the date, and the name and fingerprints themselves, and nothing else.

(Government's Exhibit 63A for identification received in evidence)

MR. FITZGERALD: Nothing further.

THE COURT: Cross?

MR. STAVIS: No cross-examination.

THE COURT: Mr. Jacobs for Mr. Mohammed Saleh.

Go ahead.

CROSS-EXAMINATION

BY MR. JACOBS:

Q. Marshal, the fingerprints taken of this person was because of an arrest, is that correct?

A. Yes, it was.

Q. Am I correct that every defendant who is arrested that passes through this building gets processed by the marshals in the back here on the third floor?

A. Yes.

Q. This was a routine procedure that U.S. marshals do, processing any defendant, taking the fingerprints?

A. Yes, it is.

MR. JACOBS: Nothing further.

MR. FITZGERALD: Nothing further.

THE COURT: You are excused.

(Witness excused)

MR. FITZGERALD: The government calls Carrie Brzezinski.

CARRIE BRZEZINSKI,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. What do you do for a living?

A. Special agent, FBI.

Q. Where are you assigned?

A. Assigned to Newark division.

Q. I approach you with what is premarked as Government Exhibit 62 for identification. I ask you to take a look at it and tell us whether or not you recognize what it is.

A. Yes, I do recognize.

Q. How do you recognize it?

A. They're fingerprint cards and major case fingerprint cards.

Q. How do you, yourself, recognize it as something you have seen before?

A. I recognize my signature on the fingerprint card.

Q. Looking at the top page of the item, is that your signature?

A. Yes.

Q. Is there another signature on that top page?

A. Yes.

Q. Is that the person who was fingerprinted?

A. Yes, it is.

Q. What is the name of that person?

A. That is Nidal Ayyad.

Q. Spell the last name.

A. A-Y-Y-A-D.

Q. If you could look at the second page, does that have your signature on it?

A. Yes, it does.

Q. Do you know when you took those fingerprints on that card?

A. That is dated March 10, 1993.

MR. FITZGERALD: Your Honor, I offer this Exhibit, Government 62A, as to the prints taken, the date, the signature of Agent Brzezinski on the first and second pages, and fingerprints of the person fingerprinted, and nothing else.

MR. STAVIS: No objection.

THE COURT: 662A?

Q. Is that 62A, agent?

THE COURT: Or 62?

Q. There is a sticker in the right-hand side.

MR. FITZGERALD: I'm sorry. 62.

Thank you.

THE COURT: 62 is received, only for the two signatures, the name, the date, and the prints.

(Government's Exhibit 62 for identification received in evidence)

MR. FITZGERALD: Nothing further, Judge.

THE COURT: Mr. Jacobs, cross?

MR. JACOBS: No.

THE COURT: Mr. Stavis, representing Mr. Nosair, cross.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Special Agent Brzezinski, do you know if a hand swabbing was taken from Mr. Ayyad?

A. A hand swabbing?

Q. Yes.

A. Meaning printing the whole hand?

MR. STAVIS: May I approach the witness with 3558A, your Honor?

THE COURT: Yes.

A. I'm not aware of that, no.

Q. Did you photograph Mr. Ayyad?

A. I probably did. If I fingerprinted him, I would have photographed him as well.

Q. And do you know if anybody else took a hand swabbing from Mr. Ayyad?

A. I'm not aware of anyone else taking fingerprints that day.

Q. Was there a special agent by the name of Linda Trafficanti who assisted you in your investigation of Mr. Ayyad?

A. Not that day, no.

Q. Do you know if Special Agent Trafficanti took a hand swab from Mr. Ayyad?

A. I am not a aware of it, no.

Q. What is a hand swab?

A. I don't know.

Q. Have you ever heard the term used?

A. No.

MR. STAVIS: No further questions, your Honor.

THE COURT: Mr. Rico, representing Mr. El-Gabrowny.

Go ahead.

CROSS-EXAMINATION

BY MR. RICO:

Q. Good afternoon, Agent.

The fingerprinting of Nidal Ayyad was done in connection with his arrest, isn't that correct?

A. That's correct.

Q. That arrest was in connection with the World Trade bombing, isn't that correct?

A. That's correct.

Q. And yourself and several other agents arrived at his address, 60 Boyton Avenue, on March 10, 1993, isn't that correct?

A. No, it's not. I did not participate in the

arrest of that individual.

Q. Okay. To your knowledge do you know whether or not he was arrested that day?

A. Yes, he was.

Q. And was he arrested at 60 Boyton Avenue?

A. I know the location was in Maplewood. I don't know the exact address.

Q. Part of your duties with the FBI is to log your activities, isn't that correct?

A. To some extent.

Q. Do you know if your activities on that day were part of an arrest log?

A. My particular activities?

Q. Yes.

A. I am not aware of it being on an arrest log, no.

Q. Do you know what an arrest log is?

A. Yes, I do.

MR. RICO: I would like to show the witness 3558A, your Honor.

Q. Could the witness please take a look at it?

THE COURT: Do you want to pose a question relating to that?

MR. RICO: I want to wait until the agent is through.

Q. Have you had a chance to look at it?

A. Yes, I have.
Q. Do you recognize that?
A. Yes, I do.
Q. What do you recognize it to be?
A. It is a FD302.
Q. Which is the arrest log for Nidal Ayyad, isn't that correct?
A. That's correct.
Q. And your activities are a part of that log, isn't that correct?
A. Yes, they are.
Q. Is it your testimony here that you have never seen the arrest log in this case?
A. I have seen the 302. I may not have seen the arrest log, the original arrest log.
Q. My question is, the document that you just had an opportunity to review --
A. Yes.
Q. -- the 302 of the arrest log, have you ever seen it before?
A. My initials appear on the 302, so, yes, I have seen it before and I have initialed it.
Q. Is your limit to his arrest solely for the purposes of taking his fingerprints?
A. Yes.

Q. And where did that take place?

A. Within our office in Newark, New Jersey.

MR. RICO: No further questions.

Thank you very much.

THE COURT: Mr. Jacobs?

MR. JACOBS: Nothing, your Honor.

THE COURT: Anybody else?

MR. FITZGERALD: No redirect.

THE COURT: You are excused. Thank you.

(Witness excused)

THE COURT: Ladies and gentlemen, we are going to take an afternoon break.

Please leave your notes behind. Please don't discuss the case.

(Recess)

MR. PATEL: I believe the next witness is Mr. Belcastro.

MR. FITZGERALD: Yes.

MR. PATEL: I received the 3500 material for Mr. Belcastro, I believe, after lunch. I am prepared to cross-examine the witnesses after him, apparently.

THE COURT: This is the same fix we were in another time?

MR. PATEL: Yes, your Honor.

THE COURT: Is there anybody who is -- I mean, I

don't your batting order. Who is supposed to go after Mr. Belcastro? Are they here?

MR. FITZGERALD: No. I think that is it.

THE COURT: Why don't we get through Belcastro's direct and then break.

MR. PATEL: No problem.

MR. FITZGERALD: It may be close to 4:00 o'clock anyway.

THE COURT: Mr. Jacobs?

MR. JACOBS: In connection with his direct testimony.

THE COURT: Yes.

MR. JACOBS: I would ask the government to state on what grounds --

THE COURT: That is, the redactions?

Yes. What is the story on those.

MR. FITZGERALD: We redacted names, other than any of the defendants who are named, any of the defendants in Judge Duffy's trial. We did not redact their names. We did not redact Ramzi Yousef's name. Anyone else who was considered a suspect or target, we redacted the names.

I don't think they are entitled to know who the government viewed as a possible suspect. It is sensitive information. They are entitled to know their run. They have gotten reports, and they are entitled to know whether

any World Trade Center prints were run. Redactions do not refer to any hits. So the fact John Smith had his prints run against the items and there were no hits is not material and is protected information.

MR. JACOBS: I guess it gets into part of the application we were dealing with on Friday.

THE COURT: I don't know that it does.

MR. JACOBS: The FBI had other suspects. The way I read the indictment, it says Salameh, Ayyad, Yousef, and others. I think we are entitled to the information who the FBI believed were the others.

What we chose to do with it, how we wanted to investigate it is something for the defense to pursue in this case.

THE COURT: Can I --

MR. JACOBS: Just so we are clear, one of the individuals they have given us, number 9, is Salem.

THE COURT: No, that is not --

MR. JACOBS: I think it looks like Salem.

THE COURT: We are talking about prints that they ran.

MR. JACOBS: Yes.

THE COURT: That is different from the question of who was or wasn't included within the others known and unknown to the grand jury named in the indictment.

MR. JACOBS: You are right.

THE COURT: You have a list --

MR. JACOBS: The point --

THE COURT: May I finish?

You have a list enumerating all of the people, at least all of the people who would be in that category. What you are saying is you have a right to know which other prints they ran.

MR. JACOBS: And I note that in 3598E, they list somebody by the name of Nasser Ahmed as one of the persons whose prints were run. Either they failed to redact that or missed that one.

But it is our position, your Honor, before the direct of this case, that we would like to see the Air Tel sent by the FBI before the World Trade Center bombing, because, unless I am misreading the document we just received at 2:00 o'clock, the Air Tel is dated December 15, 1992 and apparently was sent in connection with the, I assume, the Kahane murder.

And what I would like to see is what was sent on December 15, 1992, who are the suspects in the Kahane murder, and then I guess we will pursue how come it took four months later for the fingerprints to be done after the World Trade Center case, and I would also like to find out, before the direct, the typewritten portion that is contained

in page 2, when that was typed in, who made the redactions, and this document I think raises a lot of questions, and I don't think we should hear the direct yet.

THE COURT: The issue is whether any of them are relevant to the business we will have to do here.

Do you have anything else?

MR. FITZGERALD: No. That is precisely my point.

THE COURT: I don't think they are.

I understand your application and it is denied.

We will take a break.

(Recess)

(Continued on next page)

(Jury not present)

MR. JACOBS: Your Honor, one additional matter. This witness apparently received fingerprints October 11, 1991, as a result of Airtel, on October 11, 1991. In his report of April 15, he compares these prints, which were given on November 1, 1991, with various people including Ayyad, and I don't know what these five latent prints are. We don't have the Airtel.

I just find it very difficult to make proper objections on the direct testimony of this witness in light of the fact that the government at 2:00, I don't believe has turned over 3500 material. There are fingerprints in this case involving at least Ayyad that were compared that I don't know what they are about. I don't think we are in a situation to hear the direct --

THE COURT: Mr. Jacobs, fingerprints aren't about anything. They are fingerprints.

MR. JACOBS: Your Honor, when this witness says that he examined certain prints on direct, I think we are entitled to know ahead of time what he has examined and I don't think it should wait until over the weekend or tonight for the government to decide when to give us the information of what this witness examined. I understand under Rule 3500 we should be getting his work product for the 1991 examination and the 1993 examination. He states here five

latent prints under the caption Haight's which were previously reported in his report to the New York division are not the fingerprints. We don't have this document. We don't have the Airtel. I am not sure which fingerprints they are.

I hate to use the word, but we are getting sandbagged by the government at 2:00 in the afternoon on a lot of crucial evidence. We have been working a long time in this case and I really think this is not the way we should be doing the trial. A couple days of notice wouldn't hurt in this case, Judge.

THE COURT: Thank you, Mr. Jacobs.

MR. FITZGERALD: The paragraphs that he is referring to are some prints as to which he will not be testifying on direct. The fact that someone's prints don't match up are not crucial. He will be testifying about prints that do match. We are doing the best we can. The order changes as issues are raised at the last moment. I think that is sufficient.

MR. JACOBS: Your Honor, I am not telling the government how to try their case. All I am saying is that at 2:00 in the afternoon on a witness I don't think is sufficient to give us part of the 3500 material. I think that this is clearly 3500 material. We haven't got it, and I don't think we should be in a situation -- we have

defendants here in this case who we don't even know if their prints are examined. I don't know if it's the sheik, I don't know if it's Yousef. I don't think this is the way we should try this case.

THE COURT: Mr. Jacobs, there is no jury here.

MR. JACOBS: I am sorry, Judge. I am annoyed.

THE COURT: I am glad you told me. I wasn't able to discern that.

MR. JACOBS: The government should take whatever time they wish, give us the time.

THE COURT: Mr. Fitzgerald, were any of the prints of any of the defendants examined, any of these defendants?

MR. FITZGERALD: Yes, your Honor, and they are on the reports. All the reports about the defendants' prints have been given over as part of discovery, not as part of 3500.

THE COURT: Were any of the defendants' prints among the no hits?

MR. FITZGERALD: Yes, your Honor, but we are only offering hits.

THE COURT: No, listen to my question. Were any of these defendants' prints among those on which you did not get hits?

MR. FITZGERALD: Yes. No defendants' prints were

hits.

MS. LONDON: I am sorry. We can't hear.

MR. FITZGERALD: There were no hits among the defendants. Any defendants whose prints were run were not hits.

THE COURT: Can they tell from this --

MR. FITZGERALD: I can sit down with counsel at the end of the day, go through and work with them to try and decipher which report it is that tells them when their clients' prints were run. The paragraph that he is complaining of, if we gave a strict reading of 3500 they wouldn't be entitled to.

THE COURT: They are not examining on direct about it.

MR. FITZGERALD: Correct. I will be happy to sit down with counsel at the end of the day -- we will not be through even with direct then -- and go through them --

THE COURT: Let's get the witness then.

MR. FITZGERALD: Your Honor, while we are waiting for the jury, I would ask counsel to accept a stipulation --

THE COURT: No, we are not going to pull a stipulation out of your sock while we are waiting for the jury.

MR. FITZGERALD: I was going to offer it to them.

THE COURT: If you want to offer it, offer it to

them privately.

(Jury present)

MR. FITZGERALD: The government calls Peter Belcastro.

PETER J. BELCASTRO,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Mr. Belcastro, who do you work for?

A. I am employed by the Federal Bureau of Investigation in Washington, D.C.

Q. If you could just keep your voice up or sit a little bit closer to the microphone so that everyone can hear you.

How long have you worked for the FBI?

A. Approximately 27 years.

Q. For how long have you been a fingerprint examiner?

A. Since 1975.

Q. What did you do for the FBI prior to becoming a fingerprint examiner in 1975?

A. I was a fingerprint examiner. I am now a fingerprint specialist. The difference between the two is, for the first five years I worked in the identification

division, classifying, searching and filing ink fingerprints. The latter part of my career I am involved in working comparisons with latent prints against ink prints.

Q. Why don't you explain to the jury what the difference is between a latent print and an ink print.

A. The undersides of the fingers have raised portions of skin known as friction ridges. These friction ridges are usually coated with a thin film of perspiration, oils, or other foreign matter. When these fingers come in contact with an object, a design or pattern is usually left upon the object touched. These are known as latent prints. They are accidental, invisible and partial, and require some form of development either with certain chemicals or fingerprint powders, to make them visible.

Q. By comparison, what is an ink fingerprint?

A. An ink fingerprint is the deliberate recording of these friction ridges by the use of black fingerprint ink and placed on a standard fingerprint record card.

Q. Can you explain your general duties to the jury as a fingerprint specialist?

A. I receive items of evidence from authorized law enforcement agencies, both state and federal. I examine this evidence for the presence of latent prints. I compare any latent prints with the ink prints of known individuals to see if they were made by one and the same person. When

requested to do so, I will testify in court. I am a member of the national disaster squad, whose job it is to identify the deceased at major disasters, and I am an instructor for the FBI in latent and ink fingerprint matters.

Q. Have you testified as an expert in court before today?

A. Yes, I have.

Q. Approximately how many times?

A. Numerous, in excess of 150 times.

Q. Can you explain the difference to the jury between a fingerprint and a palm print?

A. A fingerprint is the recording or the design of the pattern on the ends of the fingers. The palm print is the ridges on the surface of the palm.

Q. How do you compare ink fingerprints to make identifications? How do you compare ink fingerprints to latent fingerprints?

A. These friction ridges we were talking about are not constant or continuous lines. Some are extremely short and have no direction. They are known as dots. Others end or begin, they are known as ends of ridges. Others begin as one ridge and separate or divide into two. These are known as dividing ridges. And still others begin as one ridge, separate into two, continue for a short distance, rejoin, and continue on as one. These are known as enclosures.

These dots, ends of ridges, dividing ridges, and enclosures are known as identifying characteristics. When these similar identifying characteristics are found lying in the same relative position in two prints -- a latent print and an ink print -- then an identification is effected.

Q. What factors are there in using fingerprints to make identifications?

A. The basic factors are two: permanence and individuality. By permanence I mean the ridges are formed before birth and do not change except for normal scarring or mutilation until decomposition sets in after death. By individuality, I mean that no two prints contain the same identifying characteristics lying in the same relative position, unless they were made by the same person or area of skin.

This statement holds true for the ridges on the palms of the hands and the soles of the feet.

(Continued on next page)

Q. Now do all people leave fingerprints?

A. No, not all people leave fingerprints, and not everybody will leave fingerprints at various times. There are so many factors that go into that.

Have you just recently washed your hands? Have you been wearing gloves? Or you just may not be a secretor who readily leaves latent prints. You may have handled a lot of paper items prior to touching the object, and that in itself would cause you to wipe your hands off, and it takes our body time to replenish this moisture or oils that cover our friction skin that leave latent prints.

Q. Do particular surfaces retain fingerprints better than other prints?

A. Some do, yes.

Q. Can you give us an example of a good surface?

A. A good surface could be paper, because the paper absorbs the amino acids from in your perspiration into the paper. The paper itself then will protect the latent print. Another good surface on a different type of surface would be glass refrigerator door. I am sure many of you have went to your refrigerator door and seen light shining on your refrigerator door and can see latent prints. These are moisture or oily prints left on a hard surface.

Q. Let me approach with Government Exhibit 61A, 61B, 62, 63, and 63B, and also with Government Exhibit 54.

Looking at 61P, are they identified as the fingerprints of Mohammad Salameh?

A. Yes, they are.

Q. And 61A, are they identified as being the fingerprints of Mohammad Salameh?

A. Yes.

Q. Have you prepared 61A and 61B?

A. I have compared them.

Q. Are they identical?

MR. STAVIS: Objection as to form.

A. Yes, they are.

THE COURT: Sustained as to form.

Don't answer it.

Q. What did you conclude after comparing 61A and 61B?

A. I found that the prints contained on both cards bearing the name of Mohammad Salameh were made by one and the same person.

Q. And looking at 63 and 63A, have you compared those items?

A. Yes.

Q. What did you conclude after comparing those two items?

A. I found out that the fingerprints contained on these two cards bearing the name of Bilal Alkaisi were made

by one and the same person.

Q. If you pick up 54, the green notebook to your left, have you seen that green notebook before?

A. Yes.

Q. What did you do when you received the green notebook?

A. I processed this or examined this for latent prints of value.

Q. Tell the jury how you go about doing that.

A. I processed -- since this item is a porous type item, I processed it chemically for latent prints.

I developed 97 latent fingerprints and four latent palm prints of value for identification purposes in this notebook. Of value for identification purposes means that each one of those prints contain a sufficient number of characteristics in them, so I have the corresponding areas and a neat fingerprint of a known individual and I would be able to effect an identification.

Q. Now, when you chemically process a given page in the notebook, how does the appearance of the page change?

A. It can change in several ways, but mainly coloration. This book was processed first by laser and then it was processed secondly by a chemical called an anhydron, which reacts to amino acids in the body's perspiration. If latent prints are developed in an anhydron, which these ones

were, they would change or appear a purplish type color in or on the page.

Q. And once the prints appear in that purplish type color on the page, does that color remain or does it fade over time?

A. The coloring could remain for quite a long time, and the coloring could dissipate over a period of time. It all depends on how much amino acids are in the perspiration prints left on the paper.

Q. Now, do you have in front of you Government Exhibit 62, the fingerprints of Nidal Ayyad?

A. Yes.

Q. And did you compare the latent fingerprints, the 97 fingerprints in Government Exhibit 54, the green notebook, with the fingerprints of Nidal Ayyad?

A. Yes.

Q. Did you effect any identifications?

A. Yes.

Q. How many?

A. Two.

Q. And do you recall what pages of the notebook you effected the identification of Nidal Ayyad's fingerprints?

A. This particular one, I can. Page 270 and 273, one fingerprint each.

Q. Have you prepared a blowup of one of those

fingerprints for your testimony here today?

A. Yes.

Q. Would that aid you in testifying and explaining to the jury how you effect an identification?

A. Yes.

Q. Let me approach you with what is premarked Government Exhibit 71A.

I ask to you take a look at 71A and tell me if you recognize what it is.

A. 71A is a set of charts or blowups illustrating one of the ink fingerprint on the fingerprint card bearing the name of Nidal Ayyad and one of the latent prints I developed in the green notebook.

Q. Did you check that to make sure it was an accurate blowup of the two fingerprints?

A. Yes.

Q. I would ask you to open 71A and, using that, try to explain to the jury how you effected the identification of that print?

THE WITNESS: Your Honor, may I step down and approach the jury?

THE COURT: Yes, you may. Just make sure -- well I will ask Mr. Fitzgerald to make sure that the witness has a microphone with him.

Q. Yes. You can step down and step by the

microphone, which is working.

I will take the exhibits out of the bag if that helps.

A. The chart marked ink fingerprint --

Q. Hold on one second.

MR. PATEL: May I ask the witness to stand on the corner so we can all see?

THE COURT: Why don't we have counsel move.

Let's ask the witness to stand in the corner of the jury box.

Q. Stand over here at an angle and speak into the directional microphone.

A. The chart marked ink fingerprint is a photographic enlargement of approximately 12 times of the ink fingerprint left thumb print that appears on this fingerprint card bearing the name of Nidal Ayyad.

Q. Marked Government Exhibit 62?

A. It is marked Government Exhibit 62.

The chart marked latent fingerprint is a photographic enlargement of approximately 12 times of one of the latent prints or of the latent print developed on the green notebook.

Q. Marked Government Exhibit 54?

A. Government Exhibit --

Q. 54?

A. 54, on page 270.

The black lines in both charts represent the friction ridges. The white lines in both charts represent the spaces for furrows between these ridges.

The red letters and numerals and lines were placed on these charts by me for illustrative purposes only, and the chart marked "ink fingerprint" at the approximate top right, there is an end of a ridge which extends to your left, and I have designated this point number 1.

From point number 1, counting downward two intervening ridges, there is a single ridge which separates into two. This is a dividing ridge. At this point of separation I have labeled it point number 2.

From point number 2, counting downward, there are three intervening ridges, there is the end of a ridge which extends to your left. I have designated that point number 3.

And from point number 3, again counting downward and to your right two intervening ridges, there is the end of a ridge which extends upward. This I have designated point number 4.

Bearing in mind, for these two prints to have been made by the same finger, these same identifying characteristics must be found lying in the chart marked latent fingerprint.

Directing your attention to the top right of chart marked latent fingerprint, there is an end of a ridge which extends to your left, and I have designated this point number 1.

From point number 1, counting downward two intervening ridges there is a single ridge which separates into two. This is a dividing ridge. At this point of separation I have labeled it point number 2.

From point number 2, again counting downward three intervening ridges, there is an interval ridge which extends to your left. I have designated this point number 3.

From point number 3, again counting downward and to your right two intervening ridges, there is the end of a ridge which extends upward. I have designated this point number 4.

With these four points I have just explained, others which I have not explained and have charted, and still others which are not charted, I base my opinion that the chart marked ink fingerprint, which is a photographic enlargement of the left thumb print that appears on this fingerprint card bearing the name of Nidal Ayyad marked Government Exhibit 62, and the chart marked latent fingerprint, which is a photographic enlargement of one of the latent prints that I developed in that green notebook

marked Government Exhibit --

Q. 54?

A. -- 54, and found on page 270, were made by one and the same person, and could not have been made by any other.

Q. You can resume your seat for just a moment and I will take the exhibits.

(Witness resumed stand)

Q. Are you familiar with the term "points of identity"?

A. Yes.

Q. And what is a point of identity?

A. It's an identifying characteristic or a focal point. As I have explained before, we have four of them in various positions throughout our friction skin area. They're dots, ends of ridges, dividing ridges, and enclosures.

Q. Are you familiar -- were you done?

A. No.

Q. If you could, complete your answer.

A. And to make two prints identical, it is not alone the type of characteristic but the number of intervening ridges between each of the characteristics and the relative position of each of the characteristics to one another.

Q. Now, if you could, take a look at Government

Exhibits 61A, which is the Salameh prints, 61B. Did you have occasion to compare the prints for Mohammad Salameh with the green notebook I have before me marked as Government Exhibit 54?

A. Yes.

Q. Did you effect any identifications between Salameh's prints and the green notebook?

A. Yes.

Q. How many?

A. 25 fingerprints and 3 palm prints were identified on various pages in that notebook.

Q. Have you selected out any of those identified prints for another blowup for illustration purposes today?

A. Yes, I selected one.

Q. If I could approach you with Government Exhibit 71C, if I could have you briefly step down and give a brief explanation for 71C.

(Witness left witness stand)

Q. And at the end the jury rail, speak into the directional mike.

A. Again, the chart marked ink fingerprint is an enlargement of approximately 12 times of the right index finger that appears on this fingerprint card bearing the name of Mohammad Salameh marked Government Exhibit 61B, and the chart marked latent fingerprint, which is a photographic

enlargement of the one of the latent prints I developed in that green notebook, Government Exhibit --

Q. 54?

A. -- 54, on page 273. Again, the black lines represent the friction ridges.

Directing your attention on the chart marked ink fingerprint at the approximate top right there is the end of a ring which extends to your left. I have designated this point number 1.

From point 1 counting downward three intervening ridges, there is another edge end of that ridge, also extending to your left. I have designated this point 2.

From point 2, counting to your right one intervening ridge, there is the end of a ridge, which extends upward. I have designated this point number 3.

For these two points to be made from the same finger, these same characteristics must be found lying in the same relative position.

In the chart marked latent fingerprint at the approximate top right, there is the end of a ridge extending to your left. I have designated this point 1.

From point number 1, again counting downward three intervening ridges, there is the end of a ridge which extends upward. I have designated this as point number 2. And from point number 2 counting to your right one

intervening ridge, there is another end of a ridge which extends upward. I have designated this point number 3.

With these points, with these three points which I have explained, others which are charted that I have not explained, and still others which are not charted, I base my opinion that the chart marked "ink fingerprint," which is a photographic enlargement of the right index finger that appears on this fingerprint card bearing the name of Mohammad Salameh, Government Exhibit 61B, and the chart marked latent fingerprint, which is a photographic enlargement of one of the latent prints that I developed out of that green notebook marked Government Exhibit --

Q. 54.

A. -- 54 on page 273, were made by one and the same person and could not be made by any other.

Q. I will ask you to take your seat again and take back the exhibit.

THE COURT: Also, Mr. Fitzgerald, could you come to a convenient break point within the next five minutes or so?

MR. FITZGERALD: Yes, Judge.

Q. With regard to the fingerprints of Mohammad Salameh, you indicated that you identified 25 latent fingerprints in that notebook and 3 latent palm prints in that notebook as corresponding to Mohammad Salameh's prints,

is that correct?

A. Yes.

Q. Do you recall on which particular pages you made those identifications?

A. Other than the one on the court exhibit that I explained on I think it was page 273, I would not be able to recall those without glancing at my worksheet notes.

Q. Could you glance and those notes and indicate to us on what pages you found Mr. Salameh's prints and the number of prints you found on that particular page?

I'm sorry. Why don't you identify for the record -- I will show you some exhibits -- which item you need to refresh your recollection?

A. This --

Q. Don't explain it, just identify it.

MR. FITZGERALD: For counsel's purposes, 3598F.

Please wait one moment.

Q. When did you prepare 3598F?

A. Last night.

Q. And what did you prepare it from?

A. From my handwritten notes on my examination. It is a condensed version.

Q. Can you tell us what pages you found Mr. Salameh's prints on in the notebook marked Government Exhibit 54?

A. Yes. I found 3 fingerprints on page 182. They are the right middle, the right ring, and the right little.

I found 4 fingerprints on page 272. They are 2 right thumb prints and 2 left thumb prints.

I found 11 fingerprints on page 273.

MR. STAVIS: Your Honor, I believe the witness is reading from his notes.

THE WITNESS: Yes, I am.

THE COURT: Go ahead.

THE WITNESS: May I continue?

THE COURT: You may.

A. I found 11 fingerprints on page 273. They are 2 right ring fingers, 2 right middle fingers, 1 right ring finger, 3 left ring fingers --

MR. STAVIS: May I be heard at the sidebar?

THE COURT: No.

MR. STAVIS: I have an objection to the witness reading from something that has not been admitted.

THE COURT: I understand your objection. It is overruled.

Go ahead.

A. I will start again.

11 fingerprints on page 273, 2 right ring fingers, 2 right middle fingers, 1 right ring finger, 3 left index fingers, 2 left middle fingers, and 1 left ring

finger.

5 fingerprints were identified on page 274, 1 right middle finger, 1 left thumb print, 1 left ring finger, and 2 left little fingers.

Also, on this page were identified 3 left palm prints.

On page 280, we had 2 identifications, 1 right middle finger and 1 right ring finger.

MR. FITZGERALD: Your Honor, this would be a convenient place to break.

THE COURT: Ladies and gentlemen, we are going to break for the day. Please leave your notes and other materials behind. Please don't discuss the case. Please don't read see or hear anything about the case.

Have a pleasant evening and we will see you tomorrow morning.

(Jury left courtroom)

THE COURT: You may step down.

(Witness excused)

(Continued on next page)

MR. STAVIS: Your Honor, a few items.

I had objected to this witness reading from an item not admitted into evidence. I believe his testimony was that he made these notes last night. They were not made contemporaneously with his testing in 1993 May.

THE COURT: They were made from work sheets made contemporaneous with his testing in May of 1993, and you can, in any event, cross on it.

MR. STAVIS: Late yesterday afternoon Mr. Khuzami advised us there was a statement made by Mr. Nosair to a physician that the government will be seeking to introduce.

We have not been able to discern the contents of that statement and I would ask the Court to direct that we have information about our client's statement that is going to be coming in shortly.

THE COURT: What is that about?

MR. KHUZAMI: Your Honor, we appraised Mr. Stavis of a witness we intend to call probably early next week, a doctor who attended to Mr. Nosair while Mr. Nosair was at Bellevue's prison unit, where he returned after a short stint at Riker's for additional medical care.

There is no 3500 material for this witness with the exception of medical records already provided. We wanted to give them the heads-up that this witness would be testifying so they could make any appropriate motions they

chose to.

I informed Mr. Patel today the statement is in the nature of a confession to the events of November 5, 1990. I further informed him that, based on our preliminary discussions, there is no applicable medical privilege, although they would be free to voir dire the witness on that basis.

THE COURT: Other than your characterization of the statement, could you tell him anything else?

MR. KHUZAMI: I can tell them the statement if they would like.

THE COURT: If they would like?

MR. KHUZAMI: Certainly.

THE COURT: Don't tell them now. You want him to put it on the record now?

MR. STAVIS: No, your Honor.

THE COURT: I didn't think so.

MR. STAVIS: If they tell me what the statement is at some part of the trial where we are facing the murder count, and if we know what the confession is at some point today prior to them introducing this so-called confession against my client, without waiving the issue of them waiting until the 11th hour, I would like to hear it, but later today and not on the record,

THE COURT: Okay. We will do that, yes?

MR. KHUZAMI: Certainly, your Honor.

THE COURT: Mr. Jacobs?

MR. JACOBS: Can I just conclude our fingerprint situation?

THE COURT: Yes.

MR. JACOBS: I don't have any 3500 material concerning any '91 submissions. Apparently the notebook may have been submitted in '91.

THE COURT: May I make a suggestion? As I heard matters before the witness testified, you were going to sit down and go through what has been produced, with an explanation of what relates to what. I will hear you before we start tomorrow morning on whatever remains clouded at that point.

MR. JACOBS: What is unclouded, it seems to me, is that the government doesn't want to give us the other ten individuals.

THE COURT: Right.

MR. JACOBS: I request your Honor direct they supply us with them.

THE COURT: I think I have refused to do that up until now.

MR. JACOBS: Then I ask they be marked and submitted to your Honor for your review, if your Honor hasn't seen them.

I would ask your Honor examine the last list and see what your Honor feels is pertinent for us to have.

MR. FITZGERALD: No objection.

THE COURT: When will I get those?

MR. BERNSTEIN: It seems the government is implying the clients here in the courtroom had their fingerprints submitted with no hits made in connection with this. I am not sure that that is unredacted from the reports that we have. Can we at least get clarification?

THE COURT: Can I suggest --

MR. BERNSTEIN: We will meet with them --

THE COURT: Can I suggest this be the content of your conversation, so we know which fingerprints have been run and which haven't?

Ms. Stewart is gone, is that right?

All right. I was going to submit the counter proposal on a topic she raised. May I submit it to you?

MR. JABARA: Yes.

THE COURT: The counter proposal is -- you can remain seated if you like. The counter proposal is that we break early on Wednesday and take Thursday off as Eid.

Do you want to talk to her and your client about it and get back it?

MR. JABARA: We will.

THE COURT: Why don't you confer about that and

we will talk, okay?

MR. JABARA: All right.

MR. KHUZAMI: Tomorrow, the scheduled witnesses include a chemist, who, if testifying, will testify as to the fact that a small vial of white powder found in Mr. Nosair's work locker contains sodium cyanide.

THE COURT: This was the second subject of Mr. Stavis' letter?

MR. KHUZAMI: That's correct.

THE COURT: When is that witness likely to testify?

MR. KHUZAMI: Tomorrow.

THE COURT: Fine. Do you want to talk about that?

MR. KHUZAMI: Yes, briefly.

I think the government's position is that this evidence should come in for the same reason the knife came in, only here the evidence connecting this material is even greater, because additional evidence in the case will show, first of all, that obtained from a jacket at Mr. Nosair's home during a search was a hypodermic needle and a yarmulke, being evidence of both the delivery system for this material as well as a possible disguise giving him the means to use it.

In addition, found in the locker along with the

sodium cyanide was a list of guns, .22 caliber bullets, list of Jewish book stores, as well as the explosive for smokeless powder and the key ring to the M60 fuse lighter referred to by Mr. Stavis today, as well.

For or all those reasons, I think there is independent evidence making this highly probative. Any other use for this material, as suggested in Mr. Stavis' letter, goes simply to weight and not to admissibility.

(Continued on next page)

MR. STAVIS: I think I heard Mr. Khuzami confuse a few different things. I am not moving to preclude lists of book stores or anything like that --

THE COURT: No. He is connecting the vial, or so he argues, to those other things.

MR. STAVIS: I am only a lawyer, your Honor, but I really don't see what the connection is. Sodium cyanide is tested. When the detectives first take it they say, aha, we have a controlled substance, they test it, it is not a controlled substance. They test it again, it is sodium cyanide. I have given your Honor a page from the Merck Index --

THE COURT: You have argued it. It's rat poison. A couple things. First, and this doesn't necessarily go to the question of its admissibility, but to satisfy my curiosity, was the powder in the bottom of the locker tested? Mr. Stavis says there was, in addition to roach traps in the bottom of the locker, there was some sort of powder.

MR. KHUZAMI: There was powder tested. That was the material turned over and was the subject of Mr. Stavis's request for additional time. That was explosive or smokeless powder. It is not any sort of rat poison or sodium cyanide.

MR. STAVIS: I am speaking of a white powder.

Sodium cyanide is a white powder. The locker that I viewed on December 4, 1994 was lined with a white powder underneath tape, with both lockers 13 and 14, your Honor.

MR. KHUZAMI: I am not aware of that material being tested. This material was in a vial in a pants pocket.

MR. STAVIS: I would also say Mr. Khuzami has raised something about a syringe being a delivery system. Sodium cyanide can be ingested orally and does not have to be shot into one's veins in order to have its desired effect if you are a human being seeking to take your own life, for example, Herman Goering or something like that.

THE COURT: I don't think he was suggesting anybody wanting to take their own life as much as wanting to take somebody else's.

MR. STAVIS: Is Mr. Khuzami suggesting that the knife would be used as a sword somehow, to try to inject people with sodium cyanide?

THE COURT: He wasn't saying anything about the knife, I don't think.

MR. KHUZAMI: Two other points. First, to emphasize, the material was contained in a vial in the pants pocket, which is somewhat inconsistent with its use and predisposition for purposes of rodent control. Second of all, again in the opening statement, Mr. Nosair was

characterized in front of the jury as a person who was on the side of America and simply a maintenance worker at his job.

THE COURT: If it was rat poison, those two things aren't inconsistent, are they? Americans poison rats, don't they?

MR. KHUZAMI: The fact that it has dual purposes. That is correct.

THE COURT: Was there -- and here I am working really from memory. Was there any evidence in connection with the World Trade Center case of this substance being used in connection with the device at the World Trade Center?

MR. FITZGERALD: Judge, I believe, but I would like to check it if your Honor is going to rely upon it, that cyanide -- I have to check the type of cyanide -- was purchased as part of the chemicals to build the bomb. I don't know that they could detect its presence in the World Trade Center after it was exploded, but I think in preparation for the building of the bomb, cyanide was purchased.

THE COURT: I thought Judge Duffy said something about that at the time of sentence, but again, I am working strictly from memory and impression, and it is my memory of what he said at the time of sentence, based, I believe, on

evidence. But that is all it is based on. That is a question, that's all it is.

MR. STAVIS: Your Honor, since the government seems to be shifting between poisons and potential bomb materials, I would ask for an offer of proof with regard to the relevance of this evidence.

THE COURT: Let's suffice it to say now that it is not coming in until I rule that it is in. So you can introduce other -- I don't know what else you plan to introduce through this chemist, if anything. Nothing?

MR. KHUZAMI: Nothing else.

THE COURT: Then he is not testifying until I make a ruling about the substance. You say it was found in a pair of pants in the locker?

MR. KHUZAMI: I believe that is correct, your Honor. I can confirm that.

THE COURT: How big a vial? Indicating about --

MR. KHUZAMI: Three inches. I think it contained a total of 16 grains, a small amount of material.

MS. AMSTERDAM: Grains or grams?

MR. KHUZAMI: Grains.

THE COURT: And the hypodermic was found where?

MR. KHUZAMI: The hypodermic and the yarmulkah were found in the house, contained in a closet.

THE COURT: The needle and the yarmulkah are

something different. We are talking only about the vial in the locker.

MR. STAVIS: Perhaps it would help if we can have an offer of proof with regard to the hypodermic needle, your Honor.

THE COURT: Is that supposed to come in tomorrow?

MR. FITZGERALD: Yes. That will be part of the house search. I don't know that we will get to that tomorrow. We will do the locker search, and we probably will get to the house search tomorrow.

THE COURT: Where was the needle found?

MR. FITZGERALD: My understanding is that the needle and the yarmulkah were found in a jacket pocket in the bedroom of Mr. Nosair's home, where one would expect to find his clothes.

MR. STAVIS: Your Honor, one final thing before we break. It is my impression, and it would be my argument that items are being taken and sought to be introduced into evidence because they somehow look bad, without the government articulating a theory or making an offer of proof with regard to these items. I have not moved under 403 to exclude everything.

THE COURT: I am not saying you have.

MR. STAVIS: I understand that, your Honor. These are some discrete items, and one of the reasons I am

making the application, your Honor, is, when I try to discern what the relevance was of these items, I got just a general, it's a homicide case. And, your Honor, I believe that these items -- I know that your Honor denied my application with regard to the hunting knife earlier today, but I believe that these items merely taint Mr. Nosair, without having a probative value and without fitting into a picture and having a specific purpose for their admission by the government.

THE COURT: I don't know that they have to necessarily give you some precise scenario in which a whole long list of things would be a list of props before the items would come in, so long as there is some argument that it is unlikely that somebody in his position would have noticed those items unless he intended to do something along the lines of something that he is charged here with. I don't know that is their theory. They don't have to go into detail precisely how, when and where.

All that having been said, the vial of sodium cyanide in one place and the hypodermic needle in a pocket in another, I don't think I want to rule until I have an opportunity to talk to you further about what your theory is, to consider any case law that you have on the subject, and to think about it a little bit. So those two items at the least are not to be introduced or referred to until I

rule further. Anything else?

MR. STAVIS: I just want my record to be clear, I was not moving under 403 with regard to the yarmulkah, your Honor, just the hypodermic needle.

THE COURT: That is what I understood.

Anything else? Thank you.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
a/k/a "John Medley,"
CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.
----------x

February 23, 1995
9:35 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

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Southern District of New York
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BY: THOMAS H. NOOTER

(In open court; jury not present)

THE COURT: Good morning.

COUNSEL: Good morning, your Honor.

MR. STAVIS: Your Honor, as I indicated to the court yesterday, I would be, and I have, discussed with Mr. Khuzami Mr. Nosair's confession. Mr. Khuzami gave me the substance of the confession and some of the circumstances concerning the confession. It seems, your Honor, that it was, that the confession was post-indictment and it was during the period of time that Mr. Nosair was incarcerated, and the confession was made in response to a question that was posed to Mr. Nosair by a physician who was working for the Department of Correctional Services. The question, I believe, from Mr. Khuzami's proffer yesterday, did not relate to the treatment that he was providing to Mr. Nosair.

For those reasons, I would like, and I would like to have the time to be able to do this, to move to preclude that statement under Rule 16, because I have not been given prior notice, and it is my position that the physician for the Department of Corrections while my client was incarcerated post-indictment would fit this case within a Massiah/Henry circumstance, and under Rule 16, such that I should have been given notice of this prior to trial, your Honor, so that I could at that time prior to trial have moved to suppress this statement, and when it came to my

opening statement, where your Honor may recall I addressed Mr. Nosair's written statement to the police, which we had had a suppression hearing about, I would have also, assuming that the pretrial suppression motion would be denied, would have dealt with this issue in my opening statement.

I would like to get something in writing to your Honor concerning the Rule 16 preclusion application, and I could probably do that by first thing Monday morning.

THE COURT: Could you have it to me earlier than first thing Monday morning?

MR. STAVIS: I will have it to you by close of business on Friday, your Honor. What I would like to do is research the status of the physician under Rule 16, your Honor.

THE COURT: Do you want to be heard?

MR. KHUZAMI: Our position is that it is not a Rule 16 violation because it was not a statement made by a person known to Mr. Nosair to be a government agent. Aside from the question whether or not there may be a Sixth Amendment issue, which is one of the reasons we brought it to Mr. Stavis's attention, that should be considered by the court and briefed. I don't think there is a Rule 16 violation.

THE COURT: He will brief both and obviously I will brief both you and him with regard to both. The proof

doesn't come in until we resolve it.

MR. STAVIS: Your Honor, I have not yet moved to suppress. Should your Honor deny my Rule 16 application --

THE COURT: Can't you deal with both? Can you deal with both? Would you deal with both?

MR. STAVIS: Yes, your Honor, I will deal with both.

THE COURT: I would rather not have to do it in little parcels.

MR. STAVIS: I agree, and perhaps the timing of this does make it well advised that I deal with both at the same time.

THE COURT: It would be helpful if you can. I recognize the time is short, and if it is impossible, it is impossible.

MR. STAVIS: I was referring to the time issue with regard to receiving this information while I am in the middle of a murder in aid of racketeering trial, your Honor.

There is one other matter that I wanted to bring to the court's attention. As I believe Mr. Jacobs said yesterday, the 3500 material with regard to Mr. Belcastro indicates that there were ten suspects with regard to the FBI investigation concerning my client and the homicide -- it is called AOTIT, homicide conspiracy Hobbs Act EID -- and under Brady I would ask for information concerning the names

of other suspects who were investigated with regard to the murder of Meir Kahane.

MR. FITZGERALD: Your Honor, the mere fact that someone's prints were run is not Brady material. There is not a standard of proof requiring that to be done. I would note for the record that I believe there may be cross-examination as to whether or not because someone's prints were run, what the state of mind of the FBI is, and I don't think that is relevant, period. But he is not entitled to Brady material.

MR. STAVIS: One of the difficulties with Brady is that it requires a defense attorney who sees an indication of something to make an application because there may be something other than that.

THE COURT: I understand that. I have looked at the list. Some of those names ring a bell in the sense that I have seen them in other contexts in this case. But I don't think that the question of whether somebody's prints have been run or not is itself Brady material and therefore I am not going to compel the turnover. I have the list. I am going to seal it and preserve it.

Mr. Jacobs.

MR. JACOBS: Your Honor, taking your suggestion, I met with Mr. Fitzgerald after court, and I think that defense counsel are in a better position this morning to

cross-examine this witness. The only couple of matters that are still open, apparently there was a November '91 report. We may have gotten earlier discovery that was not included in the 3500 material. In other words, there is a chronology of the fingerprints in this case that begins in '91 and goes to '93. That was not marked as 3500 but Mr. Fitzgerald was getting it to us this morning. There are some other redactions as well, I gather.

THE COURT: Are those redactions of names?

MR. JACOBS: Yes.

THE COURT: We will do the same thing with those names.

MR. JACOBS: Just so that your Honor understands what is happening. As well as the fact that to shortcircuit the examination, we have discussed with the government and I think the government in its direct examination is going to make a statement concerning a stipulation that none of the defendants in this case -- none of the prints of the defendants in this case were found on any of the items that this witness examined, and I think that will move this along.

THE COURT: Fine.

MR. FITZGERALD: Yes, that is substantially what I will say. I will say on the record that the government does not contend that any defendant in this courtroom had

prints on any of the remaining items that he testified about today or yesterday from the Nosair car.

MR. McCARTHY: Your Honor, at some point today can we take up the issue of the schedule for next witness?

THE COURT: I didn't know there was an issue.

MR. McCARTHY: I apologize. I should back up.

MS. STEWART: I had risen for the same thing, Judge. I was going to ask, since I wasn't here yesterday, I got the message and I spoke with my client last night. If you want to do it right now --

THE COURT: Sure.

MS. STEWART: First, I would point out that even the Parking Violations Bureau of the City of New York has two days for Eed. As I understand it, a similar problem arises with Rosh Hashanah. It has to do with the moon and when the new moon is sighted. That is the crux of the problem.

THE COURT: Miss Stewart, I think you would be on sounder ground just explaining what the problem is with regard to Eed than speculating about why there are two days of Rosh Hashanah, because I think you are wrong about that. But I don't want to get into theological discussions.

MS. STEWART: It was the reporter for the New York Times who told me that that is why there are two days, because when the moon is sighted --

THE COURT: A reporter for the New York Times told you that?

MS. STEWART: The reporter from the New York Times. What is this world coming to, Judge?

THE COURT: Apparently it is not coming to anything accurate. Go ahead.

MS. STEWART: Whether my reliance is misplaced or not --

THE COURT: It is.

MS. STEWART: -- I would point out that there are only two holidays in the Islamic calendar. There is another one that comes a month and 10 days later, apparently. I would renew my request for the two days, if that is at all possible.

THE COURT: As I said, I have enough faith in my own independent source on this that I am telling you we are going to break early on -- we will do half a day on Wednesday and nothing on Thursday.

MS. STEWART: Maybe the government and I can speak to you in the robing room later. I have been told that might be a further solution.

MR. McCARTHY: We were going to make an application completely unrelated to the Muslim holiday, and let me explain why. We have been meeting behind the scenes for a considerable period of time to try to cut down the

disputes with respect to the CM transcripts. If I can give the court some idea, I believe we have about five binders full, large binders of CM transcripts, almost all of which are in Arabic. We have been trying to narrow down the disputes so that we don't need to take up a lot of the jury's time with foundation and translation issues. We are actually making a good deal of progress on that. I believe that if we had the time next week where the lawyers would actually be here meeting with each other, we could narrow the scope of the disputes down to the point where the testimony from the translator would be negligible.

What I am proposing to your Honor is that this will actually save time in the long run.

THE COURT: That is fairly seductive.

MS. AMSTERDAM: I can really echo those sentiments. I have been working with Mr. McCarthy. I think if we take the two days it may well save us a week or two or more of having translators argue on the stand. I do think it is time well spent.

THE COURT: Why don't I hear you further in the robing room later.

MR. McCARTHY: Yes, your Honor.

PETER J. BELCASTRO, resumed.

(Jury present)

THE COURT: Good morning, ladies and gentlemen.

JURORS: Good morning.

THE COURT: You are still under oath.

DIRECT EXAMINATION continued

BY MR. FITZGERALD:

Q. Mr. Belcastro, when we left off yesterday we had been talking about a number of different fingerprints that you had found in Government's Exhibit 54, a green notebook, and let me give you back that notebook, and let me also show you Government's Exhibit 63 and 63A as in apple, the fingerprints of Bilal Alkaisi. Have you had a chance to compare that green notebook marked as Government's Exhibit 54 with the fingerprints of Bilal Alkaisi?

A. Yes.

Q. Did you effect any identifications between Alkaisi's fingerprints and the latent fingerprints you developed in the notebook?

A. Yes.

Q. How many of those identifications did you make?

A. Fifty-six fingerprints on various pages in this notebook.

Q. Again, did you prepare a blow-up of one of those fingerprint identifications for illustration purposes?

A. Yes.

Q. Would that assist you in explaining the identification to the jury?

A. Yes.

Q. Let me approach you with what has been premarked as Government's Exhibit 71B as in boy. Is that a blow-up you have checked for accuracy?

A. Yes.

Q. What is it a blow-up of?

A. The blow-up marked inked fingerprint is an enlargement of the right thumbprint that appears on this fingerprint card bearing the name Bilal Alkaisi, and the chart marked latent fingerprint is a photographic enlargement of one of the latent prints that I developed in this green notebook on page 17.

Q. How many different points did you chart on that blow-up?

A. On this particular blow-up I have charted 13 points of identity.

Q. Were there more points of identity that you did not chart?

A. Yes.

Q. If you could just step down for a moment and briefly explain to the jury how you made that identification of the Bilal Alkaisi print on the given page of the notebook. If you could step down to the jury rail and speak into the microphone.

A. The chart marked inked fingerprint is a

photographic enlargement of approximately 12 times of the right thumbprint that appears on this fingerprint card, bearing the name of Bilal Alkaisi, marked Government's Exhibit 63. The chart marked latent fingerprint is a photographic enlargement of one of the latent prints that I developed in this green notebook, on page 17, marked Government's Exhibit 54.

As I have demonstrated yesterday on the comparisons between two prints, what you are looking for is the identifying characteristics in two prints to see if they match. These identifying characteristics are dots, ends of ridges, dividing ridges, and enclosures. But it is not just the identifying characteristics that we are looking for, it is the number of intervening ridges between each characteristic and the relative positions of that characteristic to each of the other characteristics. By that I mean north, east, south or west.

With this criteria, I based my opinion that the chart marked inked fingerprint, which is a photographic enlargement of the right thumb print that appears on this fingerprint card bearing the name Bilal Alkaisi, marked Government's Exhibit 63, and the chart marked latent fingerprint, which is a photographic enlargement of one of the latent prints that I developed in this green notebook on page 17, marked Government's Exhibit 54, were made by one

and the same person and could not have been made by any other.

Q. If you could just resume your seat. You testified a few minutes ago that you made 56 identifications of Mr. Alvarez case's prints in this green notebook. As you sit here right now, can you recall precisely how many prints or on which particular page?

A. I cannot.

Q. Is there something that would aid you in establishing on which pages how many prints of Mr. Alkaise you recovered?

A. Yes, a condensed version of my notes.

Q. Is that the same yellow sheet you used yesterday?

A. Yes.

MR. STAVIS: I have an objection.

THE COURT: Yes, same ruling. Is that marked?

MR. FITZGERALD: Yes, 3598F.

Q. If you could tell us on what pages you identified prints and how many prints on each page.

A. On page 4, I identified one fingerprint, the left thumb print of Alkaisi. On page 7 I identified the right thumb print. On page 9, I identified the right thumb print. On page 10, I identified the right index and the right -- or the left ring finger. On page 11, I identified the right middle finger. On page 13, I identified the right index

finger. On page 15, I identified the right middle finger. On page 16, I identified two left thumb prints, one left middle finger, two left ring fingers, and three left little fingers. On page 17, I identified the right thumb print. On page 23, I identified the left thumb print. On page 25, I identified the right middle and the left thumb prints. On page 26, I identified two left thumb prints. On page 27, I identified two right thumb prints. On page 28, I identified one left thumb print. On page 33, I identified one left thumb print. On page 35, I identified one middle finger, right middle finger. On page 47, I identified one left index finger, two left middle fingers, and one left ring finger. On page 160, I identified one right thumb print, three left thumb prints, and one left little finger. On page 161, I identified one right middle finger, one right finger, one left middle finger, and three left little fingers. On page 168, I identified two left thumb prints. On page 169, I identified one right index finger and one left index finger. On page 275, I identified one left middle finger, one left ring finger, one left little finger. On page 284, I identified four left thumb prints. And on page 285, I identified two left ring fingers and one left little finger.

Q. In total, you identified 56 fingerprints of Mr. Alkaise in that notebook, is that correct?

A. Yes.

Q. And you identified 25 Salameh fingerprints in the notebook, is that correct?

A. Twenty-five fingerprints and three palm prints of Salameh.

Q. How many fingerprints belonging to Nidal Ayyad?

A. Two.

Q. So if you take just the fingerprints the total number identified are 56 plus 25 plus 2.

MR. STAVIS: Objection, your Honor. We can have a calculator do this.

THE COURT: Overruled.

Q. You may answer.

A. Would you please repeat the question.

Q. The total number of fingerprints identified in the book would be 56 plus 25 plus 2?

A. Yes.

Q. And if I am correct, would that be 83?

A. Yes.

Q. You developed 97 latent prints in the notebook, is that correct?

A. Yes.

Q. That would leave 14 prints unidentified, 97 minus 83?

A. Yes.

Q. And you developed 4 latent palm prints, is that correct?

A. Yes.

Q. You identified three of them?

A. Yes.

Q. That would leave one unidentified palm print?

A. Yes.

MR. FITZGERALD: Your Honor, the government has a stipulation that as to the 14 unidentified fingerprints in the notebook and the 1 unidentified palm print, the government does not contend that any of the defendants on trial made those impressions.

THE COURT: That fact is to be accepted and considered by the jury and given whatever weight they believe it deserves.

Go ahead.

Q. Let me approach you with what have been premarked as Government's Exhibits 69A, B, C, D and E, as well as what has been received in evidence as 57, 58 and 59. If you could take a look at 69A through E and tell me if you recognize what they are.

A. These are photographs of latent impressions that I received in this case.

Q. Are those photographs that you used to see if you could make an identification of known prints against those

latent prints?

A. Are these the photographs that I used?

Q. Yes.

A. Yes, they are.

Q. If you could look at Government's Exhibit 69D, the fourth page of the item that you just had in your left hand -- you just put it down.

A. 69D?

Q. 69D. That is the set of photographs that you just identified for the record. 69A on the top, and B, C, D, E. If you look at the fourth page, and if you could compare that photograph of a print with Government's Exhibit 58, one of those three Polaroid-type exhibits to your left. Have you compared 69D with Government's Exhibit 58?

A. Yes.

Q. How do they compare?

A. Government's Exhibit 69D is a photograph of Government's Exhibit 58D.

Q. Is 58 an original lift?

A. 58 is an original lift.

Q. 69D is a photograph of that lift?

A. Yes.

Q. Did you compare Government's Exhibits 69D with the fingerprints of Bilal Alkaisi?

A. Yes.

Q. What was your conclusion after comparing 69D as in dog with the fingerprints of Bilal Alkaisi?

A. It was identified as the right thumb print of Bilal Alkaisi.

Q. Looking at Government's Exhibit 69C as in cat, did you compare 69C with the fingerprints of Mohammad Salameh?

A. Yes.

Q. What was the result of that comparison?

A. The fingerprint present in Government's Exhibit 69C has been identified as the left thumb print of Mohammad Salameh.

MR. FITZGERALD: Your Honor, the government would further stipulate that as to the other items, 69A, B and C, those latent fingerprints the government does not contend were left by any of the defendants on trial.

THE COURT: Again, the jury will consider that fact as proved. Go ahead.

MR. FITZGERALD: If I may just have one moment, your Honor.

Nothing further.

THE COURT: Mr. Stavis, cross-examination.

MR. STAVIS: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Good morning.

A. Good morning.

Q. I believe you testified that there were 97 latent fingerprints and 4 palm prints recovered from that notebook, is that right?

A. That were developed in the notebook, yes.

Q. And you tested those 97 latent fingerprints and 4 palm prints and compared them against the fingerprints of Mr. Nosair over here, my client, is that correct?

A. Yes.

Q. Is it fair to say that none of those fingerprints matched the fingerprints of Mr. Nosair that you compared them with?

A. That is correct.

Q. You testified this morning concerning some photographs of latent prints that you examined. Do you recall that?

A. Yes.

Q. That was just a few minutes ago, right?

A. Yes.

Q. Do you know when those photographs were taken?

A. No.

Q. Is there a suggested procedure in the FBI laboratory for when latent fingerprints should be photographed?

A. I am not sure what you mean.

Q. Is it preferable that latent fingerprints be photographed before they are removed, on situs, or after they are removed?

A. As a general rule, if you generally photograph latent prints prior to removal from a surface to protect the latent print should you lose it.

Q. On December 21 of 1992, you received certain specimens for fingerprint comparisons, is that correct?

A. Prior to 1992?

Q. December 21, 1992?

A. If you have the report, I did.

(Continued on next page)

Q. Can you look on your work notes that you made up the other day to see if that might refresh your recollection?

A. I do not know what evidence you are talking about.

Q. Are you able to refresh your recollection by looking at the notes that you were just looking at before?

A. I do not know if I have those notes with me.

MR. STAVIS: May I approach the witness, your Honor?

THE COURT: Yes.

Q. With 3598A.

A. I have these notes with me.

Q. Would you like to -- let me get to a microphone.

Would you like to take them out so that you refresh your recollection a little bit.

(Pause)

They'd like me to work off this 3500.

Now, did you receive certain specimens in the laboratory on December 21, 1992 for testing?

A. I received them on January 27, 1993. If that's what you're talking about.

THE COURT: Excuse me, you have to speak into the microphone because otherwise --

MR. STAVIS: We'll go back and forth.

THE COURT: Mr. Belcastro has got a separate microphone. The other one works, also. Mr. Belcastro, if you could speak into the right-hand microphone. Let him speak into the left-hand one.

A. These specimens were received in my section of the laboratory on January 27, 1993.

Q. Were they received in another section of the laboratory on December 21, 1992?

A. Yes.

Q. On January 27th of '93 those specimens included a sweater, correct?

A. That is not correct.

Q. What did they include?

A. The specimens that I received for examination were the two photographs, the major case prints, the knife and sheath, the notebook, and the license plate.

Q. And after receiving those materials you tested them, correct?

A. Yes.

Q. And you compared them with certain other prints; is that correct?

A. Yes.

Q. And one of the prints you compared them against were the fingerprints of Emad Salem; is that correct?

A. Yes.

MR. STAVIS: I have no further questions of this witness, your Honor.

THE COURT: Mr. Jacobs representing Mohammed Saleh. Go ahead.

CROSS-EXAMINATION

BY MR. JACOBS:

Q. Agent, your first work on this case was back in November of 1991; is that correct?

A. First of all, I'd like to correct you, I am not a Special Agent.

Q. I'm sorry.

A. And, yes, my first work on this case was back in 1991.

Q. And FBI in New York asked you to conduct some examinations at that time; is that correct?

A. Yes.

Q. And the file number that you were working on was FBI file number 265A New York 195576; is that correct? You can look at your notes if you like, please.

MR. FITZGERALD: Objection, 401.

THE COURT: Sustained.

Q. Did you assign a number for the case that you were working on number D604 at that time, sir?

MR. FITZGERALD: Same objection.

THE COURT: Same ruling.

Q. You were then asked again in December of 1992 to conduct some examinations which you did in January of '93; is that correct?

A. Yes.

Q. And am I correct that the FBI submitted specimens of subjects and suspects --

MR. FITZGERALD: Objection.

Q. -- to you, is that correct, sir?

THE COURT: Sustained.

Q. Am I correct that in January of '93 you were given how many different individuals to examine, 18; is that correct, sir? Take a look at your notes.

A. My total comes out to 15.

Q. Fifteen. And that was in, that's a result of a communication that New York sent in December, '92 of 15 individuals, correct, sir?

MR. FITZGERALD: Objection, 401.

THE COURT: Sustained.

Q. You examined the prints of 15 individuals when? What's the date?

A. It was completed in May, on May 18, 1993, May 18, 1993.

Q. '93. Well, when were you sent the prints of these 15 individuals? What was the date from New York, if you know, when did you receive it and in the FBI section?

A. It was received in another section of the laboratory on December 21, 1992.

Q. The prints that were received in December of 1992, one of the prints was this fellow Salem?

A. Correct.

Q. When for the first time did you examine Salem's prints in connection with any item?

A. The examination was completed on May 18, 1993.

Q. My question to you, sir, is, I understood when it was completed, when did you first take Salem's prints and compare it to some specimen? When for the first time did you look at his prints and look at it against anybody else's?

A. May 18, 1993.

Q. So between December of 1992 and May, you didn't do any examinations in connection with those prints; is that correct?

A. Yes.

Q. In between that date did you get further communications from the FBI, New York indicating another case was involved?

MR. FITZGERALD: Objection, 401.

THE COURT: Sustained.

Q. Did you examine the latent prints of an individual -- I'm sorry -- the fingerprints of an individual

by the name of Ramzi Yousef at any time, sir?

A. Yes.

Q. And when did you get Ramzi Yousef's fingerprints for the first time? You can look at your notes, please.

A. I would have to refer to my notes.

Q. That's quite all right. Mr. Belcastro, when does it appear to you that you got Yousef's fingerprints?

A. I have, I did not receive Yousef's fingerprints.

Q. Is there some indication in your records when the FBI received his fingerprints in the documents that you have before you?

A. Yes.

Q. When was that, sir?

A. Since I do not have those notes with me, I would, the only information I can tell you is when the examination was conducted.

Q. Sure. Why don't you tell the jury when the examination of Yousef's prints was conducted?

A. They were conducted on August 2 --

Q. Please, it's quite all right.

A. August 2, 1994. And the report went out August 3rd, 1994.

Q. And what was his prints compared to, what objects?

A. They were compared to all of the unidentified

latent prints in Nosair case.

Q. And that concerns the notebook and the other items; is that correct?

A. Yes.

Q. And based upon your review and your expertise Yousef's prints did not appear in any items; is that correct, that you examined?

A. They did not.

Q. And would I be correct that Yousef's prints were contained in an immigration form, if you know, sir?

A. I do not know.

Q. Do your records indicate where his prints were obtained from?

A. I'm sure they do.

Q. Could you take a look and see if you can tell us --

A. I do not have those records.

Q. You don't have them. Am I correct that in addition to the specimens that were submitted by the agents in New York you also ran something called an automated latent fingerprint search?

A. Yes.

Q. Would you tell us briefly what an automated latent fingerprint search is?

A. First of all, let me explain the automated

fingerprint search that we have. It's all based on your database and ours is antiquated. We're in the --

Q. I'm sorry, antiquated?

A. Antiquated automated system. And we're in the process of getting a new one, but basically what an automated system does, if you can, it does a computerized automated search based on the latent fingerprint against the ink fingerprints that we have on file at headquarters. Now, since our database is 172 million fingerprint cards and we're looking for one fingerprint, the criteria of that fingerprint has to be almost like an inked fingerprint and we're dealing with latent prints which I have said before are partial, accidental, and so the criteria for those fingerprints means that maybe one out of 25 fingerprints you'd be able to run in the automated section.

And then you would have to hope that the database is good enough to give you a listing of candidates and you'd have to restrict that criteria by area of the country. In other words, I couldn't search all of the fingerprints throughout the United States. I would have to isolate it to a particular state or area.

And I would have to have some description of the subject or suspect. In other words, I would have to even narrow it down further by race, hair color, weight, color of eyes, any descriptive data that I can get on the suspect.

So by the time you factor everything, you're lucky if maybe one in a hundred latent prints can be run through the automated system. And then you keep your fingers crossed, and you hope that the automated system might give you a possible listing of candidates, and that's what it does.

It doesn't identify this print for me. It tells me what candidates in that automated system best fits this fingerprint that I have entered in. It will list these candidates by ranking, 1 through 25 or 1 through 50. I pull those fingerprints, and I compare them manually to see if they are, have been identified. Basically that's what the automated system does.

Q. And part of your duties concerning this investigation was an attempt to use that system; is that correct?

A. Yes.

Q. And your results were negative; is that correct?

A. Yes.

Q. Did you send these prints over to the Central Intelligence Agency, the CIA?

MR. FITZGERALD: Objection, relevance.

THE COURT: I'll allow it. Did you?

THE WITNESS: No.

Q. Do you know if they have another system there,

what you call an automated fingerprint search system, in the Central Intelligence Agency?

MR. FITZGERALD: Objection, CIPA.

(Continued on next page)

THE COURT: May I see counsel at the side?

(At the sidebar)

THE COURT: Are you telling me that whether they do or don't have an automated system is itself classified?

MR. FITZGERALD: I honestly don't know, Judge.

THE COURT: Then why did you say it?

MR. FITZGERALD: Because I'm afraid we're getting into a classified area.

THE COURT: I'm not afraid. He can answer the question.

(Continued on next page)

(In open court)

THE COURT: That objection is overruled.

THE WITNESS: Would you please repeat the question?

Q. Sure. I think it was, do you know if the Central Intelligence Agency, the CIA, has an automated latent fingerprint system?

A. I do not know.

Q. Would you know if any other branch of the United States government has a system such as the FBI's?

A. I am unaware.

Q. Mr. Belcastro, just so that we're clear, you've identified a number of prints of a fellow named Mohammad Salameh; is that correct?

A. Yes.

Q. Could you spell his name, please?

A. Without looking at my notes I couldn't --

Q. Oh, you can take a look at your notes. I have no problem. And you can read it off, too.

A. S-A-L-A-M-E-H.

Q. That person is not the same person as Emad Salem; is that correct? I think the person that Mr. Stavis asked you about was somebody you identified as Emad Ali Salem; is that correct?

A. Those are not the same people.

Q. Does the FBI still have in Washington a copy of Emad Ali Salem's fingerprints? Do you still have it? I don't know if you have it with you, but do you still have it down there in the Bureau, in Washington?

A. I --

Q. Sure, you can take a look at your notes.

A. The originals of those fingerprints, major case prints, were returned to the contributor.

Q. Contributor being FBI New York?

A. Yes.

Q. And when you say major case prints, what is that?

A. That is the recording of all the friction skin areas of the fingers and the palms.

Q. And did you keep a copy of Emad Ali Salem's fingerprints down there? Did you make a photograph of it for your files?

A. Did I?

Q. Yes, sir.

A. I did not.

Q. And you sent back his prints to the FBI in New York. Do you know when you sent them back?

A. The exact date I do not know because they went back under separate cover. In other words, the report went under the date of May 28th, and the fingerprints and specimens would have been returned shortly thereafter.

Q. That's May 28, '93 we're talking about or '94, just so --

A. '93.

Q. '93, okay. Now, did you do any work on what the FBI calls the trade bomb case?

A. No.

Q. Am I correct that one of the other people in the section, Carol Edelen, E-D-E-L-E-N, worked up that case for the bureau?

A. Yes.

Q. Okay. And am I correct that your work, your results were sent over to Carol Edelen and she then looked at it for the World Trade Center case, or what the FBI calls the trade bomb case. Is that correct?

MR. FITZGERALD: Objection, 401.

THE COURT: I'll allow it. Do you know if --

Q. Do you understand my question?

A. Please repeat your question.

Q. Sure, sure. What I'm asking you is the latent prints in your case, I think your number is D604, were they then forwarded over to Carol Edelen who was working the trade bomb case for comparison of prints that were recovered in that case?

Let me show you 3598B. Take a look at this document, and let me ask you, take a look at that and see if

that can help you answer the question, if you can?

A. Now, if you're asking me the people submitted under the May 28th report date, if I gave them to Carol doing her comparison, I do not believe I did. If you're talking about the submission that you gave me, in this hand, this was originally received under the trade bomb submission and these people were told, they were told to compare the prints in my case. So Carol would have initially received this --

Q. I'm sorry?

A. Carol would have initially received this submission.

THE COURT: "This submission," being which exhibit?

THE WITNESS: The submission on the report -- I can't read the report.

THE COURT: 35 what?

THE WITNESS: 3598B.

THE COURT: All right, go ahead.

Q. So your -- see if I understand this.

Your specimens were sent over to the, to Carol Edelen, is that what you're saying?

A. No.

Q. Okay. Please tell me what happened?

A. I'm saying the fingerprints on, that we made with

Alkaisi, Salameh, and Ayyad initially were named and requested under the trade bomb submission.

Q. Okay.

A. And they, under that submission they were also told to compare any latent prints in the Nosair submission.

Q. Okay.

A. That is what this is for, the request to compare those names Alkaisi, Ayyad, Salameh in the Nosair submission.

Q. Okay. So the FBI was carrying this --

THE COURT: Sustained.

Q. Was Salameh being carried --

MR. FITZGERALD: Objection.

THE COURT: Sustained. Why don't you move on to something else.

MR. JACOBS: Pardon me, your Honor?

THE COURT: I say why don't you move on to something else?

MR. JACOBS: I have nothing further. Can I just get back my documents, Mr. Belcastro? Thank you.

MS. AMSTERDAM: Can I have one moment, your Honor?

(Pause)

CROSS-EXAMINATION

BY MS. AMSTERDAM:

Q. Good morning, sir. You indicated that the latent prints were not sent to the CIA for comparison, correct?

A. Yes.

Q. Were any latent prints sent to any foreign law enforcement agency such as Interpol for comparison purposes?

A. In my submission of Nosair latent prints they were not.

Q. Do you have any knowledge as to whether or not they were sent to Interpol or any other foreign law enforcement agency for comparison purposes?

A. I do not.

MS. AMSTERDAM: Thank you, sir.

THE COURT: Anyone else?

MR. FITZGERALD: One question, Judge.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Mr. Belcastro, you were asked if you compared the fingerprints of Emad Salem to the notebook. Can you tell us whether you found any of Emad Salem's fingerprints in the notebook?

A. I did not find any fingerprints of Salem in the notebook.

Q. Or any of the other items that you testified?

A. Or any of the other items that I handled.

MR. FITZGERALD: Nothing further.

THE COURT: Thank you. You are excused.

THE WITNESS: Am I excused to leave the area?

THE COURT: You are.

MR. MC CARTHY: Your Honor, the government calls Abdou Waly.

(Continued on next page)

THE COURT: May I see counsel briefly at the side?

(At the sidebar)

THE COURT: Who is doing this examination?

MR. MC CARTHY: I am.

THE COURT: Is this something you can cover in ten minutes?

MR. MC CARTHY: Yes.

MR. WASSERMAN: That's fine. Thank you, Judge.

THE COURT: I just asked him if it is something he can cover in ten minutes, because his client has to go to the bathroom.

MR. PATEL: Oh.

MS. AMSTERDAM: Your Honor, can I have another sidebar, please? I have a question as to whether or not this witness is going to be asked to make any in-court identification of any of the defendants?

MR. MC CARTHY: No.

MS. AMSTERDAM: Thank you.

(Continued on next page)

(In open court)

MR. MC CARTHY: May I, your Honor?

THE COURT: Yes.

ABDOU I. WALY,

called as a witness by the government,

having been duly sworn, testified,

through the interpreter, as follows:

DIRECT EXAMINATION

BY MR. MC CARTHY:

Q. Good morning, Mr. Waly.

A. Good morning.

Q. Can I ask you to try to speak into the microphone, please.

Sir, did you receive a subpoena to come to court today?

A. Yes.

Q. How old are you?

A. 38.

Q. What country are you from?

A. Egypt.

Q. When did you come to the United States?

A. 1988.

Q. And can you tell us what it is that you do for a living?

A. Bakery, I'm a baker.

Q. You're a baker, sir?

A. Baker. Yes, I'm a baker.

Q. Thank you.

Let me direct your attention to May of 1990. Did you change your residence at about that time?

A. When was the date?

Q. Approximately May, 1990.

MS. STEWART: Judge, I ask that both voices coming from the witness stand be kept up a little bit. It's very difficult.

THE COURT: If you can ask the witness to try to talk into the microphone that's for him, and maybe move it, the microphone can be moved.

A. 26 Weldon Street (in English).

Q. Are you saying that you moved to 26 Weldon Street at around that time, that is, May of 1990?

A. Yes, I did.

Q. What kind of residence is 26 Weldon Street? That is, is it an apartment house, is it a private house?

A. Building.

Q. Did you live in an apartment there?

A. Yes.

Q. What apartment did you live in at 26 Weldon Street?

A. 22.

Q. Did you live there alone, sir?

A. No, with other people.

Q. Let me direct your attention to about a month later, June of 1990. Did someone come to move in with you and the other people living at the apartment at that time?

A. Mohammad Salameh.

Q. When did you meet Mohammad Salameh?

A. He lived with me on 1/6/1990, June 1, 1990.

Q. Is that when he starred living with you?

A. Yes.

Q. Did you know Mr. Salameh at that time?

A. No.

Q. You had never met him before he moved in with you?

A. No.

Q. How long did Mr. Salameh live with you after June of 1990?

A. From June 1, 1990 until May 1, 1991.

Q. And that was at apartment 22 at 26 Weldon?

A. Yes.

Q. Can you tell us, please, sir, what your telephone number was there at that time?

A. 332-3174. (In English)

Q. By the way, where is 26 Weldon, where is Weldon Street?

A. Kennedy Boulevard. (In English)

Q. It's in New Jersey?

A. New Jersey.

Q. I'd like to you to answer the next question yes or no.

Do you know a man named El Sayyid Nosair?

MR. STAVIS: Objection, your Honor.

THE COURT: Overruled.

A. No.

MR. MC CARTHY: Thank you, sir. I have no more questions. Oh, one moment, please, I'm sorry.

(Pause)

MR. MC CARTHY: I'm sorry, your Honor.

Q. Can you please just tell us how did you end up, in June of 1990, how did you end up with Mr. Salameh as your roommate?

MS. STEWART: I object to the form of the question.

THE COURT: Would you rephrase it?

MR. MC CARTHY: Yes.

Q. How did it happen that you and Mr. Salameh came to live together?

A. I was asking for someone to come and live in, you know, a roommate and a friend recommended. His name is Salah Shehab, and he's the one who brought him to us.

THE COURT: Thank you. Cross, Mr. Stavis. Actually, we're going to take a short break. Ladies and gentlemen, please leave your notes and other materials behind. Please don't discuss the case and we'll resume.

(Jury not present)

THE COURT: The witness may step down.

(Witness temporarily excused)

(Recess)

(Pages 3682 - 3683 sealed)

(Jury present)

CROSS-EXAMINATION

BY MS. STEWART:

Q. Good morning, Mr. Waly.

A. Good morning.

Q. I am Lynne Stewart. I represent Abdel Rahman.

A. How are you?

Q. How are you?

You were interviewed by the FBI on March 5, 1993, for the first time, is that correct?

A. Yes. '93.

Q. And that was at your place of business, is that correct?

A. Yes.

Q. They asked you about whether or not you knew Dr. Abdel Rahman, the sheik, is that right?

A. No.

Q. May I show you a document that might refresh your recollection as to whether they asked you that?

MR. McCARTHY: Objection, scope.

THE COURT: I will allow it. There has been no failure of recollection but you can show him the document anyway and ask him if it refreshes his recollection.

MS. STEWART: 35101A.

A. Yes.

THE COURT: The question is, does that change your current recollection of the conversation with the FBI, or do you still remember it the same way?

THE WITNESS: No, it does not change.

Q. It is your testimony that you do not recall the FBI ever asking you about the sheik or Dr. Abdel Rahman?

A. They asked me certain questions, whether I knew him or not, and I said I do not know him.

Q. So you do remember them asking you the questions?

A. Probably.

(Continued on next page)

Q. Have you ever heard Dr. Abdel Rahman preach at the mosque in Jersey City?

(Continued on next page)

MR. McCARTHY: Objection.

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

(At the side bar)

THE COURT: Do we know where this is going or is this just exploration?

MS. STEWART: This is an EBT, Judge. If he says yes, he has, that is the last question, if he says no, that is the last question, whichever answer he gives.

THE COURT: I will allow it.

(In open court)

THE COURT: The objection is overruled.

MS. STEWART: May I have the question read back?

THE COURT: Yes, please.

(Record read)

(Continued on next page)

A. I do not attend, I did not attend the mosque, because my circumstances wouldn't allow it.

Q. Thank you very much.

THE COURT: Mr. Stavis?

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Good morning, Mr. Waly.

A. Good morning.

Q. Mr. Waly, you came to this country in 1988, is that right?

A. Yes.

Q. At the time that you came to this country, you had a tourist visa, is that correct?

A. Tourist, yes.

Q. How long did your tourist visa last?

A. Approximately three months.

Q. Did you renew your tourist visa?

A. No.

Q. Are you here in this country illegally?

A. Yes.

Q. The prosecutor asked you if you received a subpoena. Do you recall that?

A. Yes.

Q. Can you describe for the ladies and gentlemen of the jury how you received the subpoena?

THE COURT: You mean how or where?

MR. STAVIS: First we will do how and then we can do where, your Honor.

A. They asked me to come, to give my statement, in that it might help them in the case.

Q. Who came to ask you to give a statement?

A. FBI.

Q. How many FBI agents came to ask you to give a statement?

A. Three or four.

Q. Did you know any of the names of these men?

A. There is Chris --

Q. When you say Chris, are you referring to the man at the end of the table, Special Agent Chris Voss?

A. Yes, and the other two, also, at the table.

Q. Could you identify them?

A. The first and the second from the left.

Q. Mr. McCarthy and Mr. Fitzpatrick -- Fitzgerald? Excuse me.

A. Yes.

Q. Did you come to their office or did they come to your place of business? Did they come to your workplace?

MR. McCARTHY: Objection to form. Who?

THE COURT: Is the pending question did they come to your workplace?

MR. STAVIS: Yes.

THE COURT: All right, overruled.

A. I came here because they asked me to come.

Q. When you came here, they gave you a subpoena that said that you have to testify here today, is that correct?

A. There was a subpoena, yes.

Q. That meant to you that the law required you to come here today, is that correct?

A. Yes.

Q. Did they discuss with you when you spoke to them that you were in this country illegally?

A. No.

Q. When you spoke to them, you knew you were in this country illegally, is that correct?

A. Yes.

Q. Would it be fair to say that you were frightened when you spoke to them?

A. I am not afraid because I speak the truth.

Q. Are you presently living here in the United States of America?

A. Yes.

Q. And you come from Egypt?

A. Yes.

Q. Do you want to return to Egypt?

A. Yes.

Q. Have you returned to Egypt since you came to this country in 1988?

A. No.

Q. Do you have family in Egypt?

MR. McCARTHY: Objection.

MR. STAVIS: Yes or no question.

THE COURT: I will allow a yes or no answer. Answer that yes or no.

A. Yes.

Q. Is it your testimony that you are here today and you are not frightened at all?

A. No.

Q. Not for yourself?

A. No.

Q. And not for your family in Egypt?

A. There could be problems.

Q. What kind of problems could they have from your testifying here today?

A. I don't know. Maybe could be any type of action that could be taken there. I am not sure.

Q. Mr. Waly, have you ever been to Afghanistan?

A. No.

Q. Have you ever been to Pakistan?

A. No.

Q. Have you ever been to Bosnia?

A. No.

Q. While you were living at apartment 22 at 26 Weldon Street, were there other Egyptian people living in the apartment next door?

A. Yes.

Q. Was this the apartment that was immediately next door to the one that you were living in?

A. Yes.

Q. The telephone that you have testified to, was that in the apartment that you were living in or was that in the apartment next door?

A. In my apartment.

Q. Do you know if the apartment next door had a telephone in it?

A. There was a telephone in there, but I don't know the number.

Q. Approximately how many people lived in the apartment next door to yours?

A. Four.

Q. Do you know if those people were from a town called Port Said in Egypt?

A. Yes.

Q. Were all four of them from Port Said?

A. Yes.

Q. Mr. Waly, were you aware that there was a war in

Afghanistan?

A. Yes.

Q. And were you aware that the Muslim people in Afghanistan were fighting communists in that country?

A. Yes.

Q. Did you ever have occasion to discuss that war with Mr. Salameh?

A. No.

Q. Did you discuss that war with anybody else that you came in contact with in your building at 26 Weldon Street during the time you lived there?

A. The circumstances of my work do not allow this, do not allow me.

Q. Do not allow you to discuss the war in Afghanistan?

A. Yes. I have no further questions of this witness, your Honor.

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

CROSS-EXAMINATION

BY MR. RICCO:

Q. Good morning, Mr. Waly.

A. Good morning.

Q. Mr. Waly, when Mohammad Salameh lived at your apartment, he was there how many months?

A. From between 10 to 12 months.

Q. During the time that he was in the apartment, did you know him to have a job?

A. He used to do independent work.

Q. Do you know what kind?

A. A salesman.

Q. When he was at the apartment, did he have his own room?

A. No.

Q. Can you tell us whether or not he was the type of person who entertained guests?

A. The circumstances of my work didn't allow me to know this, because I would leave at 7:00 a.m. and come back at 7:00 p.m.

Q. In the times that you were in the apartment with Mr. Mohammad Salameh, can you tell us if you ever met any of his friends?

A. Once again, the circumstances of my work do not allow this.

Q. So is it fair to say, then, that in the 10 to 12 months that Mohammad Salameh lived in your apartment, you never met any of his friends?

A. The one who came was Nidal Ayyad.

Q. You met a guy named Nidal Ayyad, isn't that right?

A. I told you, yes.
Q. He was a tall, thin man?
A. Yes.
Q. He lived in Jersey?
A. Yes.
Q. And he was a chemist, isn't that right?
A. Yes.
Q. And he would come by the house and pick up Mr. Salameh and drive him to different places, isn't that right?
A. Yes, yes.
Q. That is because Mohammad Salameh did not own a car, isn't that right?
A. Yes.
Q. And back in 1990 didn't know how to drive one, isn't that right?
A. Right.
Q. Mohammad Salameh also -- withdrawn. Is it true that Mohammad Salameh at that time received mail at 26 Weldon?
A. No, I was the one who would receive the mail.
Q. I am going to ask the question differently.
A. OK.
Q. Did letters ever come to the apartment addressed to Mohammad Salameh?

A. Probably, letters could have come from Jordan.

Q. And you would give him his mail when it came to the apartment, isn't that right?

A. Yes.

Q. Was Mohammad Salameh a quiet man?

A. Yes.

Q. Would you describe him as being sociable and friendly, or was he distant?

MR. McCARTHY: Objection to form.

THE COURT: Sustained as to form. Why don't you stop at the social and friendly part.

MR. RICCO: I will, Judge.

THE COURT: The question is was he sociable and friendly.

Q. Was he sociable?

A. He was friendly and he was kind.

Q. And that is during the time period that you were with him, and that is back in 1990?

A. Yes.

Q. After Mohammad Salameh left your apartment, did you keep up with his whereabouts?

A. Yes.

Q. Do you know whether or not during the time that Mohammad Salameh lived at your apartment, if he attended the Al Salaam mosque on Park Street?

A. Yes.

Q. Is the reason that you never attended the mosque simply because you are always working?

A. Yes.

Q. And the requirements of the work that you do make it such that you just can't get to the mosque, isn't that right?

A. Yes.

MR. RICCO: I have no further questions. Thank you very much, Mr. Waly.

THE COURT: Mr. Bernstein, representing Fadil Abdelgani -- Amir Abdelgani.

MR. BERNSTEIN: Thank you, sir.

CROSS-EXAMINATION

BY MR. BERNSTEIN:

Q. Mr. Waly, you spoke with the FBI in 1993 for the first time, correct?

A. Yes.

Q. And then again at your place of business in 1994, is that correct?

A. Yes.

Q. On the visit in 1994, was that a visit with FBI agents coming to your place of business?

A. They used to come to my place of business.

Q. When they came, did the FBI agents speak Arabic?

A. They used to bring a translator.

Q. Was that translator's name Gamal Abdel-Hafiz?

A. I don't remember, but I think I remember that language was not Egyptian. Probably he was from Syria.

Q. Subsequent to them coming to your place of business in '94, did you receive a telephone call in May of 1994 from the FBI?

A. I don't recall.

MR. BERNSTEIN: Your Honor, if I may approach the witness with 35101C.

THE COURT: Yes.

Q. Sir, you don't read English, do you?

A. No.

MR. BERNSTEIN: Would you please read for the witness the first paragraph of 35101C.

(Pause)

Q. Sir, does that refresh your recollection as to whether or not you received telephone calls in May of 1994 from the FBI?

A. I don't recall exactly. I used to get calls but I don't remember exactly.

Q. When you say you don't remember exactly, you mean you don't exactly remember the time or whether you received phone calls from the FBI?

A. There was calls, there were calls. They used to

come to the house.

Q. Sir, when you received those phone calls from the FBI, did someone introduce himself in the telephone call? Yes or no, sir?

A. Yes.

Q. Did the person introduce himself as an FBI agent or an interpreter for the FBI?

A. Translator.

Q. Did he indicate his name was Gamal Abdel-Hafiz?

A. No.

Q. In your telephone conversations, did you recognize the voice of the person you were speaking with as a translator whom you had met face to face on one of the prior meetings at your business?

A. There is only one person who came to the bakery and did the interpretation --

MR. BERNSTEIN: I am sorry. I couldn't understand your translation, sir -- not the witness, the translation.

MR. BERNSTEIN: Your Honor, can we get the witness's last answer?

THE COURT: Why don't you read back the last answer.

MR. McCARTHY: It was cut off in the middle.

THE COURT: Please.

(Record read)

MR. BERNSTEIN: I am sorry, Judge.

Q. If you would continue your answer, sir.

A. There is one person who came to me from the FBI the day that Mohammad Salameh was arrested, and I was not present in the house, and after that I contacted them and told them that I am in the house if they needed to contact me I am there.

MR. BERNSTEIN: Your Honor, I will move to strike the answer as not responsive.

THE COURT: The answer is not responsive, but do you want to focus the question.

Q. Sir, I am talking about the translators now.

A. The translator, I do not remember his name, because I do not know him.

Q. Sir, prior to testifying here today, were you prepared to testify by speaking with Mr. McCarthy with the aid of a translator in government offices?

A. Yes.

Q. Was that a person who you had met on a prior occasion with FBI agents?

A. He did come and they came to the bakery to take statements from me.

Q. Is that a person who also spoke with you by telephone in May of 1994 in those telephone calls that you

would receive at home?

A. Could you please repeat the question.

Q. The person who aided you in translation when you were prepared for testimony, who you also saw at your business, was that the same person who also made telephone calls?

A. Yes.

Q. Was that person Gamal Abdel-Hafiz?

A. No. The one I remember is Hassan Mohammed.

Q. When did you meet that Mr. Mohammed?

A. I met him since more than a year ago.

Q. Sir, let me ask you this question: Is it your testimony that with the exception of being in the United States illegally, you have committed no crimes?

MR. McCARTHY: Objection. Rule 608, 609.

THE COURT: Sustained.

Q. Sir, are you presently employed?

A. Yes.

Q. Are you paying federal income taxes?

A. No.

Q. You know you have an obligation to do that, do you not, sir?

A. I have no idea of the laws of the country.

Q. Sir, let me ask you, your name is Abdou Waly, correct?

A. Yes.

Q. You spell your first name A-B-D-O-U?

A. Yes.

Q. And your last name W-A-L-Y, correct?

A. Yes.

(Continued on next page)

Q. Prior to coming court, did you speak with anyone in your community about the fact that you were --

MR. McCARTHY: Objection. I would ask to approach.

THE COURT: Come on up.

(At the side bar)

THE COURT: What is this about?

MR. McCARTHY: My suspicion is that it is about what has been called the list of cococonspirators, about the fact that this person's name is on the list of the people -- at the defense request, we set out, because of commitments in discovery, the names of persons who might be alleged by the government to be coconspirators, and I suspect that Mr. Bernstein is about to ask him whether he knows that he is on that list. I think that is completely improper. They asked for this list and we gave them in good faith a list that was as expansive as possible. We specifically didn't allege that they were unindicted coconspirators. In the list I specifically said that they might be alleged to be unindicted coconspirators. Moreover, it is completely irrelevant.

MR. BERNSTEIN: The question is whether or not this witness based upon what goes on in the community out there believes himself to have done nothing wrong and believes himself to be a target of the government's own

machinations of coconspirators. The fact that the government has titled it possible coconspirators doesn't take the sting or fear out of a witness as to whether or not he is being looked upon by having lived with Mohammad Salameh and other people --

THE COURT: I will allow you to ask a question that asks whether he believes that he is under the under investigation or the focus of investigation in this case but I am not going to allow you to ask about whether he believes he is on a list or anything of that kind.

MR. BERNSTEIN: Your Honor, the question is whether or not he knows such a list exists --

THE COURT: No, I will not allow you to ask that. I am specifically directing you not to ask that. If you ask that question, I will hold you in contempt. Is that clear enough?

MR. BERNSTEIN: It is always clear enough, Judge.

THE COURT: Good, thank you.

(In open court)

(Continued on next page)

BY MR. BERNSTEIN:

Q. Mr. Waly, as you sit here now do you have any present belief as to whether or not you are the subject of any investigation by the federal government?

A. I don't understand the question.

Q. I am sorry. I didn't hear the answer.

A. I do not understand the question.

Q. Sir, as you sit here today, is there anything you have seen or heard that makes you believe that you might possibly be the subject of an investigation by the federal government?

MR. McCARTHY: Objection.

THE COURT: I will allow it. Go ahead.

A. I just came to speak the truth. I am not afraid, I am just coming to speak the truth.

THE COURT: No. His question is simply, do you have any reason to believe that the government is investigating you for anything?

THE WITNESS: The FBI asked me and they wanted to interrogate me, so I came.

MR. BERNSTEIN: Judge --

THE COURT: That is stricken. Answer yes or no. Do you have any reason to believe that you are now under investigation by the United States government, other than the fact that the lawyer just asked the question?

MR. BERNSTEIN: Your Honor, if I can add to that question, even though he has done nothing. I don't want the witness --

MR. McCARTHY: Objection to this in front of the --

THE COURT: Sustained.

MR. BERNSTEIN: Judge, can I rephrase my question then?

THE COURT: Yes, you may.

Q. Sir, even though you have done nothing wrong, as you sit here now do you have any reason to believe that you are under investigation by the federal government?

A. No.

MR. BERNSTEIN: I have nothing further, Judge.

MS. AMSTERDAM: I just have a few questions.

THE COURT: Ms. Amsterdam representing Fares Khallafalla. Go ahead.

CROSS-EXAMINATION

BY MS. AMSTERDAM:

Q. Good afternoon, Mr. Waly.

A. Good afternoon.

Q. Sir, during the period of time that you lived with Mr. Salameh, how many other people lived in that apartment?

A. Three, and with him makes it four.

Q. And with you, would that be five?

A. No, we were four but sometimes somebody would come as a guest and then would leave.

Q. So there would be in addition to the four people that lived there sometimes other people would come and stay? Is that your testimony?

A. Yes.

Q. How many telephones were there in the apartment?

A. One.

Q. The telephone was in your name?

A. Yes.

Q. But did other people use that phone?

A. All the people present.

Q. Sir, the other people that lived with you, are they still living with you, other than Mr. Salameh, of course?

A. There are people who left and the only one remaining is Salah Shehab.

Q. So there is one person remaining with you, is that correct?

A. No, we do have people with us.

Q. I am sorry. There are more people living with you but only one of the people who lived during the period of time that Mr. Salameh was there is with you now?

A. Yes, that is true.

Q. And the other people that lived with you when Mr. Salameh was there, are they still in this country, if you know?

A. There is only Salah, and the rest, I believe, have gone back to Egypt.

Q. Do you know whether or not the people that have gone back to Egypt were living in this country legally?

A. No.

Q. No, they were not here legally?

A. No.

Q. Sir, I may have been confused. Could you tell me again the period of time that Mr. Salameh lived with you?

A. From June 1, 1990 until 1991, the month of May or June. He stayed for a year.

Q. He stayed for approximately one year?

A. One year, yes.

Q. He came in June of 1990 and left approximately May or June or 1991, is that correct?

A. That is true, yes.

Q. Mr. Waly, the first time you were interviewed on this case, was that approximately March 5 of 1993?

A. You mean somebody came to me?

Q. Yes, the very first time.

A. Yes.

Q. That was approximately a week after the World

Trade Center bombing?

A. Yes, people from the FBI came to me.

Q. How many people came on that first day?

A. Two, one American and the other translator.

Q. And they came to your place of employment to interview you?

A. Yes.

Q. Sir, when they interviewed you, isn't it a fact that you told them in March of 1993, isn't that right that you told them that Mr. Salameh had lived with you for approximately eight months, and isn't it a fact that you told them that he moved out in January of 1990?

A. Probably I could have said, but I remember the dates, and these are approximate dates.

(Continued on next page)

Q. Let me show you 35101A. I ask you, sir --

THE INTERPRETER: He's asking if January is the fourth month or the fifth month?

Q. I'm sorry. I would ask you first just to read that portion, the portion that's highlighted in yellow, please.

Now, my question to you is, having read 35101A, that piece of paper, does this refresh your recollection as to what you told the agents on your first interview?

THE INTERPRETER: He's asking about January.

A. I wasn't there in January. I took the apartment in May, 1990.

Q. My question to you, sir, is, when you were first interviewed by the agents isn't it a fact that you told them that Mr. Salameh had lived with you for approximately 8 months and had moved out in January of 1990?

MR. MC CARTHY: Objection to form. Withdrawn.

A. If I did not have the apartment in 1990, how could I have said 1990?

Q. Okay. So it's your testimony that you did not tell the agents that; is that correct?

A. Might have been circumstances I wasn't really understanding everything, and, but I don't recall this saying.

MS. AMSTERDAM: Thank you. I have no further

questions, your Honor.

THE COURT: Anything else? Any redirect?

MR. MC CARTHY: No, thank you, your Honor.

THE COURT: You are excused. Thank you.

(Witness excused)

MR. FITZGERALD: The government calls Det. Gordon Haight, H-A-I-G-H-T.

GORDON HAIGHT,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Det. Haight, how long have you worked in the New York City Police Department?

A. 29 years next month.

Q. If you could just keep close to the microphone so that it will keep your voice broadcast throughout the room.

For how long have you been a detective?

A. 21 years.

Q. What is your current assignment?

A. I'm still with the 17th Precinct detective squad.

Q. Back in November, 1990 what was your assignment then?

A. The 17th Precinct detective squad.

Q. Did you have occasion to work on the case

involving the homicide of Meir Kahane?

A. Yes, I did.

Q. Let me direct your attention to November 7th of 1990. Do you recall that day?

A. Yes.

Q. Did you have occasion to participate in any searches on that day?

A. Yes.

Q. What areas did you search?

A. Mr. Nosair's lockers at his work and his vehicle.

Q. Were both searches conducted pursuant to a warrant?

A. Yes.

Q. Let me approach you with what has been premarked as Government Exhibits 68A and 68B for identification.

If you could look at 68A and B for identification. Tell me if you recognize what they are?

A. Yes. "A" is the doorway to the locker room at 111 Centre Street where he was employed and "B" is the two lockers.

Q. On that day how many lockers did you search?

A. Two.

Q. Do you recall the numbers of those lockers?

A. The numbers on the lockers?

Q. Yes.

A. No, I don't.

Q. Were they adjacent lockers?

A. Yes.

Q. Are 68A and 68B fair and accurate pictures of the door to the locker room and the two lockers as they appeared on that day?

A. Yes.

MR. FITZGERALD: Your Honor, I would offer Government Exhibit 68A and B.

MR. STAVIS: No objection, your Honor.

THE COURT: 68A and B are received without objection.

(Government Exhibits 68A and 68B received in evidence)

MR. FITZGERALD: I believe there are copies of those photographs in the jury's books. They can take a look. I think it's the one with the blue circle on the spine.

THE COURT: There are two thick volumes one of which has a blue circle on the spine. It's that one that has 68A and B in it.

MR. FITZGERALD: Judge, we're looking at 68A and 68B.

Q. Again for the record, Det. Haight, 68A what's in that item?

A. Beg your pardon?

Q. What is 68A a picture of?

A. The doorway to the locker room.

Q. And 68B, are those the two lockers you searched that day?

A. Yes, they are.

Q. Did you have a warrant to search both lockers?

A. Yes, I did.

MR. STAVIS: Asked and answered, your Honor.

THE COURT: All right, go ahead.

Q. And can you tell the jury what items you recovered from the locker?

A. Recovered various leaflets or pamphlets in Arabic, something to do with the Mujahideen. We recovered blank 22 bullets from the lockers. We also recovered, I found a small piece of paper with various names of different kinds of handguns and calibers, and a list of Jewish bookstores.

Q. I approach you with what has been premarked Government Exhibit 66 for identification and ask you to take a look at it and tell us if you recognize what it is?

A. Yes, I do.

Q. And can you tell us how you recognize it?

A. On the back it has my initials and the date.

Q. Is that an item you recovered from the locker you

searched that day?

A. Yes, it is, that's the list of Jewish bookstores.

MR. FITZGERALD: Your Honor, I would offer Government Exhibit 66.

MR. STAVIS: No objection, your Honor.

THE COURT: 66 is received without objection.

(Government Exhibit 66 received in evidence)

Q. Let me show you what has been premarked as Government Exhibit 67. First of all, is that an original or copy, the item as you have it now?

A. It's a photostat.

Q. Do you recognize what the item pictured in the photostat is?

A. Yes. It's the small piece of paper I indicated earlier that contained a list of handguns and calibers.

Q. Was that original item something that was recovered in the locker that day?

A. Yes, it was.

MR. FITZGERALD: Your Honor, I would offer Government Exhibit 67.

MR. STAVIS: No objection, your Honor.

THE COURT: 67 is received without objection.

(Government Exhibit 67 received in evidence)

Q. Let me show you what has been premarked as Government Exhibit 65 and ask you to take a look at it and

tell us if you recognize what it is?

A. Yes, I do.

Q. What is that?

A. These are the 22 caliber blank cartridges that were in the locker.

Q. Are those items recovered that day on November 7, 1990?

A. Yes, they were.

MR. FITZGERALD: Your Honor, I would offer Government Exhibit 65.

MR. STAVIS: One moment, your Honor.

(Pause)

MR. STAVIS: No objection, your Honor.

THE COURT: 65 is received without objection.

(Government Exhibit 65 received in evidence)

MR. FITZGERALD: Your Honor, if I could ask the jurors to look at the same notebook, Government Exhibit 66 and 67.

If I have not offered 67, your Honor, I offer it now.

THE COURT: No, you did. 67 is not in the book.

MR. FITZGERALD: I'm sorry, your Honor. I apologize. It will be later.

Q. If I could direct your attention, Det. Haight, you mentioned you also searched a car that day. Do you

recall where you searched the car?

A. Yes, that was at the 6th Precinct garage.

Q. Do you recall what type of car it was?

A. I believe it was an Oldsmobile, blue Oldsmobile.

Q. Do you know how the car got to the garage?

A. It was towed from the pound on the west side.

Q. What items did you witness being recovered from the car that day?

A. Well, from the trunk we got a license plate that was in the side wall of the trunk, one license plate. Also, a notebook that was in the trunk, a two-edged dagger, which was under the front seat, the driver's seat of the vehicle. I also seized a, there was a note that appeared to be torn up and left in the ash tray of that car. We took that also.

Q. When you looked in the trunk was the license plate that was not on the car, was that easy to spot?

A. No, it was not.

Q. Now, let me approach you with what has been premarked and received in evidence as Government Exhibit 60. I ask you to take a look at that, and tell us if you recognize what it is?

A. Yes, I do.

Q. What is that?

A. That's the plate that was found in the trunk. It has my initial "H" scratched in the corner.

Q. Let me show you what has already been received in evidence as Government Exhibit 54 and ask you if you recognize that?

A. Yes, this is the notebook from the trunk and has my signature and date on the back of the front page.

Q. Finally, I'll show you what has been received in evidence as Government Exhibit 53. I ask you if you recognize what that is?

A. This is the double-edged knife we found on the driver's seat and on the back of the scabbard it has my initials scratched in the leather.

Q. I'd like to direct your attention -- and your Honor if I could ask the jurors to also look at what is already received in evidence and I believe in their book exhibits 52A through F, photographs.

If you would look at the photograph, 52A, Det. Haight, would you tell us if you recognize what's in that picture?

A. Yes, that's Mr. Nosair's car.

Q. Do you know where that photograph was taken?

A. That's in the garage at the Sixth Precinct.

Q. 52B, would that be the car from a different angle?

A. That's correct.

Q. What is 52C a picture of?

A. That would be the interior of the front of the vehicle from the passenger's side.

Q. The slip, the torn pieces of paper that you were present for when they were recovered, where were they?

A. They were in the ash tray in the dashboard.

Q. 52D is a picture of?

A. That is again, the front seat from the driver's side.

Q. And 52E?

A. The back seat.

Q. And 52F?

A. Again, the back seat.

MR. FITZGERALD: If I may have one moment, your Honor.

(Pause)

MR. FITZGERALD: I have no further questions, Judge.

THE COURT: All right. Ladies and gentlemen, we are going to break for lunch. Please leave your notebooks and other materials behind. Please don't discuss the case. Have a pleasant lunch and we'll resume about 2 o'clock.

(Jury not present)

(Luncheon recess)

(Page 3719 sealed)

AFTERNOON SESSION

2:00 p.m.

(In open court; jury not present)

THE COURT: Miss Stewart?

MS. STEWART: Yes, sir. My client has indicated that he is overtired and not feeling too well and would ask to adjourn to the MCC this afternoon, and I would waive his presence for the afternoon.

THE COURT: Dr. Abdel Rahman, your lawyer has told me that you would prefer to return this afternoon to the MCC. First of all, is that correct?

DEFENDANT ABDEL RAHMAN: Yes.

THE COURT: Do you understand that you have an absolute right to be here and not to have the trial proceed unless you are here?

DEFENDANT ABDEL RAHMAN: Yes.

THE COURT: In spite of that, is it your preference to go back and permit the trial to proceed without you this afternoon?

DEFENDANT ABDEL RAHMAN: Yes.

THE COURT: That is fine. Hope you feel better.

Mr. Jacobs.

MR. JACOBS: Your Honor, the government apparently is going to start giving the Nosair exhibits that have been seized in various places. The ones that we see at

the back table, the only question I have is a 403 question. I gather the government is not putting it in today but I want to note I want to be heard before 116 comes in.

THE COURT: Is there a problem about the witness authenticating it?

MR. JACOBS: As far as I know, no.

THE COURT: What is 116?

MR. JACOBS: Apparently an address book. I just want to be heard at some point before we get it in.

THE COURT: OK.

MR. PATEL: Your Honor, I have been discussing a problem with some of the search photographs that relate to the next witness with Mr. Fitzgerald. I think we have come to some agreement but to some --

THE COURT: There are some disagreements?

MR. PATEL: Exactly. It would probably be best if we get that resolved before the next witness. I suspect we can do that at the break, after this witness.

THE COURT: OK.

GORDON HAIGHT, resumed.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

THE COURT: Ready to continue?

MR. STAVIS: Yes, thank you.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Detective Haight, we have never spoken before?

A. That is correct.

Q. And we have never met before?

A. That is correct also.

Q. Did you have occasion to meet with the prosecutors about this case?

A. Yes.

Q. These prosecutors here?

A. Yes.

Q. When was it that you did that, most recently?

A. Today.

Q. Excuse me?

A. Today.

Q. Was that this morning or during the lunch break or when?

A. This morning.

Q. Who did you meet with?

A. Mr. Fitzgerald.

Q. Approximately how much time did you spend with him?

A. Ten minutes.

Q. When was the next most recent time that you met with any of the prosecutors --

A. This afternoon.

Q. Let me finish my question -- any prosecutor in this case.

A. This afternoon.

Q. Was that after you testified this morning?

A. Yes.

Q. Who is it that you met with after you testified this morning?

A. Mr. Fitzgerald.

Q. Approximately how long did you meet with Mr. Fitzgerald after your testimony?

A. One minute.

Q. Excuse me?

A. One minute.

Q. We can hardly call that a meeting, can't we?

MR. FITZGERALD: Objection, your Honor.

THE COURT: Sustained.

Q. Did you do anything other than say hello, how are you, during that one-minute meeting?

A. I just identified some objects to him.

Q. When you met with Mr. Fitzgerald this morning, was that the first time you had met with a federal prosecutor concerning this case?

A. No.

Q. When was the first time you met with a federal

prosecutor concerning this case?

A. Last week.

Q. Who did you meet with at that time?

A. Mr. Fitzgerald.

Q. Approximately how much time did you spend with him?

A. Half hour, 45 minutes.

Q. You testified at a prior state trial in this case, is that correct?

A. That is correct.

Q. And you also testified in the prior hearing regarding this case, is that correct?

A. Yes, sir.

Q. Before you did that, you spoke to a state prosecutor, is that correct?

A. That is correct.

Q. Would that be a Mr. Greenbaum?

A. Yes.

Q. Was Miss Worth -- did you ever speak with her?

A. Yes.

Q. Approximately how many times did you meet with them?

A. I don't recall.

Q. You are a precinct detective, is that correct?

A. That is correct.

Q. And you have been a precinct detective for 21 years, I think you said?

A. No, I believe I said I was a detective for 21 years.

Q. How long have you been a precinct detective?

A. I have been in the detective bureau since 1981.

Q. And you are part of a Precinct Detective Unit?

A. That is correct.

Q. And the initials for that in the police parlance is a PDU, right?

A. It used to be. Now it is PDS.

Q. What does PDS stand for?

A. Precinct Detective Squad.

Q. In the PDS, is there an expression when you get a case that someone catches a case?

A. Yes.

Q. Who caught this one?

A. One of my partners.

Q. Which one of your partners caught this case?

A. Detective Bailes.

Q. What does it mean to catch a case?

A. That he is basically responsible for the investigation of that case.

Q. You mentioned one of your partners. Did you have other partners who worked on this case?

A. Yes. It was a three-man team. The other one was Detective Leonard Pugliese.

Q. Did you and Detective Pugliese and Detective Bailes discuss the investigation of this case while you were investigating it?

A. Yes.

Q. Did you discuss it a lot?

A. Yes.

Q. As a matter of fact, whenever there was a new development in the case, you ran it by either Detective Pugliese or Detective Bailes, is that fair to say?

A. Yes.

Q. There were other detectives that you worked with on this case, isn't that correct, Detective Haight?

A. That is correct.

Q. Is that how you pronounce your name, Detective Haight?

A. That is correct.

Q. Was there a Lieutenant Gallo?

A. Detective Gallo wasn't assigned to patrol, he had desk duty that night.

Q. Did you speak to him at all on the evening of November 5, 1990?

A. Just when he notified me of what had went on in the hotel.

Q. Did you have any contact with a Detective Leonard Ferguson concerning this case?

A. Yes.

Q. Did you have any contact with a Detective Troll concerning this case?

A. Yes.

Q. Did you have any contact with a Detective Sergeant John Mullaly concerning this case?

A. Yes.

Q. Did you have any contact with a Detective Andre concerning this case?

A. Yes.

Q. Did you have any contact with a Detective Duran concerning this case?

A. I don't recall the name but I probably did, because there was many detectives involved.

Q. Was there a detective from the Crime Scene Unit at the time that you did the search of the car?

A. Yes.

Q. Was his name Detective Duran?

A. I don't recall.

MR. STAVIS: I am approaching the witness, your Honor, with 3560E.

Q. Would you take a look at that.

A. You want me to read the whole thing?

Q. No, just read it to yourself.

Does that refresh your recollection concerning the automobile search in this case?

A. Yes.

Q. Was Detective Duran working on the automobile search?

A. Yes, he was one of them.

Q. Did you come in contact with any other detectives when you were working on this case?

A. There were many people involved in the initial investigation.

Q. How many people were involved in the initial investigation?

A. I wouldn't even venture a guess.

Q. Can you venture an estimate instead of a guess?

A. No, I wouldn't.

Q. During the course of your investigation here, did you come in contact with any agents or special agents of the Federal Bureau of Investigation?

A. Yes.

Q. What were the names of those agents?

A. I don't recall.

Q. How many agents did you come in contact with?

A. Initially two.

Q. Can you recall anything about those agents?

A. When you say recall anything, what are you referring to?

Q. Where were they? What did they look like? Did they --

A. They were present when a search warrant was executed at the defendant's house.

Q. After the execution of the search warrant at the defendant's house, did you have any contact with any agents of the Federal Bureau of Investigation?

A. Not really, no.

Q. Is your answer not really or is it no?

A. The answer is no, I had no direct contact with any of the agents.

Q. I am sorry. I couldn't hear your answer.

A. I said no.

Q. You testified concerning a search of Mr. Nosair's locker. Do you recall that?

A. Yes.

Q. That search took place at 111 Centre Street, is that correct?

A. That is correct.

Q. That is just a little down the street from where we are today, right?

A. That is also correct.

Q. 111 Centre Street is a courthouse, is it not?

A. Yes, it is.

Q. You have the New York City Civil Court, I believe, is in there, correct?

A. I couldn't tell you which parts of the court are in there.

Q. And the employees' locker room, is that where you went for this search?

A. Yes.

Q. That is in the basement?

A. Yes.

Q. Did you speak to anyone from the City of New York prior to going to search the locker in the courthouse at 111 Centre Street?

A. We had with us an employee of that building that witnessed the search.

Q. Did you speak to anyone from the New York City General Services Administration before executing that search?

A. I myself did not.

Q. Somebody else did?

A. I really don't know.

Q. Describe, if you would, for the ladies and gentlemen of the jury what the locker room looked like over there at 111 Centre Street.

A. It looks like any --

THE COURT: Can you focus it a little bit more? Do you want size -- please focus the question.

Q. On November 7, 1990, you proceeded to the basement of the courthouse at 111 Centre Street, correct?

A. Yes.

Q. You went down the stairs, you walked through a door, correct?

A. Yes.

Q. Were there showers in that area?

A. Adjacent to the lockers there were showers.

Q. I am talking about when you first come down the stairs. There are showers and there is a bathroom and sinks and things, correct?

A. No, that is not correct.

Q. Tell us what is correct.

A. You come down the stairs, you enter the photo that you saw of the entryway. You open a door. The first thing you come in contact with are the lockers. Beyond the lockers are the showers and sinks and urinals.

Q. Did the locker room have benches?

A. Yes.

Q. Approximately how many lockers were there?

A. I really don't remember.

Q. Is there a door separating where the lockers are from where the showers and the sinks and the other things

are?

A. Yes.

Q. When you searched the locker, one of the things you were looking for was evidence of political affiliations with those who oppose or support Meir Kahane, isn't that true?

A. Yes.

Q. Did there come a time in the early morning hours of November 6, 1990 that you went to Bellevue Hospital?

A. Yes.

Q. Was it the early morning hours or the late evening hours of November 5?

A. It was the late evening of the 5, and the morning of the 6th.

Q. Approximately how long were you there?

A. Which time?

Q. Is it one time between the late evening of November 5 and the early morning of November 6 or is it more than one trip?

A. It is two trips.

Q. Your first trip started when?

A. After leaving the scene in the hands of Detective Pugliese, I responded down to Bellevue Hospital, and at the EW where they had Meir Kahane and Mr. Nosair, they were working on him. I don't recall the exact time, but I must

have been there about an hour.

Q. And then you left and you went to the police academy?

A. No, no. I swung by there just to tell them that I wasn't coming back to the course, on the way to Bellevue.

Q. Where did you go after that first trip to Bellevue in the late evening hours of November 5?

A. When I left Bellevue, I returned to my office.

Q. Did there come a point in time that you returned back to Bellevue?

A. Yes, the next morning.

Q. When you were at Bellevue at the emergency room, in the late evening hours of November 5, 1990, did you have occasion to speak to a Dr. Stowe?

A. Yes.

Q. Did Dr. Stowe appear to you at that time to be up upset?

A. Having not known the gentleman prior to that, I wouldn't -- I couldn't tell you if he was upset.

Q. You are a detective for 29 years?

A. No.

Q. You are a detective for 21 years?

A. Yes.

Q. You are a police officer for 29 years?

A. Yes.

Q. As a police officer and a detective, are you trained to make keen observations about people that you are speaking with or interacting with?

A. Yes.

Q. In your 29 years for the New York City Police Department, have you ever come across, in your professional dealings, someone who might be fairly described as upset?

A. Yes.

Q. Did Dr. Stowe on the evening of November 5, 1990, fit that bill?

A. Not on initial contact.

Q. How about in a subsequent contact?

A. Yes.

Q. Did you meet a Police Officer Fleming at Bellevue Hospital?

A. Yes.

Q. Was Police Officer Fleming in possession of some evidence?

A. Yes.

Q. Was that evidence the clothing of Rabbi Kahane?

A. Yes.

Q. Did you and Police Officer Fleming discuss taking that clothing to the medical examiner's office?

A. When you say discuss, there was no discussion. It had to go with us and we left. It's evidence.

Q. You and Police Officer Fleming left Bellevue Hospital with that clothing?

A. Yes.

Q. Did you have a discussion with Dr. Stowe concerning you and Police Officer Fleming leaving the hospital with that clothing?

A. Yes.

Q. Did that discussion make Dr. Stowe upset?

A. Yes.

Q. Did Dr. Stowe ask you if he could take the remains of Rabbi Kahane in his ambulance to the medical examiner's office?

A. Yes.

Q. And did you tell him that that would be OK?

A. Yes.

Q. Did you go to the medical examiner's office that evening?

A. No.

Q. Do you know if Police Officer Fleming went to the medical examiner's office that evening?

A. Not to my knowledge.

Q. Have you had occasion during your 21 years as a New York City police detective to go to the medical examiner's office?

A. Yes.

Q. Have you gone not medical examiner's office pursuant to your job investigating a crime?

A. Yes.

Q. Does the medical examiner's office act in the same investigation, often, that you are in to help solve crimes?

A. Yes.

Q. And they do that by performing autopsies, is that correct?

A. Yes.

Q. Have you ever seen an autopsy at the medical examiner's office?

A. Yes.

Q. For want of a better word, they cut people open?

A. Yes.

Q. Determine things like paths of bullets?

A. Yes.

Q. And causes of death?

A. Yes.

Q. They remove bullets during autopsy?

A. Yes.

Q. They evaluate wounds?

A. Yes.

Q. They determine paths of bullets?

A. Yes.

Q. Before you and Officer Fleming left Bellevue Hospital that evening, did he give you a gun?

A. Yes.

Q. How did he give you the gun?

A. He handed it to me.

MR. STAVIS: Do we have the --

Q. That gun was a .357 magnum, was it not?

A. Yes, it was.

Q. It has what is called a trigger guard?

A. Yes.

Q. That surrounds the trigger?

A. Correct.

Q. When Police Officer Fleming gave you the gun, did he sort of stick a pencil through that trigger guard and then give it to you that way?

A. I don't recall.

Q. Do you have any recollection as to how he gave you the gun?

A. No, not really.

Q. Do you recall whether he was wearing gloves when he gave you that gun?

A. I don't recall that either.

Q. What did you do when you got that gun?

A. I took it by the grips and carried it to my car.

Q. Did you put it any place?

A. Next to me on the seat.

Q. When you took the gun from Bellevue Hospital to the seat of your car, did you put it inside of anything?

A. No.

Q. Was the weapon loaded at the time that you moved it from the hospital to your car?

A. I believe it was.

Q. Did you have with you at the time that you moved this .357 magnum, did you have a service revolver on you at that time?

A. You mean my own?

Q. Yes.

A. Yes.

Q. Where did you carry that?

A. In a holster on my belt.

Q. When you left Bellevue Hospital and went to your car -- by the way, how far was your car parked in Bellevue Hospital?

A. From the entrance, about 30 feet.

Q. So were you holding it in your hand, in your right hand or your left hand when you went from Bellevue Hospital over to the car 30 feet away?

A. I switched from my right hand to my left hand to open the car door.

Q. Was the loaded weapon pointed down or was it

pointed out hanging down? How did you carry it?

A. By the grips, pointing down.

Q. What time did you get to the Marriott Hotel on the evening of November 5, 1990?

A. It was a little after 9.

Q. Were you one of the first detectives on the scene?

A. Yes, I was.

Q. Were you the first detective on the scene?

A. I believe I was.

Q. When you got to Bellevue Hospital -- excuse me, withdrawn. When you got to the Marriott Hotel, did you have occasion to speak to any civilians there?

A. Yes.

Q. The civilians that you spoke to, were they in the hallway or in the Morgan D room?

A. The first one I had contact with was in the hallway on the second floor.

Q. Did you have subsequent contact with any civilians inside the Morgan D room?

A. No.

Q. Approximately how many civilians did you speak to at that time?

A. Two.

Q. Did there come a time that you went back outside

of the Marriott Hotel?

A. Yes.

Q. Did you speak to any different civilians when you went outside the Marriott Hotel?

A. Well, it would be the second one.

Q. That is the same one that you spoke to inside --

A. No.

Q. How many did he speak to inside?

A. One.

Q. And then one outside?

A. Correct.

Q. Did you speak to any other civilians outside?

A. No.

Q. Did you speak to any other civilians after that regarding your investigation of this case?

A. Yes.

Q. Approximately how many?

A. I have no idea.

Q. Can you estimate for the ladies and gentlemen of the jury?

A. A dozen.

Q. Is there a form, a police form that is commonly known as a DD5?

A. Yes.

Q. Did you fill out DD5 forms with regard to your

investigation in this case?

A. Yes.

Q. Did you fill out DD5 forms with regard to your speaking to those approximately 12 civilians?

A. No.

Q. Was anyone else present when you spoke to those 12 civilians?

A. Yes, I believe there were.

Q. Were there any other detectives present when you spoke to those approximately 12 other civilians?

A. Yes.

Q. Would you know who those detectives are?

A. No.

Q. Would you know if they filled out DD5 forms?

A. The people I spoke to were subsequently interviewed by other detectives. I can only assume that they made out a DD5 on each interview.

Q. Did the 12 people that you spoke to include a person by the name of Michael Djunaedi?

A. No.

Q. Kendall Brown?

A. No.

Q. Mildred Wright?

A. No.

Q. Jerry Goldberg?

A. No.
Q. Henry Klotz?
A. No.
Q. Alice Goldberg?
A. No.
Q. Israel Katz?
A. No.
Q. Barbara Katz?
A. No.
Q. Sholem Gubin?
A. I might have spoken to him. I am not sure.
Q. Peter Jablin?
A. He also, name sounds familiar. I might have spoken to him.
Q. Sol Kessler?
A. He also.
Q. Raoul Felder?
A. The attorney, yes.
Q. Jeanne Carter?
A. I don't recall.
Q. Nanette Hoffman?
A. Doesn't ring any bells.
Q. Jonathan Dunetz?
A. Yes.
Q. Gregory Dushetsky?

A. I am not sure.

Q. Abraham Ancselovitz?

A. Yes, I believe he was one of them.

Q. Norman Dunetz?

A. One is the father and one is the son. I spoke to the son and I don't know which one is the father, by name.

Q. Would the son be Jonathan Dunetz?

A. I don't recall.

Q. Jennifer Weissen?

A. I don't remember that one.

Q. Elina Rosenberg?

A. No.

Q. David White?

A. No.

Q. Hershel Davoudi?

A. I don't think so.

Q. Thomas Farrilee?

A. No.

Q. Ben Steiger?

A. No.

Q. So the ones you spoke to were Sholem Gubin, correct?

A. Yes.

Q. Peter Jablin?

A. Yes.

Q. Sol Kessler?
A. Yes.
Q. Raoul Felder?
A. Yes.
Q. And Dunetz the younger.
A. Correct.
Q. Were you present for a search of Mr. Nosair's home on November 6 of 1990?
A. Yes.
Q. That was in New Jersey, wasn't it?
A. Yes.
Q. Did you notice anything during that search from the United States army base at Fort Bragg, North Carolina?
A. Yes.
Q. What was it that you noticed from the United States army base at Fort Bragg, north Carl?
A. It was a map of the installation.
Q. A map of Fort Bragg?
A. That is correct.
Q. Did it have any military markings on it?
A. It was like a topographical map with altitudes and borders, and so named, Fort Bragg.
Q. Your attention was drawn to that?
A. Yes.
Q. Why was your attention drawn to that?

A. Because it was executing a search warrant that would give us information with regard to this individual's background, and it is a little unusual.

Q. It is unusual to see a map of a United States army military installation during the execution of a search warrant, Detective?

A. Yes, when the individual is not in the army.

Q. Prior to testifying, when you were discussing the case with Mr. Fitzgerald, did you discuss the United States army map from Fort Bragg, North Carolina?

A. Yes.

Q. Approximately how long did you take discussing the United States army map from Fort Bragg, North Carolina?

A. When you say discuss, I don't think there was a discussion. Just I mentioned it as an article recovered during the search of the residence.

Q. Do you know where that map of Fort Bragg, North Carolina, was found?

A. I believe it was found on the first floor in the front room.

Q. Do you know where Fort Bragg, North Carolina, is?

A. North Carolina.

Q. Do you know where in North Carolina?

A. No. I was in the navy, I wasn't in the army. I don't know where it is.

Q. You were a swabby?

A. Please.

Q. After you finished the search of the locker on November 7, what did you do?

A. I returned to my office with what we took from the locker and vouchered it.

MR. STAVIS: I would ask if the witness could come off the witness stand.

THE COURT: Would you step down. If you could use that microphone that is at the end of the jury box.

(Continued on next page)

Q. When you first arrived at the hotel on the second floor, where were you?

A. Approximately here (indicating)

Q. And where was it that you first, that you saw the first civilian that you spoke with that evening?

A. Same location.

Q. Did there come a time shortly thereafter that you proceeded to the Morgan D room?

A. No.

Q. Did there come a time subsequent to that, that you went to the Morgan D room?

A. No.

Q. Did you know if anything occurred in the Morgan D room on the evening of November 5, 1990?

A. Yes.

Q. Were you curious as to what occurred in the Morgan D room on that evening?

THE COURT: Sustained. And would you move somewhat further away from the microphone? I appreciate the effort to talk into it. Don't talk into it that close.

Q. Did there come a time after November 6th -- withdrawn.

Did there come a time after November 5, 1990 that you went to the Morgan D room?

A. No.

Q. Did you ever voucher any property from the Morgan D room?

A. No.

Q. Did you ever conduct any investigation in the Morgan D room?

A. No.

Q. Did you ever ask a crime scene unit detective to take any fingerprints in the Morgan D room?

A. No.

Q. Did you ever ask the crime scene unit detective to preserve any evidence in the Morgan D room?

A. No.

MR. STAVIS: Detective, please resume your seat.

(Witness resumed the stand)

Q. When you searched the locker you recovered what has been introduced into evidence as Government Exhibit 65; is that correct?

And if I can have that exhibit? 65, the cartridges.

Do you recall finding small cartridges in the locker?

A. Yes.

Q. I believe you testified that these are 22 caliber bullets, blanks. Blanks?

A. 22 caliber blanks.

Q. During your 21 years as a police detective have you had many occasions to see 22 caliber blanks?

A. Yes.

Q. Are you able to tell us what the difference is between a 22 caliber blank and a Remington stud driver?

A. Never seen a Remington stud driver.

MR. STAVIS: Your Honor, may I approach the witness?

THE COURT: Yes.

Q. I ask you to take a look at these.

THE COURT: These being Nosair's Exhibit H.

MR. STAVIS: Defense Exhibit H for identification.

THE COURT: I. Nosair Exhibit I.

Q. Defense Exhibit I for identification. Have you ever seen something like this?

A. No. No.

Q. I'd ask you to take a look at these and compare what is contained in Defense Exhibit H with what you have here --

THE COURT: Defense Exhibit I.

Q. -- with what you have in Government Exhibit 65. I think I have the 65 right. I think these are 65.

A. When you say compare, what do you want? What are you looking for?

Q. Just look at them, look at the ones in the Government Exhibit 65, and look at the ones in Defense Exhibit A -- I.

A. Okay, I look at them, and they're both 22 caliber.

Q. Do you know what a rivet gun is?

A. Yes.

Q. Tell the ladies and gentlemen of the jury what a rivet gun --

A. It's used to put rivets in. There's two types. One is a pneumatic air powered for, you mesh the rivet down on one side, holding it with a block of steel. And another one is a cherry rivet gun. A cherry rivet gun you put the actual rivet into the gun and you squeeze it like a grease gun almost, and it pulls the shaft of the rivet which flattens the back of it. This is used when you can't get on the other side to back up the rivet.

Q. For a rivet gun you use Remington stud drivers; is that correct? Or any other kind of stud driver?

A. No, I never used one of those. Any rivet work I ever did was how I just explained it.

Q. And a rivet gun drives objects into hard surfaces; is that correct?

A. No, that's not correct.

Q. What does a rivet gun do?

A. A rivet gun as I said is pneumatic, it's air powered usually. It's, you drill a hole in two pieces of metal. You place a rivet through it. Then you would put the pneumatic end of the gun against the head of the rivet and back it up with a piece of steel, and as you hit the head of the rivet, the steel in the back crushes the back of the rivet, so that you can't pull out of the hole.

Q. Have you ever heard of something called a power actuated tool?

A. Yes.

Q. And do power actuated tools use small metal objects like I just showed you from Defense Exhibit I?

A. I guess. I've never used one or saw one.

Q. And can you buy power loads for power actuated tools at any hardware store?

A. I don't know.

Q. Have you ever had occasion during your 21 years as a New York City Police detective to investigate power loads for power actuated tools?

A. No.

Q. I believe you testified this morning that you recovered what you referred to as two pamphlets concerning the Mujahideen. Do you recall that testimony?

A. I said pamphlets. One of them I think was about or two of them about the Mujahideen.

Q. Now, please explain to the ladies and gentlemen of the jury what you meant when you used the word Mujahideen?

A. Those were the Afghan rebels fighting the Russians and from the attire of these individuals in these pictures they appear to be Afghans.

MR. STAVIS: May I approach the witness, your Honor?

THE COURT: Yes.

Q. Detective, I am now showing you what has been marked as Nosair defense exhibits J and K for purposes of identification. Are these two of the -- what would you characterize them?

A. Literature.

Q. Two of the pieces of literature that you recovered from Mr. Nosair's locker?

A. Yes.

Q. And do these depict Afghan soldiers?

A. Well, as I said they appear to be clad as Afghan rebels.

MR. STAVIS: I would offer these into evidence, your Honor.

MR. FITZGERALD: I have an objection I can raise at the sidebar.

(At the sidebar)

MR. FITZGERALD: My concern is the purpose for which they're offered. Here's what I am worried about. I don't know what, these have not been translated. I don't know what's in there. If he is going to deem there is an article there about America or the CIA in for the truth of the matter asserted, I have a problem.

THE COURT: He's offering them as material that was found in his client's locker, right?

MR. STAVIS: Yes. I am not offering any Arabic portions of that. As your Honor will recall, I opened on the fact that there is such a thing as jihad magazines and these are them.

MR. FITZGERALD: Is the translation going to be offered?

MR. STAVIS: No.

MR. FITZGERALD: Then I have no objection.

THE COURT: Fine. Simply because he says, no, I'm not going to bar him from offering a translation if it turns out there is something that is otherwise admissible.

MR. FITZGERALD: I just wanted to see the translation before.

(Continued on next page)

(In open court)

THE COURT: J and K are received without objection.

(Defendant Nosair Exhibits J and K received in evidence)

MR. STAVIS: Your Honor, I ask that the witness come off the stand so we can show what has been marked in evidence as Nosair K and J to the jury?

THE COURT: You want him to show it?

MR. STAVIS: I want him to show just certain aspects of these that are in English, your Honor.

THE COURT: Okay. You can step down.

(Witness left the stand)

THE COURT: Just again move the microphone to the center so you can be heard.

Q. Detective, drawing your attention to the top of this magazine, does it have a name for the magazine?

A. Yes.

Q. What is that name?

A. Al-Jihad?

Q. How do you spell that?

A. A-L dash J-I-H-A-D.

Q. Drawing your attention to the third page at the bottom, what does that say?

A. It says Alkifah Refugee Center, 552 Atlantic

Avenue, Brooklyn, New York.

Q. Does it give a telephone number?

A. Yes, it does.

Q. What is that telephone number?

A. 718-797-9207.

Q. Does the magazine appear to include people shooting rifles?

A. Yes.

Q. Directing your attention again to the front page, is there a date for this Al-Jihad?

A. January, 1990.

Q. Is there an issue number for this Al-Jihad?

A. 63.

Q. Now, drawing your attention to Nosair Defense Exhibit K in evidence, I'd ask you to look at the top again and tell us the name, issue number, and date of that magazine?

A. Same name, Al-Jihad, number 64, February, 1990.

Q. Drawing your attention to the second page, do you see an address, a name of a place, and a telephone number?

A. Yes, the same as the other one.

Q. Which is?

A. Alkifah Refugee Center, 552 Atlantic Avenue, Brooklyn New York, 11257, 718-797-9207.

Q. Drawing your attention to this double-sided

picture, that's part of the exhibit; is that correct?

A. You mean it's part of the book?

Q. The book or the exhibit?

A. Yes.

Q. Does that appear to be people making war on each other?

A. Yes, it does.

Q. Drawing your attention to the back cover, does that appear to be a soldier or soldiers with rifles slung over their shoulders walking through the mountains?

A. It appears to be rebels with rifles slung over their shoulders walking through the mountains.

Q. When you say "rebels," do you mean Mujahideen rebels?

A. That's what I think they are.

MR. STAVIS: Your Honor, I have no further questions of this witness.

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

CROSS-EXAMINATION

BY MR. RICCO:

Q. Good afternoon, sir.

A. Good afternoon.

Q. On the night that Rabbi Kahane was shot at the Marriott Hotel, at some point you ended up at the Bellevue

Hospital, isn't that right?

A. That's correct.

Q. And yourself and Det. Bailes took charge of the coordination of what was happening at that time?

A. Among others, yes.

Q. At some point in the early morning hours Ms. Karen Nosair and Mr. Ibrahim El-Gabrowny were brought to the Bellevue Hospital, isn't that correct?

A. That's correct.

Q. And they were brought to the hospital by New York City Police Department law enforcement personnel?

A. I believe so.

Q. While Ms. Nosair was at the hospital she was asked to identify her husband?

A. I'm not aware of that, no.

Q. Not at all?

A. No, sir.

Q. Well, wasn't that done in your presence?

A. No.

Q. Well, Det. Haight, I've noticed that when Mr. Stavis asked you several questions about names of witnesses, you seem to have had a good memory of the people that --

THE COURT: Sustained. Just ask a question.

Q. You seem to have a good memory of the people that you spoke to in the course of this investigation.

A. Certain people.

Q. I'm going to ask you to take a look at three documents, 3560A, 3560D and 3560H. I'm going to ask you to read it, and then I'm going to ask you a question again about whether or not you were in the presence of Ms. Nosair when she identified her husband?

(Pause)

The three documents that I asked you to review, you know what those documents are, don't you?

A. Yes.

Q. Those documents are the various warrant affidavits that you submitted --

MR. FITZGERALD: Objection, your Honor.

MR. RICCO: I'll ask the question a different way.

THE COURT: Okay.

Q. Det. Haight, tell the jury what those documents are?

A. They're affidavits of search warrants.

Q. And three different search warrant applications, right?

A. Correct.

Q. Now, having read -- and they were your affidavits?

A. Correct.

Q. And having read those, do they help refresh your recollection as to whether or not Ms. Nosair identified her husband at Bellevue Hospital in your presence?

A. Well, if you're familiar with the recovery room at Bellevue Hospital, it's a very large room, almost as large as this room. I was in that room, but I could not hear. I just watched, so I could not say that I heard her identify her husband. I saw her identify her husband from across the room.

Q. Does that mean that she was in your presence -- was she in your presence when she identified her husband?

A. She was in the same room with me, yes.

Q. And when you filed the affidavits in connection with these warrants you stated on each time that the identification was done in your presence?

A. Well, it was in my presence.

Q. And after she was at the hospital, Ms. Nosair and Mr. El-Gabrowny were taken back to the 17th Precinct, isn't that correct?

A. I believe they were.

Q. And at the 17th precinct Ms. Nosair spoke to you, isn't that right?

A. Myself and other people.

Q. And basically you just asked her basic pedigree information about who the person was in the hospital, isn't

that right?

A. That's correct.

Q. And that was just basically his name, where he worked, his age, et cetera?

A. Correct.

Q. And Ms. Nosair answered those questions, isn't that right?

A. Yes.

Q. And in addition to that Mr. El-Gabrowny was also asked questions that morning, isn't that right?

A. I believe he was, yes.

Q. And after Mrs. Nosair and Mr. El-Gabrowny were interviewed at the 17th Precinct they were taken back home by New York City law enforcement personnel, isn't that correct?

A. I believe they were, yes.

Q. Now, there were FBI agents involved in the early stages of this investigation, isn't that correct?

A. When you say "involved," I know there were two present at the house in Jersey.

Q. Did you ever speak with a Special Agent by the name of Louis Napoli at the 17th Precinct?

A. I could have. I don't recall. I don't recall the name at all.

Q. You did a computer search or not you --

withdrawn.

New York City Police Department did a computer search on the license plate that was recovered from the trunk of Mr. Nosair's automobile, isn't that correct?

A. Yes.

Q. And that was done as a part of your investigation, isn't that right?

A. Yes.

Q. And you were able to ascertain the owner, the registered owner of that license plate number, isn't that correct?

A. Yes.

Q. And you determined that to be Martina Figueroa, isn't that right?

A. Well, I don't remember, but it's a matter of record.

Q. And was she subsequently interviewed by New York City Police Department personnel?

A. I'm not aware of that.

Q. Do you know whether or not New York City Police Department personnel ever determined whether or not Mr. Nosair had her consent or authority to have that license plate?

A. I have no knowledge of that.

Q. Do you know if any law enforcement personnel

either FBI or yourself ever interviewed Ms. Figueroa?

A. I have no knowledge of that.

Q. Now, you have no knowledge of that today as you testify?

A. That's correct.

Q. And you had no knowledge of that back in the early stages of this investigation, that would be back in 1990 and 1991, isn't that correct?

A. That's correct.

Q. The FBI in this case never came to you and said Det. Haight, let me share with you what we have discovered or have not discovered on this case, isn't that correct?

A. Yes.

MR. RICCO: I have no further questions.

THE COURT: Anyone else? Any redirect?

MR. FITZGERALD: No, Judge.

THE COURT: You are excused.

THE WITNESS: Thank you.

(Witness excused)

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

(Jury not present)

THE COURT: You want to discuss that in the

robing room?

MR. PATEL: Sure. Thank you, your Honor.

(In the robing room; Mr. Patel, Mr. Stavis and Mr. Fitzgerald present)

THE COURT: Do I need an exhibit book for this?

MR. FITZGERALD: You can have mine.

MR. PATEL: Judge, these are the photographs of the house search. There are a number, I think there are two that Mr. Fitzgerald has agreed to take out. Basically my problem with the ones that I had marked with the tag, this is, this one's out. This is sort of a typical example.

This is a photograph of someone holding a target. Now, I have no objection to the admission of the target, but I do have an objection to these photographs which display items that are not as they were.

THE COURT: Fine, I understand. What's the rationale for photographing them like that?

MR. FITZGERALD: They will testify that they were moved and photographed to show the room they were in, but --

THE COURT: It doesn't show the room they were in. All it shows them is on a floor. The items themselves are going to be offered, correct?

MR. FITZGERALD: Yes.

THE COURT: He's not objecting to the items themselves.

MR. PATEL: No.

THE COURT: I don't see the point of the photographs.

MR. FITZGERALD: Okay, I'll remove them then.

THE COURT: Good.

(In open court; jury not present)

THE COURT: Ms. Stewart, did you want me to account for your client's absence or not?

MS. STEWART: No, I don't think that's necessary.

(Continued on next page)

(Jury present)

MR. FITZGERALD: The government calls Lt. Roger Kane, K-A-N-E.

ROGER KANE,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Lt. Kane, who do you work for?

A. I work for the Bergen County prosecutor in Hackensack, New Jersey.

Q. For how long have you worked for the Bergen County prosecutor?

A. Approximately 15 years.

Q. What is your current rank?

A. Lieutenant in charge of homicide.

Q. Directing your attention to the fall of 1990, what was your rank and assignment at that time?

A. I was a sergeant assigned to do investigations in the Homicide Squad.

Q. Did there come a time in November of 1990, when you had occasion to participate in the search of a house on Olympia Avenue?

A. Yes, sir, there was.

(Continued on next page)

Q. Do you recall the day of that search?

A. On November 6.

Q. Was that pursuant to a warrant?

A. Yes, it was.

Q. Let me approach you with what have been premarked as Government's Exhibits 75A, B, D, G, H, I, K, and L. If you could take a moment to look at those different photographs beginning with A and ending with L, but not inclusive, just to determine if you recognize them.

A. Yes, sir, I do.

Q. How do you recognize them?

A. I was there and I directed these photographs to be taken.

Q. Did someone else physically take the pictures?

A. Yes, sir.

Q. Those photographs that you have looked at, are they fair and accurate pictures of the residence that you searched that day?

A. Yes, they are.

MR. FITZGERALD: Your Honor, I would offer those exhibit numbers.

MR. PATEL: No objection.

DEFENDANT ABDEL RAHMAN: 75A, B, D, G, H, I, K and L are received without objection.

(Government's Exhibits 75A, B, D, G, H, I, K and

L were received in evidence)

MR. FITZGERALD: If the jurors could be asked to look at the same big book, at Government's Exhibit 75A is the start.

Q. Lieutenant Kane, tell us what is depicted in Government's Exhibit 75A?

A. That is the front of 577 Olympia Avenue, Cliffside Park, New Jersey.

Q. Is that the residence you searched on November 6, 1990?

A. Yes, sir, it is.

Q. Before we turn to the other photographs, can you tell us basically how you went about the search?

A. I entered through the window adjacent to the front door depicted in the photograph, and I went around and unlocked the front door and allowed the New York detectives to enter with me. We proceeded to search from the first floor, from the porch through the living room, dining room, kitchen, basement, then up the stairs to the bathroom, three bedrooms, and then the attic.

Q. Can you describe the general nature of the items you recovered during that search?

A. We recovered books, one in particular, By Way of Deception.

Q. What was the title of that book?

A. By Way of Deception. Books about guns, books about terrorism, articles about --

MR. PATEL: Objection, your Honor.

THE COURT: Sustained.

MR. PATEL: Move to strike.

THE COURT: That is stricken.

Q. Let me ask you this: Did you see written materials about weaponry?

A. Yes, sir, I did.

MR. PATEL: Objection.

THE COURT: That I will allow. Go ahead.

Q. Did you see written materials about weaponry?

A. Yes, sir, I did.

Q. Did you see materials that referred to Afghanistan, if you recall?

A. Yes.

Q. Can you tell us, were all the materials you saw in the English language?

A. No, sir. There was a lot of information with photographs, next to them were drawings that were in a different language.

Q. If you could continue describing the a general nature of the items you saw, just describing them, not characterizing them?

A. There was newspaper articles. There was personal

papers. There was targets.

Q. What do you mean by targets?

A. Targets, round circular -- square piece of paper with a target on it, and also a piece of plasterboard with a target on it, that contained what appeared to be bullet holes.

(Continued on next page)

MR. PATEL: Objection. Your Honor, may we be heard very briefly at the side bar?

THE COURT: Sure.

(At the side bar)

MR. PATEL: The reason I asked for a side bar, it appeared that the witness was reading from something. He looked to the side and I couldn't see whether or not he had anything in his hand. You have a better view.

THE COURT: It didn't seem to me that he did. On the other hand, I wasn't watching.

MR. FITZGERALD: He does look to his left but I think he has the photo in front of him. We can verify that.

MR. PATEL: Judge, I would object to going through --

THE COURT: Why don't he just go the titles?

MR. FITZGERALD: We worked out a stipulation that we are going to designate the specific items by stipulation. I think I am done.

THE COURT: Good.

(In open court)

BY MR. FITZGERALD:

Q. For the record, Lieutenant Kane, to your left you have the photographs on the witness stand?

A. Yes, sir.

Q. Do you have anything else, any written notes?

A. No, sir.

Q. Just for the record.

If you could turn to the photograph that the marked as Government's Exhibit 75B as in boy. Can you tell us what that depicts?

A. That is the front door. The mail was placed against the bottom of the front door.

Q. Skipping ahead to 75D as in dog.

A. This is, the radiator would be on the front wall. This is the front porch area. The radiator is on the front wall, and that is the opposite corner from where we entered the porch area.

Q. Were materials seized from that general area?

A. Yes, sir, they were.

Q. 75G.

A. That is the basement of the home.

Q. Moving ahead to 75H.

A. This is the closet in the front bedroom, or master bedroom.

Q. Moving ahead to 75I.

A. This is the master bedroom next to the bed, opposite that closet.

Q. Moving ahead to 75K.

A. The stairway leading to the attic.

Q. Lastly, 75L.

A. It's a piece of plasterboard with a target drawn on it that appeared to have bullet holes in it.

Q. What room was there in, 75L?

A. In the attic.

Q. During your search, did you ever see a yarmulkah?

A. Yes, I did.

Q. Where was that?

A. It was located in a jacket pocket in a sport coat in the master bedroom closet.

Q. Looking at 75H, is it that closet or a different closet?

A. It is that closet.

MR. FITZGERALD: Your Honor, at this time I would like to read a stipulation between the government and counsel for Mr. Nosair.

THE COURT: This is simply an agreement between the government and Mr. Nosair through his counsel as to certain facts or what certain testimony would be, and you are to accept this as if it is proved and give it whatever weight you think it deserves.

Go ahead.

MR. FITZGERALD: The agreement between the parties is that the following items as designated by a Bates number were recovered during a search. There is no agreement as to relevance or admissibility. The items are

designated by the following numbers. It is a long list.

106, 1803, 1831, 1833, 1851, 1852 and 53. Then a series of numbers: 684 through 705, 845, 860, 862, 863, 885, 900, 926, 964, 968 through 70, 973 and 974, 986 and 987, 992, 997, 1005, 1007, 1041, 1051, 1061, 1176, 1204, 1414, 1418, 1448, 1538, 1543, 1546, 1548, 1574, 1585, 1588 and 1589, 1593, 1607, 1654, 1657, 1661 through 63, 1667, 1680, 1718, 1815, 1854, 1940, 1941 through 1991, 1994 through 2019, 2020, 2033, 2035, 2037, 2039, 2056, 2058, 2059, 2083 through 2134, 2139 through 2142, 2147, 2151 through 2160, 2161 through 2241, 2242 through 2244, 2255 through 2262, 2288 through 2290, 2300, 2326 through 2329, 2331 -- we are getting there -- 2376, 2438 through 2439, 2501 through 2546, 2598, 2600, 2610 through 2620, 2627 through 2629, 2632 through 2633, 2662, 2665, 2673, 2676 through 2678, 2716 and 2717, 2725 through 2735, 2740, 2745, 2741 as well, 2776 through 1779, 2785, 2788, 2796, 2837 through 2840, 2878 through 2889, 2904 through 2911, 3021 through 3091, and 3527.

And further it is agreed that a number of audiotapes and videotapes, to be designated at a later point in time, were seized. There are several miscellaneous items that will be numbered later.

Your Honor, at this time the government would offer Government's Exhibit 88, which is the document which

was Bates stamped number 1831; Government's Exhibit 89, which was Bates stamped 1833; Government's Exhibit 90, which was Bates stamped 1851; Government's Exhibit 91, which was Bates stamped 1852; Government's Exhibit 100, which was Bates stamped for pages 2255 through 2262; Government's Exhibit 105, which was Bates stamped 2331; Government's Exhibit 106, which was Bates stamped 2438 through 2439; and finally, Government's Exhibit 109, which was Bates stamped 2598.

THE COURT: 88 had which Bates stamp number on it?

MR. FITZGERALD: 88 had a Bates stamp number of 1831.

MR. PATEL: No objection.

THE COURT: All right. 88, 89, 90, 91, 100, 105, 106, 109 received without objection.

(Government's Exhibits 88, 89, 90, 91, 100, 105, 106 and 109 were received in evidence)

MR. FITZGERALD: May I have one moment, Judge?

Judge, the binders for those exhibits have been assembled. They have not yet been distributed to the jury.

THE COURT: You want to distribute them now?

MR. FITZGERALD: Yes.

THE COURT: Fine.

MR. FITZGERALD: The first exhibit we will be

looking at, Judge, will be Government's Exhibit 88. In the books should be, for Government's Exhibit 88, a copy of a title page, table of contents, and then selected pages. The full book is in evidence and marked as Government's Exhibit 88.

THE COURT: Fine.

MR. FITZGERALD: If you look in Government's Exhibit 88, the copies in the books, the front page should be with the exhibit sticker on it. The next two pages should be the table of contents, which includes a reference to chapter 3, hidden handguns, at page 48. The following page should be a picture of a revolver at the top and at the bottom. The following page should be chapter 3, hidden handguns. I would just like to read the first three sentences, Judge.

"In the final analysis, guns are awkward things to carry. With the paraphernalia that goes along with them, they weigh a couple of pounds. They have sharp edges and corners, and they are made of hard and unyielding materials."

On the next page should be a picture of a gun at the top and in the lower left corner, which the first sentence should read:

"Sturm, Ruger is the newest of the major American handgun manufacturers, and they have only entered

the concealable law enforcement revolver market in recent times."

And the next page should have a picture on the bottom with a caption that begins with the words:

"Below. When the shooting is close, inside of 7 yards or even less, then the stance will probably be more like this. Fast, pointed shooting is quite possible."

Turning to Government's Exhibit 89, which is a hardcover book in evidence, some pages have been copied. The title page should have Government's Exhibit 89, an exhibit sticker for it, called The Tactical Edge, Surviving High-risk Patrol. The next two pages should be the table of contents. The next page, which says "Entry," bears underlining, and the sentence that has the underlining reads:

"You want the situation to be where one second there is nothing happening and the next all hell breaks loose and your goal is accomplished before the confused suspect realizes what has happened."

And the next page the underlining should say:

"Remember, an increasing number of extremist religious and political groups are providing paramilitary and survival skills training as well as sophisticated weaponry to their members."

I think we are done with that exhibit for the

moment.

Government's Exhibit 90, which is not in the book, is a newspaper called the Jewish Press, for the week of August 17 to August 23, 1990, and that includes, on page 11, an article by a professor Howard L. Adelson, A-D-E-L-S-O-N, which bears some underlining of words in the article. Then the next page -- it is continued on page 38 and then on page 39 is an article entitled "Rabbi Meir Kahane speaks," and the title of the article is "Who Killed Ronen," R-O-N-E-N, "and Lior?" L-I-O-R.

Government's Exhibit 91, there is one page in the book for Government's Exhibit 91, and that is the cover of the May '88 Guns and Ammo magazine, which has a Government's Exhibit sticker 91.

Government's Exhibit 100 is a set of NRA pistol shooting targets, which if I could ask Lieutenant Kane to step down and display to the jury.

THE COURT: Go ahead.

BY MR. FITZGERALD:

Q. And the last two exhibits, Government's Exhibit 105, if I could ask -- sorry, Lieutenant, if you could show this to the jury and, speaking into the microphone, describe what it is.

A. These are five live 38 rounds that were found in the closet on the second floor in the master bedroom in this

box, five live rounds in it.

Q. I am sorry.

A. Five live .38 caliber rounds.

(Continued on next page)

MR. FITZGERALD: Finally, the last two items -- you can take a seat again. Government's Exhibit 106, a copy of which should be in the books, 106. If I could just read the title and the first paragraph. Title, "Kahane to tour U.S." First paragraph: "Rabbi Meir Kahane will be in the U.S. from October 22 to November 18 for a nationwide lecture tour with an urgent message for Jews in America."

Finally, Government's Exhibit 109, a copy of which is also in the books, is a single-page receipt from the Navy Arms Company for a case of 1,440 rounds, dated July 22, 1989.

At this time, Judge, I have no further questions for Lieutenant Kane.

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

(At the side bar)

THE COURT: I would like to be done for the day by 4:30, so if you have something that you can accomplish within that time --

MR. PATEL: I have a ton of stuff to do, you can imagine, plus our exhibits that we are going to introduce aren't quite as ready to go. But I can get started. I can certainly take him through the rider to the warrant, and stuff like that.

THE COURT: Fine.

(In open court)

MR. PATEL: Judge, as long as I am here, may I approach the witness?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. PATEL:

Q. Showing you Government's Exhibit 105, the .38 caliber bullets, are those hollow points?

A. No, sir. Thank you.

You are with the Bergen County prosecutor's office, right?

A. Yes, sir.

Q. Are you attached to them from some police department or do they have their own force, so to speak?

A. They have their own force of investigators.

Q. You are an investigator with them?

A. I am a lieutenant investigator.

Q. And you have the same powers and duties as a police officer?

A. Yes, sir.

Q. You carry a gun and a badge?

A. Yes, I do.

Q. Handcuffs?

A. Yes.

Q. Authorized to make arrests, execute search

warrants?

A. Yes, sir.

Q. You obtained a search warrant in this case?

A. I did.

Q. And you worked with an assistant prosecutor in Bergen County and you spent a few hours writing up affidavits and warrants and brought it to a judge?

A. That is correct.

Q. When you apply for a warrant, that is a judicial order to go someplace and look for something and to take it, right?

A. Correct.

Q. You have to go to the judge and explain to him why you think you should be able to do that, and if he agrees with you he signs the warrant, right?

A. Yes.

Q. That is what you did in this case?

A. Yes, it is.

Q. The warrant in this case told you that you had the right to go to this house in Hillside, the one on Olympia Avenue.

A. I am sorry, Cliffside.

Q. Excuse me. What is the address?

A. 577 Olympia Avenue.

Q. Olympia Avenue. It told you that you could

search the house, car, and the garage?

A. Yes, sir.

Q. And it also told you that you should search anyone who was in the house?

A. That is correct.

Q. When you went there to execute that warrant -- by the way, you had been there before, right?

A. I had been there earlier that day, yes.

Q. And you had spoken with Mrs. Nosair, right?

A. Not me personally, no.

Q. Someone you were with?

A. I wasn't with anyone that spoke with her.

Q. Back to your office for a minute. The warrant that you prepared permitted you to search for certain specific items, right?

A. Yes.

Q. This is what you told the judge that you wanted to look for and this is what the judge in New Jersey authorized you to take, right?

A. That is correct.

Q. He authorized you to take firearms, correct?

A. Correct.

Q. Explosive devices?

A. Correct.

Q. Boxes of ammunition?

A. Yes.

Q. Particularly for a .357 magnum revolver, right?

A. Correct.

Q. Literature relating to shooting?

A. Correct.

Q. Literature related to Rabbi Kahane?

A. Correct.

Q. Or to the November 5 lecture at the Marriott Hotel?

A. That is correct.

Q. Documents showing evidence of travel.

A. Correct.

Q. Plans, diagrams, telephone numbers, names, material objects or other documents which would enable a suspect to plan for travel to or from or engage in shootings, right?

A. Correct.

Q. So it is not just any travel document, it is one that involves going back and forth to a shooting, presumably the one at the Marriott Hotel.

A. Presumably.

Q. That is what you told the judge about in the warrant, right?

A. If you read on, it goes further.

Q. Or criminal possession of a weapon, and talks

about Haight's affidavit. Haight's affidavit was about the incident at the Marriott Hotel where Rabbi Meir Kahane was shot, is that correct?

A. That is correct.

Q. Evidence of political affiliation of those who support or oppose Rabbi Kahane.

A. Correct.

Q. And other instrumentalities or paraphernalia used in connection with the commission of the events that occurred at the Marriott Hotel that night, right?

A. I don't think that is the way --

Q. That's not the way it is phrased but that is what it means, right?

A. No, instrumentalities of crime --

MR. FITZGERALD: Objection.

THE COURT: The objection is sustained.

MR. PATEL: Sorry, your Honor.

A. Doesn't it say of crime and --

THE COURT: There was an objection that got sustained. There is no need to answer. There is no question.

THE WITNESS: Sorry.

Q. Basically what it talked about is what you were authorized by the judge in New Jersey to go in there, you get.

A. Basically, yes.

Q. You work for a prosecutor's office and you know that what you are authorized to take is what you are supposed to take.

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. You know as a law enforcement officer that this is the limit on your authority.

MR. FITZGERALD: Objection, your Honor.

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

(At the side bar)

MR. FITZGERALD: My objection was based on the fact that he is confusing the jury as to the law. The warrant is not the limit in the sense that there are plain view documents, there are many things beyond the warrant that allow him to take things.

THE COURT: That is true, too. On the other hand, are we having a suppression hearing in front of the jury or what?

MR. PATEL: No. I just want to establish what he understood he was going there to take.

THE COURT: How is his state of mind on what he was there to take relevant?

MR. PATEL: It certainly goes to the scope of

what he took and his -- whether he says -- I just want to establish what he was going there to get.

THE COURT: I understand, but what is his view of what he was there to get --

MR. PATEL: I am basically done with this, Judge, if that solves the problem.

THE COURT: It solves the problem. Then let's move on to something else.

MR. PATEL: Exactly.

(In open court)

(Continued on next page)

BY MR. PATEL:

Q. When you applied for the warrant, you were authorized to enter at a certain time, is that correct?

A. I think so, yes, sir.

Q. The warrant doesn't limit how long -- or does the warrant limit how long you can stay at the location?

A. I don't recall if it does or not, sir.

Q. You were under no time constraint to get in and get out, were you?

MR. FITZGERALD: Objection, your Honor.

THE COURT: Sustained.

Q. Was there anything about the fact that you had a warrant that made you feel pressured in terms of time? When you executed this search?

A. No.

MR. FITZGERALD: Same objection.

THE COURT: Sustained.

Q. How long did this search last?

A. Approximately two hours.

Q. It lasted two hours because that is how long you needed to do the search, is that correct?

A. Yes, sir.

Q. If you needed more time you could have stayed more time, is that correct?

A. It would have been, but I didn't.

Q. But you could have if you needed to?

A. I would have -- yes.

Q. Before you actually went and executed the search, you and someone else went to the location?

A. I went to the location to get a description.

Q. Before you applied for the warrant?

A. Yes, to put it into the warrant.

Q. And before you went and actually executed the warrant, you had a meeting with other law enforcement personnel?

A. Yes.

Q. Where did this meeting occur?

A. At the Bergen County prosecutor's office.

Q. And there were a number of law enforcement officers from a number of different agencies, is that fair to say?

A. That is fair to say.

Q. There were a number of New Jersey police law enforcement personnel?

A. Yes.

Q. There was a detective Siblensky?

A. Yes. He was --

Q. Am I pronouncing it correctly?

A. I don't know.

Q. Detective Woods and Engel?

A. Yes.

Q. Detective Badreaux, Police Officer Bonnano and Harry Gann?

A. That is correct.

Q. And there was a Sergeant Maturo and Senior Investigator Goldrick, is that correct?

A. That is correct.

Q. And there were a number of New York City police personnel there as well?

A. Yes, sir.

Q. And you basically spent quite a bit of time with Detective Haight getting this warrant paperwork done, is that correct?

A. That is correct.

Q. In addition to Detective Haight there was a Detective Troll?

A. Yes.

Q. And Detective Ferguson?

A. Yes.

Q. And Detective Harvey?

A. Yes.

Q. Trumble?

A. Yes.

Q. Sergeant Mullaly?

A. Yes.

Q. And there were also some FBI agents there, right?

A. Yes, I think there were two.

Q. Special Agent Atkinson and Special Agent Perrin, correct?

A. I think so, yes, sir.

Q. All these officers attended a meeting at the prosecutor's office?

A. No.

Q. Who attended the meeting in the prosecutor's office?

A. Senior Investigator Goldrick, myself, and the officers from the New York Police Department.

Q. And the FBI agents met you at the scene?

A. I think so, yes, sir.

Q. You had had some telephone conversations with the FBI agents beforehand?

A. Personally, no.

Q. Someone in your office did?

A. I don't know.

Q. They showed up?

A. Yes, sir.

Q. And you weren't surprised that they were there?

A. I could say I was surprised. I didn't know they were coming. I personally didn't know. I was working on a search warrant.

Q. Had you received any communications from the FBI before you went out to the scene?

A. Personally, no.

Q. Did anyone in your office --

A. I am sorry, sir. When I speak, I speak for my office. We didn't, no.

Q. Did you have an interpreter with you?

A. No.

Q. Did any one of the officers that we have just discussed speak Arabic?

A. Not to my knowledge, no.

Q. Do you read or speak Arabic?

A. No, sir, I don't.

Q. When you went out there, did you know that Mr. Nosair spoke Arabic?

A. I didn't know that personally, no.

Q. When you got out there, you saw a number of documents that were in Arabic; would that be fair to say?

A. That is correct, they were in a foreign language. I thought they were Arabic, yes, but I didn't know for sure.

Q. At that point did you contact or ask one of the other officers to get an interpreter?

A. No.

Q. Did the FBI agents, do you know if either of them spoke or read Arabic?

A. I don't know.

Q. Did they offer to get an interpreter?

A. No. This was my search warrants.

Q. You were the seizing person?

A. Yes, sir.

Q. So it was your responsibility, you made the determination of what items were seized?

A. That is correct.

THE COURT: Mr. Patel, could you come to a convenient break point in the next five minutes or so.

MR. PATEL: Judge, your timing is impeccable. We were just about to go someplace else.

THE COURT: Thank you.

Ladies and gentlemen, we are going to break for the day, and, from your standpoint, for the weekend. For your own scheduling purposes, I should tell you, as you may be happy to hear, I suppose, that next week is going to be a short week, in the sense that we will sit Monday and Tuesday but we will not sit in the trial portion of this case on Wednesday and Thursday. Please be aware that the lawyers, however, are going to be working on some things in those days that we hope will help shorten the trial after that, so they will be engaged in productive activity and you won't have to be. But we are going to sit Monday and Tuesday.

Please don't read about the case, hear about the

case, see anything about the case or think about the case. We will see you on Monday morning. Have a pleasant weekend. Good night.

(Jury excused)

THE COURT: I am to get together with the lawyers tomorrow afternoon at about 2:30?

MR. JACOBS: 2:30.

THE COURT: See you then.

(Proceedings adjourned until Friday, February 24, 1995)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
a/k/a "John Medley,"
CLEMENT HAMPTON-EL,
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.
----------x

S5 93 Cr. 181 (MBM)

February 24, 1995
2:45 p.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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(Trial resumed)

(In open court; defendants not present; jury not present)

THE COURT: This is what, an application to enforce or an application to quash or what?

MR. JACOBS: Your Honor, perhaps I can move it along. We have been chatting with the government. There is a letter that I submitted which to some extent --

THE COURT: February 13?

MR. JACOBS: Yes, your Honor. That letter attempted to explain the two subpoenas that were issued, as well as the Brady request for statements. Here is where we are at at the moment, and I think we have at least got the issues clarified. The government has agreed with respect to the FBI subpoena to comply with all items except number 9, up to the World Trade Center bombing on February 26 -- or the flight immediately thereafter.

MR. FITZGERALD: Yes, the next day.

MR. JACOBS: The CIA subpoena is still subject to argument and discussion.

THE COURT: Argument and discussion with them or with me?

MR. JACOBS: With you. Leaving number 9 open for the moment, your Honor.

With respect to the statements of Yousef, we have

no objection to the government's request that they will turn over anything that they have, if they have anything, to your Honor within 10 days to examine. So there is no argument needed on that, unless your Honor has some question. But we have no problem with the government's statement to that effect, and that is fine with us.

Next, with respect to the number 9 documents, and the general Brady requests with respect to Yousef, we both feel, the government and us, that it is difficult for your Honor to make rulings on it without knowing what is there. We don't know what is there, precisely, at all. I know the court doesn't.

THE COURT: What is where?

MR. JACOBS: Let me give you an example. There were items seized when Yousef was arrested in Pakistan. We don't know what they are. What I think we would like to propose before the court makes a ruling on whether we get anything is for the government to summarize, in a sealed letter to the court, the general information that they have. It is difficult for me to argue items that I don't know if they exist or not. If I knew that a diary existed laying out particular facts, I could obviously make an argument directly on the document.

THE COURT: You would also have to know the content of it.

MR. JACOBS: That is what I meant.

So what I propose and what Mr. Fitzgerald has talked to his colleagues about is sometime, without setting a date for the moment, the government gives you in some form of sealed fashion a summary of what they have come up with, summarizing this evidence, so that at least your Honor has some idea of what is out there.

We take a very simple position. We have a defense. We believe under the Second Circuit that we have a right to put that defense forward to the jury. We may be wrong and the jury may reject it and may convict the defendants. We want the opportunity to put the defense forward and introduce relevant and admissible evidence. I don't think the government disagrees with that general principle of law. We also don't want to compromise ongoing investigations, but there may be a problem with that if documents do exist.

So what we are suggesting is, if the government gives your Honor a heads up as to what is generally there, then at least we will have some idea of what we are talking about, or at least the court will have some idea what we are talking about.

We disagree with the general characterization by the government in their letter about what our theory is. The government is certainly entitled to prove their case,

and now that we have been overruled on the international aspects which we argued before, the government can put the evidence in, no question.

What we are saying is, if the government is in possession of documents that are relevant and possibly admissible with a proper foundation, that would support our defense theories, we need them. We intend to offer them, assuming that I can find the proper foundation to offer those exhibits in evidence.

It is not a fishing expedition, it is not an attempt to sabotage the government's ongoing investigation. But where the government alleges that Yousef is a member of this organization, which they do, and they allege that the sheik solicited others to carry out the acts of violence, which they do, we believe we are entitled to show that is not correct, and argue that to the jury.

So I hope I am making sense to your Honor as to where I think we are at. We have no problem if your Honor has a general idea what they've got, and once your Honor has a general idea what they've got, I think we are in a better position to focus in on the specifics.

THE COURT: All of that is at a very high level of abstractions, and I assume that when I get whatever summary I get from them that they have agreed to provide, I will have a general idea of what they have got. However, I

have to have also at least a general idea of what defense it is that it is said to relate to.

MR. JACOBS: Sure.

THE COURT: Couple of things. First of all, to say that there were others involved in a particular act is not to say that defendants charged with committing that act were not also involved. We told the jury that early on, with everybody's approval, about the four defendants in the World Trade Center case. That is a two-way street. The fact that they were convicted doesn't mean that there weren't other people who were also involved. By the same token, the fact that they were convicted doesn't make others who were accused guilty.

I guess what I don't understand is, among other things, how it is that Yousef's involvement with other people necessarily says that there was no involvement between him and some or all of these defendants, or that these defendants didn't do what they are charged with doing as part of some larger organization that included, among other people, Yousef.

MR. JACOBS: I am only talking about the World Trade Center. I don't want to get into Kahane or anything like that. Let's just focus on the World Trade Center because that is really what I think Yousef involves.

Let me give you an extreme example. If we are

correct and Yousef was hired by the Iraqi government, which is what has been reported and which the former director of the World Trade Center said -- Fox -- and that's correct, and Yousef never discussed it with the sheik, the sheik never participated in any conversations, had no knowledge of it and he recruited, Yousef recruited Salameh and Ayyad, and the others without the sheik or, as the government says, the sheik's solicitation, then it is our position that our group is not guilty of that overt act. All we say is, give us a shot to do that. We may be wrong and the government may link up Yousef completely with the sheik, and they may be able to produce evidence that Yousef went to the sheik.

All we are saying, Judge, if the government has evidence that Yousef operated for another terrorist organization and I can show by relevant and admissible evidence that that organization has no contact with the sheik -- how do I do it? Very simple. Let's assume we have 10 other coconspirators that the FBI has information on that was found on a computer disk. I have the names. I go to Miss Stewart. I look at the sheik's phone records. I show that those people never had any contact with the sheik. I look at the sheik's bank accounts. I show no money going to these people. I show money going to another foreign government. I get up in front of the ladies and gentlemen of the jury and say -- I say the sheik because I think he

was a critical person in the World Trade Center equation here. He didn't participate, he didn't solicit, he didn't authorize. Yousef authorized and participated. We don't disagree that Salameh and the other defendants were involved. I said in my opening we are not here to say Judge Duffy's trial was wrong. We are saying those people did it independently of the sheik and the other defendants in this case. I may be wrong but that is our theory, and we want a shot to argue it to the jury based upon relevant and admissible evidence, if they have it.

A phone record. Let's assume he has a diary, phone records. I would like to see it. I would like to be able to have Miss Stewart and me examine it.

THE COURT: That goes to another problem involving Rule 16 and the nature of a Rule 16 subpoena, but we can get to that in a minute.

MR. JACOBS: So what I am saying, your Honor, is that if the government possesses the documents that we can show establish another conspiracy or that this group didn't do the World Trade Center -- when I say didn't do it, I don't mean the physical acts. I don't think there is any allegation that any of the defendants in this case actually did the bomb itself -- I don't think. The point is, if Yousef did it independently, I think we have a right to argue that, especially where it alleges others. For the

government to come back and say we won't give you the tools to argue that, we are deprived of our defense. And it is very difficult -- I did it in my opening because I did it on the basis of the Iraqi passport and the $13,000 worth of phone records, all of which the government has made available. I don't disagree that we have gotten certain data that they had in the World Trade Center case. But the question is what has come since that supports our theory, in addition to the Iraqi passport and other information. I do agree it may compromise other problems and other investigations, but I am not aware of a case --

THE COURT: Let me ask you two questions and let me hear from them. If they presented evidence that there were conversations where there was authorization, there was a connection, then the fact that this person and others talked to other people or got money from other sources and so on wouldn't change that evidence. It would simply mean that they had connections with other people as well. By the same token, if they don't put in any evidence of such connections, then the fact that there is evidence out there that he was working with other people doesn't change the fact that they haven't put in any evidence. Either way, you stand or fall on the evidence linking these particular defendants to the act, unless what you are hypothesizing is a piece of evidence out there that not only shows that he

was working with other people but that somehow suggests -- more than suggests -- proves that yet others were not involved. That is Brady material, and that they have an obligation to turn over.

MR. JACOBS: Your Honor, the problem I have is, even assuming the worst scenario, that they get a witness that comes on the stand and says the sheik confessed that he did it, we have a right to attack the credibility of the witness, whoever it may be, say it never happened, it's nonsense, and show the jury, ladies and gentlemen, we will show you documentary evidence that suggests that that is not correct, we will show you Iraqi passports, we will show you bank accounts, we will show you travel to other countries, we will show you phone records.

THE COURT: That stuff would have to show that the testimony wasn't correct. Wouldn't it?

MR. JACOBS: No. Your Honor, I haven't talked to Yousef and I don't have a clue what he will say --

THE COURT: Me either.

MR. JACOBS: I understand, Judge. All I can suggest is, we seem to believe, and I think it is based -- I don't want to make ex parte submissions. We think we are on a very good-faith basis --

THE COURT: You don't have to do that, because you can have a theory that consists at some point of no more

than a wish. If there is anything to back it up, then you are fine.

MR. JACOBS: I understand. I understand, at least I think I do, that the general theory of the Second Circuit is that no matter how implausible a defense is, present it, and maybe this defense won't fly and maybe the government will prove its case beyond a reasonable doubt.

THE COURT: But it doesn't say that any implausible set of facts -- any set of facts, be they plausible or implausible, any set of facts that you want to present, if that is the set of facts you want to present, must necessarily be a defense. The statement that everybody is entitled to a defense means that everybody is entitled to present the facts that add up to a defense. It doesn't mean that everybody gets issued something called a defense, and if it is truly a defense fine, if it isn't, we are going to call it a defense anyway.

MR. JACOBS: But, your Honor, can't we introduce the evidence of Yousef's first class airfares -- let's assume they have bank accounts that don't show any money coming from the defendants in this case, that show -- I am making this -- I don't know -- show deposits coming in from Kuwait, from other countries, and I want to argue, ladies and gentlemen, there is no money from the sheik, he didn't finance the World Trade Center.

The question is, is it relevant, his other foreign bank accounts? Is it admissible? He is alleged to have blown up the World Trade Center. Can I stand in front of the jury and say ladies and gentlemen --

THE COURT: You are now arguing about something that is the subject of agreement between you and the government. Bank records are number 4. We are on 9.

MR. JACOBS: I am talking about post World Trade Center information, obviously.

THE COURT: I see.

MR. JACOBS: And I think that is critical. If we are correct, and there is certainly a lot of basis to believe that we may be correct, shouldn't we have the opportunity to see his list -- I call it list of coconspirators for want of a better word. His list of associates. Shouldn't Miss Stewart and I be able to get an investigator, look up who these people are, maybe interview them?

You can't tell us, Judge, that Yousef's list of associates can't be made available to us. The indictment says Yousef and others blew it up. How can the government say to us we are not going to give you the names of his associates that we found a few months ago and we are not going to let you see their names, we are not going to let you investigate them, we are not going to let you interview

them, because it might help you.

I can understand the government's reluctance.

THE COURT: We haven't heard from them and maybe we ought to let them do that.

MS. AMSTERDAM: Can I add one brief thing?

THE COURT: Sure.

MS. AMSTERDAM: To make this more factually specific, my theory, my defense would be that Iraq had commissioned Ramzi Yousef to do the World Trade Center bombing and that Iraq and the sheik or any other religious fundamentalist person would not necessarily have an affinity which was apparent to a person looking at the facts. Iraq is a secular military government which was criticized by many fundamentalist countries for their acts in the Gulf War, where it wouldn't necessarily be to me apparent that Iraq would have turned to someone like the sheik, even if you were to believe the government's description of the sheik, to carry forth this bombing.

If it turns out and we can show that Yousef leaves New York after the bombing and returns to Iraq and within weeks thereafter is given substantial amounts of money from Iraq, then his post travel documents, his post bank records, his post associates would allow us to establish that it was Iraq who commissioned it and allow us to argue to the jury that Iraq and the sheik stand wildly

apart and do not necessarily have any reason to think that these two people would come into the same orbit.

You know, it's not just my theory. There are many, many people out there, in politics and in the government and in newspaper agencies who do believe that in fact this is what happens, and while we bat a thumbs down, as Mr. Jacobs says, I think we are entitled to argue it to the jury.

MR. FITZGERALD: Your Honor, I will be brief. I think the bottom line is this: The government is not saying that they are not getting the information that we don't agree to give them because we are afraid it might help them. It is because of a pending investigation. We are not afraid it will help them, we are afraid of what they will do. The standard is whether or not the information might significantly alter the quantum of proof.

Mr. Jacobs makes a lot of points about what if there is an absence of a record in a phone diary. In Scarpa in this circuit, there were a bunch of tapes and a defendant saying if there are tapes of me speaking not about drugs, that tends to prove me innocent --

THE COURT: That is a whole different thing. The defendant in a drug case where he is charged with selling drugs on a street corner who offers to prove all the occasions where he stood on the same street corner and did

not sell drugs isn't going to get very far. That is all Scarpa stands for. I think their argument is somewhat different.

MR. FITZGERALD: All I am saying is that while the defendants are in jail in this case, if a coconspirator is in another country speaking to other people and not calling --

THE COURT: I think what they are arguing is, if Yousef was doing business with somebody who would not have done business with the person who was alleged to be the leader of this group, that tends to prove that the leader of this group was not involved in Yousef's activities and therefore that the other members of the group were not and therefore that whatever Yousef did, i.e., the World Trade Center case, had no involvement with this group. That doesn't take account of other principles of human behavior, like the enemy of my enemy is my friend, but that is their argument.

MR. JACOBS: Your Honor, just briefly.

THE COURT: Sure.

MR. JACOBS: I acknowledge the fact that there is no question that this material would compromise ongoing investigations, absolutely. I am a former federal prosecutor, I understand. But I am not aware of a rule of law that the U.S. Attorney's Office can invoke for that

principle --

THE COURT: As far as compromising ongoing investigations, if there is Brady material there, then pending investigations or no, the fact that you have an ongoing trial here means you get it, and the other investigations -- tough.

MR. JACOBS: Can I give you an example of something, Judge?

THE COURT: I think they are encouraging you not to --

MR. JACOBS: That's all right. It is just not a question of what is Brady is the problem. That list of names one can argue is Brady or maybe isn't Brady. I say it is Brady but that's my interpretation --

THE COURT: You say it without knowing who is on it.

MR. JACOBS: Your Honor, if my client the money man is on it, then I have a problem.

THE COURT: Not necessarily.

MR. JACOBS: You know, let me ask you this: If my client's name was on this book or computer disk, rest assured the government would be running forward to put it in under some theory.

THE COURT: We both are pretty confident that your client's name isn't on that list. That is not to say

that other people with whom they may be able to prove he had contact are not on that list.

MR. JACOBS: Forgetting the admissibility of an exculpatory statement by Yousef, forgetting admissibility, let's assume he tells the government that the sheik didn't do it, for argument's sake, not admissibility. Then, is the door open for everything at that point? If he comes forward and he tells --

THE COURT: I don't know what you mean by everything.

MR. JACOBS: At that point where we have something affirmative, whether it is a declaration against penal interests -- the government submits a Brady statement where this person under arrest says I didn't do anything with the sheik. At that point now, we have gone way beyond speculation. You have an affirmative statement before the court, what do we do with everything they have been gathering?

THE COURT: Can I make a suggestion? We can sit and explore the what if's endlessly. As I understand it, I am going to get the statements. Correct?

MR. FITZGERALD: Yes, Judge.

THE COURT: I am also going to get a summary of the material in category 9, correct?

MR. FITZGERALD: Yes, Judge, a description.

THE COURT: At that point, I guess, I will at least be in shape to do some speculating on what else is there or to ask particular questions about what else is there.

When you say I am going to get a description --

MR. FITZGERALD: Your Honor, I don't know exactly what is there yet, so I want to commit in principle that I agree with the idea, and we will figure out the most sensible way to present it to your Honor, so you will get a description or summary, or if the documents are small you can get copies. We will work on that.

THE COURT: I am also going to ask specifically that apart from anything that is exculpatory, which you have an obligation to produce and describe and so forth, I want anything on here that you argue is inculpatory, anything that you can spot that you argue is inculpatory, to be made clear to me, and also the how, so that I understand both sides of the equation.

Is there anything left?

MR. JACOBS: I think we have a CIA matter, your Honor.

THE COURT: Are the subpoenas identical?

MR. JACOBS: No, they are slightly different, your Honor. I believe the CIA subpoena generally provides for almost all the same things, except for numbers 12 and

13, employment payment for services -- we have some information that Yousef may have had some contact with this government in some official capacity, or unofficial capacity. We have asked for that, and the same for 13, your Honor. I put that in this category. CIPA request on February 7, 1994, I believe, and I quote from -- February 2, 1994, and I quote from the defense Brady request at that time under CIPA.

"Some of the defendants in this case have filed requests similar to those filed in the World Trade Center prosecution for any information contained in reports, lists, intelligence analysis or memoranda prepared by any agency of the United States government, tending to show that individuals or groups other than the defendants responsible for the conspiracy to bomb the United Nations and other targets as well as assassinations and other conspiracies identified in the indictment."

I take that to mean that the information that we are requesting here was part of this request. In any event, I renew this request with more specificity in light of Yousef's recent arrest. Until I heard the government's opening and then read some of the information that was coming out in fact about it, I didn't have a clue that there was any contact that Yousef had with Afghanistan until his arrest took place and reports began to come out about it.

It may be wrong. But if he did, we are entitled to that information, whether the CIA has it or anybody else has it.

THE COURT: It may be that I have read the same reports you read, but I don't have them as strongly in mind. I am not talking about that document, I am talking about the reports that you are talking about, about Yousef's connection to Afghanistan.

MR. JACOBS: After Yousef was arrested it was reported that he had previous CIA contacts, that he was trained to work in Afghanistan, things like that.

THE COURT: What is the theory?

MR. JACOBS: I think it would be relevant and admissible to show that he was operating independently of the sheik.

THE COURT: I don't get it.

MR. JACOBS: The fact that he is operating, perhaps is trained, had contacts and is sent overseas by the CIA to deal with Iraq, we have him reported in Kuwait right before the Gulf War, we need all this information to establish his movements. Was he ever in the United States before '92? I would like to know that.

THE COURT: I understand you would like to know a lot of things. What I don't understand is how -- sorry.

MS. STEWART: Judge, if I could just give Mr. Jacobs a little help, there were probably 50 different

groups fighting in Afghanistan. The sheik was connected to certain of them, others he had absolutely nothing to do with. If indeed they had information that Mr. Yousef was connected to a different faction, a different group, perhaps an Iraqi-inspired group, to carry the original analogy a step further, that might indeed be probative of a distancing from the sheik and indeed a distancing from what the government has alleged is the entire motivation underlying this entire conspiracy.

MR. McCARTHY: Your Honor, can I point out for just a second, you know, the court, among other things, given the somewhat unusual nature of this case, gave defense counsel in this case the transcript of the World Trade Center trial as the case was being tried. There was a lot of evidence in that trial connecting Yousef to Afghanistan. The Iraqi passport that has been referred to from time to time in the course of this latest round of claims was a subject of proof at that trial. To say that folks were not on notice that this could be something that was relevant, at least in their view, to this case until the government's opening is really sort of a stretch on the facts that we now hear. They were raised up plenty by information that they had as it was coming in at a trial.

THE COURT: So what?

MR. McCARTHY: So what, in terms of this current

application, which I understand to be for CIA information, we asked your Honor back in July or August to put --

THE COURT: I am less interested -- you say it is untimely?

MR. McCARTHY: On CIPA?

THE COURT: Yes.

MR. McCARTHY: Yes. Your Honor, if I may for just a moment, the CIPA litigation that we had in this case is some indication that this is not a situation where you can just pick up the phone and straighten all this out. It took a number of months to get through what was probably a less thick forest than what we may be talking about here for all I know, and for that reason we asked to have a reasonable period of time before trial, as the statute allows us to have, to hash all this out if there was anything to be hashed out. To do this in the middle of the trial where it is incontrovertible that they had tons of notice that this was an issue is really not fair at a time when we are trying to put our case in, and the statute, moreover, just doesn't permit it.

THE COURT: I will take a look at it.

MR. PATEL: Your Honor, it would be somewhat difficult for us to have requested pursuant to CIPA things that the government didn't have until after the trial began. That is just unfortunate.

THE COURT: I think you are talking about different things.

MR. PATEL: The things that were seized in Pakistan.

THE COURT: The things that were seized in Pakistan, as I understand it, are going to be reviewed pursuant to the FBI subpoena. Ideally from your standpoint, Ramzi Yousef's pay stubs and W2's and so forth --

MR. PATEL: His .357 magnums.

THE COURT: But I am still hung up on how, even assuming they are there, they prove that there was no involvement by any defendant in this case, in his activities as well. I just don't get it. It really isn't like teams wearing jerseys with numbers on them, so that if at any particular moment you are playing for the Yankees you can't simultaneously be playing for the Red Sox. I don't think anybody still remembers.

MR. JACOBS: Your Honor, in presenting a defense on the World Trade Center aspect, and I guess it to some extent goes to whether this organization is what the government says it is, if we come into possession of information that is relevant and admissible to show who Yousef is, from the first time he set foot in this country or from the first time he had contact with any agency of this government, from the day he arrived with respect to the

World Trade Center to the date of his arrest -- if we want to present arguments that from the date of his birth to the date of his arrest he never met the sheik, he never got authorization from the sheik, he was never financed by the sheik, isn't it a fact that his CIA contacts and what that may contain and what the CIA sent him, all of that is relevant and admissible?

THE COURT: How?

MR. JACOBS: If he was trained to go to Afghanistan and work with another --

THE COURT: The CIA presumably does business with some unlovely people and they were there.

MR. JACOBS: It's not doing business with the sheik, and that's what we need to show.

THE COURT: So what?

MR. JACOBS: The problem is, I don't have the documents, and they may not exist.

THE COURT: The point is, and this is something I started to mention before, that it goes to the nature of a Rule 16 subpoena.

MR. JACOBS: 17(c).

THE COURT: Sorry. A 17(c) subpoena is supposed to be for evidentiary material. It is not a discovery device.

MR. JACOBS: Absolutely agree.

THE COURT: What we are talking about here is discovery.

MR. JACOBS: No.

THE COURT: Why not?

MR. JACOBS: Let's assume you have a payment schedule, like they are going to put the money that Emad Salem got into evidence, his payment stubs. We want to put the payment stubs by the CIA in. It may not exist. It may be much ado about nothing.

THE COURT: Let's say it does exist.

MR. JACOBS: Is it a document that is admissible? Yousef is a coconspirator, eventually. What relevancy does it have? The relevancy is that it shows that he was operating as a, quote, terrorist, with the backing of the CIA, with the support of the CIA, not with the support of the sheik.

THE COURT: It's the second part that it doesn't prove.

MR. JACOBS: I think we can argue to the jury that it shows he doesn't have a connection with the sheik's so-called group for the years in question, and we take that through.

MS. AMSTERDAM: Your Honor, to follow that through --

THE COURT: It doesn't follow. Yes.

MS. AMSTERDAM: I think that, your Honor, the way you framed it with the baseball reference, you can't assume that he is walking around with Yankees and New York Mets T-shirts. On the other hand, if someone is walking around with a "Jihad for Iraq" T-shirt it is circumstantial evidence that he is not with a jihad for Egypt. It may not be proof positive, but the fact that he is wearing a different T-shirt from a guy who is the head of this organization may well be circumstantial evidence to show that they are not the same organization. It may be on a given day he is wearing a blue T-shirt and another he is wearing red, but if on a given day he is wearing blue, we ought to be able to argue that that is proof they are not in the same organization. What if he got payments from the CIA during the time the World Trade Center was blown up? What if he was on the CIA payroll on February 26, 1993? It doesn't mean he didn't do it for Iraq or the sheik, but I can make a circumstantial argument that he didn't do it for them.

MR. JACOBS: All we are asking your Honor is to look at them. If it comes back there is no record of him having any contact with the government, so be it.

MS. AMSTERDAM: I don't believe this is very difficult material to get. It is a specific thing. If there are no pay records, that's the end end of it. If

there are, the court can look to see what time periods and determine whether it is relevant.

MR. McCARTHY: Again, this is not a point that is the most popular to continue to argue, CIPA is supposed to get litigated prior to trial. We asked I don't know how many times that anything that was CIPA-related they raise in a timely fashion so that we could responsibly deal with it and deal with it prior to trial, and it is waived.

MS. STEWART: I know I better get up, your Honor, because I indeed alerted the government that I was going to raise what I termed a Brady/Giglio request which may affect CIPA that I made upon them in early January, because I felt that both the sheik's prior counsel and the government misapprehended the drift that should have been taken in making the initial request. There was a time in which there was an appearance in court in which the sheik was asked, do you have any requests, and he says no, but I don't think it was clear exactly what he was looking for at that point. So I made this request after jury selection had begun, but I have not received a response to it. If they intend to respond, I would like to ask them on the record to do so, so that we may then follow up.

THE COURT: I thought they had responded.

MS. STEWART: No.

MR. McCARTHY: Frankly, your Honor, I don't

remember whether we did or we didn't. If we had, I am sure Miss Stewart would tell us that we had.

THE COURT: Is this the same point he is arguing?

MS. STEWART: I am only getting up because if the government is saying we are time-barred at this point, they may well be saying that is likewise time-barred.

THE COURT: That one, I believe, is barred for a whole different set of reasons, including time.

MR. McCARTHY: Just to be clear, not that we would have any chance of making this fly, it is not the government's position that Brady is ever waived. It is CIPA that is waived.

THE COURT: That's the point.

Let's get back to the question about pay stubs and W2's, since that is a tight, finite category of information. I don't see why for Yousef that information couldn't be gotten.

MR. McCARTHY: Could I have just a moment, your Honor?

THE COURT: Sure.

(Pause)

MR. McCARTHY: Your Honor, we are comfortable making that inquiry. In fact, I think it has been done already before we made our initial submission to the court.

THE COURT: What submission?

MR. McCARTHY: The initial stuff that Mr. Khuzami dealt with back in --

THE COURT: That was back yonder -- OK, good.

MR. McCARTHY: Right. We made inquiries a long time ago about that kind of stuff.

THE COURT: So that we could reiterate it and have them shake the tree again, and if anything falls out, I want it.

MR. McCARTHY: I hear you.

MR. JACOBS: I assume counsel for Yousef in the other case before Judge Duffy is probably going to make a similar request.

THE COURT: I don't know what that lawyer will request. Have you spoken to him?

MR. JACOBS: No. So I am not sure -- what I am saying, your Honor, the case before Judge Duffy, if that case is litigated I assume there will be a normal CIPA request. I would be surprised -- I have been surprised before.

MS. AMSTERDAM: Even I now say sit down.

THE COURT: Surprised but never at a loss for words.

Then I think we have dealt with it all. Yes?

MR. LAVINE: Just, one last thing. New York Newsday especially had extensive coverage of a videotape

showing my client, Mr. Bernstein's client and Mr. Serra's client. Although grainy, they are depicted on the front page of today's Newsday.

THE COURT: Today?

MR. LAVELLE: Today. It is comforting to know that your Honor may not have seen it. In any event, on Monday would you make the standard inquiry of the jury?

THE COURT: I made a blunderbuss instruction to notify my deputy so that if anyone saw anything we would do what we are supposed to do. That was designed to avoid piecemeal inquiries as the litigation progressed.

MR. LAVELLE: Your Honor, when I got up this morning and it was on the Nassau Newsday page 5, I felt we didn't need to be concerned. But coming over the city line things changed dramatically. It is extensive coverage. I would ask you to take a look at it.

MS. STEWART: I was called by CBS National to be asked if I wanted to comment on the videotape. I refrained, you will be happy to know, Judge.

MR. JACOBS: One other matter. We got the 3500 material on Salem. There was a great deal redacted. Was that with your Honor's approval or was it the government on their own?

MR. McCARTHY: I didn't clarify it but obviously I have it all available. If there is an application --

MR. JACOBS: I hate to make the request --

THE COURT: Not as much as I hate receiving it.

MR. JACOBS: Just to protect ourselves, your Honor. If the government does redactions of 3500 material, they may be right. I like the court to have it and take a look at it.

THE COURT: How much are we talking about? We are talking about a ton, right?

MR. JACOBS: We are not dealing with him until at least a week.

MR. McCARTHY: So you have minute of time, Judge.

MR. JACOBS: They slipped up on the last one and we got the name. Just so we are covered --

THE COURT: You are talking about two feet?

MS. AMSTERDAM: Less than that.

MS. AMSTERDAM: That is why we took Wednesday and Thursday off, Judge.

THE COURT: That is an evening, particularly. if --

MR. SERRA: This is it, your Honor.

THE COURT: That is an evening.

MR. McCARTHY: Your Honor, we can just give you the redacted pages, if you like. I think we have been submitting 3500 material to the court.

THE COURT: The people who are in charge of

preserving my sanity upstairs have been keeping that away.

MR. McCARTHY: Lucky you.

THE COURT: It has been put in separate folders and I get it as the witnesses come on.

All I need to do is to take the redacted material and put it alongside the unredacted material and go like that. Even I can do that, and I will do it.

MS. STEWART: The only other thing, Judge, the way in which the defendants generally receive the exhibits -- not the 3500 material because that is on us to go over and pick up at the U.S. Attorney's Office, but when we come in in the morning we are sometimes greeted with a thick stack of material as to who is going to be introduced that day. Since many of us operate on about an 18-inch space of table, we are sometimes fumfering around trying to find them. It seems, if the government is going to give them to the jury in a nice neat notebook, like they did the other day, it might be wise to have it handed to us in a nice neat notebook. I know it means 11 or 12 extra notebooks but it would help a lot. It would also enable us to follow the testimony as we go along because it would be there in front of us.

MR. McCARTHY: Could I see how big a problem this is before somebody kills me?

THE COURT: Because you are going to volunteer

Miss Chu, right?

MR. McCARTHY: I am sort of afraid to.

THE COURT: Please don't do that.

There is another way to do it, and that is simply to provide notebooks. I think the chore is putting the stuff in the notebooks. That is where the labor is. If you provide notebooks and the exhibit tabs, then it seems to me you can take the exhibits and put them in behind each of the tabs yourself. No?

MS. STEWART: That would be fine with me. It would help a lot.

THE COURT: Is that doable?

MR. McCARTHY: There is a problem with the tab, but we will figure it out.

THE COURT: The problem is marking the tabs?

MR. McCARTHY: Right.

THE COURT: What about blank tabs? You can mark them yourself. As long as you get the exhibit and you know what exhibit it is and you get a book with a bunch of tabs in it, you can stick them in seriatim and mark the tabs yourself.

MR. PATEL: Judge, that sounds -- the problem is that the exhibits don't necessarily come seriatim.

MS. STEWART: One of the major problems is that the translations are not always here in court when we get

the Arabic documents, but that is something that has to be worked out. This is not a major problem.

THE COURT: This isn't convenient to work out this way, I think. Talk it through. You might be able to provide some backup staff to help with this.

Thanks.

(Continued on next page)

(Pages 3831 - 3836 sealed)

(Discussion off the record)

MR. KHUZAMI: We found some transcript citations to the issue of the cyanide issue. The court had asked us whether or not that had come up in the World Trade Center trial and we did find some reference to it.

THE COURT: Yes, but given the amount, I have to tell you that is out unless and until you come up with something that connects him specifically to the use of the hypodermic needle and the cyanide in tandem, or something other than simply having it there and having it in that small amount, and having been used in the World Trade Center. That was just my question. I wasn't focusing on what amount we were dealing with here. But that is out under 403 until there is a specific connection. If you have a conversation where he is telling somebody that he wants to sidle up to somebody, like the Josephine Tey mystery, The Man in the Queue, and slip him a needle, that is a different story and we will talk about it then. But otherwise it is out.

MR. PATEL: Will these minutes be sealed, your Honor?

THE COURT: Yes, other than the discussion that we just had about the cyanide, which has to be part, should be part of the open record.

MR. PATEL: Thank you, your Honor.

(Proceedings adjourned until 9:30 a.m., Monday, February 27, 1995)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
CLEMENT HAMPTON-EL, S5 93 Cr. 181 (MBM)
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.
----------x

February 27, 1995
9:45 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

APPEARANCES

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Southern District of New York
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Mohsen Shawarby

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Mirta Hess
Denia McGuire
Candido Valderrama

(Trial resumed)

(In the robing room)

THE COURT: We talked about this last week, there was the "Newsday" article, then I think after that, there were two television stations that ran --

MS. AMSTERDAM: More. CNN, New York One, and NBC.

THE COURT: In any event, what I thought we would do is go across the hall and find out whether anybody saw it and then take it from there. Is that all right?

MS. AMSTERDAM: Great.

MS. STEWART: Fine.

MR. FITZGERALD: Fine.

(In the jury room)

THE COURT: Good morning.

THE JURY: Good morning.

THE COURT: Last week, some of the media were kind enough to publish what they claim was a preview of certain evidence that they said was going to be received in this case. I wondered if any of you had seen any of those stories.

THE JURY: No.

THE COURT: Did anybody?

THE JURY: No.

THE COURT: Good. Thank you very much. We will

see you in a few minutes.

(In the robing room)

THE COURT: Would you like to report to your colleagues?

MS. AMSTERDAM: I will.

MS. STEWART: We will. Thank you, Judge.

MR. McCARTHY: Thank you, your Honor.

(In open court)

(Jury not present)

THE COURT: Can we have the witness.

Roger Kane, resumed.

(Jury present)

THE COURT: Good morning, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: Lieutenant, you are still under oath.

THE WITNESS: Yes.

THE COURT: Mr. Patel?

CROSS-EXAMINATION (Continued)

BY MR. PATEL:

Q. Good morning.

A. Good morning, sir.

Q. I believe when we left off last week we were talking about the search of Mr. Nosair's house.

A. That's correct.

Q. You and 16 other law enforcement personnel went

to his house to execute the search warrant?

A. I don't know how many there were. But it was a few.

Q. I think we went through the names.

A. Yes.

Q. There were about eight people from various New Jersey law enforcement, six New York City detectives and two FBI agents.

MS. STEWART: Is that mike on?

We are having trouble hearing over here.

THE COURT: It is on.

MR. PATEL: Is that any better?

MS. STEWART: Yes.

A. Yes, sir, you are correct.

Q. You went into the house first?

A. Yes.

Q. How many agents or officers went in after you?

A. The New York City guys came in with me, the two FBI agents were in there, but they were stationed in the dining room area, dining room/living room area. They didn't do the search.

Q. So there were basically seven of you doing the search?

A. Right. There were two Bergen County Sheriff's Department Bureau of Criminal Identification photographers.

They weren't searching, they were photographing.

Q. I am just interested in the number of people who were actually searching the house.

A. Probably four of the New York detectives and myself.

Q. So that is five of you who were actually doing the search?

A. And one other investigator from my office.

Q. So there were six of you doing the search?

A. Approximately, yes.

Q. So all in all there were six people searching for two hours?

A. That is correct.

Q. So about 12 manhours of search time?

A. You could say that.

Q. When you were searching, is it fair to say that you saw clothing for an adult male and an adult female?

A. Yes, sir.

Q. And you saw clothing for children of various ages?

A. That is correct.

Q. You saw clothing for a young girl and for two young boys?

A. I don't know if they were two. You're right, there was clothing for young children, yes.

Q. I believe you said that you were the seizing agent and you were responsible for deciding what was taken, is that correct?

A. That's correct.

Q. Last week on direct you mentioned that you seized a book entitled "By Way of Deception."

A. Yes.

Q. Do you recall that?

A. I do.

Q. Do you recall the subtitle for that book?

A. No, sir, I don't.

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

THE COURT: Yes.

MR. PATEL: I think this may have a government marking --

THE COURT: If it has a marking on it, let's just use whatever number it has. It doesn't matter whose tag is on it.

MR. PATEL: Right. Is it on the list?

MR. FITZGERALD: 101.

MR. PATEL: Government Exhibit 101.

Q. I am going to show you that. Does that refresh your recollection as to the subtitle of the book?

A. Well, I can see it is there. Whether I remember

it from that time, no.

Q. Is it fair to say that you know that this is a book about the Mossad?

A. I don't know what the book is about, sir.

Q. You have heard of the Mossad?

A. Yes.

Q. The Mossad is the Israeli intelligence service, is it not?

A. Yes.

Q. This title "By Way of Deception," that is part of the motto of the Mossad, isn't it?

A. I don't know.

Q. You are familiar with the book, though?

A. I am familiar with the book by its title. I took the book because there was some underlying parts, there were some -- not underlying, I'm sorry. There were some parts that a Flair pen was used to document.

Q. Is it fair to say that you skimmed through the book?

A. Yes.

Q. So you know this is a book about the Mossad?

A. Yes. I know it is about it. I don't know what the book is about.

Q. Did you skim through page 53 of the book?

A. I have no -- I doubt that.

Q. Let me show you page 53, if I may.

Take a look at that paragraph.

A. First of all, I don't think this is the book that I took.

Q. Is this the book you took, Government Exhibit 101?

A. Yes, this is the book.

Q. Do you remember looking through the highlighted sections on page 53?

A. No, sir, I don't.

Q. You just remember looking through some highlighted sections?

A. I noticed that they were highlighted. The case was a New York City case, it wasn't mine. It wasn't up to me to decide -- I wasn't doing the investigation. I was doing the search warrant.

Q. But you did decide what was taken?

A. I did. I seized everything that was taken.

Q. When you went there, how did you get there physically?

A. By car.

Q. How many cars did you and the other investigators and agents arrive in?

A. I don't know. I have would have to guess it would probably be about four or six.

Q. How many empty boxes did you bring with you?

A. Empty boxes?

We brought bags and boxes. I don't know. Maybe a couple, two, three, four, five. I don't know.

Q. Is it fair to say that before you testified in this case, you met with one of the U.S. Attorneys here in the courtroom?

A. Is it? Yes, sir.

Q. You went to their office and you looked at some of this stuff, right?

A. Yes.

Q. And you went through what, about 20 boxes of stuff?

A. I didn't go through, no, a couple of boxes --

Q. Just a couple of boxes.

How many boxes and bags of stuff did you take out of the house that night?

A. I think it was 14, and mostly there were bags, a couple of boxes.

MR. PATEL: Mr. Fitzgerald, could I trouble you for the exhibits we discussed.

MR. FITZGERALD: Do you want to stipulate them in?

MR. PATEL: Yes.

MR. FITZGERALD: Your Honor, the government and

Mr. Nosair stipulate in the following exhibits: They are marked as Government Exhibits 77 through 79, 82 through 84, 92, 104, 108 and 118.

THE COURT: All right. Those exhibits are received on stipulation. Go ahead.

(Government Exhibits 77 through 79, 82 through 84, 92, 104, 108 and 118 for identification were received in evidence)

MR. PATEL: Mr. Fitzgerald, we seem to have lost the plastic folder somewhere along the line.

MR. FITZGERALD: I took it out.

MR. PATEL: All right.

Your Honor, may I approach the witness.

THE COURT: Yes.

Q. Showing you what's been marked in evidence -- now, let me ask you a question. You went out there and you were looking for evidence of the crime, is that what you told us the other day?

A. That's correct.

Q. Now, I would like to show you what's been marked as by stipulation Government Exhibit 118 in evidence.

You looked through this at the time that you seized it.

A. I would finger through pages like that, yes, sir.

Q. And you saw this was from the United States Army

John F. Kennedy Special Warfare Center, is that correct?

A. Yes, sir.

Q. And it has descriptions of recognizing friendly and threatening armored vehicles, is that correct?

A. Yes, sir.

Q. The new generation of Soviet tanks is labeled a threat, is that correct?

A. Yes.

Q. Each one of these pages is labeled with a Special Forces Airborne insignia on it, isn't it, as you flip through it?

A. That's correct.

Q. The M2/M3 Bradley Infantry Fighting Vehicle, that's recognized as a friend, correct?

A. Correct.

Q. That is an American piece of military hardware, isn't it?

A. It's also an American military book.

THE COURT: Could you talk a little bit louder, please.

THE WITNESS: It is an American military book also.

THE COURT: Thank you.

Q. So the covert combat helicopters, also recognized as friendly?

A. Yes.

Q. This also give gives you instructions for maintaining an M-16 rifle?

A. That's correct.

Q. It has diagrams?

A. Yes, it does.

MR. PATEL: Can we step down, your Honor, so the jury can see this. I don't think they have copies of this in their folder, do they?

THE DEPUTY CLERK: 118?

MR. PATEL: 118.

MR. FITZGERALD: They do.

MR. PATEL: Your Honor, may I ask the jury to look --

THE COURT: All right. If you could turn to the volume of your binders that has Exhibit 118 in it and turn to that exhibit, please.

MR. PATEL: Thank you.

THE COURT: It would be one of the thick binders, but not the one that has the dot on it.

Q. Starting at Station 1, which is the first page of the exhibit, where it has the United States Army John F. Kennedy Special Warfare Center, which has a handwritten numeral 3 at the bottom, and going to page 8, that's where the new generation Soviet tanks are labeled a recognized

threat.

Skipping a few pages, M1 Abrams main battle tank, recognized friend, on page marked 11 at the bottom. Page 12 is the Bradley fighting vehicle. We looked at that before, is that right?

A. Yes.

Q. We have Station 6. That starts on the page where the bottom is marked with the number 39, and that has directions for the maintenance of an M-16 rifle, diagrams and directions.

Station 7, United States Army, John F. Kennedy Special Warfare Center, is again perform a function check on the M-16 rifle.

Station 9, page 53 at the bottom, and then on to page 54, M72A2 light antitank weapon for firing with pictures and diagrams.

Do you recall if you seized this document?

A. Yes. I recall that document.

Q. Where was that document found?

A. It was in the attic, I think, in a box with other documents similar to it.

Q. Do the members of the jury have Exhibit 104?

MR. FITZGERALD: No, that is too voluminous.

MR. PATEL: Thank you.

THE COURT: You do not have Exhibit 104.

Q. Why don't you take a look through this and tell me if that is a document you seized or if one of the other officers seized it.

A. I seized all of the items, whether --

Q. Who found it?

A. That I don't know. But I seized all the items. I don't recall the book of facts in the house where exactly it -- we took a lot of items as in their entirety, such as the file cabinet, such as boxes containing numerous items. We took them because we were turning them directly over to the New York City Police Department for them to analyze the evidence. We were seizing it. They were going to analyze it, not us. It was not our homicide case. It was an assassination case, and we were trying to work on --

Q. There was a selection process, wasn't there? That means you were the seizing officer for evidence of the crime?

A. Evidence of the assassination and a crime, yes.

Q. That's what is called the "CIA World Fact Book," and it has information about various countries in the Middle East, does it not?

A. That's correct.

Q. There is nothing about assassinations in here, is there?

A. I didn't go through it page by page. There might

have been for all I knew at the time I seized it.

Q. The "CIA World Fact Book" --

A. It could have been written in it.

Q. Is there anything written in this book?

A. I don't know. I didn't go through it.

Q. You didn't notice anything written in it as you just went through it now, did you?

A. Not in the pages I just went through, no. The previous book I did.

Q. Showing you what's been marked Government Exhibits 79, 78, and 92 --

MR. PATEL: Could we step down so the jury can see these, your Honor.

THE COURT: Please work with the microphone.

MR. PATEL: Is that better?

Q. Exhibit 78 is geometric -- just look at the cover if you would. It is a geometric design, and it has explosive traps written in English, correct?

A. That's correct.

Q. And looking at Government Exhibit 79 --

MR. FITZGERALD: Excuse me, Mr. Patel. They are in the binder if that is makes it easier.

MR. PATEL: Are they?

MR. FITZGERALD: Yes.

MR. PATEL: OK. Great.

You have Exhibit 78 in your binder, I'm told, different binder. If you could just look at the cover on Exhibit 78, it says explosive traps and it has a geometric pattern?

A. That's correct.

Q. Exhibit 79 says "hand grenades," and it has -- except for color it is the identical geometric pattern, isn't it?

A. Yes, sir.

Q. And Exhibit 92, "Arms in Afghanistan," the same geometric pattern, only the image and the words at the bottom are different?

A. Correct.

Q. You looked through this at the time you seized it, is that correct?

A. That's correct.

Q. This is entirely written in Arabic, is it not?

A. Yes, sir.

Q. Now, you have some military experience. Is it fair to say this, looking at this page, that it is an explanation in trajectories?

A. That is what it appears to be.

Q. That is a mortar?

A. Correct.

Q. This is the image of someone firing a hand-held

missile at a tank?

A. That's correct.

Q. Is that similar to the kind of missile we saw in the John F. Kennedy Special Warfare Center manual?

A. I don't know. I guess it's similar. It would act similar.

Q. This is a picture of someone in Islamic dress holding a rocket launcher, is that fair to say?

A. That is fair to say, yes, sir.

Q. Government Exhibit 84. At the time you seized this, did you have any idea at all what this was?

A. No, sir.

Q. The same with Government Exhibit 108 -- excuse me. 82. Do you have any idea what this was at the time you seized it?

A. I said no. It's completely written in a foreign language.

MR. PATEL: Is Exhibit 108 in the binders?

MR. FITZGERALD: Not yet, I don't believe.

Q. This is not in one of the binders.

Showing you Exhibit 108, could you just read what that says there.

A. The Central Intelligence Agency, The World Fact Book, 1988.

Q. This is essentially in the same format as Exhibit

104, is that correct?

A. Yes, sir.

Q. In fact that is a small section of Exhibit 104?

A. I don't know that, but that could be true.

Q. Looking at Exhibit 104 again, this is just open to Morocco, and it has a profile, a map, official name, a larger map of the region, geography, people, history, government, political conditions, economy, Western Sahara, travel notes, foreign relations, U.S. Moroccan relations and further information, and then the principal United States U.S. officials, and then there's what is a called a Culturgram.

Just flipping to Turkey, basically the same sort of information: A map, geography, people. That's what this is. There is nothing written in here, this is just a printed document --

A. That's correct.

Q. -- from the Central Intelligence Agency.

Looking at Exhibit 77 --

MR. PATEL: Is that in the binders?

MR. FITZGERALD: I believe so.

Yes, it is.

MR. PATEL: OK.

MR. FITZGERALD: Government Exhibit 77 is in the binders.

MR. PATEL: Let me save you all a minute. The front cover -- can you all see the front cover.

JUROR NO. 2: No. Wait. OK.

Q. This is from the Afghan Refugee Services, Inc.

A. Yes, sir.

Q. At 2824 Kennedy Boulevard in Jersey City, New Jersey, correct?

A. That's correct.

Q. Was this stapled together when you found this or was it loose?

A. I would imagine it was stapled together. I don't know if that was the same that was in it or not.

Q. If you want to sit down for a minute. I will get the rest of the stuff.

A. Thank you very much.

(The witness resumed the stand)

MR. PATEL: Ladies and gentlemen, you have a navy blue binder. I think most of the exhibits that we are going to be talking about now are in the navy blue binder.

Your Honor, may I approach the witness -- actually maybe you should just come down.

Showing you what I open in trepidation --

THE COURT: Mr. Patel, you are going to have to talk into the microphone because there are interpreters back here that can't hear you unless you do.

Q. Showing you what has been marked as Exhibit L, tell us what this is.

A. This is a photo album.

Q. That is a photo album that you seized from Mr. Nosair's house?

A. Yes, sir, it is.

MR. PATEL: I would like you to look at what is in your binders as --

Q. Actually, before they look at it, I would like you to look at L1, L2, L3 and L4.

Is that a sampling of the photographs that were seized that day?

A. There is a book of photographs that was seized. That is a portion of it. We seized the photographs because --

THE COURT: He didn't ask you why they were seized. He just asked whether L1, L2, L3 and L4 were a sampling.

A. They are some of the photographs out of that book.

MR. PATEL: Your Honor, I call for L1 through 4.

MR. FITZGERALD: No objection.

THE COURT: L1 through L4 are received.

(Nosair Exhibits L1 through L4 for identification were received in evidence)

MR. PATEL: I would ask you to look through your binders at L1, 2, 3 and 4.

Q. Let's start with L1. Do you recognize that to be a picture of Mr. Nosair with two small children?

A. Yes, sir.

Q. And L2 is a picture of Mr. Nosair with a baby?

A. That's correct.

Q. And L3 is a family portrait so to speak?

A. Yes, sir.

Q. And L4 is children in front of a Christmas tree?

A. That's correct.

Q. There is no criminal activity going on in any of these photographs, is there?

A. No, sir.

JUROR NO. 8: Excuse me. I don't have L2.

MR. PATEL: Your Honor, it appears that some of the jurors' books are out of order. I apologize for that.

Q. Showing you Nosair J and K, already in evidence, which are now in your binders, J and K, other than the words "Al-Jihad" at the top of each of them and the date and the Al-Kefah Refugee Center, are you able to read any of those documents?

A. No.

MR. FITZGERALD: Objection. May I just have a moment.

THE COURT: Pardon?

MR. FITZGERALD: If I could just have one moment with Mr. Patel.

THE COURT: Yes.

Q. Showing you what's been marked Nosair U for identification, do you recall seizing that from Mr. Nosair's house on the evening of November 6, 1990?

A. I don't recall seizing this particular item, no. It was probably in a box with other items, and I didn't notice it as a single entity.

MR. PATEL: Can I have a stipulation from the government.

MR. FITZGERALD: We will stipulate Nosair's U was seized from Nosair's home that day.

MR. PATEL: Your Honor, I would offer Nosair U in evidence.

MR. FITZGERALD: No objection.

THE COURT: U is received without objection.

(Nosair Exhibit U for identification was received in evidence)

MR. PATEL: Ladies and gentlemen, you do have this. It is folded up in your binders.

JUROR NO. 3: Which one?

MR. PATEL: U.

Q. The cover, at the bottom it says, "Mirror of

Afghan Jihad," does it not?

A. Yes, sir.

Q. It has a number of pictures of the war in Afghanistan, that is basically what this is?

A. That's correct.

Q. And then it says, on the page in your notebook, "When kissing your children, remember those children and orphans, whose faces are now marked by misery, poverty and dust, whose eyes look across the camp, hoping to see their lost fathers coming to find them."

Let me show you these documents, which have been marked Nosair P1 and P2. Do you recall seizing those?

A. No, as I said before, we seized a file cabinet that was labeled personal paperwork, and we took the whole file cabinet, including all its paperwork.

Q. Did you assign any one of the 16 or so law enforcement officers to go through that filing cabinet?

A. Not at that time, sir. That would be done at a later date at the New York City Police Department.

Q. What are these items, do you recognize them?

A. One is a marriage certificate -- both of them are marriage certificates.

MR. PATEL: Your Honor, I would move them into evidence.

MR. FITZGERALD: No objection.

THE COURT: These are which exhibits?

MR. PATEL: P1 and P2.

THE COURT: Received without objection.

(Nosair Exhibits P1 and P2 for identification were received in evidence)

Q. One is an English marriage certificate --

MR. PATEL: Ladies and gentlemen, these are in your book.

Q. One is an English marriage certificate and one is a marriage certificate under Islamic law?

A. That's correct.

Q. And the people who got married were El Sayyid A.A. Nosair and Karen Mills Sweeney.

A. Yes, sir.

Q. It is not a crime to get married in this country?

A. No, sir.

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. Let me show you what's been deemed marked Nosair Exhibit O, also taken from the house. Have you seen this?

A. I don't recall.

MR. PATEL: Your Honor, I believe on stipulation I would offer this.

MR. FITZGERALD: Yes, Judge. In fact, if it will save time, we will stipulate the entire book of defendants'

exhibits in evidence.

THE COURT: Let's get the letters on them.

MR. PATEL: Your Honor, it is L, M, N, through X.

THE COURT: L through X?

MR. PATEL: Right. Yes, your Honor.

THE COURT: L through X are received on stipulation.

MR. PATEL: Thank you.

(Nosair Exhibits L through X for identification were received in evidence)

MR. PATEL: I would ask the ladies and gentlemen of the jury to turn to Exhibit O, which is this.

Q. I can't attempt to pronounce the first line under the Arabic, but this is someone -- this is: "I, Karen Mills Sweeney, having studied and understood the religion of Allah, the five pillars of Islam, and the six articles of faith, now take the oath of Islam."

And it then recites the five pillars of Islam:

"1. I bear witness that there is no God except Allah, and I bear witness that Muhammed is the messenger of Allah.

"2. To observe the obligatory prayers of Islam.

"3. To pay the obligatory Zakat of Islam.

"4. To fast during the holy month of Ramadan.

"5. To make Hajj to the holy city of Mecca once

in a lifetime, if able."

The six articles of faith:

"1. I believe in Allah.

"2. I believe in the angels of Allah.

"3. I believe in the revealed holy books of Allah.

"4. I believe in the messengers of Allah.

"5. I believe in life after death." And

"6. I believe in the power of Allah and the day of judgment."

Showing you what's been deemed marked M --

MR. PATEL: Which is in your book, ladies and gentlemen.

Q. -- this is something you are familiar with, generally speaking?

A. Yes, sir.

Q. It is a fingerprint card, is it not?

A. That's correct.

Q. And it says, "El Said A. Nosair, applying for citizenship"?

A. That's correct.

Q. This was seized from his house that evening?

A. I would imagine that was seized with the rest of the personal property already in the file cabinet, personal papers and --

Q. Did the warrant authorize you to specifically seize personal papers?

A. Specifically --

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. I am showing you --

MR. PATEL: What is in your book, ladies and gentlemen, as Q, Defense Exhibit Q.

Q. This was seized from Mr. Nosair's home that evening, was it not?

A. Again, I would say it was probably taken with all of his personal papers.

Q. This is a certificate indicating that he graduated from Helwan University in Egypt?

A. Yes, sir.

Q. Turning to Exhibit R --

MR. PATEL: Which we will mark the original later with your Honor's permission.

Q. -- this also was seized from his home that evening, was it not?

A. Yes.

Q. This is a letter dated March 24, 1986, advising Mr. Nosair that he had been accepted to the University of Pittsburgh?

A. Yes, sir.

Q. Exhibit S, which is in evidence under stipulation, was seized from his home that evening, was it not?

A. Yes, sir.

Q. That is a pay stub from the City of New York, General Services Administration?

A. Yes, sir.

Q. Do you know if that is where Mr. Nosair was working at the time of his arrest?

A. I don't know.

Q. Exhibits T1, T2 and T3 are various letters of recommendation from employers that were seized from his home that evening?

A. That's correct.

MR. PATEL: Ladies and gentlemen, Exhibits T1, T2 and T3 are in your binder.

"His performance in both departments was excellent, and we regret his departure."

That is from the Canal Naval Construction Company in Port Said, Egypt.

The other three letters are from Carnegie-Mellon University, which is T2, St. Clair Jewelers, and Manhattan Woodworking Company, ironically with a Brooklyn address.

Q. Now, that evening you also seized a number -- do you want to sit down?

A. Sure.

Q. We will do it this way.

MR. PATEL: Your Honor, may I approach.

THE COURT: Yes.

(The witness resumed the stand)

Q. Is it fair to say that evening you seized a number of videotapes and a number of audiotapes?

A. Yes, sir.

Q. Now, was there a VCR and a television set at the premises?

A. Yes, there was.

Q. Did you review these videotapes before you seized them?

A. No, I didn't.

Q. Did any of the other agents or law enforcement personnel review these tapes?

A. Not before they left.

Q. Do you recall how many tapes you took?

A. I recall there was probably about somewhere in between 45 and 50 of these, and I want to say in the 20s of the audiotapes, but I am not sure.

Q. Did you just take all the videotapes that were in the house?

A. That's correct.

Q. The same with the audiotapes?

A. Yes, sir,

Q. Was there a tape recorder, a play-back system?

A. Not that I am aware of.

Q. Did you have one with you?

A. No, sir.

Q. Or have one in your car?

Did you listen to any of these audiotapes before you seized them?

A. No, sir.

Q. Who suggested taking all the videotapes and all the audiotapes?

A. I did.

Q. At the time you seized them, did you have any knowledge that there was any evidence of a crime on any of these tapes?

A. At the time I seized them, I didn't know what they were. There could have been evidence of a crime on those tapes. So we seized them so they could be analyzed later.

Q. The question is, at the time you took them, did you know that they contained evidence of a crime?

A. No, sir, I didn't.

MR. PATEL: May I approach, your Honor.

THE COURT: Yes.

MR. PATEL: Can we deem these videotapes marked

II1 through 8.

THE COURT: They are deemed marked II1 through 8.

Q. Some of these are in English, are they not?

A. Yes.

Q. And this one --

MR. PATEL: Your Honor, can we offer them?

MR. FITZGERALD: Your Honor, unless I know what they are, I will have to review them for objections as to relevance, but not as to authenticity.

THE COURT: I gather the government is stipulating that they were seized?

MR. FITZGERALD: Yes, Judge.

THE COURT: All right.

Q. You seized this tape?

A. Yes, I did.

THE COURT: "This tape" being which one?

MR. PATEL: II1, your Honor.

Q. Is the label in English?

A. Yes, it is.

Q. This indicates that this is a religious discussion?

A. That's what the label says, yes.

Q. II2 is also in English, the label?

A. Yes, sir.

Q. Also indicates a religious discussion?

A. That's correct.

Q. II3, also in English?

A. Yes, sir.

Q. And indicates something about the Afghan mujahadeen?

A. That's what it says.

Q. Anything from the labels on these tapes that indicate that they contain evidence of a crime?

A. No.

MR. PATEL: Your Honor, I would offer 1 through 3, that is, II1 through 3 in evidence.

MR. FITZGERALD: No objection.

THE COURT: II1 through 3 are received without objection.

(Nosair Exhibits II1 through 3 for identification were received in evidence)

MR. PATEL: May I approach the witness with the JJ series audiotapes?

THE COURT: All right.

Q. I ask you to look at JJ1, seized from Mr. Nosair's home that evening, if you recall.

A. As a single entity I don't know. We did take a lot of them.

Q. But the label of this tape is also in English?

A. That's correct.

Q. It is about prayer made simple?
A. That's what it says.
Q. This tape is also labeled in English?
A. Yes, sir.
THE COURT: "This tape" being what? JJ2?
MR. PATEL: JJ2, your Honor.
Q. This is "Jihad by Yusuf Islam," Cat Stevens?
A. Correct.
Q. These two tapes -- that is, JJ3 and 4 -- have labels from the Afghan Refugee Center?
A. Yes, sir.
MR. PATEL: Your Honor, at this time I would offer JJ1 through 4.
Would you like to see them?
MR. FITZGERALD: Yes.
(Counsel conferred)
MR. PATEL: Your Honor, I understand that the government has no objection to JJ1 and 2 for the content, and JJ3 and 4, the labels of the tapes and raise the issue of the contents later.
THE COURT: All right. JJ1 and 2 are received, JJ3 and 4, the labels are received.
(Nosair Exhibits JJ1 through 4 for identification were received in evidence)
MR. PATEL: Your Honor, if I could have a moment.

Your Honor, may I approach.

It's getting to be near the last batch.

THE COURT: Yes.

Q. Showing you what's been marked as Nosair V in evidence, do you recall having seized that as one of the documents that evening?

A. I'm sorry. I don't really. It was a single entity, but I did -- we did take papers like that.

MR. PATEL: This is in evidence, is it not.

MR. FITZGERALD: B or V?

MR. PATEL: V as in Victor.

MR. FITZGERALD: Yes, it is in evidence.

MR. PATEL: This is an interview with Yusuf Islam.

Document V is in your binders.

Q. This is an interview, that is, Defense Exhibit V is an interview with Yusuf Islam, whose name also appears on Defense Exhibit JJ2, the audiotape?

A. That's correct.

Q. This is the document --

MR. PATEL: Ladies and gentlemen, it didn't Xerox very well. I apologize.

Q. Reading from the bottom: "How would you define the situation of the Afghans?

"Answer: From what I have seen, the situation is

absolutely intolerable. For seven years you had to flee your country, your natural land, your home, and have to suffer the condition in the refugee camps, also, at the same time, having to gain control of the country. Another fact that is the lack of education is very noticeable. Many people would have gone under by now, but because of the spirit of Islam, it is unsinkable, but there is still a big deficiency in the amount of help which is being offered."

Q. I also would like to show you these folders, which I ask be marked Z1 through 5. Z1, 2, 3, 4 and 5.

MR. PATEL: These are not in your binders.

A. Yes, sir.

Q. Those are Arabic newspapers?

A. Yes, sir, they are.

Q. Entirely written in Arabic?

A. Correct.

MR. PATEL: Your Honor, I would offer these in evidence as defense Exhibit Z1 through 5.

MR. FITZGERALD: No objection.

MR. PATEL: Your Honor, may I pass these to the jury?

THE COURT: All right.

Z1 through 5 are received without objection.

(Nosair Exhibits Z1 through Z5 for identification were received in evidence)

(Nosair Exhibits Z1 through 5 were published to the jury)

Q. Showing you what has been marked in evidence as Defense Exhibit N --

MR. PATEL: Ladies and gentlemen, defense Exhibit N is in the navy blue binders.

Q. -- this is a two-page document, saying, "Our goals" -- I am just going to read it in part -- "to invite people to the obligation of Jihad by lectures, conventions and publications?

"2. To follow the news and developments in all aspects of Jihad and about the mujahadeen.

3. To write and report accurate news about Jihad.

4. To assist and support the mujahadeen.

5. To support orphans and widows.

6. To take care of regular and emergency needs and to care for the long-term ill and disabled." And

7. To collect donations, such as medical supplies and medicines, clothing, blankets and other essential articles."

On the back it tells you who to contact if you want to go to Afghanistan.

Do you remember seizing this that night?

A. In itself, I don't, but --

Q. I would like to show you this pamphlet, which is W in evidence.

MR. PATEL: Which, ladies and gentlemen, is in your folders.

Q. Turning to page 2, the meaning of Islam, "Islam is an Arabic word and denotes acceptance of God as the supreme and the ultimate reality. It means submission, surrender and obedience as a religion. Islam stands for complete submission and obedience to God. That is why it is called Islam. The other literal meaning of the word "Islam" is peace." "And" -- read along with me. I am going to skip that one. We will be here all day.

"That one can achieve real peace of body and of mind only through submission and obedience to God. Such a life of obedience brings peace of heart and establishes real peace in society at large."

This pamphlet was seized from my client's home on the evening of November 6, 1990?

A. Yes, sir.

Q. Turning to Nosair Exhibit X --

MR. PATEL: Ladies and gentlemen, we have the wrong cover. This is the cover of Nosair Exhibit X, "Islam in Focus," and that will be replaced in your binders later. I apologize for that. But we do have the correct table of contents, and I ask you to turn, after the table of

contents, there is a section, chapter 5, "Distortions about Islam.

"1. The Holy War, Jihad."

And on page 142 of this Nosair X in evidence it says, "Although realistic in its approach, Islam never tolerates aggression from its own side or from any other side, nor does it entertain aggressive wars or the initiation of aggressive wars. Muslims are commanded by God not to begin hostilities or to embark on any act of aggression or to violate any rights of others."

Do you recall seizing this book from my client's home on November 6, 1990?

A. I don't recall the book itself, but we did seize books from there, yes, sir.

Q. And you did seize quite a few religious books that night, didn't you?

A. That is correct.

Q. And at the time you seized them you knew they were religious books?

A. No, sir, I didn't.

Q. You knew that a book entitled "Islam in Focus" concerned religion?

A. No, I did not.

Q. Showing you an envelope deemed marked AA, I ask you to take a look at that. Look at the contents of it.

That was seized from my client's home that evening?

A. I would imagine it was seized with the file cabinet marked personal papers.

MR. PATEL: Your Honor, I would offer AA and its contents.

(Counsel conferred)

MR. FITZGERALD: No objection.

THE COURT: AA is received without objection.

(Nosair Exhibit AA for identification was received in evidence)

Q. These are camping vacation brochures, are they not?

A. That's correct.

Q. Showing you BB, that also was seized from my client's home that evening?

A. I couldn't say that for what it is. But it was probably taken with his personal papers that were in the file cabinet.

MR. FITZGERALD: No objection.

Q. This is a vacation planner for Colonial Williamsburg, is it not?

A. Yes, sir.

MR. PATEL: Your Honor, I would offer BB in evidence.

MR. FITZGERALD: No objection.

THE COURT: BB is received without objection.

(Nosair Exhibit BB for identification was received in evidence)

MR. PATEL: Your Honor, may I pass BB and AA to the jury?

THE COURT: Yes.

MR. PATEL: Thank you.

These are not in your folders.

(Nosair Exhibits AA and BB were published to the jury)

MR. PATEL: Your Honor, can I have a moment with the government.

(Counsel conferred)

Q. Showing you two brochures, FF1 and FF2, those were seized from my client's home that night, were they not?

A. I can say that they might have been with other pieces of evidence, but I don't recognize them as what they are.

MR. PATEL: Your Honor, I offer them.

MR. FITZGERALD: We will stipulate and no objection.

THE COURT: All right FF1 and FF2 are received without objection.

(Nosair Exhibits FF1 and FF2 for identification were received in evidence)

Q. They say, "Mercy International helping you help others," and, "Mercy International scholarship program, because need shouldn't be a barrier"?

A. That's correct.

MR. PATEL: Your Honor, may I pass these to the jury?

THE COURT: Yes.

(Nosair Exhibits FF1 and FF2 were published to the jury)

Q. Showing you what's been marked GG. That is a diploma, is it not?

A. That's correct.

MR. PATEL: Your Honor, I would offer this as an item that was seized from my client's home on the evening of November 6, 1990.

MR. FITZGERALD: No objection.

MR. PATEL: Your Honor, may I pass this to the jury?

THE COURT: GG is received without objection.

Yes, you may.

(Nosair Exhibit GG was published to the jury)

Q. Showing you what's been marked DD, which I would offer into evidence, your Honor --

MR. FITZGERALD: No objection.

Q. It is a Father's Day --

THE COURT: DD?

MR. PATEL: DD. D as in David, D as in David.

Q. It is a Father's Day card, is it not?

A. That's correct.

THE COURT: DD is received without objection.

(Nosair Exhibit DD for identification was received in evidence)

Q. This was made by a child, wasn't it?

A. It appears to be, yes, sir.

MR. PATEL: Your Honor, I would like to display this to the jury, if I may.

THE COURT: Go ahead.

(Defense Exhibit DD was published to the jury)

Q. Showing you CC1 and CC2, which I would offer into evidence.

MR. FITZGERALD: No objection.

THE COURT: CC1 and 2 are received without objection.

Q. CC1 is a Raggedy Ann coloring book?

A. That's correct.

Q. And CC2 is a Rainbow Brite coloring book?

A. That's correct.

Q. These are children's toys, are they not?

A. They are.

Q. They were seized from my client's home on

November 6, 1990?

A. They weren't seized singularly. I don't recall even seeing them, but they might have been in with other boxes that we took that we didn't observe them.

Q. You were the seizing officer that night?

A. That is correct.

Q. You were responsible for what came out of my client's house?

A. Yes, sir.

Q. These items came out of my client's house that night?

A. Yes, sir, they did.

MR. PATEL: Your Honor, I would like to display these items to the jury.

THE COURT: Go ahead.

(Nosair Exhibits CC1 and CC2 were published to the jury)

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

Your Honor, I have no further questions of this witness.

THE COURT: Any redirect?

MR. FITZGERALD: Yes, Judge.

MR. RICCO: Your Honor, before the redirect, I had some questions.

THE COURT: I'm sorry. Mr. Ricco.

MR. RICCO: Thank you very much.

CROSS-EXAMINATION

BY MR. RICCO:

Q. Good morning, sir.

A. Good morning.

Q. You do recall that there were at least two FBI agents present during this search, don't you?

A. Yes, sir.

Q. One of those FBI agents was a special agent by the name of William Atkinson, isn't that correct?

A. Yes, sir.

Q. And he was out of the FBI's office in New Jersey, as far as you know?

A. Yes, I think so.

Q. They played an active or inactive part in the search of Mr. Nosair's home?

A. An inactive part.

Q. But they were present?

A. Yes, sir, they were.

Q. Did you have verbal contact with them during the search?

A. Yes.

Q. In other words, did you talk to them?

A. Of course.

Q. You are from the Bergen County Prosecutor's

Office, isn't that correct?

A. Yes, sir.

Q. Is it safe to assume that the Bergen County Prosecutor's Office did not conduct a prosecution of anything that was taken from Mr. Nosair's home?

A. That's correct.

Q. In fact, the information and documents that were seized from Mr. Nosair's home were turned over to the New York City Police Department, Manhattan South Homicide Detectives, isn't that correct?

A. That's correct.

Q. The photographs that you said were taken that morning during the time period you were there, do you recall that?

A. Yes, sir.

Q. Those photographs were made in triplicate, isn't that correct?

A. Yes.

Q. One copy went to the New York City Police Department, isn't that correct?

A. Yes, sir.

Q. One copy of those photographs was retained by your office just for informational purposes, isn't that correct?

A. Yes, sir.

Q. Yet the third set of photographs, those photographs were sent to Special Agent William Atkinson of the FBI, isn't that correct?

A. Yes, sir.

MR. RICCO: I have no further questions.

Thank you.

THE COURT: Any other cross?

All right. We are going to take a short break, ladies and gentlemen. Well, when you get done passing the exhibits we will take a short break.

You may step down.

THE WITNESS: Thank you, sir.

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

THE DEPUTY CLERK: Please follow me.

(Recess)

THE COURT: Mr. Fitzgerald?

MR. FITZGERALD: Thank you, Judge.

REDIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Lieutenant Kane, let me approach you with what has been premarked as Government Exhibit 87.

Please take a look at it and tell us if you

recognize what it is.

A. Yes, sir, I do.

This is the yarmulke I took from the sport coat in the master bedroom closet.

MR. FITZGERALD: I would offer government Exhibit 87, Judge.

MR. PATEL: Your Honor, I have an objection. Beyond the scope.

THE COURT: Overruled. 87 is received.

(Government's Exhibit 87 for identification was received in evidence)

Q. Let me approach you with what's been premarked as Government Exhibit 123. I ask you to take a look at Government Exhibit 123 and tell me whether or not you recognize it.

A. Yes, sir, I do.

Q. Is that an item that you seized from the residence on November 5, 1990?

A. Yes, sir, it is. It is a bill --

MR. PATEL: Objection.

Q. Don't describe it, please.

A. I'm sorry. Yes, it is.

MR. FITZGERALD: Your Honor, I would offer Government Exhibit 123.

MR. PATEL: Your Honor, objection to this.

THE COURT: Do you want to be heard?

(At the side bar)

THE COURT: What is the exhibit?

MR. FITZGERALD: It is a firearms transaction record which was authenticated on direct. I am offering it now to show that there were things that he may not know the significance of, but it goes to the search that he didn't know what everything meant at the time. It is authenticated on direct. It's a firearms transaction record from someone else to a man named Quaza Haque. I am trying to show that he seized relevant documents as well in the search.

MR. PATEL: Your Honor, this is so far beyond the scope of anything that was done on cross. This is a document that was available to be put in on direct examination.

THE COURT: If it is a scope objection -- is that what it is?

MR. PATEL: That is part of it, your Honor.

THE COURT: What is the other part?

MR. PATEL: The other part of it is relevance.

Does this tie into anything else?

MR. FITZGERALD: Yes.

THE COURT: You said "does it." You mean "will it"?

MR. PATEL: Will it?

THE COURT: All right. When it does, it will be received. Since it hasn't yet, it won't.

MR. FITZGERALD: OK.

(Continued on next page)

(In open court)

Q. Lieutenant, that document is not in evidence so please do not read from it. But if you could look at the top of the document, without reading it, do you know the name that appears in the first line of the document? Yes or no, is that a name familiar to you, on the second page, the bigger page?

A. Yes, it is.

Q. Do you know that person personally? Yes or no.

A. No, I don't.

Q. Let me show you what's in evidence as Government Exhibit 55, which is not a document from the Nosair search.

As you look as what's been marked as Government Exhibit 123 for identification and Government Exhibit 55 in evidence, the torn pieces of paper, do you have any idea of the relationship between the two?

A. No, sir, I don't.

MR. PATEL: Objection.

THE COURT: Overruled.

The answer was no, he doesn't.

Q. Sir, during the two hours that you and some other people looked through the house at 577 Olympia Avenue, did you see any document, photograph or other item that indicated that Mr. Nosair ever set foot in Afghanistan?

A. No, I didn't.

MR. PATEL: Objection, your Honor.

THE COURT: Overruled.

Q. You may answer.

A. No, I didn't.

Q. Let me approach you with what's been premarked as Government Exhibit 126 for identification?

Taking a look at Government Exhibit 126 for identification, is that a photograph?

A. Yes, sir, it is.

Q. Is that a photograph of Mr. Nosair?

A. I would say, yes, sir.

MR. FITZGERALD: One moment.

Your Honor, there is a stipulation that that is one of the photographs seized from the house that day.

THE COURT: All right.

Q. You were shown a number of photographs by Mr. Patel on cross-examination, family photographs.

Is that another family photograph of Mr. Nosair by himself?

A. Yes, sir, it is.

Q. Did anything strike you as particularly relevant about that photograph at the time?

A. No, it did not.

Q. How about right now?

A. No, it doesn't.

Q. Do you see what Mr. Nosair is doing in that photograph?

A. He appears to be eating.

Q. Do you know what hand he's using to eat?

MR. PATEL: Objection, your Honor.

THE COURT: It is not in evidence.

MR. FITZGERALD: I offer it. 126.

MR. PATEL: No objection.

THE COURT: 126 is received without objection.

(Government Exhibit 126 for identification was received in evidence)

Q. Now, can you tell us what hand he's using to eat?

A. He's using his right hand.

Q. Finally, let me approach you with what's been premarked as Government Exhibit 76. Let me show you what's been marked as Government Exhibit 76 for identification.

Do you recall this item in particular?

A. Yes, I do recall finding small notebooks like this. Some of them were phone books and some had writing in them.

Q. Let me direct your attention to a page written in the English language.

Could you wait a second before answering.

MR. FITZGERALD: Your Honor, I would offer the English writing on that page that he's referring to in

evidence at this time.

THE COURT: 76?

MR. FITZGERALD: 76.

MR. PATEL: Just that page?

THE COURT: Just that page.

MR. PATEL: No objection.

THE COURT: All right.

(One page of Government Exhibit 76 was received in evidence)

Q. If you look at the English writing on that page, does that appear to be religious writing?

A. Yes.

Q. Mr. Patel asked you about a number of other items you seized that appear to be religious items. Is there Arabic written throughout that book as well?

A. Yes, sir, there is.

Q. Do you know what the Arabic says?

A. No, sir, I do not.

Q. Do you have any idea if the Arabic talks about the peace and lack of aggression that you were asked about on cross-examination?

A. No, I don't.

Q. Do you know whether there is talk about blowing up buildings in that book?

MR. PATEL: Objection.

THE COURT: Sustained.

MR. FITZGERALD: Nothing further.

THE COURT: Recross, Mr. Patel?

MR. PATEL: Very brief.

RECROSS-EXAMINATION

BY MR. PATEL:

Q. You don't read Arabic, do you?

A. No, sir, I don't.

Q. No one in your office on that night read Arabic either, did they?

A. I'm sorry, sir, would you repeat that?

Q. No one in your office that night read Arabic either?

A. No, sir.

Q. Would it be fair to say you have no way of knowing whether Mr. Nosair went to Afghanistan or not?

A. That's fair.

MR. PATEL: Nothing further, your Honor.

THE COURT: Anything else?

MR. FITZGERALD: Nothing, Judge.

THE COURT: Thank you. You are excused.

MR. FITZGERALD: The government calls Michael Feghali.

MR. PATEL: Your Honor, could we ask for a side bar. It might save some time.

THE COURT: Before this witness testifies?

MR. PATEL: Yes, your Honor.

THE COURT: Come on up.

(At the side bar)

MR. STAVIS: Your Honor, I believe that this next witness is going to be asked concerning a notebook with some Arabic writing in it.

MR. PATEL: Government Exhibit 76.

MR. STAVIS: Government Exhibit 76.

THE COURT: Right.

MR. FITZGERALD: Correct.

MR. STAVIS: We don't know who wrote the notes, and we don't know what they signify.

THE COURT: Where was it found?

MR. FITZGERALD: In his home.

THE COURT: OK.

MR. STAVIS: I do not believe the mere fact that it was found in his home -- the stipulation was that it was taken from his home.

THE COURT: Right.

MR. STAVIS: But my point to the court is I do not believe that just the fact that a document where we don't know who wrote it or what it concerns --

MR. PATEL: Or when it was written.

MR. STAVIS: -- or when it was written is a

sufficient enough foundation for the admission of such a document.

THE COURT: I assume it is being offered to prove that it was found in his house, but --

MR. FITZGERALD: Yes, Judge. In the contents is the speech talking about blowing up the tall buildings and things like that. This is just like in a drug case in which drugs records are found in someone's home. We are not required to prove that the person filled them out themselves. It was found in his home. You can look at the item, Judge. It is a personal notebook.

THE COURT: It is a notebook. I will allow it.

MR. STAVIS: There was an argument that was made in the opening statement that somehow this document, Government Exhibit 76, somehow refers to the World Trade Center bombing. I don't know if that is the purpose for which it is being offered.

THE COURT: That is something you can argue. Let's go.

(In open court)

MIKE FEGHALI,

called as a witness by the Government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Mr. Feghali, can you tell the jury how you are employed.

A. I am employed by the Justice Department.

Q. What is your job title?

A. As a language specialist.

Q. In what language?

A. Arabic.

Q. Could you tell the jury where you were born.

A. I was born in Lebanon.

Q. For how long did you live in Lebanon?

A. For 27 years.

Q. Can you tell us what studies you did or what work you were employed in for the 27 years you were in Lebanon.

A. Well, when I was in Lebanon I was working for an American company as a liaison to the customs duties.

Q. Did you learn to speak English in Lebanon?

A. Yes, sir, I did.

Q. How did you learn to speak English?

A. I studied at the British consulate and at the American center.

Q. When you worked for the American companies liaisoning with customs, did you use your language skills?

A. Yes, sir, I did. I used to take Americans who would come from the United States to Lebanon to the company. We used to translate and interpret for them around town.

Q. At the age of 27 what did you do?

A. I came to the United States to continue my studies.

Q. And where did you go?

A. I went to Texas, I went to college.

Q. What college did you go to?

A. Baylor University.

Q. Did you perform any roles besides a student when you were at Baylor University?

A. Yes, sir. I was the liaison or coordinator of international students on campus.

Q. And did that involve using any language skills?

A. Yes, sir, very much so. We had a large international student body and many of them were Arabs that needed translations and interpretations while they were there.

Q. What did you actually study when you were a student at Baylor?

A. I have a BBA in management and marketing.

Q. What did you do after graduating from Baylor?

A. After graduation I stayed for about two years doing the postgraduate studies and then came up to Washington, D.C. to a grass roots organization of Arab American relations.

Q. In that job did you use your language skills?

A. Very much so.

Q. What did you do after you spent those two years with the grass roots organization?

A. I worked for a training center in the Washington metropolitan area training Arab officers. Officers in Arab countries would come to be trained here in either law enforcement, security or firefighting. I worked for that center as a translator, interpreter, and caring for the student affairs, training affairs.

Q. Had you been a police officer or a fireman in your past?

A. No, sir, I haven't.

Q. The instructors, did they speak English or Arabic?

A. The instructors were Americans and the students from were Arab countries, spoke Arabic.

Q. You translated between the teachers and the students?

A. Yes, sir.

Q. Did you have occasion to serve as a translator in court during that time?

A. Yes, sir. On many occasions these trainees would either get in trouble, intentionally or unintentionally, but they get involved with the courts and I had to accompany them and translate for the courts and for themselves.

Q. Did there ever come a time when you began to serve on a periodic basis as an interpreter of the courts for your own?

A. Yes, I did. Also, I have read and became a member of the American Translators Association in the Washington metropolitan area. As a result, I have submitted a form to the courts and I have interpreted for other than my own people on several occasions.

Q. What did you do after the five years in which you worked as a translator for this company that taught foreign police officers and firefighters from the Middle East?

A. Meanwhile, when I was working for this company, I had my own business at home as a freelance translator. So I worked as a freelance translator on my own, from my house, and, in the meantime, I was working for this company. Then in 1987 I was working also as a freelancer with the Justice Department from 1987 to 1991.

Q. What happened in 1991?

A. '91, I became a full-time translator for the government.

Q. Let me you approach with a number of exhibits. What have been premarked as Government Exhibits 54 and 54T, 76 through 85, and 76T through 85T; 95 through 97, and 95T through 97T; 111 and 111T; 114 and 114T; and 117 through 121 and 117T through 121T.

Let me show you first what's been premarked as Government Exhibit 54, a green notebook. Have you seen this item?

A. Yes, sir, I did.

Q. Let me show you Government Exhibit 54T.

Have you seen that item?

A. Yes, I did.

Q. How do you recognize the item described as 54T?

A. I have put my initial on the top right.

Q. Let me show you a blue notebook marked as Government Exhibit 76.

A. Yes, sir.

Q. Have you seen that?

A. Yes, I did.

Q. And how about 76T?

A. Yes, sir. This is the translation. I have signed it at the top.

Q. Let me hand you 77, have you seen that item?

A. Yes, I did.

Q. And 77T?

A. Yes, sir, I did.

Q. How does 77T correspond to 77?

A. You mean --

Q. What is 77T?

A. It is a translation of 77.

Q. And 76T is a translation of 76?

A. Right.

Q. And 54T a translation of 54?

A. Yes, sir.

Q. Let me show you further Government Exhibit 78 and 78T, and tell us whether or not you recognize those items.

A. Yes, I do.

Q. What are they?

A. This is a translation of this book, which is about explosive traps.

Q. 78T is a translation of 78?

A. Right.

Q. And that is a translation you have reviewed and approved?

A. Yes, I did.

Q. 79 and 79T. Have you seen Government Exhibits 79 and 79T?

A. Yes, sir.

Q. And have you reviewed --

A. That is a translation, yes, sir.

Q. That is 79T?

A. Yes, it is.

Q. The next items are Government Exhibit 80 and 80T. Have you seen those items?

A. Yes, I did.

Q. What is 80T?

A. It is a translation of 80.

Q. I will show you Government Exhibits 81 and 81T.

A. That is also a translation of this.

Q. 81T is a translation of 81?

A. Yes, sir.

Q. I will show you Government Exhibit 82 and 82T? What is 82T?

A. 82T is a translation of 82.

Q. Again, that is a translation you have reviewed and approved and initialed?

A. Yes, I did.

Q. 83 and 83T, have you seen Government Exhibit 83?

A. Yes, I did.

Q. And what is 83T?

A. 83T is a translation of it.

Q. And 84 and 84T, have you seen Government Exhibit 84?

A. Yes, I did. And 84T is a translation of it.

Q. 85 and 85T, have you seen Government Exhibit 85?

A. Yes, I did, and 85T is a translation of it.

Q. Government Exhibits 95 and 95T.

A. I saw this one, too. And this is -- 85T is a translation of it.

Q. Is that 85T or 95T?

A. 95T, I'm sorry.
Q. 96. Have you seen that document?
A. Yes, I did.
Q. And 96T, what is that?
A. 96T is a translation of it.
Q. Again, it bears your initials?
A. Yes, it does.
Q. 97, have you seen that document?
A. Yes, I did.
Q. And 97T, what is that?
A. 97T is a translation of it.
Q. 111, have you seen that item?
A. Yes, I did.
Q. What is 111T?
A. 111T is a translation of it.
Q. And 114, have you seen that item?
A. Yes, sir, I did.
Q. And what is 114T?
A. 114T is a translation of it.
Q. And let me show you Government Exhibit 117, and you have seen this item before?
A. Yes, I did.
Q. And what is Government Exhibit 117T?
A. 117T is a translation of it.
Q. And again, have you put your initials on it?

A. Yes, I did.

Q. And Government Exhibit 118, have you seen that item?

A. Yes, I have.

Q. What is 118T?

A. 118T is a translation of it.

Q. And if you look in this envelope -- just three more exhibits. 119, have you seen that item?

A. Yes, I did.

Q. And 119T?

A. Yes, sir. This is a translation of it.

Q. And 120, single packet?

A. Right.

Q. Have you seen the item marked Government Exhibit 120?

A. Yes, I did.

Q. And what is 120T?

A. 120T is a translation of it.

Q. Finally, 121, have you seen that item?

A. Yes, I did.

Q. And 121T, what is that?

A. That is a translation of it.

Q. Each of those items that you just reviewed that bear your initials, are they fair and accurate translations from Arabic into English of the corresponding item with the

same number --

A. Yes, sir. They are.

Q. So 54T would be a fair and accurate translation of Government Exhibit 54.

A. Right.

MR. FITZGERALD: Your Honor, I would offer Government Exhibits 54T, 76T through 85T, 95T through 97T, 111T, 114T, and 117T through 121T.

MR. STAVIS: I have an objection, your Honor.

THE COURT: I will hear you at the side.

(Continued on next page)

(At the side bar)

MR. FITZGERALD: I think that is in reverse order now.

MR. STAVIS: It is.

THE COURT: In any event, the objection or objections is or are what? What is the objection?

MR. STAVIS: I have to go exhibit by exhibit, your Honor. Some exhibits I don't object to. Some exhibits I do object to. Perhaps your Honor would like to give a break to the jury.

THE COURT: They just came off one.

MR. STAVIS: Then I will proceed.

THE COURT: Is it the interpretation?

MR. STAVIS: No, your Honor.

THE COURT: It is relevance?

MR. STAVIS: It is the relevance of the substantive documents, and there may be some Rule 403 objections to some of these substantive documents, although not all of them.

THE COURT: Other than presenting him as a translator, is there anything else to be done through him?

MR. FITZGERALD: There is only a few questions to explain some comments. I don't know if they would trample on any ground that they are worried about.

THE COURT: Comments about what?

MR. FITZGERALD: He has some translating, "observation," which is literally not his observation, but the word "observation" was being translated in the document. So I wanted him to explain the transcript. They are not that important. We can proceed to that, and we can deal with the objections later if your Honor wants.

THE COURT: Fine. As far as I'm concerned, all he's doing is authenticating the accuracy of translations.

MR. STAVIS: I was objecting because Mr. Fitzgerald was seeking to introduce the substantive exhibits.

THE COURT: I know. All I am saying is the only thing he's testified to is the accuracy of the translation, and if anybody wants to cross on that, you can do it. We will leave the rest for -- who is the witness after him?

MR. FITZGERALD: After him I plan to read a number of these items.

THE COURT: So, in other words, we need to take a break after him?

MR. FITZGERALD: Yes, Judge.

THE COURT: All right.

(Continued on next page)

(In open court)

THE COURT: All right. The T exhibits are received as translations of the corresponding unlettered exhibits. We will deal with other objections afterwards.

(Government Exhibits 54T, 76T through 85T, 95T through 97T, 111T, 114T, and 117T through 121T for identification were received into evidence)

MR. FITZGERALD: I think, Judge, I only have two questions.

THE COURT: Go ahead.

Q. On 54T, Mr. Feghali, indicated for page 4 are the words in brackets, "translating observation," close bracket?

A. Yes.

Q. Can you explain to the jury what the words "translating observation" mean?

A. The word in English is "observation," and the person who was trying to either read or learn that word has written the variation of meaning of it in Arabic. So if he has written that variation three times, I have put translating the word observation in English in brackets because this is my word, and put equal to it in Arabic and translated the three words or more or less, the ones that he's trying to learn or use that word.

Q. So the word "observation" appears in Arabic in the original document?

A. Yes.

Q. This is not a comment by you, "translating observation"?

A. No.

Q. With regard to Government Exhibit 77, if you look at this document, in the transcript there are references to little Bates stamp numbers, 1,994, 2,018.

A. Yes, sir.

Q. Were the pages themselves arranged out of number order?

A. They were out of order, but they didn't make sense in the way they were -- they were in order. We had to rearrange it. Where it says "first," that means it was on this page. "Second" is on the second. So they were just rearranged for the sake of continuity.

Q. So page that said "second" was put in front of the page that said "first" --

A. Right.

Q. -- to make the translation make more sense?

A. Right.

MR. FITZGERALD: I have nothing further at this time, Judge.

MR. STAVIS: What is the last exhibit?

MR. FITZGERALD: That was Government Exhibit 77.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Mr. Feghali, are you employed by the Department of Justice or the Federal Bureau of Investigation?

A. By the FBI. I think it is a part of justice. Originally, I started with the Justice Department.

Q. You are an employee of the United States government, is that correct?

A. Yes, sir.

Q. You get paid by the United States government?

A. Yes, sir.

Q. You have a GS level in the United States government, is that correct?

A. Yes, we do.

Q. Do you work in a United States government building?

A. Yes, I do.

Q. Where is the United States government building in which you work?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. Is it a United States government building in New York City?

A. Yes, sir.

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. Do you have an FBI security clearance?

A. Yes, sir.

Q. When did you obtain that FBI security clearance?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. During the time that you worked as -- worked for the FBI as a defense translator or -- withdrawn.

What is your official job title for the Federal Bureau of Investigation?

A. Language specialist.

Q. You work solely for the Federal Bureau of Investigation as a language specialist, is that correct?

A. Yes, sir.

Q. Now, from 1982 to 1987, you were working for U.S. law enforcement, is that correct?

A. Yes, sir.

Q. And what kinds of things were you doing at that time?

A. This is a private entity. Somebody who was a police officer had started a training center for police officers and law enforcement agencies who are not, you know, U.S., in the United States. It is a private entity, and he hired many American officers to come teach in this organization.

So he gets contracts from several Arab countries where they send officers to be trained in the United States.

Q. For which Arab countries did you train their officers?

A. There was a big variety from many countries. Some of them from Saudi Arabia, some of them from Kuwait, some of them from Egypt, some of them from Jordan, I guess. So several countries have sent students to be trained.

Q. During the five years that you were doing this kind of work, how many Egyptian officers did you help to train?

A. At least 14, I would say.

Q. Mr. Fitzgerald was just asking you questions about some rearranging that you did in Government's Exhibit 77, do you recall that?

A. Yes, sir.

Q. You did that rearranging because it wasn't understandable to you, is that fair to say?

A. Well, it was understood, but the order was wrong, like the page that had 1 on it was like the third page. So they weren't arranged by the sequence of the meaning of the text.

Q. Do you know the difference between translation and interpretation?

A. Yes, sir.

Q. Explain to the ladies and gentlemen of the jury over here the difference between translation and interpretation?

A. Translation is when you do a verbatim, a word for word almost of what the text has. Interpretation is when you add to the meaning what you think it is trying to say.

Q. Is it fair to say that when you do translation it is an objective job that you do, is that correct?

A. Yes, sir.

Q. This word means this?

A. Yes, sir.

Q. Correct?

A. Yes.

Q. But when you do interpretation, there is a subjective component to that, isn't it fair to say?

A. It is fair to say, I would say.

Q. And you are saying what you believe the meaning of a document is, is that correct?

A. If you are doing --

Q. If you are interpreting --

A. That's true.

Q. -- you are reading something into the document?

A. That's true.

Q. When you were rearranging on Government's Exhibit 77, as Mr. Fitzgerald asked you, you were at that time

interpreting, is that correct?

A. No, sir.

Q. Did you put down everything in the order in which it came?

A. Well, you see, when there were -- the papers were in one order, that it doesn't make sense in translating it. So if you just remove one to put it two or three, I am not including any of my interpretation in it. I am translating. I am just putting it in a form that still makes sense to the text.

Q. But you are changing it, is that correct?

A. No, sir. I am not changing -- no, I am not changing the text.

Q. You are changing the order, isn't that correct?

A. Of the papers.

Q. Yes.

A. Yes.

Q. Now, on some of the documents that you worked on, you did interpretation, as you have already testified to, is that correct?

A. Well, if you consider that interpretation, but I don't. I think this is arranging the physical papers, sir, not the text itself.

Q. Let's move off of Government's Exhibit 77.

A. All right.

Q. OK. There were a few other government exhibits here this morning that you worked on.

A. Yes.

Q. Is that correct?

A. Right.

Q. On those exhibits other than Government's Exhibit 77, you did interpretation, is that correct?

A. I tried not to.

Q. Did you try successfully or unsuccessfully?

A. To the best of my knowledge, sir, I tried successfully. I tried to do a very professional job.

Q. Did you testify a few minutes ago that some of what you did in your work here was interpretation?

A. No, sir.

Q. It is all translation, correct?

A. Yes, sir.

Q. That is your testimony?

A. Yes, sir.

Q. Drawing your attention to Government's Exhibit 76T, can you take that out?

A. The last one, yes, sir.

Q. You have it?

Turn to page 8. Do you have it?

A. Yes, sir.

Q. Certain things are in parentheses on that page,

is that correct?

A. Yes.

Q. Now, drawing your attention to that second paragraph, where it says "page 12" --

A. Yes, sir.

Q. -- on page 8?

A. Yes.

Q. If you go down toward the middle of that?

A. Yes, sir.

Q. There is a reference to "buildings in which gather their heads"?

A. Yes, sir.

Q. Do you see that?

After that in parentheses it says, "their leaders"?

A. Right.

Q. Was that translation or interpretation when you put that in the parentheses?

A. I believe I saw it in the text that it is in parentheses because I checked also the word up above it, "exploding," and it was in parentheses, too. So I put that in parentheses. But let me check the book anyway, if I may.

THE WITNESS: Excuse me. Do you have the copy that I have worked out from? Because those pages are numbered.

(Counsel conferred)

A. These are not numbered here.

Yes, sir. It is in parentheses in the text.

Q. Right above that, it refers to the state of Ibrahim --

A. Yes, sir.

Q. Do you see that part?

A. Yes, sir.

Q. Do you know if that refers to a prophet by the name of Ibrahim?

A. I am not sure what he's referring to, sir. Then I would be interpreting if I said I did.

Q. Why don't you do some interpretation.

Does "the state of Ibrahim" refer to the prophet Ibrahim?

MR. FITZGERALD: Objection, your Honor.

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

(Continued on next page)

(At the side bar)

THE COURT: Where is this going?

MR. STAVIS: Your Honor, in his opening statement Mr. Khuzami zeroed in on the paragraph that I am going over with this witness, and Mr. Khuzami said that this notebook refers to the bombing of the World Trade Center.

I am going over with this witness the state of Ibrahim and other items contained in this portion of the translation that is now in evidence. I will attempt to disprove that which Mr. Khuzami sought to convince the jury of in his opening statement.

THE COURT: What you are asking him in essence is to read the mind of whoever is writing in that book.

MR. FITZGERALD: My objection is he was called as a translator. He translated literally. Now we are asking him to speculate as to the mind of someone else. He is not competent.

MR. JABARA: He is not translating literally because Ibrahim is Abraham. It's been Abraham. That is a translation and he's saying that he doesn't know that it is Abraham.

THE COURT: No. You are asking whether it is the prophet Abraham. I am not going to allow it.

(In open court)

BY MR. STAVIS:

Q. Drawing your attention back to that portion where it says page 12 --

A. Yes, sir.

Q. -- your first sentence in your translation -- that is a translation, is that correct?

A. Yes, sir.

Q. -- says, "Before announcing the establishing of the state of Ibrahim in our holy land --"

A. Yes, sir.

Q. Now you used the word "holy land."

A. Yes.

Q. That was your translation, you used the word "holy land"?

A. Yes, sir.

Q. What is the holy land?

MR. FITZGERALD: Objection, your Honor.

THE COURT: Sustained.

Q. What does the word "holy" mean in English?

A. I means holy.

Q. As a person who translates and interprets for the Federal Bureau of Investigation --

A. Yes, sir.

Q. -- what does "holy land" mean?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. Please explain as a translator, an interpreter for the Federal Bureau of Investigation the difference between holy land and regular land.

MR. FITZGERALD: Same objection, Judge.

THE COURT: Same ruling.

Q. Is it your testimony that holy land has its ordinary meaning?

A. I am not sure what you mean by "ordinary," sir.

Q. Would you and I and everybody else in this courtroom use holy land the same way?

THE COURT: Sustained.

A. It says here --

THE COURT: Sustained. If I sustain an objection, whether one is made or not, you don't answer. Go ahead.

Q. Right before "holy land," you used the word, Ibrahim, I-B-R-A-H-I-M, do you see that?

A. Yes, sir.

Q. Is that an English word or an Arabic word?

A. I think it is an English word.

Q. Have you ever heard the English word or name Abraham?

A. Yes, I have heard that, too.

Q. Is that a word that you are familiar with?

A. Yes.

Q. When you did your translation, you kept the English word Ibrahim, is that correct?

A. Yes, I guess so.

Q. And you didn't use the word "Abraham," did you?

A. Not in this instance, I did not.

Q. When you did that, were you translating or were you interpreting sir?

A. I was translating, but in English it's used both ways.

MR. STAVIS: I have no further questions, your Honor.

THE COURT: Anyone else?

All right -- I'm sorry. Mr. Jabara, representing Dr. Abdel Rahman, go ahead.

CROSS-EXAMINATION

BY MR. JABARA:

Q. Mr. Feghali, have you ever met me before?

A. I am not sure. I don't think so, sir.

Q. You came to this country in what year?

A. 1972.

Q. 1972?

A. Yes.

Q. Then did you enroll immediately in school?

A. Yes, sir.

Q. At Baylor University, is that correct?

A. Yes, sir.

Q. Your degree was a bachelor's of art in business, is that --

A. In business, yes.

Q. Did you have any specific training in translation or interpreting while you went to school at Baylor?

A. Not at Baylor, but I had specific translation back home in Lebanon.

Q. No, I am asking you at Baylor?

A. No, I had none, sir.

Q. After you completed your degree at Baylor University, what was the first employment that you obtained?

A. I was executive director of a nonprofit organization, a grass roots Arab-American organization.

Q. What was the name of that organization?

A. American Lebanese League.

Q. American Lebanese League?

A. Yes, sir.

Q. Was that a lobbying organization?

A. Sort of.

Q. What did they lobby for, Mr. Feghali?

A. Lobbied for the Americans who are of Lebanese origin to try to work very closely with their congressmen and senators for the better relationship with Lebanon.

Q. Did it have any position with regard to the civil

war that was taking place in Lebanon?

A. Indirectly I would say, because our relationship was with the American citizens and not with foreigners.

Q. But you were lobbying the American government, were you, on behalf of certain parties in Lebanon?

A. No, sir. This was an American entity, 100 percent.

Q. Did it take a position with regard to what was to happen in Lebanon?

A. Well, as far as independence and sovereignty, yes.

Q. Did it take any position with regard to the various factions in Lebanon?

A. No, sir.

Q. Did your organization support the Phalangist organization in Lebanon?

A. No, sir.

Q. Did it support the Lebanese Shi'ites?

A. No, sir.

Q. So it supported all of the Lebanese?

A. It supported the government of Lebanon to stay sovereign, have sovereignty over all of Lebanon and have its independence.

Q. Now, Mr. Feghali, when you indicated that you were translator/interpreter for charity organizations, what

charity organizations were those?

MR. FITZGERALD: Objection, your Honor. I don't object to type of organization.

THE COURT: Can you give us the type of organizations?

Q. Can you tell me the type of those organizations?

THE COURT: Kinds of organizations?

A. Type of?

Q. Yes.

A. I am not sure. I am lost between the two here. Would you please rephrase the question?

Q. All right. You say that you were a translator/interpreter for charity organizations?

A. Yes.

Q. What kind of organizations --

A. Oh, even -- this is as a volunteer. I do that for several organizations in town. Some of them are like IVOS, International Visitors Organization, which is a charity organization. We do that for the Red Cross. We do that for other nonprofit organizations that need assistance with, you know, when they come across Arabs. I will do this as a volunteer, sir.

Q. Now, Mr. Feghali, returning for a moment, if you will, to the period of time that you worked for U.S. law enforcement training centers --

A. Yes, sir.

Q. -- you indicated that you translated for Egyptian police officers?

A. Including other officers, too.

Q. They were here to learn police techniques?

A. Police techniques or security techniques, or firefighting techniques, sir.

Q. Did you have, at any time, any occasion to meet one Emad Salem?

A. Who is that?

Q. Emad Salem.

A. No, sir.

Q. Can you tell me how many Egyptian police officers you translated for during their training?

A. During the period I guess about 14 of them came into different units. One time, seven, another time seven or eight. Excuse me, let me make myself clear. The center had about 300 of them from other Arab countries, too.

Q. I am talking now about Egyptian police officers.

A. Yes, sir.

Q. What year did they come?

A. They came between 1982 and 1985.

Q. You don't recall the year that they came?

A. Not exactly. Maybe '84, I would say.

Q. They were sent by their government?

A. Yes, sir.

Q. Was part of their training in interrogation?

A. I haven't done any of that.

Q. Well, that was not the question. I didn't ask you what you had done. I asked you whether or not part of their training was in interrogation techniques.

A. If it was, I wasn't involved in it. So I didn't know exactly.

Q. I didn't ask you whether you were involved in it --

MR. FITZGERALD: Objection, your Honor.

THE COURT: Is the answer that you don't know?

THE WITNESS: I don't know.

Q. Was the training of any of the police officers that were brought there in interrogation techniques?

A. I don't know, sir.

Q. Can you tell me, Mr. Feghali, how long you served with the American Lebanese League?

A. About two years, sir.

Q. In what capacity was that?

A. I was executive director.

Q. Who was the president of that league at the time?

MR. FITZGERALD: Objection, 401.

THE COURT: Sustained.

Q. Did you have an office in Washington?

A. Yes, sir.

Q. Did you meet with congressmen?

A. No.

Q. What were your job duties in that position?

A. My job was executive director in relationship with the members and executive board of the league.

Q. What were your job duties?

Can you tell us what those were?

A. Yes. Administrative mainly of the main office in Washington and keeping good relationship with the Lebanese community across the United States and keeping a tab of the chapters that are, that start in every city of American Lebanese.

Q. In that capacity did you travel to any churches, Lebanese churches around the United States?

A. No.

Q. You did not?

A. No.

Q. Did you travel to any mosques and speak to any people at any mosques?

A. No.

Q. Did you travel in this capacity --

A. Not in this capacity, no, sir.

Q. -- as the executive director?

A. No.

Q. So you just kept in contact with the members by telephone?

A. Yes, sir. By telephone and by correspondence.

Q. How many members did you have?

A. Oh, we had about at least 3,000, I would say.

Q. Did you have chapters?

A. Yes, sir.

Q. You didn't visit the chapters in your capacity as --

A. No, I did not.

Q. Did you publish any literature?

A. When?

Q. As executive director of this organization?

A. No, sir.

Q. So all you did was contact Lebanese around the United States. For what purpose? What did you contact them for?

A. To keep a good relation --

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. Now, the purpose of this Lebanese American League you said was to have good American Lebanese relations, is that correct?

A. Yes, sir.

Q. All right. Did it have any kind of program

directed at the American government?

A. I am not sure I understand what you are saying.

Q. Well, how did you intend to keep good American Lebanese relations through the American Lebanese League?

MR. FITZGERALD: Objection, 401.

THE COURT: I will allow him to ask a question about whether the league's activities involved any contact with the United States government. Did they?

Q. Did the league's activities involve contact with the American government?

A. I wasn't directly involved in that.

Q. That is not the question.

A. OK, sir. Please rephrase it.

Q. I asked you whether or not the league's activities involved contacting the American government.

A. Yes, sir.

Q. Who was it that contacted the American government?

A. The executive board.

Q. The executive board. Who did they contact in the American government?

A. They contacted their congressmen and senators.

Q. And did they contact the State Department?

A. I am not sure.

Q. You are not sure.

A. Yes.

Q. You were executive director, but you are not sure?

A. Right.

Q. Did they contact the White House?

A. I believe so, yes.

Q. Did they have campaigns to send telegrams?

A. Yes.

Q. Did they have campaigns to send letters?

A. Yes.

Q. What did they ask for in these letters and telegrams?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. You served in this position, did you not, Mr. Feghali, for two years?

A. Yes.

Q. When you left that job -- and that would have been in what year?

A. I think the end -- at the end of '81, almost '82.

Q. How old was the organization at that time?

A. I think it was about ten years, maybe.

Q. Where did you go then?

A. I went, then, to the international center for training.

Q. What type of training?

A. The police force and the security and firefighting.

Q. You worked there for a period of five years, is that correct?

A. Yes, almost, yes.

Q. That was full-time employment?

A. Yes, sir.

Q. Mr. Feghali, from the employment that you had at the law enforcement training center --

A. Yes, sir.

Q. -- for foreign police officers, where did you go from there? What job did you get?

A. I was doing my own job, like freelance translation on my own.

Q. Did you have an office?

A. Yes, at home.

Q. You had an office?

A. Yes, sir.

Q. How long did you do that freelance translating?

A. I think I have done that from about '82 until about '87.

Q. You indicated that you worked for the U.S. law enforcement training center from '82 to '87?

A. Yes, I did, sir. I had a day job with them and

at night I worked as freelance in my own home.

Q. After you finished your work with the U.S. law enforcement training center --

A. Yes, in 1987, yes.

Q. -- what type of employment did you take?

A. I wasn't employed. I was self-employed. I was doing only my translation.

Q. How long a period were you self-employed doing your own translations?

A. About two years.

Q. Until 1989?

A. 1987, sir.

Q. You indicated you worked for the U.S. law enforcement training center until 1987. On direct examination that is what you testified.

A. I'm sorry. It must be a mistake, I guess.

Q. How long did you work for --

A. I worked there until '85,

Q. How many years did you work for them?

A. About five years.

Q. You started with them in what year?

A. In '82.

Q. So '82 to '85 was how many years Mr. Feghali?

A. About five years.

Q. '82 and --

A. I'm sorry.

Q. All right.

A. It must be '86, sir. It must be '86.

Q. OK. '82 to '86 is how many years?

A. I worked for about two and a half years for the international training center.

Q. After that you got a job working on your own, is that correct?

A. Yes.

Q. For how long a period of time did you work on your own?

A. About a year, a year and a half, until '87, until June '87.

Q. That's when you got a job working at the Justice Department?

A. Yes, as a self-employed, though.

Q. On a contract?

A. Yes. On a contract basis.

Q. How did you get that job?

A. I must have heard it from somebody. I think a friend recommended it to me.

Q. I see.

A. I knew they needed contract workers, and I do freelance translation so I bid on it and I got it.

Q. So you were doing this again as freelance. You

weren't working as a civil service employee for them?

A. That's right, yes, sir.

Q. At what point in time did you become a civil service employee with the GS classification?

A. In September '91.

Q. So it's been for the last three years that you have really worked for the Justice Department as a civil service employee, is that correct?

A. Yes, sir.

Q. So from 1986 until 1991 you were self-employed, is that correct?

A. Yes. If you want to consider the -- yes. Yes, you're right.

Q. You were working out of your home, is that correct?

A. Yes, in most cases.

Q. All of that work was done on a contract basis, is that correct?

A. If I may retract. The initial period, yes, but when I started as a contract with the Justice Department, I was working at the Justice Department as its contractor.

Q. When you say you were working at the justice -- were you down there every day?

A. Yes, sir.

Q. You had an office?

A. Yes.
Q. You were working full-time?
A. Yes, sir.
Q. But you had not been employed as a civil servant at that time?
A. Right.
Q. That was in what year?
A. June '87, I started. Until the end of September, '91.
Q. How many hours a week would you work in that job?
A. I would say about 12 hours a day, sir.
Q. In 1991 that went from a part -- rather a contract basis to a civil servant position, is that correct?
A. Yes, sir.
Q. Since 1991 you have worked for the FBI?
A. Yes, sir.
Q. Have you ever acted as an interpreter when they apprehended people?
A. Yes.
Q. So you've translated for people that they have apprehended, is that correct?
A. Yes, sir.
Q. Did you go with them on searches when they would conduct any kind of searches of homes to look at documents?
A. Yes, sir.

Q. Did you do that in this case?

A. No, sir.

Q. In this case all they did was they brought you material and they asked you to translate it, is that correct?

A. Yes, sir.

Q. Now, Mr. Feghali, if I were to ask you how do you translate Abraham, how would you translate that into Arabic?

A. You mean the word, just the name?

Q. Yes. The word.

A. I would say Ibrahim.

Q. It is Ibrahim, isn't that right?

A. Yes, sir.

Q. If I were to ask you to translate Ibrahim, how would you translate that into English?

A. Many of the Arabic names, sir, are --

Q. Can you translate the word Ibrahim for me, Mr. Feghali?

A. Yes.

Q. How do you translate it into English?

A. Either Ibrahim or Abraham.

Q. Can you find, Mr. Feghali, the word Ibrahim in the American dictionary?

A. Well, I can't find many American names.

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. Did you look for the word "Ibrahim" in the dictionary?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

MR. JABARA: I have nothing further for this witness.

THE COURT: Anyone else?

MR. RICCO: A few questions, your Honor.

THE COURT: Yes. Mr. Ricco, representing Mr. El-Gabrowny, go ahead.

MR. RICCO: Excuse me, your Honor.

Thank you, your Honor.

May I approach the witness, please?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. RICCO:

Q. In your document that you have --

A. Yes, sir.

Q. -- 76T --

A. Yes.

Q. -- here you have a translation.

A. Yes.

Q. It says, "Before announcing the establishing of the state of Ibrahim in our holy land" -- what does the holy

land mean to a person who speaks or writes Arabic?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. Well, is holy hand New York City?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

MR. RICCO: No further questions.

THE COURT: Any redirect?

MR. FITZGERALD: No, Judge.

THE COURT: You are excused.

Thank you.

THE WITNESS: Thank you, sir.

THE COURT: Ladies and gentlemen, we are going to break for lunch. Please leave your notes and other materials behind. Please don't discuss the case. We will resume either at or shortly after two o'clock.

(The jury was excused)

THE COURT: Mr. Stavis, you had some objections with regard to the exhibits, the underlying exhibits that were introduced through this witness?

MR. STAVIS: Yes, your Honor.

THE COURT: Can we go through those?

MR. STAVIS: If I may.

Also, your Honor, some of my colleagues may have objections on different grounds.

THE COURT: Why don't we take yours first.

MR. STAVIS: At the side bar I had objected to Government's Exhibit 76.

THE COURT: Right. For lack of foundation?

MR. STAVIS: Yes, your Honor. We had no objection to Government Exhibit 84, your Honor.

We have no objection to Exhibit 83, your Honor.

I have no objection to Exhibit 82, your Honor.

THE COURT: Why don't we just deal with the ones --

MS. STEWART: Judge, may I just interject a moment. Is it possible for the defendants to be excused, those who wish to be, since they have that window of opportunity in which to pray?

THE COURT: Yes, they may.

MS. STEWART: Then we can do the objections.

THE COURT: Fine. It is an issue of law so they needn't be present. They can be excused.

MS. STEWART: Thank you.

THE COURT: Everyone.

MR. STAVIS: Did your Honor wish me to go only through those --

THE COURT: Why don't you just go only through the ones that you have objections to. I will assume that you have no objections to the ones you don't deal with,

although others may, and I will deal with theirs afterwards.

MR. STAVIS: Your Honor, I have an objection to Government's Exhibit 81, which is a document that refers to America, Israel and the Palestinians. My objection to this document is that there is no foundation as to where, who, or when this document was written or how it relates to the government's case.

MR. FITZGERALD: Your Honor, this concerns an item of paper which I can hand up a copy to --

THE COURT: Is it in the book?

MR. FITZGERALD: Yes.

THE COURT: All right. Go ahead.

MR. FITZGERALD: That item was found -- it is not disputed -- in Mr. Nosair's home.

THE COURT: Right.

MR. FITZGERALD: In that writing it indicates some comments about America: That now that she considers herself the master of the world, she wants to expand her sovereignty over the whole earth, no matter who they are. It actually already began the conflict between the American government and the Jews. It continues on.

Although it's being offered on the direct case, it is responsive to his contention that because he has the CIA manual and the World Fact Book that he has the state of mind with someone who is with America. This is showing

that --

THE COURT: I don't have the translation in my book, so it is hard for me to follow along.

MR. FITZGERALD: I'm sorry.

THE COURT: I will reserve on that.

MR. STAVIS: I would just make an additional response to Mr. Fitzgerald that the document actually refers to the conflict between Jews and the United States and not between Arabs and the United States.

THE COURT: In any event, I am reserving on that one. What else?

MR. STAVIS: Your Honor, with regard to Exhibit 95, it appears to be a document which refers to the Egyptian consulate, Egyptian embassy, Egyptian missions, and I have a relevance objection to this document.

MR. FITZGERALD: Your Honor, there is another document referring to the attempted assassination of Zaki Badr, where the Muslims in Egypt talk about an attempt to kill Zaki Badr. My recollection is he is among the people named in this document. In fact, he is on page 2. If your Honor has a copy -- otherwise, I will hand one up.

MS. STEWART: I can't understand Mr. Fitzgerald.

THE COURT: I have page 2 of this document.

MR. FITZGERALD: If you look in the middle of page 2, it says, "Minister of Interior, Zaki Badr," and this

is a handwritten list. It has a different color ink, and it is updated from time to time, and it has lists of various Egyptian officials. To the extent that it is the government's contention that he had a Jihad against America, among others, and his contention that he had a Jihad with America --

THE COURT: This one I will allow. Go ahead.

This is 95?

MR. STAVIS: 95, your Honor.

THE COURT: That objection is overruled.

MS. AMSTERDAM: Excuse me, your Honor. Are we taking up other matters, or would it be appropriate to leave after this?

THE COURT: What other matters?

MS. AMSTERDAM: I have no other matters at all. I am just asking your Honor.

THE COURT: You mean am I going to do some widespread damage after? No.

MS. AMSTERDAM: All right.

THE COURT: No, the only other business I can think of is there was one outstanding ruling with regard to something Mr. Patel had raised about the examination of somebody earlier on that I may rule on, but that is all you are going to miss.

MS. AMSTERDAM: Thank you.

MS. STEWART: Would you just restate the basis of your ruling on document 95. We have trouble, I think, because we hear --

THE COURT: I think you flatter me a little bit, but there was a relevancy objection. If I overruled the objection, that means implicitly I believe that the document tends to prove matters in dispute.

MS. STEWART: I didn't hear what Mr. Fitzgerald said. He said something about "Jihad with, Jihad against."

THE COURT: I think that was with regard to 81, and I reserved on it. He talked about a specific person who appears on 95.

MS. STEWART: Right.

THE COURT: Who was also, he says, the subject, according to other proof, of an assassination plot or attempt --

MR. FITZGERALD: Yes, Judge, that is 96, the attempted assassination of Zaki Badr.

MS. STEWART: That took place in Egypt, is that correct?

THE COURT: Right.

MR. FITZGERALD: Yes.

MR. STAVIS: Your Honor, drawing the court's attention to Government Exhibit 111T, it has footnotes on the bottom, and Government's Exhibit 111 does not have

footnotes on the bottom. I will hand up the original exhibits to the court.

THE COURT: One second. Let me turn to the tab.

MR. STAVIS: Mr. Fitzgerald will agree to strike it before the jury sees it.

MR. FITZGERALD: I will consent to strike the footnote, Judge.

THE COURT: Fine. You mean there are two footnotes on the bottom of the first page of the translation?

MR. FITZGERALD: Yes, Judge.

THE COURT: Those are out, correct?

MR. FITZGERALD: Those are out.

THE COURT: What appears below the dotted line on the second page is not a footnote, is it?

MR. FITZGERALD: No, Judge. That's text.

THE COURT: These footnotes are out.

MR. STAVIS: Those are my objections.

THE COURT: All right. Anyone else?

Mr. Ricco?

MR. RICCO: Yes, your Honor. I just want to get some clarification from the court with respect to the court's ruling with the language expert who just testified, Mr. Feghali. Your Honor, it would seem to me that --

THE COURT: Is this the question that you asked

that I sustained an objection to?

MR. RICCO: Yes, your Honor.

THE COURT: I sustained that objection.

MR. RICCO: You also sustained Mr. Stavis's objection.

THE COURT: Right.

MR. RICCO: What I wanted to say to the court is that if he is determining the use of the word that he saw as it would be translated by an Arabic person, and that word is "holy land," the reason, it seems to me, your Honor, that he writes "holy land," because to an English speaking and a non-English speaking person holy land is one place, if he is a language expert, we should be entitled to ask him what does that place refer to, to an indigenous person who speaks this language.

Your Honor, the analogies would be also, for example, if a Chinese interpreter was interpreting something and he interpreted the words "The Great Wall," it would be The Great Wall in English, and it would be The Great Wall, presumably, in Chinese. We would be entitled to ask the language expert whether or not in the context of this is he referring to The Great Wall that exists in China.

Another example would be if a person was speaking sort of "New Yorkese" and referred to New York as the Big Apple. If an interpreter was interpreting the reference to

the Big Apple, it would seem to me that, if this person was a language expert, it would be fair game to ask that person, "Is this reference here to a very large apple, or is this reference here to a place, and, if so, what is that place? Where is that place?"

THE COURT: I understand your point. I think your argument is better directed 90 degrees to your right.

MR. JABARA: The other thing, your Honor --

MR. RICCO: The only point is that -- it can be argument naturally, but it just seems to me that a person who is a language expert often is able to testify as to how a person uses an indigenous term and what that means to a person who doesn't speak that language and what it means to a person who does speak that language.

THE COURT: I understand your point. You can argue it to them. Mr. Jabara?

MR. JABARA: Yes. On this question about holy land, I mean it is always translated as a capital H and a capital L. Certainly it takes on a much different meaning when it is translated that way than if it were lower case letters. I think that shows that there is a very deficient translation here of whatever that was in the original.

THE COURT: Mr. Fitzgerald?

MR. FITZGERALD: Your Honor, he could have cross-examined him on the capital letters, but I think it is

still holy land. They can argue it to the jury. There is nothing about a translator the makes him particularly expert on what that means.

THE COURT: Are you willing to strike the capital letters?

MR. FITZGERALD: I don't think they are in capital letters.

THE COURT: They are not?

MR. FITZGERALD: No.

THE COURT: I am sorry. I thought that was his application.

MR. JABARA: No, my application was that it should be caps on the holy land.

THE COURT: That I think you can argue, too.

MS. STEWART: I am standing up not because of holy land.

THE COURT: This is a separate point?

MS. STEWART: Yes.

THE COURT: Let me just deal with one loose end, and that was: Mr. Patel had given me two cases to review in light of rulings with respect to -- I forget the police officer.

MR. PATEL: No, was that the hearsay issue, your Honor.

THE COURT: Yes. I looked at the case. I looked again at the transcript. Those cases are light years from this situation, and I understand the objection. It is overruled.

That had to do with the policeman who said that he called up and found out where the entry and exit was, hypothesized where the man had been standing at the podium, and on the basis of that looked up behind the drape or at the drape and found a bullet.

MR. PATEL: The point was, Judge, this was an officer who was sent to collect physical evidence, looks around the room, and out of the blue gives a double hearsay explanation of why he did what was --

THE COURT: The basis for the ruling is, first of all, there was a limiting instruction given. But, secondly, as I said before -- and I repeat this again -- it was duplicative of other evidence that was received. So even to the extent that anybody might be tempted to disobey the limiting instruction, all that would get them is a reiteration of matters that were already in evidence, unlike the kind of testimony that was involved in the cases that you cited, which in essence involved people saying that somebody was a member of a conspiracy, which is rather different.

Ms. Stewart, you were going to raise a different

point?

MS. STEWART: Yes, Judge. I just wanted to raise, Judge, that apparently last night at 9 o'clock, two hours after I left my office, a fax was received from the government indicating their schedule of witnesses, including some documents that were previously identified, but for whom we had not received final translations. This was during the search of the sheik's residence, and also of Mr. Elmasry's residence. One translation we only had as a summary from the government, and that full translation, which runs 17 pages, single-spaced, was received at the break today.

MR. McCARTHY: Ms. Stewart, is that 12214U?

MS. STEWART: Yes.

MR. McCARTHY: I wanted to give it to you as soon as I had it available. We are not going to offer it in evidence today.

MS. STEWART: Notwithstanding Mr. Khuzami's --

MR. McCARTHY: That is a miscommunication between him and me, and I apologize for that, but we are not going to offer it into evidence today.

MS. STEWART: The secondary thing is doubt about Jihad, which we had in a complete translation. It has been altered. Mr. Clark had pointed out to one change to me. Just in trying to read through it while watching what was happening in the courtroom, I see a few others as well. If

they intended do that this afternoon, I would ask if they could hold off on that at least until tomorrow morning.

MR. McCARTHY: I was only aware that there was one change.

THE COURT: I will give you an extra 15 minutes. We are not going to resume until 2:15 or maybe even past that.

MS. STEWART: That document, Judge, was a 19-page single-spaced --

THE COURT: He says there is only one change in it. Is it possible that it was simply retyped and the pagination comes out differently? I am just guessing. You say there are other changes?

MR. McCARTHY: Your Honor, there was a document that actually he testified to, and it turned out that is the witness Abdel Hafez testified to. As far as I was aware, there was a question which was addressed to the defendant Abdel Rahman about that. The question incorporated the words "United States." After the transcript was identified on the record, it was double-checked, and it turns out "United States" does not appear in the question. So we took it out.

Other than that, I am not aware of any other changes in the transcript.

THE COURT: You two talk --

MS. STEWART: I will just show him the first one I saw. I don't know if there are any others.

THE COURT: -- and see if this is a big deal or not.

MR. FITZGERALD: One other item, Judge.

THE COURT: Yes.

MR. FITZGERALD: When I offered all those transcripts, I also meant to introduce the underlying exhibits that were not in evidence.

THE COURT: I understand that that is what we were talking about here. Other than 81 that I reserved on, the others are received.

MR. FITZGERALD: OK.

(Luncheon recess)

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

2:15 p.m.

(In open court; jury present)

THE COURT: Good afternoon, ladies and gentlemen.

MR. FITZGERALD: Judge, the government would now like to read from some exhibits received in evidence this morning beginning with Government Exhibit 76 and 76T which are in the books. The first exhibit will be Government Exhibit 76 and 76T which should be one of the bound books, one of the thicker ones.

We will begin with the English version, which is Government Exhibit 76 which is a photocopy which showed the front page that says notebook on it, with the Government Exhibit sticker 76. There are page numbers written in handwriting in the lower right corner and we'll move forward to page 15. After looking at the diagram on page 15 of 76, not 76T, but 76. We're looking at 76, not 76T.

THE COURT: You are looking at exhibit 76 which is the notebook itself. That's the photocopy of the notebook itself which should be in your exhibit binders behind tab 76. There are hand-lettered numbers in the lower right-hand corner. If you turn to page 15 there should be a diagram on that page after you've looked at the diagram.

MR. FITZGERALD: We'll turn to page 16 where there is English which reads as follows.

Roll electrical tape, window screens, hose clamp, another entry for hose clamp, two and a half inches, small diameter tube, large dash marks for diameter tube, steel, soft rubber, hand drill, cleaning rod, screwdriver, files, hack saw, rivet gun and steel rivets, drill bits, center punch.

Then turn to page 17 which shows one more diagram. Now, we'll turn to the translation which is the next item in the book, 76T. Simply flip the whole notebook over and then you'll see an item with 76T in the upper right hand corner.

Reading from the beginning where it says page 2 in the name of Allah, most gracious, most merciful. Abraham's state, the State of Islam. Territorial and religious demands; starting with the Hijaz land, Saudi Arabia.

1. The Koran. 2. The Muslim people. 3. The Holy land.

"Allah is the light of the heavens and the earth."

"Believe, therefore in Allah and His messenger and the light which we have sent down."

"There hath come to you from Allah a new light and a precious book."

The Prophet, may God's peace and blessings be

upon him said: The people have gone astray by rejecting what their prophet brought to them and accepted what other profits brought to other people.

God almighty says: "And is it not enough for them. We have sent down to thee the book which is rehearsed to them? Verily, in it is mercy and a reminder to those who believe."

"We will, without doubt, help our messengers and those who believe both in this life and on the day when the witnesses will stand forth."

"And it was due from us to aid those who believe."

Next translation is a translation at page 3. "Verily Allah will defend from ill those who believe; verily Allah loveth not any that is a traitor to faith, or shows ingratitude. To those against whom war is made, permission is given to fight because they are wronged and verily, Allah is most powerful for their aid. They are those who have been expelled from their homes in defiance of right for no cause except that they say, our Lord is Allah. Did not Allah check one set of people by means of another? There would surely have been pulled down monasteries, churches, synagogues, and mosques in which the name of Allah is commemorated in abundant measure. Allah will certainly aid those who aid His cause for verily Allah is full of

strength, exalted in might, able to enforce his will.

The banner of monotheism is flooding over Abraham's nation.

The counter psychological war against God's enemies for their attempt to demonstrate their might.

God almighty says: "Say to those who reject faith, "soon will ye be vanquished and gathered together to hell. An even bed indeed to lie on. There has already been for you a sign in the two armies that met in combat. One was fighting the cause of Allah, the other saw with their own eyes twice their number. But Allah does support with his aid whom he pleaseth. In this is a warning for such as the eye to see. We should not forget, the strongest among men in enmity to the believers will now find the jews and pagans."

The Muslim nation should remember that its enemy is wicked an cunning. And it has to remember the Prophet's saying Gabriel informed me saying, there are conflicts in your nation; I said what is the solution; he said God's book. God almighty described His messenger --

THE COURT: May I see counsel at the side, please.

(Continued on next page)

(At the sidebar)

THE COURT: Did you intend to read this whole thing in?

MR. FITZGERALD: A good portion of it but not every exhibit. Just this one I want to have it read out of context. I'll skip ahead.

THE COURT: You are going to read the whole exhibit.

MR. FITZGERALD: A good chunk of it, but I can cut down the sections down the.

THE COURT: Please do.

(Continued on next page)

(In open court)

MR. FITZGERALD: Skipping ahead to page 5 of the transcript where it refers to page 9. That begins where it says page 9 at the last paragraph.

The punishment of those who wage war against Allah and His messenger: Surat Al-Maidah: "For this reason we had preescribed to the children of Israel that whoever slays a soul, unless it be from manslaughter or from mischief in the land, it is as though he slew all men; and whoever keeps it alive it is as though, he kept alive all men; and certainly our messengers came them with clear evidence but even after that many of them certainly acted extravagantly in the land.

The punishment of those who waged war against Allah and his messenger and strive to make mischief in the land is only this, that they should be murdered or crucified or the and their feet should be cut off on opposite sides or they should be exiled from the land.

This shall be as a disgrace for them in this world and in the hereafter they shall have a grievous chastisement except those who repent before you have them in your power; so know that Allah is forgiving, merciful.

Oh you who believe do your duty to Allah, seek the means of reapproach unto him and strive hard in his way that you maybe successful.

Skipping one paragraph.

The punishment of those who wage war against Allah and his messenger: Surat Al-Anfal.

"Surely, the worst of animals in Allah's sight are those who rejected Him: Then they would not believe. Those with whom you made an agreement, then they break the their agreement every time and they do not guard themselves against punishment.

If you gain the mastery over them in war, disperse with them those who follow them, that they may remember. And if you fear treachery on the part of a people, then throw back to them on terms of equality. Surely, Allah does not love the treacherous. And let not those disbelieve think they come in first; they will never frustrate them.

And prepare against them what force you can and horses tied at the frontier, to frighten thereby the enemy of Allah and your enemy and others beside them whom you do not know but Allah knows them; and whatever things you will spend in Allah's way, it will be paid back to you fully and you shall not be dealt with unjustly.

And if they incline to peace, then, incline to it and trust in Allah surely, He is the Hearing, the Knowing. And if they intend to deceive you, then surely Allah is sufficient for you; it is He who strengthened you with His

help and with the believers, and united their hearts. Had you spent all that is on the earth, you could not have united their hearts, but Allah united them. Surely, He is mighty and wise. O prophet, Allah is sufficient for you and whoever followed you of the believers. O prophet, urge the believers to war; if there are twent patient ones of you, they shall overcome two hundred. And if there a hundred of you they shall overcome a thousand of those who disbelieve, because they are a people who do not understand.

For the present, Allah has lightened you task for He knows that there is weakness in you. But if there a hundred of you, patient, they will vanquish two hundred,and if there are a thousand, they shall overcome two thousands by Allah's permission and Allah is with the patient ones. It is not fitting for a prophet that he should have prisoners of war until he has subdued the land.

You look for the temporal goods of this world; but Allah desires for you the hereafter; and Allah is mighty, wise. Had it not been for a previous ordainment from Allah, a severe penalty would have reached you for what you had taken to.

Eat then of the lawful and good things which you have acquired in war and be careful of your duty to Allah; surely, Allah is forgiving and merciful. O prophet say to those who are captives in your hands; if Allah finds any

good in your hearts, He will give you something better than what had been taken from you. And he will forgive you; for Allah is forgiving and merciful. And if they want to betray you, they had already betrayed God, but He gave you mastery over the, and Allah is knowing, wise.

Surely, those who believed and immigrated and struggled hard in Allah's way with their property and their souls, and those who gave shelter and helped, these are guardians of each other; and those who believed and did not immigrate, you owe no duty of protection to them until they immigrate. And if they seek aid from you in the matter of religion, aid is incumbent on you except against a people between whom and you there is a treaty."

Skipping down to the bottom of the page where it says page 11.

Even if this will have its long period to change the hearts of the Muslims. And we ask almighty Allah to help us during his state.

The circumstances that existed through the era of Allah's messenger on whom God has blessed, and between our current circumstances, is that during the messenger's era there are two types of people, believing Muslims and nonbelieving.

And even the Muslims during his time were classes: The believers the ordinary Muslim, the hypocrites

but the believer's group was the largest and the predominant group.

This also was the case in the era. But the difference is the big number of the ordinary Muslims in our era now. Therefore, and as Allah's messenger did which is gathering the believing group in one space to expand the area through this point.

The believers must do the same work, which is to gather together for the purpose of working from one point, one place. Everyone in his country.

Remarks: Purifying the soul. As an example: The stingy people of the village and the way they solved their problem is mentioned by Sheik Lashin Abu Shanab.

Allegiance to God and devotion of all efforts for the sake of Allah using everything in the light for the sake of obeying God. Uniting for one goal and by one mean. Work must be done to studied experience. The Islamic ability must be a knowing degree for its geographical and technological reality. And to work through it through the framework of Islamic supporters and imagination in all the spheres of life.

Reading now from page 12. Before announcing the establishing of the state of Ibrahim in our holy land immediately before that, break and destroy the enemies of Allah. And this is by means of destroying exploding, the

structure of their civilized pillars such such as the touristic infrastructure which they are proud of and their high world buildings which are they are proud of and their statues which they endear and the buildings which gather their head their leaders, and without any announcement for our responsibility of Muslims for what had been done and therefore, the enemies of God will be busy in rebuilding their infrastructure, and rebuilding their morale, and they will not care much about what goes on around them more than they care about rebuilding their morale and therefore, the chance will be available for the Muslims to repossess their sacred land in the hands of the enemies of God. The traitor and the hypocrites who will be at this moment the very psychological weakness for what they see around them and this is because the forces on which they were depending were crushed into pieces and are in tragic collapse. That's it for this document, Judge.

MR. STAVIS: Your Honor, may I be heard briefly at the sidebar?

(Continued on next page)

(At the sidebar)

THE COURT: Yes.

MR. STAVIS: Your Honor, as part of his reading Mr. Fitzgerald read from Surat al-Maildah and Surat al-Anfal. A Surat means a chapter of the Koran and I would ask the Court to take judicial notice of that and to instruct the jury that Surat are the designations for chapters of the Koran.

MR. FITZGERALD: I don't object if they're told which paragraphs are Surats, we can go back to the page and say that's a Surat, it's a chapter for the Koran.

THE COURT: Okay.

MR. FITZGERALD: But not page 12 what we just read.

MR. STAVIS: That wasn't a Surat.

MR. FITZGERALD: Okay.

(Continued on next page)

(In open court)

THE COURT: The government portions that were read from this exhibit, which page --

MR. FITZGERALD: Page 5, referring to page 8 and page 9.

THE COURT: It was on page 5 of the transcript referring to page 8 of the notebook begins with the phrase from Surat al-Maildah. That is a portion of the Koran.

MR. FITZGERALD: The same for page 6, your Honor, where it refers to Surat al-Anfal.

THE COURT: The same again for page 6 where it refers to Surat al-Anfal. Surat is a portion of the Koran, and you are so instructed.

MR. FITZGERALD: Your Honor, may we clarify what is not from the Koran?

THE COURT: What is not designated as a Surat is not from the Koran.

MR. FITZGERALD: Thank you. Turning to Government Exhibit 77 which is a booklet with diagrams which actually perhaps we'll look through after we read just a minor portion of the translation which is 77T.

Looking at the transcript marked 77T the title is Afghan Refugees Service Booklet and looking at the bottom of the first page of the transcript it says the title

manufacture of primary ingredients needed to demolish any building.

At page 1 of the transcript, turning to page 2 the first, the second paragraph under ML number 5 it says:

The manufacture of primary ingredients needed to demolish any building. This type is perfect for demolishing closed areas like rooms and building, and then it lists ingredients needed: Flat tin can with a diameter of eight centimeters, height three and three quarters centimeters. The appropriate can is a tuna can, size six and a half ounces, and continues.

Turning to the next page of the translation second paragraph it says title, the chemical fire bottle Molotov crossed out. And then the next paragraph is a bottle that ignites when it breaks against the target. Diagram ingredients needed. Sulfuric acid taken from a battery.

Benzine.

Potassium Chlorate.

Sugar.

A glass bottle with a top, one liter.

A small glass bottle or jar with a top.

Piece of cloth or paper napkin.

Wire or string.

And picking up at the very bottom of the page the

last four words, how to use it, turning over to page 4 shake the bottle to make the contents, and skipping down three lines when you throw the bottle on any hard target it will ignite.

Skipping down to the next paragraph after page 21, explosive of Benzine Nitrate a matter of oil.

It is very --

MR. STAVIS: Your Honor, can the prosecutor just slow down a little bit?

MR. FITZGERALD: I apologize.

MR. STAVIS: Where are you?

MR. FITZGERALD: Page 4 of the transcript referring to page 21 of the original item, which is the second full paragraph. If says explosive of Benzine Nitrate and then when it says ingredients needed.

Nitric acid concentration 90 percent specific gravity 1.48. And it says Benzine Nitrate anti-acid container glass or porcelain, anti-acid metal or wooden rod, blasting cap, wax, metal pipe closed from one end and a cap for the other end, a bottle or jar.

Skipping to the next page, page 5 at the very top, part 6, number 3, cigarette to delay ignition. You can make a cheap delay by means of a simple cigarette. Ingredients needed: Cigarette, matches or paper match, string, fuse, method:

Cut the end of the fuse as such to expose a large portion diagonally. Light the cigarette in the usual way, with the paper match as such as the head of the match will be on top of the exposed part of the fuse and wrap both with a string, paper match plus the fuse, with a lit cigarette by means of the string.

Put the lit cigarette and the fuse of one side as such that the ignition will be easy going. As a suggested means hang the fuse of piece of wood is indicated in the diagram:

And then the title of the next section, title: A hand pipe bomb.

Turning to page 6 of the translation second paragraph title: The nail bomb which reads: You can make a shrapnel bomb by means of dynamite block and nails. Ingredients needed: A block of dynamite or any explosive material, nails, blasting cap, fuse, tape, string wire or glue.

Skipping down three paragraphs title, manufacturing a nine millimeter pistol. Manufacturing a nine millimeter pistol. You can manufacture a nine millimeter pistol from a quarter inch steel pipe or water pipe, and other things.

There is no further reading from that document, your Honor.

MR. STAVIS: Your Honor, may I be heard at the sidebar?

THE COURT: Yes.

(Continued on next page)

MR. STAVIS: Your Honor, I would like to read two small paragraphs under Rule 106, because I believe it places the document in context.

THE COURT: Go ahead. The same document.

MR. STAVIS: Yes.

(Continued on next page)

(In open court)

MR. STAVIS: If you would be so kind as to turn to page 1. Below the title which reads Afghan Refugees Service Booklet, the booklet contains directions on the making and use of home made weapons. Some of the pages are duplicates. Some appear to be missing and many were out of their natural order. Mujahideen services office. The top of cover also cites the opening verses to many of the Koran Surahs -- in the name of Allah the beneficent and the merciful.

I now ask you to turn to the top of page 2. This page deals with the construction of a small explosive device utilizing common items such as a tuna can, a nail, a wooden rod, aluminium null metal shavings and a blasting cap. The instructions detail how to assemble the explosive complete with drawings.

Thank you, your Honor.

MR. FITZGERALD: I just need to read one sentence in response. At the top of page 3 at the end of the first paragraph. It says: This charge is able to ignite the container. It is able to demolish two thousand cubic feet of any construction which is ten by twenty by ten feet. Remark: To demolish a bigger size use a bigger amount.

Now, moving ahead to Government Exhibit 78 this is the book entitled explosive traps in English, and the

transcript is 78T reading at the first page of the translation to the booby traps it says booby traps in Arabic closed caps in English.

In the name of God the compassionate the merciful, booby traps. It is creative imaginative method aimed at planting charges against personnel or against equipment or bombs against the enemy exploding them by themselves when he goes about routine activities or normal movements without his noticing when he is around them, after we are at a sufficient distance from the scene of operation.

It is important that these methods have regard for appropriate place, appropriate time and normal human behavior of the opponent with reliance or adaptation and continual creativity.

And it is not allowed at any time that any person carry out the actions in this procedure after being made completely sure of the use of explosives and mines in the various procedures because some of these types are very dangerous and sensitive and require a large degree of knowledge and attention.

Also, do not forget that our enemy will use these methods against us, too, so we must have complete vigilance without fearlessness or complacency at any moment except after complete sanitization of the area and among the most important concerns in carrying out element of surprise we

make sure that we make the choice of the appropriate type of key which will cause in the opponent a moment of carelessness during which explosion of the planted charge will occur.

Always remembering the need to remove any trace of our work where present in any area where charges are present that we don't forget any tools or pieces of electrical wire or pieces of adhesive tape.

Turning to page 3 of the translation the bottom paragraph, which corresponds to a diagram in the original it says page 9.

When leaving the automobile set up the circuit starting the motor, turning the shaft with a string on it pulling it and closing the circuit.

Turning to page 4 of the translation. Refers to page 10. The pressure trap. When pressure on the two pincers of the clothes opinion completes the circuit.

Turning ahead to page 6 at the top, pressure trap. When a car moves on to the clothes pin it causes completion of the electrical circuit.

Turning one page to page 7. Tension release trap, the mouse eats the piece of meat the closed retention is released when the circuit is completed.

Moving down to the third paragraph from the bottom, timed trap. When the clock reaches the designated

time the alarm button turns with the string tied to it and pulls the string and also pulls the circuit switch in closing it.

Moving to page 8.

The fourth paragraph refers to page 23. Toothpaste tube trap. We put battery inside. We connect the battery by wire, the inside of the tube. Then we connect the other end of the wire, the detonator located in the opening of the tube, and we attach the end of the other wire, the detonator to a piece of metal in the shape of a sideways capital letter H.

When there is pressure on the outside of the tube the circuit is actuated.

Turning to page 10. At the top. Page 29. Bed trap. There are two ways to blow up a bed. The first and they are set up on a slant; explosive substance ordinary detonator, blow torch igniter. The second; and they are set up on a slant; explosive substance, electric detonator, battery, mercury switch.

1. As far as the first method of exploding is concerned explosive substance is placed in the bed as is placed in the accompanying picture, and the detonator is attached to the explosives with the pull igniter. Then we connect it by means of the pull wire. When a person lays down or sits on the bed the explosion is set off by the

puller.

2. Concerning the second method of exploding it is based on closing electric circuit as is set up in the second picture below.

Skipping down a paragraph, page 30. Book trap. Here we have the objective of catching the eye and gaining the attention as with a cover that looks important or beautiful.

We place the charge inside the cavity. We make of the pages of the book as is shown in the picture. Then we attach the detonator and the batteries and connect the ends of the wire to liquid mercury switch. We fasten it with the cover of the book.

And, finally, the next to last paragraph, page 31, chair and sofa trap. Trap method that may be done by electrical or nonelectrical method likewise, the normal method like used to explode the bed. Electrical method by depletion of the circuit for the necessary materials are electrical detonator, explosive substance, liquid mercury and switch.

Your, at this time I just ask the jurors just to look through Government Exhibit 78 which is the original document with the diagrams.

(Pause)

Skipping ahead to Government Exhibit 80 and 80T.

80 has written English. Nitromethane lead azite, sodium nitrate crossed out potassium chlorate. And 80T has written as follows: Nitric acid, 90 percent concentration density 1.48. Skipping over 81, the transcript marked 82T.

THE COURT: The people need to switch volumes.

MR. FITZGERALD: 82T is the transcript 82 and 82T are the first items in the next book. Just reading the title on the first page of 82T, title: Storming a building, this method is used by the anteterrorist units when storming a building. Then the title below, storming building, room storming. First using three persons, second using four persons. What to do if the door was locked. How to land a group. How to come down from the roof and storming the room and on the second page. Storming and airplane.

Then on page 3 includes specifications of modern Russian weapons. And page 4, the title is reconnaissance missions and patrol base: And then we move on to 83 and 83T.

MR. STAVIS: Your Honor, may I make additions or should we go through 83 first and then come back?

THE COURT: I'm sorry.

MR. STAVIS: May I make certain additions or should we go through 783 first?

THE COURT: Are you reading from documents he just read a portion of?

MR. STAVIS: Yes, your Honor.

THE COURT: You can do it right now.

MR. STAVIS: Starting on page 1, how to land on roofs which is towards the middle of the page. Under 1.

MS. AMSTERDAM: Which exhibit?

MR. STAVIS: 82T. First it says using a helicopter. On page 3 at the top of the page it says title: Chinese 82 millimeter mortar. In the middle of the page it says title: Specifications of modern Russian weapons, assault rifles, specification of modern Russian weapons assaults rifles. Then it says, automatic rifle Kilokhov M1981, and then it sales automatic rifle Kalishnokof AKM-M47-M43.

On page 4 it says title: Reconnaissance missions. Patrol basis is a place which is established when a patrol will be stopping for a long time. Important notes in setting up patrol bases restrict the movement in camp to a individual being discovered by the enemy. Hide the forces for a while until the reconnaissance information about the target is studied. Prepare food, rest, take care of equipment and weapons after a long trip. Prepare final plans and give out the necessary orders before engaging the enemy.

After working on the enemy targets organize the patrol into small group used as offensive point. Use a

fixed base to launch operations against the enemy. Assault or recon.

That's all, your Honor.

MR. FITZGERALD: Skipping ahead to Government Exhibit 95 and 95T. And for 95T rather than read it I'll ask the jurors to skim it for a moment, and then I'll point out two sections.

(Pause)

Now turn to page 3. The first big paragraph on the page reads, there is a group called the group of six which consists of six elite officers from the Egyptian police special forces. Their task is to storm and confront during assault operations, and to prepare the theater of operations for the rest of the joint forces by blunting any resistance or adversarial attacks.

They are nicknamed "cannon's front," they ride in a white microbus and are called the "suicide squad," and they consists of.

1. Lieutenant Colonel Sayyid or Sa'id Salem.

2. Lieutenant Colonel Omar Al-Kharfi.

3. Fikri.

4. Major Safwhat.

5. Captain Muhammad Abel Hamid Mansour.

And it is headed by General Samir Fouad. This group has participated in thwarting all terrorist operations

in Egypt during the past years.

Now, going back to page 2 under the entry in the middle of the page that says ministry of Interior Minister of the Interior Zaki Badr 6 12/2/1989.

Now moving ahead to Government Exhibit 96 and 96T. 96T is entitled in the name of Allah the merciful the most compassionate. Statement about the attempted assassination of Zaki Badr, thank Allah the God of the weak, the supporter of the strong and peace and blessings from the Prophet of grace his family and his companions henceforth as a punishment and a revenge for the honor of those that were abused, the blood that was shed, the bodies that were tortured, the people that were in prison, the mosques that were violated and that were silenced, before and after the act of doing the supporter of the weak, God's will, we ask for forgiveness from the almighty for all that and other things. The martyrs battalion in Muslim Egypt and at attempt at executing God's will, Egypt's arrogant tribunal. Zaki Bada who by exercising his inhumanity turned Egypt into a prison and a big concentration camp.

The man has killed tortured and left homeless. He made many mothers grieve when their children, many women widows, he caused many women to abort, turned many children to orphans. Many peaceful villages were attacked and abused by him. He humiliated many people. Even the unions

establishment judges and the orders were not paired from his arm. Why not when he never heeds any of God's laws. Meanwhile he saw his master approaching with him to supporting him. He went on spreading his corruption on earth without any accountability to conscience or law. Therefore, the martyrs battalion declares that his attempt came as an answer after it was legitimatized by the religious jurors to cry from all walks of Egyptian people and its political powers. If the martyrs battalion also declares that this action is a message directed to Egyptian regime and whoever supports it. Take your hand off the Egyptian muslims. Those who are acting like the tyrant will not be able to bend the strength and the will of that nation. Neither will the policies inflicted on the Egyptian regime accept losses and the desolations.

This is an apology and a warning. Unless you listen what happened will happen again. With Allah's help. This is just the tip of the iceberg. Those who treat us with injustice they will miserably fail all, and Allah is most powerful. Signed the martyrs battalion in Muslim Egypt.

MR. STAVIS: I would just ask that the jury review Government Exhibit 96. That was 96T that was read, just very briefly, your Honor. In the name of Allah the merciful the most compassionate statement about the

attempted assassination of Zaki Bada. Thank Allah the God of the weak, the supporter of the strong, and peace and blessings on the Prophet of grace, his family and companions.

MR. FITZGERALD: Moving ahead to 97T, looking at the first page of 97T is a reference to the plastic charge for filling. You can make it from potassium chlorate and vaseline. Materials required: 1. Potassium chlorate. 2 vaseline. 3. Round sticks. 4. A large container for mixing the mixture.

Source for obtaining: A. Drugs, medicine. B. You can make it from matches. A. Drugs, medicine. B, the lubrication (facility).

Moving ahead two pages, page 3 of the translation right about the middle of the page where it says title: Goals in guerrilla wars, or as it is called the irregular war, it makes good sense not to use military ammunition, that the police forces use for important purposes. It is therefore important to make this ammunition at home, and also this book will help in making this explosives and ammunition using what is available locally.

Without doubt items made in factories is better than items made by hand, but items made in factories is not readily available for many reasons. Therefore a person must depend on substances that could be bought from shops,

pharmacies or drug stores. Also, most of these substances or items can be carried without suspicion because people carry these items as part of normal and daily routines.

2. Security and safety: All items for manufacturing were studied closely to assure security and safety, and most of the substances that causes accidents were kept away but still security and safety must always be in mind when dealing with the mentioned substances. Caution is asked and, second, all items and instructions must be prepared closely and in sequence before starting work. The most important in the work is going step by step, in preparing explosive. Propellant, firing devices. It is important to keep all items in a clean place, being careful not to make any sparks, or contact with the items or dropping or having any hot or chemical reaction or using violence or pressure. The substance produced must be tested using a small quantity in a deserted area. That is before using all the items produced. Now looking ahead to 111.

MR. STAVIS: Just another portion, briefly, your Honor. On page 4 types of patrols: There are two types of patrols-combat patrols and reconnaissance patrols. The fundamentals are described. The formation of patrols: It is comprised of navigational, intelligence, the detail, and command elements. These functions are described. Heat stroke. There are two types of heat strokes: Heat cramps

and heat exhaustion. The symptoms are described and treatment is given. Continues on the subject of first aid. It deals with heat stroke, its symptoms and treatment.

THE COURT: We are going to take a short break, ladies and gentlemen. Please leave your notes and other materials behind. Please don't discuss the case and we'll resume in a few minutes.

(Jury not present)

(Recess)

(In open court; jury present)

MR. FITZGERALD: Thank you, Judge.

The next item will be Government Exhibit 111 and 11T is the transcript which follows the two-page diagram. It reads as follows: Method of manufacturing. Mercuryfulminate is made of nitric acid ordinary mercury plus alcohol. Lead azide is made of picric acid, the white cream for cleanses burns or wounds. Bomb. Nails slash rivets, explosive charge, detonator. Below that. Sack with black powered placed in it. Detonator, rocks, cloth. Making a mortar launcher, water pipe slash water main.

On the next page, explosive material, plastic charge Potassium Chlorate 9, plus vaseline 1. Medicine for cleansing. 2. Explosive material black explosive, black powder. Potassium nitrate, chemical fertilizer plus charcoal plus the detonator, plus yellow sulphur, plus white

alcohol.

3. Explosive material, fertilizer charge, aluminium nitrate fertilizer, fertilizer, plus oil, any type plus gasoline, a small six to seven inches, put the charge in it and put packing in it to make a bigger. 4. Cellulose explosives, nitric acid, plus clean paper, plus clothing. The detonator. Lead azide mercuryfulminate.

Skipping to 114 and 114T. 114 reads nitro methane, lead azide, lead azide, potassium chlorate. 114T reads potassium chlorate nitric acid, 90percent, concentration, density 1.48, any promethane, lead azide Potassium Chlorate. 120 and 120T is the next exhibit and the last one in this book. 120T reads potassium chlorate, 90 percent strength Nitric acid density 1.48.

There is only one other item within a different book and that's Government Exhibit 54, 54T.

Government Exhibit 354 and 54T are probably in the book with the blue dot on it. It should be the first item in the book. 54T is just before the exhibit tab.

If you turn the notebook all the way over there is only two pages left before the translation and that's where we'll start 54T if we turn to the second page there is a reference to page 1606 where it reads.

1. When he exits from the car to the store.

2 block him between two cars front and back and approach him while in his car.

3. Standing beside him in the car and firing upon him; one of the brothers advancing towards (illegible)

4. Create an accident, one brother hit him from the back and when he goes down to see what happened to his car; he carries out the job.

Then I ask the jurors to turn to page 160 Government Exhibit 54 the page numbers are written on the bottom page 160. Page 160 has a partly legible marking in the lower right corner but at the top of the page it says page 1606 notebook on an FBI latent fingerprint section sticker.

Having looked at that, Judge, I have nothing further from the exhibits, and we are prepared to call the next witness. The government calls Mary Ellen Aranow.

MR. STAVIS: Your Honor, while the witness is coming out may I be heard at the sidebar with Mr. Fitzgerald?

THE COURT: Yes.

(Continued on next page)

(At the side bar)

MR. STAVIS: Your Honor, I have been provided with a list of witnesses and their potential testimony. Under Mary Ellen Arnow, it says, "Took complaint from Martina Figueroa regarding stolen license plates.

Ms. Figueroa has previously testified concerning the stolen license plate and reporting it. It would seem to me that it was hearsay. If now we are going to have the other side of the transaction, which is the report being given to this person who is going to come and testify --

THE COURT: I assume it is just to establish the date?

MR. FITZGERALD: Yes, Judge.

MR. STAVIS: The date?

MR. FITZGERALD: I am going to try to elicit through prior recollection recorded the date she reported it and the date she noticed it missing as to what Ms. Figueroa reported to her, and the license plate number.

Your Honor, the letter brief that we submitted the other day dealt with this issue. I know Mr. McCarthy briefed it. I know it is a prior recollection recorded. I am not offering it as a business record. It is her duty to write it down. She writes it down when it is fresh in her mind and those entries are recorded at the time.

THE COURT: All right.

(In open court)

MARY ELLEN ARNOW,

called as a witness by the Government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Ms. Arnow, if you could lean forward and speak into the microphone and keep your voice up so everyone can hear you.

Could you tell the jury what you do for a living.

A. I am a police administrative aide.

Q. For how long have you been a police administrative aide?

A. Eight years.

Q. Directing your attention to November of 1990, where were you assigned as a police administrative aide?

A. 120 Fordham, 7-2 Precinct.

Q. Is that in Manhattan or Brooklyn?

A. Brooklyn.

Q. As part of your assignments as a police administrative aide, do you ever have occasion to take reports of stolen cars or stolen license plates?

A. All the time.

Q. Do you have any specific recollection of taking any particular report in November of 1990?

A. No.

Q. What do you do when someone comes in to report a stolen license plate?

A. The last time they saw their automobile with the license plate on it.

Q. Is that what you ask them?

A. Where it was parked or where was it at the time that you noticed it.

Q. You ask them where the car was parked and when they last noticed the plate on it?

A. Yes.

Q. Anything else you do in the process?

A. Proper identification.

Q. Anything else you ask?

A. If you have the proper identification, that is all I need to know.

Q. Do you fill out reports once you conduct this interview?

A. Yes.

Q. Is it part of your job duties to fill out those reports?

A. Yes.

Q. Let me approach you with a copy of what's been premarked as 3557C and 3557E for identification.

Looking at 3557C, can you just tell us generally

what that piece of paper is.

A. It is a complaint report.

Q. Do you know who filled that piece of paper out?

A. Yes, I did.

Q. Was that filled out in connection with the report of a stolen license plate?

A. Yes.

Q. Looking at 3557E, can you tell us generally what that item is?

A. You go down to the motor vehicle department with this to replace your stolen license plate. You need this identification.

Q. This particular document, this is a copy, but who filled out the original?

A. Myself.

Q. Does your signature appear on that page?

A. Yes, it does.

Q. At the time that the person who came to see you -- at the time you filled out this document, was the name of the person reporting the license plate fresh in your mind?

A. I don't know this person.

Q. Excuse me?

A. I don't remember taking this report.

Q. As you sit here today, you don't remember taking

that report?

A. No.

Q. At the time you wrote out the report, whenever it was dated, did you know the person who was --

A. No.

Q. Had you sought their identity by asking identification? Did you know their name at the time you filled out the report?

A. Yes, only by them giving me the identification, so I know.

Q. Did you fill it out the day the person made the report to you?

A. Yes.

Q. Did you fill out on that form the day they told you they first noticed their license plate missing?

A. Yes.

Q. Did you put down on the form the numbers and letters on the license plate that they had reported stolen?

A. Yes.

Q. You did that when it was fresh in your mind?

A. Yes.

MR. FITZGERALD: Your Honor, I would offer the entries on 3557E as to the license plate, the state of registration, the date the report was made, the date it was reported noticed missing, and the name of the person making

the report.

MR. STAVIS: I have no objection, your Honor.

THE COURT: All right. Those entries from 3557E may be read. The exhibit itself is not received.

MR. FITZGERALD: Thank you, Judge.

Q. The plate number, KNR 211. Registration, New York. Date lost or stolen, 11/4/90. Date reported to police, 11/7/90. Name of registrant, Figueroa, Martina.

Is that accurate, Ms. Arnow?

A. Yes.

MR. FITZGERALD: I have nothing further, Judge.

THE COURT: Any cross?

MR. STAVIS: I have no cross-examination, your Honor.

THE COURT: Anyone else?

Thank you very much, you are excused.

(The witness was excused)

MR. FITZGERALD: Your Honor, the government calls detective Tom Corrigan as its next witness.

THOMAS CORRIGAN,

called as a witness by the Government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Detective Corrigan, how are you employed?

A. I am a New York City detective.

Q. What is your current assignment?

A. The Joint Terrorist Task Force.

Q. How long have you been with the Joint Terrorist Task Force?

A. Since July of '85, 1985.

Q. Directing your attention to December 28, 1993, did you obtain some items from an apartment on that date?

A. Yes, sir, I did.

Q. Where was that apartment located?

A. 115 Fairview Avenue, Jersey City, and it was Apartment 46.

Q. Why did you go to pick up some items on that date?

A. I was directed by Abdul Rahman Haggag.

Q. Do you know what Mr. Haggag's connections were to that apartment?

MR. JACOBS: Objection.

THE COURT: Sustained.

Q. Was Mr. Haggag there on December 28, 1993 when you went to pick up the item?

A. No, sir.

Q. Who was there?

A. An individual by the name of Mahir Mahfouz.

Q. Do you know who Mr. Mahfouz was?

MR. JACOBS: Objection.

THE COURT: Sustained.

Q. What happened when you went to the apartment?

A. Mr. Mahfouz was aware that we were coming to --

MR. JACOBS: Objection, move to strike.

THE COURT: That is stricken. Don't tell us who was aware of what. He asked you what happened. Tell us what happened.

A. I went to the apartment that day to pick up personal property belonging to Mr. Haggag.

Q. What happened when you arrived?

A. We arrived at the apartment, the property was laid out in the middle of the apartment. It consisted of boxes, I believe a duffel bag, as well as a suitcase.

Q. What did you do with those items?

A. Removed them from the apartment and returned them to the FBI building at 26 Federal Plaza.

Q. What did you do with these items when you returned them to the FBI headquarters?

A. Brought it to our evidence room which is a locked security room.

Q. Did you go through the items at all?

A. Yes, sir, I did.

Q. What did you do with them?

A. At that point we just logged them into the

evidence room. Subsequent to that, I removed them for translations, some articles.

Q. I'm sorry. Some --

A. Some articles I removed for translation.

Q. What articles did you remove for translation?

A. Audiotapes.

Q. Did you identify the audiotapes in any way?

A. Yes, sir. I made some markings on them.

Q. What kind of markings?

A. They were --

MR. JACOBS: Objection.

THE COURT: Overruled.

A. They were numerical markings.

Q. You numbered them?

A. Yes, sir.

Q. During the time that you had them, where did you keep them, the audiotapes?

A. They were in the locked security room.

Q. Who has access to that room?

A. At that time, there was one key that had access to that room. That was either myself, Special Agent Christopher Voss, Special Agent John Liguori and Special Agent John Sorge had access to that room.

Q. Did you remove them at any time?

A. Yes, sir, I did.

Q. For what purpose?

A. For the translations, sir.

Q. Where were those translations done?

A. At the FBI building --

MS. STEWART: Objection.

THE COURT: Overruled.

A. At the FBI building at 26 Federal Plaza.

Q. Did they ever leave the FBI building?

A. Yes, sir, they did.

Q. When?

A. I don't know the date, but they were brought over to the Southern District of New York.

Q. The U.S. Attorney's Office?

A. That's correct.

Q. Detective Corrigan, let me show you what's been marked as Government Exhibits 801 through 807 for identification and ask you to take a look at them.

Do you recognize those?

A. Yes, sir, I do.

Q. What are they?

A. Those are items that I took out of Mr. Haggag's residence.

Q. How do you recognize these as items you took from the residence?

A. By the numerical markings.

Q. Are those markings in your handwriting?

A. Yes, sir.

Q. Are they on every tape?

A. Yes, sir.

Q. Have you had a chance to review those prior to your testimony today?

A. Yes, sir, I have.

MR. KHUZAMI: Your Honor, at this time I would move into evidence Government Exhibits 801 through 807.

MS. STEWART: May I have a brief voir dire, Judge.

MR. JACOBS: I would like a side bar, too.

THE COURT: Why don't we start with a side bar.

(Continued on next page)

(At the side bar)

THE COURT: Let me shorten this. As far as I can tell from the current state of the record, we have him visiting an apartment as to which there is no competent proof as to whose it was, picking up material as to which there is no competent proof as to who it belonged to. Based on that, I don't see offering it, other than to establish that he picked it up from that apartment on that date, which as far as I can tell is not in issue.

MR. JACOBS: That is correct, Judge. It is not an issue. It is just what you said he did.

THE COURT: Thank you.

MR. KHUZAMI: I can solicit that these items were in the possession of Mr. Haggag, but they can come in evidence --

THE COURT: You can solicit. I mean, as the Bard said, "I can call spirits from the vasty deep, but will they answer?" He can't testify.

MR. KHUZAMI: He will.

THE COURT: He will answer. I am sure he will. But it is not competent. He can't testify as to Mr. Haggag. Mr. Haggag can testify to that, or somebody else who saw it in Mr. Haggag's possession. He can't testify that Mr. Haggag told him that they were his because that is, as we say, hearsay.

MR. KHUZAMI: They can still come in as the items that he picked up that day and then subsequently had translated subject to connection that they belonged to him.

THE COURT: Subject to connection. The tail comes in subject to it being established that there exists a dog. But that doesn't get you at all there. Let's put it this way: An offer of these subject to connection is meaningless. When you make the connection, offer them. They can cross-examine, I suppose, on --

MR. KHUZAMI: I am not sure. What is the relevance of who they belonged to?

THE COURT: I suppose that depends on what the relevance is as to this case.

MR. KHUZAMI: If they are tapes that based on their content when they are translated or authenticated as to a speaker who is on a particular tape, then who owned a particular tape doesn't seem to --

THE COURT: That is a different story. Who is on the tape?

MR. KHUZAMI: Sheik Rahman.

THE COURT: That is a whole different thing.

MS. STEWART: But he doesn't know that.

MR. KHUZAMI: He doesn't need to that know that. It is on the tape.

MS. STEWART: It doesn't make it admissible.

THE COURT: If it is your client on the tape, and the tape is not tampered with, I mean, it is a real tape of your client, then who it belonged to or didn't belong to is irrelevant.

MR. KHUZAMI: A translator has already identified in testimony that it is Sheik Rahman.

MR. JABARA: How would he know that it was Sheik Rahman?

MS. STEWART: That is a different question.

THE COURT: It is a different question.

Did you plan to play these today?

MR. KHUZAMI: We planned on it. I don't think we are going to have time, but we plan on reading it tomorrow.

THE COURT: Is there anything else to be done through this witness?

MR. KHUZAMI: Three questions on where 831 Second Avenue is, what the cross streets are.

THE COURT: That is a different subject.

MR. KHUZAMI: Right.

THE COURT: Why don't you ask those. We can hassle about these at relative leisure. Unless, as you say, they are self-authenticating, then where he picked them up from it seems to me is irrelevant. Let's get to the other stuff.

(Continued on next page)

(In open court)

Q. Detective Corrigan, have you had an opportunity to visit an address of 831 Second Avenue in Manhattan?

A. Yes, sir, I did.

Q. When was that?

A. This morning.

Q. When you were there, did you identify what the cross streets are, that is, on either side of that location?

A. 831 Second Avenue is on the west side of the street between 44th Street and 45th Street, New York City.

MR. KHUZAMI: No further questions.

THE COURT: Any cross?

MS. STEWART: I have some, your Honor.

THE COURT: Ms. Stewart, representing Dr. Abdel Rahman.

CROSS-EXAMINATION

BY MS. STEWART:

Q. Detective Corrigan, you went to an apartment in Jersey City, is that right?

A. On the 28th, sir -- I'm sorry. Ma'am. Ma'am.

Q. I am a "ma'am," yes.

A. That is the second time I have done that. I apologize. Yes, the 28th of December, Jersey City.

Q. And that was in 1993, is that right?

A. Yes, sir.

Q. You picked up a number of tapes and other materials at that point, is that right?

A. Personal items, ma'am.

Q. Then you checked them into an evidence locker, is that right?

A. That's correct, ma'am.

Q. Did those tapes have any kind of labeling on them at all?

A. Some were written on, most of them were written on, ma'am, yes.

Q. On the tapes next to you as they exist now, is that the same writing that was on them on that date?

A. As far as the Arabic writing, ma'am?

Q. Yes.

A. Yes, ma'am.

Q. Do you read Arabic?

A. No, ma'am, I don't.

Q. So what the about the English writing that is on them right now?

A. Some of the English, the English writing is writing that I have put on or the translators have put on.

Q. That was not on them when you picked them up?

A. No, ma'am. If you could just give me a minute just to review that, so I am not mistaken.

Q. Sure.

A. That is correct.

MS. STEWART: I have nothing further, Judge.

THE COURT: Anyone else?

MR. STAVIS: I have no cross-examination, your Honor.

THE COURT: Any redirect?

MR. KHUZAMI: None, your Honor.

THE COURT: You are excused, thank you.

Ladies and gentlemen, we are going to break for the day. Please leave your notebooks and other materials behind. Please don't discuss the case.

Have a pleasant evening and we will see you tomorrow as close to 9:30 as we can get started. Good night.

(Continued on next page)

(Jury not present)

THE COURT: Now, where are we? Were the translations of these tapes stipulated to?

MR. KHUZAMI: No. A witness testified as to the accuracy of the translations. I believe he testified, although I want to check the record again, that he recognized the voice as that of Sheik Rahman.

MS. STEWART: I am having trouble hearing, Judge.

THE COURT: He said there was a witness who testified to the accuracy of the translations and who he believes identified the voice of Dr. Abdel Rahman.

MS. STEWART: I don't believe so. If he can tell me where that appears in the transcript.

MR. KHUZAMI: We will check the transcript right now. There is also a reference in the transcript to questions -- page 18 indicating that Sheik Abdel Rahman got questions from the floor following a speech indicated in this tape. There is also a reference that it took place at the Abu Bakr Mosque.

THE COURT: This is on page 18 of what?

MR. KHUZAMI: Of 801T2, the transcript that corresponds to one of the tapes.

THE COURT: Where is the point in this trial where that testimony --

MR. KHUZAMI: We are reviewing that testimony

right now, your Honor.

February 2, your Honor. The transcript is of Gamal Abdel Hafez.

THE COURT: I don't have a full set --

MR. McCARTHY: I am just looking for the page identifying the voice.

MS. STEWART: I can't hear what they say. I can't hear what you say.

MR. McCARTHY: I am looking for the page where he identified the voice. The exhibits that were placed before him were identified at page 2142. He identified the voice of the defendant Abdel Rahman on page 2143.

THE COURT: I know there was some cross-examination about voice identification. I didn't recall --

MS. STEWART: Not by me. I seem to remember that the translator was shown a number of documents and authenticated the documents. Mr. Fitzgerald told me he was only going to move one in. He did. That was the tape that was played subsequently for the jury on February 2. But I don't think that anyone was ever cross-examined about the translation. Indeed, we only got a final translation today.

MR. McCARTHY: That is not quite right.

MR. FITZGERALD: Judge, I think I can explain what happened since I asked the questions.

THE COURT: I have my notes. If you have the transcript, I will look at it, and we will see what happened.

MR. FITZGERALD: For counsel's benefit, that is at page 2142.

MR. JACOBS: This is 801T2?

THE COURT: Yes. Those exhibits were shown to him, and he was asked whether the voice attributions were accurate, and he said they were.

MR. McCARTHY: Your Honor, if I could just clarify. We had something come up right before lunch about a change that had been made --

THE COURT: You mean today?

MR. McCARTHY: Yes. A change that had been made in one of the transcripts. As I explained to Ms. Stewart before, we had a transcript that was placed before that witness, which was 801T for identification. That was the transcript where we later found that the words "United States" were erroneously in one of the questions, I think on the next to last page. We have since produced an exhibit which is exactly the same but for those two words, which is 801T2, which is what we plan to put in today.

THE COURT: All right.

MR. JACOBS: May I ask for an offer of proof as to what this is? I am not sure what this is. I ask for an

offer as to -- what is the government introducing this for? I am not sure.

THE COURT: It is apparently remarks by Dr. Abdel Rahman.

MR. JACOBS: Where? When? I don't know.

THE COURT: Mr. Jacobs, sit down.

MS. STEWART: I think as to the where, apparently it does state on the tape that it is at the Abu Bakr. As to the when, I don't think that is, and I don't know whether that is a crucial point in their foundation as to when these remarks were made.

MR. McCARTHY: He's been here since 1990, and it was at the Abu Bakr mosque. So it's got to be sometime after 1990 at the Abu Bakr Mosque, which is during the course of the conspiracies charged in the indictment. We are down, your Honor, to Exhibit 801. We don't contend that the other exhibits, 802 and 807 were shown to the translator at all.

MS. LONDON: I'm sorry. We can't hear you.

MR. McCARTHY: Since the offer through the detective was 801, 802 and 807, I believe, the only --

THE COURT: Those were not shown. The ones that were shown, according to my notes, were in addition to the one that was received at the time, which was 451 he showed him 708, 801, 850 and 851. One of those is 801. That is

the one in issue here.

MR. McCARTHY: Right. He identified it.

I am sorry, your Honor.

THE COURT: He identified it. I am going to receive it.

MR. JACOBS: I would make an objection.

THE COURT: Pardon?

MR. JACOBS: I have an objection.

THE COURT: It is overruled.

MS. STEWART: I would ask for an instruction for the jury that we do not know what date this is, and we also do not know whether the tape is authentic as it is constructed. We don't know whether it is was ever cut, whether it is part of what happened that night, whether it is all of what happened, whether there were additional portions that may have been recorded at a different time. I mean, there is no one to authenticate that part of the tape as being what it purports to be or what the government makes it out to be.

MR. McCARTHY: Your Honor, that all goes to weight, and there were a large number of tapes in this case which were subjected at the defense request to scientific testing. That could have been done here. I imagine it still could be done here if they wanted to do it for their case. But there is no reason, it certainly doesn't cut

against --

THE COURT: I am not going to interrupt receiving the exhibit based on speculation about what an examination might show. If you want to have the original examined, you may. If you want to put on proof, you may do that, too.

MS. STEWART: I am just pointing out that there is an infirmity here when you bring a tape and have someone say, "I found a tape in an apartment, and I can't read Arabic, but I turned it over to the translator, and he says it is the sheik's voice and there is something on the tape that says it is at the Abu Bakr Mosque."

THE COURT: When the sheik's lawyer doesn't cross-examine him about it, you left that part out.

MS. STEWART: That tape was not going in, your Honor, and there are 8,000 tapes, and we did not focus on that tape because we knew it was not going to be offered as evidence at that time. That was the problem. I am focusing on it now, and that is my objection.

THE COURT: I understand your objection and it is overruled. Again, if you want to test the tape and put in proof on it as part of your own case, you may.

There was one exhibit --

THE DEPUTY CLERK: 81, that you reserved on.

THE COURT: The exhibit that I reserved on was 81T.

MR. FITZGERALD: Yes, Judge.

THE COURT: That is out under Rule 403.

Anything else?

MR. FITZGERALD: There were some phone numbers at the top that I would ask to be considered separately. There are some speeches at the bottom.

THE COURT: You want the phone numbers at the top?

MR. FITZGERALD: Yes, Judge.

THE COURT: Does that connect up with something else?

MR. FITZGERALD: Yes.

THE COURT: Subject to connection, the phone numbers are in. Everything after the words "reverse side" in brackets is out unless you connect with something. I can't imagine what that might be. OK?

MR. FITZGERALD: Thank you.

THE COURT: See you tomorrow.

Sorry. One more thing. Mr. Jacobs, you wanted to be heard about CJA vouchers?

MR. JACOBS: Pardon me.

THE COURT: You wanted to be heard on the subject of CJA vouchers?

MR. JACOBS: Can we do that in the robing room on the record?

MR. McCARTHY: Do you want us for that.

THE COURT: Not particularly. I will see Mr. Jacobs alone.

MR. BERNSTEIN: Judge, may I come in on this?

THE COURT: Sure. Whoever wants to.

MR. JACOBS: Sure, yes.

(In the robing room)

THE COURT: We have a big audience for this one.

I am surprised you didn't want to do this out there.

Let me just tell you what the usual drill is on this and what I intend to do. As you know, several members of the free press out there have petitioned for your -- not your particular, but everybody's CJA vouchers in the case, I assume because they want to do some splendid article on how you are going to be rich beyond the dreams of avarice. Maybe not. Maybe it is the opposite kind of article.

In any event, they want to get it. The usual method is for the material to be sent from Washington to me and for me to review it and make sure that, for example, entries on there that might otherwise compromise defense strategy, such as investigators' reports, or sometimes people inadvertently leave in the names of witnesses that they have spoken to and so forth, so that none of that information is disclosed. That is what I plan to do.

I think they are entitled to it under the Freedom of Information Act, and it is the public's business. It is the public's money. Unless you can give me a reason not to, I will be happy to hear you.

MR. STAVIS: Your Honor, my practice in preparing a voucher, I always include worksheets and I occasionally include whose cross-examination I was preparing on a certain date.

THE COURT: I understand. What I think I am going to release is the cover sheet.

MR. JACOBS: That is what I figured.

THE COURT: That gives how much and in general categories for what; that is, in court, out of court, travel and other.

MR. STAVIS: Yes.

THE COURT: If somebody comes back to me and says, well, I want to know some particular detail, then we can argue about that when the time comes.

MR. BERNSTEIN: Are they asking only for lawyers, or are they asking for backup documentation on other people, too?

THE COURT: I don't know. I haven't seen the request. In fact, the information hasn't come up to me from Washington, and I don't know whether they sent the request. I don't know what kind of request it was. I think it was

simply a request for the CJA -- I shouldn't speak. I don't really know.

But, as far as I am concerned, whatever would otherwise compromise any kind of defense strategy should not be disclosed. I am going to resist disclosing that kind of material.

MR. JACOBS: May we have a couple of days to think about any other -- I am just concerned about doing it during the trial. I don't think I would have a problem after the trial. Only because we are on trial, and I don't want it to compromise anything anybody is doing. That is all I am thinking about. I will never give it if it is compromising an ongoing trial or something like that.

THE COURT: It is not going to compromise an ongoing trial. It is a one-day story, Mr. Jacobs.

MR. JACOBS: I know. It is the worksheets I am worried about.

THE COURT: I am not going to disclose the worksheets. That is the sort of thing that can lead to somebody figuring out not only how much effort you are putting into it but what you are directing it toward, and that is nobody's business. It is my business because I have to OK the vouchers, but that should not be disclosed at this time, and I wonder whether it should be disclosed at any time. But, in any event, certainly not now.

MR. JACOBS: OK.

THE COURT: May we go off the record for two seconds.

MR. JACOBS: Sure.

(Discussion off the record)

MR. STAVIS: Thank you, your Honor.

MR. LAVINE: Have a nice night.

THE COURT: You, too.

MR. JACOBS: I asked for a conference on maybe Thursday to go over 3500 on Salem and stuff like that. The government agreed.

THE COURT: Fine. On Thursday?

MR. JACOBS: Anytime. Wednesday, Thursday, Friday. Whenever you get a chance to read through it first.

THE COURT: You mean on the redactions?

(Continued on next page)

MR. JACOBS: Yes. That and some other applications. Unless you have read it, it is difficult to discuss it.

THE COURT: I haven't.

MR. JACOBS: I know, you haven't gotten it.

THE COURT: I will do my homework.

MR. JACOBS: Only because there are things we want to request, and if we know you have read it, it will move it along.

THE COURT: OK. Have a good evening.

(Proceedings adjourned to Tuesday, February 28, 1995 at 9:30 a.m.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,

v.

OMAR AHMAD ALI ABDEL RAHMAN,
a/k/a "Omar Ahmed Ali,"
a/k/a "Omar Abdel Al-Rahman,"
a/k/a "Sheik Rahman,",
a/k/a "The Sheik,"
a/k/a "Sheik Omar,"
EL SAYYID NOSAIR,
a/k/a "Abu Abdallah,"
a/k/a "El Sayyid Abdul Azziz,"
a/k/a "Victor Noel Jafry,"
IBRAHIM A. EL-GABROWNY,
SIDDIG IBRAHIM SIDDIG ALI,
a/k/a "Khalid,"
a/k/a "John Medley,"
CLEMENT HAMPTON-EL,
a/k/a "Abdul Rashid Abdullah,"
a/k/a "Abdel Rashid,"
a/k/a "Doctor Rashid,"
AMIR ABDELGANI,
a/k/a "Abu Zaid,"
a/k/a "Abdou Zaid,"
FARES KHALLAFALLA,
a/k/a "Abu Fares,"
a/k/a "Abdou Fares,"
TARIG ELHASSAN,
a/k/a "Abu Aisha,"
FADIL ABDELGANI,
MOHAMMED SALEH,
a/k/a "Mohammed Ali,"
VICTOR ALVAREZ,
a/k/a "Mohammed," and
MATARAWY MOHAMMED SAID SALEH,
a/k/a "Wahid,"

Defendants.
----------x

S5 93 Cr. 181 (MBM)

February 28, 1995
9:30 a.m.

Before:

HON. MICHAEL B. MUKASEY,

District Judge

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BY: THOMAS H. NOOTER

(In open court; jury not present)

MS. LONDON: Your Honor, I would like to bring to the court's attention a matter concerning a witness that I believe the government intends to call this morning. The witness's name is Joseph Cartamessa. On February 26, the government advised us by letter that this witness would be testifying as to technical aspects of audio and video surveillance of the Queens safe house. We certainly have no Rule 16(c) notification that this is an expert witness, if indeed it is. However, last night I received by fax -- it actually came into my hand about 9:00 last night -- what has been labeled Government's Exhibit 300B, which is a technical diagram of the audio video plan that was established at the safe house. I took a look at it. I had some idea of what was being referring to. It has technical terms that I have no idea of. I have no idea what AG7400's or DDG's are. I did try to contact people experienced in audio visual matters late last night in my office, trying to track this down. Other defense counsel have not received copies last night. I don't believe most of them have. I don't know how we can proceed to cross-examine on these technical aspects without having time to understand what this document is about, your Honor.

MR. McCARTHY: May I, your Honor?

THE COURT: Yes.

MR. McCARTHY: The document is not technically 3500 material of the witness. It was a document that was prepared by other people at the FBI. In preparing for his testimony, it appeared to me that it might be helpful in explaining what the setup was, so I turned it over. It is not really technically discoverable, but I do think it will help him explain to the jury the way the audio was captured in the safe house.

THE COURT: I don't know what the scope of his testimony is. Is he simply going to testify to where cameras and microphones were located?

MR. McCARTHY: Yes.

THE COURT: Or is he going to testify to the capacity of those devices in some technical fashion?

MR. McCARTHY: Essentially his testimony is the audio visual setup of the safe house and the manner in which it was designed to serve the purposes of securing the location and capturing conversations that occurred in the location. What essentially I would have him testify about is that there were five cameras that were set up in the safe house and a series of microphones, and that was monitored from a second location. The document before your Honor basically --

THE COURT: But is he going to be asked to testify to the technical capacity of the microphones to pick

up sounds at a certain level or not at another level?

MR. McCARTHY: Here is what he would say. There were three microphones in the location and the audibility pickup in the location was poor, and the reason that the audibility pickup in the location was poor is because the microphones were not adjusted for sound for particular locations, because of the speed at which sound travels, there was a sort of redundant pickup, and for that reason the audio quality was poor.

THE COURT: Was he the person who chose, say, the AG7400 rather than an AG7500 or 600?

MR. McCARTHY: That is a commercially available --

THE COURT: I am sure it is, but is he the guy who chose the equipment?

MR. McCARTHY: Yes, he is. He is the person who supervised the operation, so ultimately he is the person who chose the equipment.

THE COURT: In that event, he is not testifying until she has had an opportunity to review this with somebody who can review it and propose cross-examination of how come he didn't put in a 7600 or 7200 or whatever.

MR. McCARTHY: OK.

THE COURT: Which I would say is until next week.

MS. LONDON: Your Honor, I understand that there

will be --

THE COURT: I am not saying that his testimony -- wait a second. I am not saying his testimony is necessarily expert testimony. What I am saying is that you may very well need to consult an expert in order to cross-examine him.

MS. LONDON: Your Honor, I believe the court is 100 percent correct --

THE COURT: Don't tell me that, because it is not good for me to hear that.

MR. McCARTHY: Your Honor, he is not a necessary witness. He is somebody who can describe the setup. If we have to defer him, we will defer him.

THE COURT: You do, and you will.

MR. McCARTHY: Yes, your Honor.

THE COURT: Anything else? Let's get started.

(Jury present)

THE COURT: Good morning, ladies and gentlemen.

JURORS: Good morning.

THE COURT: Mr. Fitzgerald.

MR. FITZGERALD: Your Honor, the government calls Detective Richard Picciochi, PICCIOCHI.

RICHARD PICCIOCHI,

called as a witness by the government,

having been duly sworn, testified as follows:

THE COURT: If you can move one of those microphones in closer to you and move closer to it. Thank you.

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Would you tell the jury what you do for a living.

A. I am a New York City Police Department detective assigned to the crime laboratory questioned documents section.

Q. If you could take whatever file you have and just close it and put it to the side.

Can you tell the jury how long you have been a detective with the New York City Police Department?

A. I have been a uniformed member of the service in the police department for approximately 11 years. I was also a civilian member at the laboratory for approximately three years.

Q. What area are you assigned to?

A. I am assigned to the questioned documents section.

Q. Can you describe generally to the jury what your duties are in the questioned documents section?

A. As a documents examiner, I look at handwriting and compare for authenticity such as signatures, writing, printing. I examine typewriting for comparison, altered

documents, obliterated documents, charred documents, development of latent fingerprints, use of special photographic techniques.

Q. Let me approach you with what has been received in evidence as Government's Exhibit 55. I ask you to take a look at that item and tell us whether or not you recognize it?

A. Yes, I do, sir.

Q. How do you recognize it?

A. I recognize this envelope because it has my initials RTP, my shield number 2417, the police lab number 906441 affixed to it.

Q. That exhibit which consists of torn pieces of paper, can you tell the jury what you did with it when you first received it.

A. It was requested of me to assemble these pieces of paper to determine if they were in fact a larger, if they formed a larger piece of paper at one time, and to process the evidence for latent fingerprints.

Q. Let me approach you now with what have been premarked as Government's Exhibits 55A and 55B. Looking at 55A, can you tell us whether or not you recognize what that is?

A. Yes, I do. It is a photograph of the assembled pieces of paper.

Q. If you could not show it yet -- it's not yet in evidence -- did you assemble those pieces of paper?

A. Yes, I did, sir.

Q. Is that a fair and accurate photograph of what the pieces of paper looked like once they were assembled like a jigsaw puzzle?

A. That is correct, sir.

MR. FITZGERALD: Your Honor, I would offer Government's Exhibit 55A.

MR. STAVIS: No objection, your Honor.

THE COURT: 55A is received in evidence.

(Government's Exhibits 55A was received in evidence)

Q. Can you tell us what 55B is?

A. 55B is also a photograph of a transparency representing the questioned writing and also the pieces of paper assembled together.

Q. Is that one word -- it is hard to read what is written but it shows the edges of the paper?

A. It shows the edges of the paper.

MR. FITZGERALD: Your Honor, I would offer Government's Exhibit 55B.

MR. STAVIS: I have no objection, your Honor.

THE COURT: 55B is received without objection.

MR. FITZGERALD: Your Honor, if I could ask the

jurors to look in their books at a copy of Government's Exhibit 55A.

THE COURT: The volume with the dot on the back.

MR. FITZGERALD: I am sorry. It may not be in the books at this moment.

THE COURT: It is not. You have 55T.

MR. FITZGERALD: I am sorry. We will correct that. I apologize.

Q. You mentioned you examined the documents for fingerprints. Did you develop any latent prints of those pieces of paper?

A. Yes, I did.

Q. Let me approach you with what has been premarked as Government's Exhibit 70. If you look at Government's Exhibit 70, if you can tell us whether or not you recognize it?

A. Yes, I do, sir.

Q. How do you recognize it?

A. I recognize it because of the police department ruler on the photograph and the document stamp and my initials and shield number on the back of the photograph.

(Continued on next page)

Q. What is it a photograph of?

MR. STAVIS: Objection, your Honor.

THE COURT: Overruled.

MR. FITZGERALD: Your Honor, I offer Government's Exhibit 70.

MR. STAVIS: May I see the exhibit, your Honor?

MR. STAVIS: May we have a side bar, your Honor?

THE COURT: Yes.

(At the side bar)

MR. STAVIS: Your Honor, at 9:28 p.m. on February 26, we were given a list, which is a current list of witnesses to be called on February 27 and 28. This witness was not named on the list. I had a colleague of mine hand me the 3500 material which evidently had been provided, along with thousands and thousands of pages of 3500 material, and I believe I would probably be prepared to cross-examine the witness notwithstanding that he is not on the list and I had no idea when I came here. I would be prepared if he is a minor witness. However, I do not know where these fingerprints are leading, so before I venture down a road the end of which I do not know, I would ask for an offer of proof.

MR. FITZGERALD: Very simple. 69A and B is what Belcastro identified were the prints he examined.

THE COURT: This is the guy who got them off the

document?

MR. FITZGERALD: Right. He is linking that, saying these are ones I took off the document, and that's it.

MR. PATEL: Didn't Belcastro identify fingerprints recovered from the car, that is, from the right rear window and the vanity mirror? I don't remember any discussion about him examining fingerprints from a document other than the notebook. I may be wrong, but that is my recollection.

MR. FITZGERALD: He said he compared Salameh's fingerprints to 69C.

MR. STAVIS: Keep your voice down, Mr. Fitzgerald.

THE COURT: He can't be heard.

MR. FITZGERALD: He said he compared to 59C and found a match. This witness simply says that 69C, that these two prints that Belcastro examined -- that's B and C -- come from 70, which he took off the pieces of paper. He just completes the link between Salameh's fingerprint and the papers in the ashtray. Belcastro also made a link between Alkaisi's print in the rear window, and the documents.

MR. STAVIS: The offer of proof is this witness is going to say I took these fingerprints?

THE COURT: Off the paper.

MR. STAVIS: And that's it?

MR. FITZGERALD: That's it.

(In open court)

MR. FITZGERALD: I would offer Government's Exhibit 70, Judge.

MR. STAVIS: No objection, your Honor.

THE COURT: 70 is received without objection.

(Government's Exhibit 70 was received in evidence)

(Continued on next page)

BY MR. FITZGERALD:

Q. Can you tell the jury what Government's Exhibit 70 is?

A. It is three pieces of torn paper that have latent fingerprints -- I should say developed fingerprints -- on them.

Q. Are those the actual pieces of paper or a photograph of them?

A. This is a photograph of the pieces of paper.

Q. Let me approach you with what have been premarked as Government's Exhibits 69B and C.

MR. STAVIS: May I see them?

MR. FITZGERALD: 69B, C.

Q. Looking at the second page of this item, 69B as in boy, and the third page, 69C as in cat, did you compare that with Government's Exhibit 70?

A. Yes, sir.

(Continued on next page)

Q. Can you tell us the results of your comparison?

MR. STAVIS: Objection, your Honor. May I be heard at the side bar?

THE COURT: No. Overruled. Go ahead.

A. Apparently these are photographs --

MR. STAVIS: Objection to "apparently," your Honor.

THE COURT: May I see counsel at the side bar.

(At the side bar)

MR. STAVIS: Your Honor, I think we were just here and Mr. Fitzgerald's offer of proof was that he is identifying these as the fingerprints that were recovered. At this point the questioned documents expert is now being asked to become a fingerprint expert and compare fingerprints, which I didn't know until he got on the stand and started to do it.

MR. FITZGERALD: It has the same case number. There is a tag --

THE COURT: Did he take the picture?

MR. FITZGERALD: He took the picture Government's Exhibit 70. 69 is the FBI copy.

THE COURT: How can he testify to that? Because it has the same case number?

MR. FITZGERALD: I will call another witness.

THE COURT: Good.

(In open court)

MR. FITZGERALD: I have nothing further, Judge.

THE COURT: The objection is sustained. Nothing further?

MR. FITZGERALD: Nothing further.

THE COURT: Cross, Mr. Stavis?

MR. STAVIS: Yes, your Honor.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. The torn piece of paper about which you are testifying was directions to a location, is that correct?

A. I do not know, sir.

Q. Do you have it in front of you?

A. Yes, sir.

Q. Approaching the witness with 35103A, I ask you to take a look at these.

Have you reviewed them?

A. Yes, I have, sir.

THE COURT: Can you stalk into the microphone because otherwise you can't be heard.

THE WITNESS: Sorry.

Q. 35103B, are those your notes?

A. No, sir.

Q. Those are somebody else's notes?

A. That is correct, sir.

Q. Are those notes that you have ever seen before?

A. No, sir.

Q. How about 35103A? Is that something that you have ever seen before?

A. Yes, sir. It is my police laboratory report.

Q. I didn't ask you what it was, I asked you if you had ever seen it before. Is the answer to my question yes?

A. Yes, sir.

Q. And you assembled this piece of paper? Is that your --

THE COURT: The piece of paper being what? 70?

MR. STAVIS: The piece of paper about which he is testifying, Government's Exhibit 55.

A. That is correct, sir.

Q. And you sent it out for translation after you assembled it?

A. That is correct, sir.

Q. Did you review the translation after it came back to you?

A. I handwrote out what I was told was the translation and then forwarded in a to the detective.

Q. Did the translation that you forwarded to the detective include that the location was a mosque in Queens?

MR. FITZGERALD: Objection.

A. I have no idea.

THE COURT: Is the exhibit in evidence?

MR. FITZGERALD: No, Judge, not with the translation. It is the next witness.

THE COURT: If he wants to buy bring it out now, I will let him testify. Go ahead.

A. Sir, I do not know what the translation means or the location or what you are referring to, a mosque. I have no idea until this point of time that you mentioned that it may be a mosque.

Q. You are a questioned document examiner for the New York City Police Department, sir?

A. That is correct, sir.

Q. And one of the things that you do is assemble documents, is that correct?

A. If it is requested of me to assemble a jigsaw fit of pieces of paper, yes, that is correct, sir, to determine if they have a common original piece of paper.

Q. And after you do that, sometimes if a document is in a foreign language you send it out for translation, is that correct?

A. That is correct, sir.

Q. And sometimes after you send out a questioned document for translation, you then receive it back from the place you sent it to, is that correct?

A. That is correct, sir.

Q. And sometimes after you get it back from the place you sent it to, you look at it, is that correct?

A. That is correct, sir.

Q. And when you looked at this document here, did you see that it was directions to a mosque in Queens?

A. No, sir.

MR. STAVIS: I have no further questions, your Honor.

THE COURT: Anything else?

MR. FITZGERALD: Nothing further.

THE COURT: You are excused.

(Witness excused)

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

THE COURT: Excuse me, counsel. When somebody is being sworn, don't shuffle papers. Miss Stewart. Thank you.

GAMAL ABDEL-HAFIZ,

called as a witness by the government,

having been duly sworn, testified as follows:

MR. McCARTHY: May I proceed, your Honor?

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. McCARTHY:

Q. Good morning, Mr. Abdel-Hafiz.

A. Good morning.

Q. Am I correct that you previously testified on February 2, 1995, in this proceeding?

A. Yes, sir, I did.

Q. Mr. Abdel-Hafiz, I have placed before you what has been marked as Government Exhibit 55C for identification.

A. Yes, sir.

Q. Have you reviewed that item prior to testifying here?

A. Yes, sir, I did.

Q. Did you compare the English writing on the right-hand side of the document to the Arabic on the left-hand side of the document?

A. Yes, sir, I have.

Q. Did you determine, sir, that the English writing on the right-hand side of the document is an accurate translation of the Arabic on the left?

A. Yes, sir.

MR. McCARTHY: Thank you.

Your Honor, the government offers Exhibit 55C.

MR. STAVIS: No objection, your Honor.

THE COURT: 55C is received without objection.

MR. McCARTHY: Your Honor, I believe that is the document where the copies are not in the books, so we will

defer dealing with it until a later time.

THE COURT: All right.

(Government's Exhibit 55C was received in evidence)

Q. Mr. Abdel-Hafiz, let me direct your attention to your prior testimony here on February 2, 1995. Do you recall that?

A. Yes, sir.

Q. You testified on that occasion about your familiarity with the voice of the defendant El Sayyid Nosair. Do you recall?

A. Yes, sir, I have.

Q. To be clear, can you explain to us, please, when was the first time that you heard the voice of El Sayyid Nosair, that you recall?

MR. STAVIS: Objection. Asked and answered.

THE COURT: Overruled.

A. The first time I heard that was about seven, eight months ago.

Q. In connection with what did you hear that voice?

A. I heard that voice through a phone conversation between Mr. Sayyid Nosair and his wife.

Q. I would like you to answer this question, if you could, yes or no: At the time that you heard the conversation some seven or eight months ago, the telephone

conversation, did you know at that time that you would be asked in court to identify the voice of the defendant Nosair?

MR. STAVIS: Objection, your Honor.

THE COURT: Overruled.

A. No, sir, I have not.

Q. Did there come a time -- your answer is that you had not known the --

A. I haven't.

Q. Did there come a time that you learned that you would be asked in court to identify the voice?

A. Yes.

Q. In relation to your testimony on February 2, 1995, approximately when did you learn that you would be asked to identify the voice of Mr. Nosair in court?

A. About a week before.

THE COURT: You don't have to get that close.

Q. Can you tell us, Mr. Abdel-Hafiz, did you review anything else besides the telephone conversation between Mr. Nosair and his wife, once you learned that you would be expected to make a voice identification in court?

A. Yes. It was a radio broadcast with Mr. El Sayyid Nosair's voice.

Q. When is the first time you believe you heard the radio broadcast?

A. About a week before the testimony.

Q. The radio broadcast, just to be clear for purposes of the record, the radio broadcast that you reviewed, is that the same radio broadcast that you identified in your previous testimony?

A. Yes, sir.

Q. Did you indicate to us the last time that you testified that you had heard the radio broadcast about seven months ago?

A. Yes, I did.

Q. Why did you do that?

MR. STAVIS: Objection, your Honor.

THE COURT: Overruled.

A. I was confused, I guess, between the two tapes that I heard.

Q. The two tapes being the telephone conversation --

A. The telephone conversation and the radio broadcast.

Q. Mr. Abdel-Hafiz, I am directing your attention, please, to Government's Exhibit 801T for identification. Do you recognize that document?

A. Yes, sir, I do.

Q. Is that a document that you identified in your testimony here on February 2?

A. Yes, sir.

Q. Let me direct your attention to the next to last page of that document.

MS. STEWART: I didn't hear the number of that document.

THE COURT: 801T.

Q. Directing your attention to page 18 of that document, which is the next to last page, do you see approximately about a quarter of the way up the page there is a section of questions and answers?

A. Yes, sir.

Q. Directing your attention, sir, to the first question, do you see that?

A. Yes, sir.

Q. After you testified on February 2, 1995, were you asked to review that document again?

A. Yes, I was.

Q. Did you notice anything, sir, with respect to the first question on page 18?

A. Yes.

MR. STAVIS: Objection, your Honor.

THE COURT: Overruled.

A. That the word "United States" is not there -- shouldn't be there.

Q. In other words, the word "United States" appears in the transcript that is 801T?

A. Yes, sir.

Q. And you are telling us that based on your review of the tape, those words "United States" did not belong in that question?

A. Yes, it did not.

Q. Let me now direct your attention to 801T2 for identification. Do you recognize that document?

A. Yes, sir, I do.

Q. How are you able to recognize it?

A. With my initial and my date on it, in my handwriting.

Q. Is that a transcript that you prepared?

A. Yes, sir.

Q. Let me invite your attention to again the next to last page which I believe is also page 18 on this document.

A. Yes, sir.

Q. Do the questions and answers appear on page 18 of Government's Exhibit 801T2 as they did on Government Exhibit 801T?

A. Except for the words "United States."

MS. STEWART: I can't hear the answer, your Honor.

THE COURT: "Except for the words 'United States.'"

Q. Have the words "United States" been removed from

the question?

A. Yes.

Q. Other than modifying the transcript to reflect that "United States" is not in that question, is there any difference between 801T and 801T2?

A. No, there is not.

MR. McCARTHY: Your Honor, the government offers 801T2.

MS. STEWART: No objection, Judge.

THE COURT: 801T2 is received without objection.

(Government Exhibit 801T2 was received in evidence)

Q. Mr. Abdel-Hafiz, the last time that you testified here, you told us about consultation with other translators. Do you recall questions about that?

A. Yes, I do.

Q. Let me ask you first, do you follow a different process in terms of creating transcripts when you are following your ordinary duties as a translator for the FBI, versus what you are going to testify to a transcript in court?

A. Yes, I do.

Q. Would you explain, please, to the ladies and gentlemen of the jury what the difference is.

A. When I am preparing a regular translation, I can

sometimes consult with other colleagues to hear something that cannot be heard, or it's difficult to hear or there is a dispute about the word, sometimes can be heard in two different ways. In this case, we can always consult with each other and get somebody else to listen to a word or two with me, or discuss something like regular normal saying in Arabic and what's the best way to put in English. On the contrary, when I am preparing to testify in court, unless I can hear myself and determine what the word is, I cannot write it and I cannot testify to it. Therefore I do not ask anybody else to review anything or help me with the preparation to testify in court.

Q. Let me invite your attention or your recollection back to February 2 and the exhibits that you were shown on that occasion. For the record, on that day, you testified about Government's Exhibits 451, 708, 801, 850, and 851, and the corresponding T exhibits in connection with those recordings.

A. Yes, sir.

Q. In connection with the T exhibits, that is, the transcript of those recordings that you identified in court, did you consult with other colleagues in the preparation of those transcripts, that is, the transcripts that were identified and testified about here in court?

A. No.

Q. Can you tell us, please, what your process was in completing those transcripts? That is, what were you presented with and how did you ultimately produce the transcript that you identified in court?

A. I was presented with drafts of the translations. I don't know who made the drafts, and we usually don't know who made them before me. I review them. I make any corrections. And I have to approve it before it is presented in court.

(Continued on next page)

Q. Let me ask you some questions about translation in general. Is it easier, sir, to translate, generally speaking, a tape recording or a document?

MS. STEWART: Objection. May we have a side bar?

THE COURT: Yes.

(At the side bar)

MS. STEWART: Judge, as I recall, this witness was on direct. He had a full and fair direct, I believe at the hands of Mr. Fitzgerald --

MR. McCARTHY: That is right.

MS. STEWART: -- with regard to the very same documents. There was a full and spirited cross-examination then, which may have been unexpected by the government but I don't think it gives them the right to recall this man and go through once again rehabilitating him because he chose to make mistakes. This is asked and answered, in essence.

MR. McCARTHY: I don't believe he was asked about the process of translating the last time. I think what he was asked about the last time was his background and the specific translations that were testified about in court that day.

THE COURT: What is the point of this? Why wasn't it covered the first time?

MR. McCARTHY: We knew that he was being recalled. Judge, other issues have been raised in the

meantime.

THE COURT: Other issues have been raised in the meantime as to who? As to him?

MR. McCARTHY: No. Judge, it is not that important. I think it would help the jury to understand the evidence better. If it doesn't come in, it's not the end of the world, but I don't think it is a good reason not to let it in that we have recalled him. He will be recalled a number of times. As I understood the discussions that we had at the beginning of the trial, there was not going to be a problem with recalling people --

THE COURT: Yes, but usually you recall people to testify to different subjects, not to go back to testify to what they testified about before. If something is an oversight or if you discovered after a witness has left the stand that he misstated something and you need to make it accurate, that is one thing. But simply to put his testimony on in layers, which is in essence what this is, I am not going to let you do it.

MR. McCARTHY: Your Honor, can I make one point? We could in terms of economy and time call another translator to testify about that, if it would be helpful to the jury in response to things that either have come up in the trial or it has become clear to us the way things are going may come up in the trial. In terms of economy, there

is no difference in calling this man or having Faghali come back or another person.

THE COURT: But they wouldn't testify to what he did, which is what he is doing.

MR. McCARTHY: At the moment I think what he is testifying about -- let me tell you what I wanted to ask him and maybe the record will be more complete. All I wanted to do was ask him to compare the problems of translating a tape versus translating a document and why it is easier to do things like telephone calls than Nagra recordings, body recordings. The reasons for that are that it is clear to us as we get to the part of the case where the consensual monitoring from 1993 is going to come in, that there are going to be a number of issues raised with respect to statements that are made on those tapes --

THE COURT: That is a different issue. If that is what he is going to, I will let him testify.

MS. STEWART: Judge, we don't know that he did Nagras. He is testifying hypothetically.

THE COURT: He is an expert translator. He can testify why it is easier or harder. You can cross-examine on it.

MS. STEWART: I don't think we were given notice that this is the person that was going to be put on as an expert on tapes. I speak for myself who does not have a lot

of this but my cocounsel may want to take him on on this.

MR. McCARTHY: Obviously the court is giving me a lot of latitude. When we recall him, I will certainly not object if people decide that they want to examine him on these matters at that time.

THE COURT: You mean later?

MR. McCARTHY: Sure.

MS. STEWART: I guess my balance on trial is, the government gives direct, the defense cross-examines.

MR. McCARTHY: I can also defer this until the next time.

THE COURT: Defer this until the next time or do it through another witness.

MR. McCARTHY: Yes, your Honor.

(In open court)

(Continued on next page)

(In open court)

THE COURT: Sorry, ladies and gentlemen. You usually try to try the case out here rather than over there, but occasionally it becomes necessary to talk over there. Again, it is just to make sure that the only evidence you hear is competent evidence and that it comes in, in the order in which it should.

Thank you.

MR. McCARTHY: Thank you, your Honor, I have nothing further at this time.

THE COURT: Anything else?

MR. McCARTHY: No.

THE COURT: All right. Ms. Stewart.

CROSS-EXAMINATION

BY MS. STEWART:

Q. Good morning, sir.

A. Good morning, ma'am.

Q. When you last testified about Exhibit 851T1, you identified Sheik Rahman as being the person on that transcript, is that right?

MR. McCARTHY: Objection to the form. 801.

MS. STEWART: 801. I'm sorry.

A. Yes, I have.

Q. You are familiar with his voice, is that correct?

A. Yes, ma'am.

Q. Can you tell me how you come by this familiarity?

A. Sheik Omar has hundreds of tapes out in the mosques, and I listen to his lectures and I listen to his sermons. I heard his voice the first time -- the first time I heard his voice was exactly 14 months ago when I translated a CM tape for him.

Q. For the government, you mean?

A. For the government, yes.

Q. Not for the sheik?

A. Yes, with his voice. I'm sorry.

Q. You say that there are many, many tapes, hundreds of tapes out in the mosques?

Did you ever hear them in the mosques?

A. I bought some myself.

Q. Was this before you translated for the government or --

A. During the translation for the government.

Q. During the time of the translation?

A. Yes, ma'am.

Q. For what reason did you do that?

A. I am a Moslem, and I like to hear all the Muslim, the Islamic opinions of all the sheiks.

Q. Do you know which tapes they were that you bought, do you recall?

A. I don't recall the names of the tapes.

Q. Were they tapes that had been made in Egypt or tapes that had been made here?

A. They were made here.

Q. They were readily available to you at the mosques?

A. Yes, ma'am.

Q. So it is fair to say, then, that Sheik Omar has a public voice, and you were able to recognize that very public voice, is that right?

MR. McCARTHY: Objection to form.

MS. STEWART: If he understands the question.

THE COURT: If you understand the concept of "public voice," you can answer the question.

A. Yes, he has.

MS. STEWART: I have nothing further, Judge.

THE COURT: Mr. Stavis?

CROSS-EXAMINATION

BY MR. STAVIS:

Q. Hello, again.

A. Hi there.

Q. You testified concerning Government's Exhibit 55C, is that correct, the writing that you have before you?

A. Yes, sir.

Q. The piece of paper?

A. Yes, sir.

Q. And you wrote some English in that?
A. Yes, sir.
Q. The English that you wrote was, "on the light make a left"?
A. On the light make a left.
Q. "After the left, go five blocks"?
A. Yes, sir.
Q. "Then there is something on the right."
Then it said "on the right --"
A. On the right, five blocks on the right.
Q. It was an Arabic word that translated into "fatima"?
A. Fatima, yes.
Q. Is that how you pronounce that?
A. Fatima.
Q. Is there an Arabic word called "masjid"?
A. Yes, sir.
Q. Explain to the ladies and gentlemen of the jury what a masjid is?
A. It is a mosque.
Q. To your knowledge, is fatima a masjid or mosque?
A. Not that I know of.
Q. Did you look into that at all?
A. No, sir.
Q. You testified that when we spoke -- withdrawn.

You and I spoke in the court here --

A. Yes, sir.

Q. -- on February 2, right?

I was asking you at that time about two tapes, is that correct?

A. Yes, sir.

Q. With the voices?

A. Yes, sir.

Q. Those were the voices that you had used to compare to other tapes, right?

A. I don't understand what you mean by "compared."

Q. You listened to a telephone conversation between Mr. Nosair and his wife, is that correct?

A. Yes, sir.

Q. Before you listened to that telephone conversation, did you ask Mr. Nosair's wife if it would be OK for you to listen to her telephone conversation?

A. No, I hadn't.

Q. Before you listened to that telephone conversation, did you ask Mr. Nosair if it would be OK for you to listen to his telephone conversation with his wife?

MR. McCARTHY: Objection, 401.

THE COURT: Sustained.

Q. You listened to that telephone conversation, correct?

A. Yes, sir.

Q. You listened to something that you have referred to as a radio broadcast?

A. Yes, sir.

Q. When I was last speaking to you on February 2, 1995, you were confused about the two of them?

A. I got confused, yes.

Q. So that when you were giving me answers --

A. Excuse me, I need to clear something. I was not confused about the two of them. I got confused when I answered which one I listened to first.

Q. That is what you were confused about?

A. Yes. When I was asked which one I would listen to, first to familiarize myself with this voice, that was the confusion was all about.

Q. Now that you are back here, I don't know, three weeks later, are you still confused or do you have it all straightened out?

A. It is all straightened out.

Q. Are you confused about anything else that you have testified to here today?

A. No, I am not. The confusion I didn't --

THE COURT: He just asked you whether you are or not. It just called for a yes or no. Your answer is no?

THE WITNESS: No.

Q. How about on February 2, other than what you are telling us you were confused about, was there anything else that confused you that you testified about on February 2 of 1995?

A. No.

Q. You testified here today, February 28, that when you prepared your testimony concerning translations, you made certain notes, is that correct?

A. No. I did not say that.

Q. What did you say about notes?

A. I did not say anything about notes.

Q. You didn't?

A. No, sir, I did not.

Q. Do you have any notes?

A. No, I don't have any notes.

Q. Do you make any notes when you do your work?

A. No, I don't.

Q. Are you sure of that?

A. I am sure of it.

MR. STAVIS: I have no further questions, your Honor.

MS. STEWART: May I just ask one more question, I can ask it from here.

THE COURT: Yes, you may.

MS. STEWART: Thank you.

CROSS-EXAMINATION

BY MS. STEWART:

Q. Do you recall the subject matter of the tapes that you purchased regarding Sheik Omar?

A. I recall, I believe, two of them. He was talking for one primarily -- in one of them about jihad and the other one he was talking about the corruption among the Arab leaders.

MS. STEWART: Thank you.

THE WITNESS: You're welcome.

THE COURT: Ms. Amsterdam?

CROSS-EXAMINATION

BY MS. AMSTERDAM:

Q. Good morning, sir.

A. Good morning.

Q. Correct me if I am wrong, you stated on direct that when you work on translations of either tapes or documents, not for the purpose of testifying, that you consult with colleagues as that process is going on?

A. Sometimes we do, yes, ma'am.

Q. Sometimes in that process you may have people review your work, would that be a fair statement?

A. Not to review my work. If there is something that I cannot hear clearly, especially when it comes from the body mike or a car mike or a mike that is placed in a

certain room, it is difficult to control how many conversations are happening in the background. It is difficult to control how many people are talking. It is difficult to control how far the person who is talking is from the mike. So sometimes two sets of ears are better than one.

Q. Two sets of ears you have found are better than one in reviewing items when you are not going to testify, correct?

A. Yes, ma'am.

Q. When you testify you do not rely on anyone else's ears, correct?

A. That's true.

Q. No one reviews your work?

A. No one reviews my work.

MS. AMSTERDAM: Thank you.

MR. McCARTHY: Objection.

THE COURT: Overruled.

Q. Sir, you testified on direct that there were some items that you reviewed other people's drafts, correct?

A. Yes.

Q. And on those copies you made corrections or adjustments, suggestions, would that be a fair statement?

A. No, no. I make the final corrections during the review for the items that I present to court.

Q. Someone physically gives you a copy of their draft transcripts. It is in writing, correct?

A. Yes, ma'am.

Q. You review the document which is in writing, correct?

A. Yes, ma'am.

Q. When you find errors in it, you make corrections on it, correct?

A. Yes.

Q. Wouldn't you consider that to be notes?

A. I make my notes on the computer. I don't make any handwritten notes.

Q. So you have --

A. I translate directly on the computer.

Q. So you do have notes, but they are on computer, they are not handwritten?

A. Excuse me. The way I understand notes, that I make notes to remind me of something or notes as drafts of my work to make the final version of it.

But I don't do that.

Q. OK.

A. I make my final translation right there and then on the computer.

Q. Do you save your documents as you are going along?

A. Yes, ma'am, I do.

Q. You have those saved rough drafts, correct?

A. As soon as --

Q. Some of them, correct?

A. Excuse me. When I make the correction, it asks me to save, I say yes; replace, I say yes. So nothing is there on the document but my final version.

Q. When you are working with someone else's draft, that is not on computer you just testified that that is on paper --

A. No, ma'am, it is all on computer.

Q. Sir, didn't you just say --

MR. McCARTHY: Objection.

Q. Didn't you just say that they are on paper and that you review the documents that people give you?

A. No, ma'am, I did not say it was on paper. We review the work. I did not say on paper.

Q. Let me start over again.

It is your testimony now that --

MR. McCARTHY: Objection.

Q. -- people give you documents that are on computer, is that correct, computer disks?

THE COURT: Sustained as to form.

Do you want to reframe it?

Q. Would it be fair to say that people give you

documents on computer disks for your review?

A. Yes, ma'am.

Q. Now, as you are reviewing that document, there may be instances in which you think a word should be changed, correct?

A. OK.

Q. In that instance do you change it without consulting the person whose first draft it was?

A. I do change it without consulting them.

Q. And you change it right then and there on your computer?

A. Yes, ma'am.

Q. You do not save the other person's hard copy?

A. No, ma'am, I don't.

Q. You take their disk, you change it and you lose whatever they said, correct?

A. Yes, ma'am.

Q. So if another person had translated certain passages differently, you would have no permanent record of those original translations?

A. Not on me.

Q. Would the other person have copies of the original translations?

A. I have no idea about that.

Q. If they gave you the disks, it is possible, is it

not, that once you changed it, there would be no record of the original translation, correct?

A. That might be possible, yes.

MS. AMSTERDAM: Thank you.

THE COURT: Anyone else?

Any redirect?

MS. STEWART: I hate to keep doing this. I just want to ask him one more question about the change in translation.

THE COURT: All right.

MS. STEWART: I can do it from here if it saves time, Judge.

MS. STEWART: OK.

CROSS-EXAMINATION

BY MS. STEWART:

Q. Sir, the question and answer that you missed the first time around you told us when you were here on February 2 you translated a question on a document 801T1 and you translated that as being, "What did we do to the Arab leaders who stand with the United States against Iraq."

That is the question that was mistranslated, is that right?

A. Yes, ma'am.

Q. How did you find this mistranslation?

A. Mr. McCarthy called me and asked me to review

this question again.

Q. When you reviewed it again, you found that the words "with the United States" were not in the sentence at all?

A. They were not in the sentence at all.

Q. Yet you mistakenly heard them the first time around?

A. No, it is not that I mistakenly heard them the first time around. They were written on the draft that I had, but I mistakenly did not correct them.

Q. The draft that you had was done by another person?

A. Yes, ma'am.

Q. This was not an attempt that was done by you directly from the tape without any input?

A. No, ma'am.

Q. Do you know who made that draft?

A. No, ma'am, I have no knowledge.

MS. STEWART: Thank you.

THE COURT: Any redirect?

MR. McCARTHY: Briefly, your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. McCARTHY:

Q. Mr. Abdel-Hafiz, I am showing you again

Government Exhibit 55C, which is now in evidence. I believe you were asked some questions about the English writing on the right side of the page by Mr. Stavis.

A. Yes, sir.

Q. Did you write the words that are written in English?

A. No, I did not.

Q. You simply translated them for us?

A. I translated them for you.

Q. Thank you.

MR. McCARTHY: Thank you, your Honor.

THE COURT: All right. You are excused. Thank you.

THE WITNESS: Thank you.

(Witness excused)

MR. McCARTHY: At this point, the next thing we would ask to do would be to read from Government Exhibit -- I'm sorry, now I'm doing it. 801T2. I don't know if the court wants me to begin that now or --

THE COURT: How long is it going to take?

MR. McCARTHY: Probably about 45 minutes.

THE COURT: May I see counsel at the side?

(At the side bar)

THE COURT: What is the drill on this? You are going to play the tape?

MR. McCARTHY: I am just going to read it. It is not my intention to read all of it. But I am going to read an awful lot of it.

MS. STEWART: We can be sure, Judge, that what he doesn't read I probably will.

MR. McCARTHY: We tried to do that yesterday, and what we ended up with were objections which sort of made it look to the jury like we were --

THE COURT: That you were leaving some things out.

MR. McCARTHY: Right.

THE COURT: I put this to all the lawyers: What would be the problem with having them at some point sit and read it? They can read, no?

MR. McCARTHY: They can surely read. I don't know that they -- I mean obviously some parts of it, Judge, are more important than other parts.

I don't know that where you have a jury just go off and read documents, particularly documents like this one, whether you can be confident that they are getting everything that they ought to get.

THE COURT: All right. The document itself the

record should reflect is 18 pages, single-spaced.

All right.

MR. McCARTHY: Your Honor, let me just tell the court while we are at the side bar, we are trying to tie together what ends we can tie together today before Salem gets on the stand with the knowledge that this negotiation about the transcripts is going on sort of behind the scenes. As a result, it is pretty evident that we are scrambling a little bit today. I don't want anybody to be surprised by that.

THE COURT: I can be distressed without being surprised, can't I?

(In open court)

THE COURT: What exhibit is this, 801?

MR. McCARTHY: 801T2.

THE DEPUTY CLERK: It is in the binder that doesn't have a label on it. It is the new binder. It doesn't have a label on it.

THE COURT: It is in an unlabeled binder.

MR. McCARTHY: May I begin, your Honor?

THE COURT: Yes.

MR. McCARTHY: Ladies and gentlemen. I am going about a third of the way down the page with the third paragraph.

"Brothers, the subject of the lecture is doubts about jihad. And the response to them. Jihad is the peak of a full embrace of Islam. And it's" --

MS. STEWART: Objection.

MR. McCARTHY: I think I understand the objection let me begin again.

"Jihad is the peak of a full Islam. And it's reward by God is great. Its reward is mentioned in the Book and in the sayings of the prophet. The almighty God said, 'Those who have believed, immigrated and adopted jihad for the sake of God with their wealth and selves are at a higher level by God. And those are the winners. God promises them of his mercy, acceptance and paradises for them that have

eternal bliss. In which they will all will live eternally. God has great rewards. And many sentences that need long time to recite."

MS. STEWART: I would just like it to be noted that entire last sentence was a quote, indicating at least that the translator believed that that is from the Koran.

MR. McCARTHY: Your Honor, there was testimony about this. Do you want me to indicate for the record every time that there is a quotation? I will do that.

THE COURT: Yes.

MR. McCARTHY: Ladies and gentlemen, when I refer to "quotation," that is an indication on the basis of the testimony that it is taken from the Koran.

THE COURT: Pick up with "and many sentences."

MR. McCARTHY: Yes, your Honor. Thank you.

"And many sentences that need long time to recite. And the sayings of God's messenger, may God's prayers and peace be upon him, are plenty in this regard. The most eminent among them is the question by the man who came to ask God's messengers, may God's prayers and peace be upon him. The man's question was: 'Tell me of a work that equals jihad.' God's messenger said: I can't find it. Then he asked, can you, during the time that a mujahid is out enter the mosque and keep on praying and never end or fast and never eat? The man answered; And who can do that?

Then God's messenger said: If there is no man who can do that, then there is no work that equal jihad. And if we mention the verses and the sayings which mention urging of jihad and which indicate the warnings from quitting jihad, I would spend the entire lecture. But we will go to the subject of the lecture, which is: Doubts about jihad. Many people have raised, whether from the public or from the intellectuals, they raised doubts about jihad. Some of these doubts were with bad intentions, the other were with good intentions. These doubts were, in detail and in brief, calling for: Abandoning jihad; discouraging the people from performing this great ordinance; and to delay and obstruct the rising for this serious matter which has become the duty of every Muslim. Every Muslim has become obliged to perform jihad by himself. Because the battlefields have increased, and because the scholars: Old and new have agreed that if part of the Muslim land has been taken away, it is the duty of all the Muslims to get up and to rise for jihad for the sake of God to liberate that part. And what has been taken from the Muslim land was not equal to a meter or to the span of a hand, but millions of meters and spans of hands. But it were entire countries that were taken away from the Muslims. Therefore, jihad has become an individual obligation. And he who does not do it commits one of the vices and a big sin. By this, he moves away from God's

orders and a sinner. And God does not guide the sinning people. And if he dies at this stage, then he has died belonging to a branch of hypocrisy.

"The summary of these doubts that it moves the people away from jihad. God has warned us from this path when he said: 'Verily God knows the obstructionists among you, and those who are saying to their brethren: Come join us, but come not to the fight except for just a little while.' God, glory be to Him, is addressing the believers to be cautious and beware of those who obstruct people from jihad. God said: 'O Ye who believed, take your precautions and either go forth in parties or go forth all together. There are certainly among you men who would tarry behind.'

There are some people who will discourage doing jihad, and repress the desire for it among the people. In addition to staying behind saying: 'Let us be with those who are staying behind. They were satisfied to be with the Kharijites and their hearts were sealed, and that is why they don't understand.'

"It is extremely surprising that they are referring to an act by God's messenger, and if they were fair they should have known what the messenger had done. The verse says: 'But the prophet and those who believed with him gave jihad their won wealth and selves and those who will have the good things and they are the successful.'

The summary of these doubts is that they discourage the people from jihad. Sometimes they say: Patience, you must be patient. That means don't go to the jihad, but be patient. And sometimes they say: Good behavior going to the mosques and to gather and God will turn you triumphant. And sometimes they say: Be like the ant -- this is a story from the Koran -- who said to the other ants: Enter your house and sometime they say to those who believed with Noah, the flood, and sometimes they say -- I'm sorry, and sometime they say that those who believed with Noah, the flood came to drown their enemies and God has made them triumphant without jihad. Other time they say that going to the mosques and leaving work and jobs is jihad. They also say: Man's heart burns for jihad and the blood boils for jihad. Therefore, man restricts his jihad efforts to intentions only. That's it. And sometime they say that the deeds of the youth and the zealous youths are reckless and the youth don't have much knowledge or understanding of religion and they are criticizing the youth who are performing jihad and adopting sacrifice for the sake of God.

"Many doubts. If we can answer some of them, it will be good. But the doubts are reiterated and are elbowing each other's way. From among these doubts the first doubt is that they want to limit jihad to the intention. And they say that every Muslim must have his

heart burning for jihad and to crave for and to have his spirit longing for jihad. And this is an obligatory duty. Intention, is an obligatory duty? How could it be like this? An obligatory duty is not an intention. An obligatory duty is an act. It is doing the thing and performing it. The obligatory duty in jihad is not the intention for jihad, and it is not burning for and longing for such words and not to have one's blood boiling. An obligatory duty is to do the jihad and to perform it and to carry it out. This is the obligatory duty? No. Live in carrying out, no? It is a refutable doubt, that the obligatory duty in jihad is restricted to longing, craving, etc., and to boiling one's blood. All these words mean that jihad remains jailed and in the intentions and the hearts. This is refutable. Jihad is an obligatory duty that must be done and performed and acted. Carrying it out is an obligatory duty and to be present in the fields.

"We find the second doubt is patience. We find the second doubt is the patience. They say: We must be patient and wait. How to wait. To be patient at the wrong time is not right. To put the sword at the place of the dew or the dew where the sword it, all this is not right. If they want to adhere to what the scholars and the ancient said, they can refer to what Abu Ja'far, Al Nahhal, others, Ibn Kathir, Al-Tabari. All said that the verse of the sword

has replaced all the verses on patience, appeasement. All the verses that spoke of overlooking the patience with enemies as well as their appeasing and leaving them alone. It replaced all these verses. If they want to adhere to the ideas of the ancestors, and if they are true in their call, then let them look at what was said in this regard. And how the verse of the sword said: 'And fight all the polytheists as they are fighting all of you:' That is in quotes. 'But when the forbidden months are past, then fight and kill the pagans, wherever you find them, and seize them, beleaguer them and lie in wait for them in every stratagem.' 'Fight them. God will punish them by your own hand. Disgrace them and make you triumphant over them and relieve of a believing people and to erase the anger of their hearts. Fight. Fight those who don't believe in God and the day after, and don't prohibit what God has prohibited his messenger, and do not adopt the right religion as those who were given the book. Pay taxes, even if they have to be forced to do that. You the prophet fight the nonbelievers and the hypocrites and be hard on them. Their abode is hell, the worst destiny.'

"They said that these verses that call for fighting those have replaced all the verses that spoke of appeasement, patience, overlooking and abandonment. What the ancestors said can guide them to the truth.

"As for the subject ever patience. It is inappropriate to say that we must be patient when we see the violated honors and the bloodshed, the looted lands of the Muslims then we say: Let us be patient. How can we be patient? Is this the place for patience? And to recommend it? This is a refutable doubt that must be checked with the scholars and the pious ancestors.

"The third doubt:

They said abiding by the rules: Going to the mosques and praying in a group; taking care of one's family, etc. And that if you do this, God will make you triumphant. Is this the logic of Islam? This can never be the logic of Islam. All these things are good. But will they achieve victory? Where are that achieve victory? Victory has its system. And has elements that God use as causes for victory. Which is jihad for the sake of God. Then piety and following the rules of Islam are good things. But they must be accompanied with what God has made especially for that matter, which is jihad for the sake of God in raise high the word of God."

At this point I would skip down to the fourth doubt, which is the middle paragraph on that page, and pick up approximately ten lines from the bottom of that paragraph.

"The law of our master Muhammad, may God's

prayers and peace be upon him, said that when we confront the enemies, and find that they had hurt our lands, violated our honor; and were mean to us, we must adopt jihad for the sake of God and not sit behind. In our laws there are what differs from the previous ones. If the people of God had destroyed their enemies, we" -- I'm sorry. "If the people of Moses, Noah, Houd and Salih were not asked to perform jihad and God had destroyed their enemies, we however are asked to do the jihad and we must do it. The rule is: The law of our ancestors is not our law. If in our law there is something different. And actually in our law there is something different which is jihad for the sake of God."

Your Honor, I would skip at this point down to what is labeled the sixth doubt which is on the next page.

"Some people use the prophet's saying: Whoever does not invade and does not crave for invasion dies on one side of hypocrisy. Then they say that there is time for invasion and a time for longing for invasion. What is this distribution and from where did they bring this distribution? That there is a time for invasion and a time for longing for invasion? The saying combines. It says: The hypocrite is the one who does not invade and does not long for invasion. That means that the believer invades and longs for invasion. Whenever he finishes one invasion, he longs for another invasion. This is the believer. Because

the saying didn't say: He who doesn't invade or longs for invasion. It didn't say that. But he who doesn't invade" -- I'm sorry. "He who doesn't invade or longs for invasion, it didn't say that. But he who doesn't invade and does not long for invasion. Therefore, the hypocrite does not invade and does not long for invasion. The believer invades and longs for invasion, not or longs for. He invades and longs for invasion. This is how the believer is. Lives between two matters, to invade and to long for, the two. He invades, and whenever he finishes one battle he longs for another invasion. This is how the believer is. This is not musical distribution. We say there also a time for this and a time for that. Then we must understand the saying a good understanding. And not to use it to evade the subject of jihad for the sake of God. Then, you have to long for invasion. Not in order to keep Jihad just a dream and a wish, and an intention. But of wills in order to invade for God's sake and not to delay it.

"The seventh doubt:

"We find a despise for the youth who are jealous for their religion. The youth who sacrifice themselves and those who prefer the afterlife over the earthly life. And who sacrificed all their property and their future. Those who are sitting behind are mocking at them. Those who are sitting behind ridicule the youth which is jealous of their

religion. Those who love the afterlife sacrifice themselves. Those are sitting behind, ridicule them and say they don't -- say that they don't have a trace of knowledge; the only thing they have is recklessness. This is falsehood" -- I'm sorry -- "this falsehood that those who are sitting behind, those who are lazy ridicule the youth who sacrifice themselves, whether against the enemies of Islam or inside, who are the rulers; or outside enemies of Islam who are inside, who are the rulers; or outside enemies of Islam who are stealing the Muslim lands. You find the mockery at this youth who are jealous for their religion, don't have a trace of knowledge. Who is the one that does not have the trace of knowledge? The sitter of the fighter. Those who have stayed behind don't have any problems, do not equal the fighters for the sake of God. Then they say that the training and the preparation are not jihad. How cannot they be jihad? Aren't they preparation for jihad? Preparations, meetings, and so on, so on. Isn't it preparing for jihad, for God's saying: 'And prepare for them all what you can of power.' Then accusing this youth who sacrifice themselves of being reckless enthusiast who don't have a trace of knowledge. If they follow the ideas of the sultans, counselors who always berate the youth's works and good deed. This is a youth who have learned of the book and the saying of the prophet more than what many

scholars know."

MR. McCARTHY: Your Honor, I would move at this point to what is labeled the eighth doubt on the next page, which is page 7.

"They say that he who leaves his job during the day in order to go to the mosque has performed jihad. And he who listens to a religious lecture has performed jihad. What is this? This is distortion to the subject of jihad. Praying, listening, jihad? Why don't we call things with their proper names? Why not? A call is a call. A jihad is a jihad. Coming to the mosques is a good work. And group praying is just praying. We don't cover the name of jihad with names that distance us from the real jihad. Jihad by your heart, jihad against the devil, and jihad by the tongue. What is that? He goes to the mosque did jihad? Or use his pen for jihad? And who he who says there is no God but Allah then has done jihad? What is this? The jihad for God's sake is to fight the enemies. When the Koranic verses were revealed in Medina they were very clear: Jihad means fighting the enemies for the sake of God. But distorting the situation, and trying to extend the meanings of jihad in order to please one's self in order to abandon the real jihad, this is confusing the matter and losing the subject."

I would then skip down about ten lines beginning with the word "then."

"Then when we confuse the case of jihad and say: Jihad of the heart, jihad against the devil; jihad by the pen and by the tongue, going to the mosque is jihad, and listening to a lecture is jihad, then we don't need the real jihad. If everything is jihad, and they support their logic by a forged saying of the prophet, we returned from the smaller jihad to the greater jihad. This is a false saying, even though it was repeated by many preachers and many of the scholars. We must beware of this style. We specify jihad by the Muslim definition, which was mentioned in the books on interpreting the religious instructions and by the definition of God's messenger and not to confuse the subject and lose the stand, and call every moment jihad. Jihad is fighting the enemies."

MS. STEWART: "Movement jihad."

MR. McCARTHY: Pardon me.

MS. STEWART: You said "moment."

"Every movement."

MR. McCARTHY: I'm sorry.

MS. STEWART: The third line up.

MR. McCARTHY: I see it. I just want to go back to where it makes sense.

"We must beware of this style. We specify jihad by the Muslim definition, which was mentioned in the books on interpreting the religious instructions and by the

definition of God's messenger and not to confuse the subject and lose the stand and call every movement jihad. Jihad is fighting the enemies. Fighting the enemies for God's sake in order to raise them high in his word.

"The ninth doubt:

"They also said that the individual deeds, not jihad and that jihad is a collective work. What is this? This is an assault on the prophet's intentions. There is an individual jihad when the prince orders them and then he goes and do it. This is a single work. And the assassinations. The assassinations for the sake of rendering Islam triumphant is a legitimate matter.

(Continued on next page)

Al-Ka'b ibn Ashraf, when he was insulting the Islamic men and women and was provoking the polytheists against the Muslims, Prophet Mohammed ordered Mohammed ibn Maslamah to go and kill him. The latter said God's messenger. And then he was able to kill Ka'b ibn Al-Ashraf. And there is another known story, that of Abu Aba Rafi. Abu Rafi, he also entered, he was one of the Jewish merchants and hostile to Islam. One of the Muslims entered before they close the doors and waited, and told him, Aba Rafi, someone is calling you. When Abu Rafi' came out, he stabbed him with his sword in the stomach. The man didn't die and started to scream. So the apostle pretended to be one of those who came to the rescue and finished him up, till the sword reached the bones of the man's back. The apostle waited till it was dark, then went to Abi Rafi and stabbed him with his sword. Then he went out and returned to say, what is wrong with Aba Rafi'? The latter said someone tried to kill me. Then went to him and claimed to be from Khuza'a, and kept talking to him till people left, and he slaughtered him, then took his head to God's messenger, may God's prayers and peace be upon him. The single fighting, the single action is useful. Who said that jurisprudence books don't have? They said jurisprudence books don't have anything about jihad. No, many sayings and it is possible for any person to do what the group does. And God said "You

who have believed be careful and proceed in small groups or big groups." Small groups as well as big groups. It is absolutely untrue to say that single work in jihad is not desired. And they said that jihad means the meeting of two armies. One army confronts another. Two unequal armies. Who said such thing? Who said so? Two equal armies. If it is so, then there will never be jihad in all those decades, because we, no Muslim army will rise up for jihad for the sake of God. All the rulers are agents for, are employees of America, who are moving in its orbit. If it is an army which should do the jihad, then there will never be jihad. They are saying the meeting of two different armies. No army from among the Muslim armies will perform jihad. Then an army to an is unfounded. As a matter of fact, the proof that single works such as guerrilla warfare and city battles. God has said "And prepare for them whatever you can of power." If power is in the guerrilla warfare, there is power in city battles. The power is in anything the enemy is doing. Then they say, the doubt says, when we tell them that Ka'b ibn Al-Ashraf was killed, you tell them that this was an order from God's messenger. An order from God's messenger is law. An order from God's messenger, all right. An order from God's messenger must be carried out. An order from God's messenger is legislation from which jurisprudence is taken. If jurisprudence is not taken from the book and

the prophet's sayings, then from where can it be taken? God's messenger ordered. God's messenger ordered that Ka'b ibn Al-Ashraf must be killed. And he who would kill him would have performed a single act, an individual act. This is a duty, and from it we are taking a juridical rule, which is of the individual action, which is a must. Then the person does the jihad work, but they had that this was an order from God's messenger. What is that? What is this? Specification? No one can claim specification except by a proof. That was a thing done only by God's messenger, no not at all. No one can lay a claim to specifically accept with a proof that this matter was specifically related to God's messenger.

Then individual work and the jihad done by the individuals, whether separately or in a group, is a work Islam has approved and legitimated. And fighting is not as they described by the meeting of two different armies because if we said let us wait till the establishment of an Islamic army, then we have eliminated jihad and jihad does not exist. He who claims that there is no jihad or that the time is not for jihad, then he has disobeyed his God. They claim that they are referring to the literature of the ancestors. Al-Bukhari said, jihad is going on God's prophet, jihad is going on as God's prophet said, goodness is tied to the necks of horses to the doomsday. This means

that jihad does not stop. In every time and place there must be jihad and that if you don't find the just ruler and the pious mujahid, then you can perform jihad with a profligate? Where did you find this talk, Bukhari? You are from the good ancestor and from the great scholars? He got this talk from the saying of the prophet, that horses have goodness tied to their necks to the doomsday. That means jihad will continue to the doomsday. He, Bukhari, said that jihad is going on with the pious man or the profligate one. Anyone who claims that jihad has stopped and that we are not ready and that we enter our houses and that we behave ourselves and be patient, all these claims are unfounded, and who claims them is a sinner who has disobeyed God's order. And God doesn't guide the sinner people. The saying of God's messenger is clear, and they said that the jurisprudence of Bukhari is in his interpretations. His interpretations, not from English to Arabic but from what the prophet had said. Goodness are ties to the necks of horses till doomsday, which is the reward and the triumph, and this is lasting, and that jihad continues. And if you don't find a pious man with whom you perform jihad, then do it with a profligate one, in compliance with the sayings of God's messenger, may God's prayers and peace be upon you. Then jihad should not stop for any reason, except for lack of personnel and equipment and the like.

THE COURT: We are going to stop here for a break. Ladies and gentlemen, please leave your notes and other materials behind. Please don't discuss the case. We will resume in a few minutes.

(Jury excused)

MR. NOOTER: Your Honor, my client is having some stomach problems and would like to be excused for the rest of the day with the permission of the court, without the court's stopping the proceedings. He would consent.

THE COURT: Mr. Wahid Saleh, is that correct?

DEFENDANT WAHID SALEH: Yes, your Honor.

THE COURT: You understand that you have a right to be here?

DEFENDANT WAHID SALEH: Yes, your Honor.

THE COURT: Is it your choice to go back and to permit the trial to go ahead in your absence?

DEFENDANT WAHID SALEH: Yes, your Honor.

THE COURT: Anything else?

MR. McCARTHY: No, thank you.

THE COURT: Thank you. You can be excused.

(Recess)

(Jury present)

THE COURT: You were on 801T2, page 9.

MR. McCARTHY: Thank you.

MR. McCARTHY: Yes. Ladies and gentlemen, it is

page 9, beginning with the section that is labeled the tenth doubt. It is page 9 of Government's Exhibit 801T2.

The tenth doubt. The small number and the small of equipment and so on. Our religion has taught us not to fight with number of men or equipment, and we will be brief in this matter because it is a clear matter.

God has said: "God has made you victors in Badr while you were abject." We could never have described the people of Badr as abject, but it was God who said it. Do you want a proof more than that? Is there any expression another expression? At the time of the small number and equipment. Abject. We were not able, and we could not say that. Abd Allah ibn Rawwah, when he said about the battle of Moses, in brief: You, the people, we do not fight our enemy by a number of by an equipment but we fight our enemy by this religion, which God has honored us by it. Then the idea that we don't fight the enemies unless our equipment reaches the level of our enemy's or close is a false claim said by the hypocrites in the old days and is said currently by their followers. "The hypocrites and those with a sickness in their hearts said deluded by their religion." The Muslims are too vain. Would they be able to fight the Romans and the Persianss as well as Sanaa? Those were deluded by their religion. "God and his messenger haven't promised them except vain. The Muslims are vain. Fight the

greatest empires and then the Romans and Persians. This is vanity. Of course, a talk of the hypocrites. And those who follow them, whether in good intention or bad one, is that we are vain to fight the Soviet Union and to defeat it, the worst defeat. Of course no one could have imagined that. If the Afghans hear today what they are saying, that we don't fight unless we have big numbers of men and equipment, Afghanistan would never have fought, and thanks to God Afghanistan hasn't heard all that talk.

THE COURT: Hasn't heard this talk.

MR. McCARTHY: I apologize, your Honor. I lost my place.

Afghanistan hasn't heard this talk. Thanks to God that the Afghans hadn't heard the talk of the frustrates. We don't fight our enemy unless we have guns, tanks and airplanes equal to those of the Soviet Union. Then shouldn't they remember the almighty God saying how many small group overwhelmed a big group by God's order, and God is with those who are patient, those who say those who were deluded by their religion, calculated with a pencil or paper and say our tanks must be 100 as theirs and 1,000 as they have. But the hypocrites overlooked something. We don't fight our enemy with the material weapon only. No, we have something more than the material weapon. To them, the hypocrites think that the material weapon is everything.

The Islamic militarism is jihad. For the Islamic militarism, the material weapons is only one part of the weapons. But the greatest weapon is the moral weapon, the relationship of the fighters to their God, who is dignified and majestic. Distance from disobeying him is the strong moral weapon. The effective in the battle. We don't overlook the material weapon but it is not the only weapon as with the western militarism and the American militarism. The only weapon is the material one.

THE COURT: Is the military one.

MR. McCARTHY: Thank you. We don't overlook the material weapon but it is not the only weapon, as with the western militarism and the American militarism. The only weapon is the military one. There must be an amount of airplanes, certain amount of airplanes and the tanks and the guns. In the Islamic militarism, the material weapon is part of the battle and a part of the weapons which are with the Muslims. That is why they say, these were deluded by their religion, and so God answered them, and he who depends on God, an honorable and wise, depend on God and has wealth in his moral relations to God, strong faith, strong relation to God, rallying around God's rope. Then we don't fight our enemy with number or with equipment, but we fight with this religion which he honored us with. The doubt that we are not ready and that we cannot fight and that our number is

small and that the number of the fighters is smaller, and that the equipment is small, and that the time being is not the time for fighting, and what is that? What is this pile? What is this pile of falsehood? And this huge laziness? What is that? On whose behalf? On whose behalf we bring these false doubts which the hypocrites uttered sometime ago, then we reiterate nowadays?

Your Honor, at this point I would skip to the beginning of the twelfth doubt, which is at page 13.

The twelfth doubt: Their talk, their talk about the rulers who do not rule by something different than what God has revealed. The defenders of the doubt say that this differs from country to country. How can it differ? He who doesn't entirely rule by what God has revealed is like the one who rules according to some parts and ignores the others. Absolutely, there is no difference between abandoning the ruling according to what God has revealed by what we call the Muslim rulers. He who doesn't reveal by --

THE COURT: Doesn't rule by what God has revealed.

MR. McCARTHY: He who doesn't rule by what God has revealed is an atheist, unjust and indecent, and must revolt against him. Who will revolt against him? Are the scholars the ones who revolt? The scholars guide. But the revolt is from the individuals, the people, the masses, the

scholars, everyone. No one has said that the scholars are the ones who revolt. And after that they mitigate the situation little by little. So they say that the scholars are the ones who revolt, then advise. And the advice must be in secret. Secret that is done by one of the scholars. One scholar like what happens in Saudi Arabia. One scholar is the one who advises. And so, smoothly the revolt against the ruler who doesn't rule by what God has revealed has been transferred. It has to be from the scholars and it must be an advice, a secret advice, and that the advice must be to one person from one scholar. Only the God knows whether one person will be able or permitted to advise. Then the subject matter has been smoothly and simply transferred. The obligation to revolt against the ruler in an overwhelming and widespread revolution has been transferred to an advice, secret and to one person. What is this humiliation? What a loss? How could it be like this? The obligation to revolt against the ruler in an overwhelming and widespread revolution has been transferred to an advice secret and to one person. What is this humiliation? What a loss? How could it be like this? The obligation to revolt against the ruler is of disobedience and taking back the promise of allegiance -- I am sorry. The obligation to revolt against the ruler of disobedience and taking back the promise of allegiance not to obey his orders. And to revolt

against him by all that we own. But to say that the scholars are the ones who revolt, advise, and that it should be a secret advice known only to the closest person and even the closest persons may not know it. What is there? What is this talking whose bottom it so leave the ruler to do whatever he wants in the fate of the nation as if it was the country estate or the farm he inherited from his parents and grandparents. This doubt we must beware of it. And beware of talking about it. And we must read the book of "the types of rulers." "The types of rulers" which reveals the differences among the Muslim ruler, the sinner ruler, the ruler who deviates from the basics, the atheist ruler who rules by not what God has revealed, the one who replaces the Islamic law. He who makes constitution, civil law, commercial law, maritime law. All this is different to what God has revealed. He created a whole system, and the scholars have agreed that he is an atheist. That's it. This is not one case or two or 20 or 100. No, he replaced the entire Shari'a, that is, the Islamic law. He made an integrated system far away from the Shari'a. We would not continue the situation and that the revolt against the ruler who rules by not what God has revealed transferred to a secret advice from the scholars and that this be from one scholar as is the case in Saudi Arabia. I want to summarize the doubts, but summarizing is distortion. I omit some of

the doubts and come to the 13th doubt by which I hope to end the doubts.

The thirteenth doubt: What does this doubt say? This doubt says that using the help of the polytheists, the Muslims' use of the polytheists is like eating the flesh of the dead. Like eating the dead during a starvation, and that this is a necessity. And it is said, does anyone say that it is legitimate to eat the dead? And how can we say that the scholars have legitimated the illegitimate? The fact is that using the polytheists the Koran forbade it, and God's messenger, may God's prayers and peace be upon him, forbade it in many many verses. The Koran, there are 17 verses of which I only remember about ten verses. Enough? Ten verses are what I remember. In the part on the Umrans, in addition -- I am sorry. The saying by the almighty God. The believers do not take the polytheists as confidants instead of the believers. You who have believed if you obey some of those who are given the book, they will turn you after your believing polytheists. You who have believed do not take an entourage lower than you are who will spare nothing to harm you. They wish you were weakened. Hatred is apparent from their mouths and what is hidden in their chests is much more. We have clarified if you may reason. You who have believed, if you obey those who have disbelieved, they will turn you around and then you will be

failures. God is your tutelary, and he is the best one to render you victors. These are four verses from the part on the Umrans, in the part of women. Tell the hypocrites that they will have a painful punishment, those who take the nonbelievers' confidants instead of believers. Do they find dignity from them? All dignity is to God. You who have believed do not take the nonbelievers confidants instead of believers. Do you want to give God a strong evidence against you? From the part that is titled the Al-Maida. You who have believed, do not take the Jews and Christians as confidants. Some of them are the confidants of the others and he from among you who confides in them, one of them. You who have believed who from among you renegades from his religion. Some of the interpreters said that renegade means taking the Christians and the Jews as confidants. He who renegades from his religion, God will bring people from whom he loves and who love him. Humble to the believers, proud to the nonbelievers, who perform jihad for the sake of God and don't fear the blame of any blame err. You who have believed do not take those who have made mockery of your religion, something to play with from those who were given the book before you and the nonbelievers as confidants, and guard yourself if you believe. These were three verses in the part of the Al-Maida and four in the part of the Umrans and two in the part on the Al-Nissa'a.

The total is? The audience answered laughingly, nine. He said, what do you want from me? The answer was one.

Skipping down to the next dash: You who have believed do not take my enemy and your enemy as confidants. You meet them with affection while they disbelieved in what came to you from the truth. They chase out the prophet and you because you believed in Allah, your God. If you went out for the jihad in seeking my satisfaction, you express affection to them and I know that you have declared and what you have hidden -- I am sorry -- and I know what you have declared and what you have hidden. And who among you does that has lost his way.

Skipping to page 16 at approximately the middle of the page.

Where is then a text for the use of the polytheists? Where is the text for the permission? We look in God's book. We will not find neither in the book of God nor in the instructions of his messenger a permission to use to the polytheists. And for the unintelligible tens of verses and sayings which prevent the use of polytheists. Then eating the flesh of the dead in the desert at a time of need is a necessity and a permission. But using the polytheists is not a necessity or a permission. Then how can you compare this to this? You don't have any proof, you don't have any proof at all. In addition, no scholar of the

trusted and knowledgeable one ever said that. But those who said it are the men in power in Egypt and Saudi Arabia, and in order to permit the entrance of the Americans in Saudi Arabia or the Levant, they said because they are the beneficiaries and they are ordered by the government and they obey. But has the opinion of the scholars taken before the war? Have they paid attention to the scholars? Were they asked before the entrance of the polytheists to the Levant? They were not paid attention to and their opinion was not sought except after the polytheists had entered actually and not sought -- I am sorry. Let me read that again. Except after the polytheists had entered actually and after the start of the war. They took their opinion in order to be a pretext to use only. When the youth whom they describe as without a trace of knowledge, when this youth say we should not seek the help of the polytheists by these texts and that this is not a necessity or permitted, and that the scholars who said that made a mistake.

Your Honor, I would skip at this point to page 18. This is almost two thirds of the way down the page.

Respected brothers: After this brief summary and distorted summarizing in mentioning the doubts, because the doubts are many. After this briefing and summarizing, I ask the almighty God to guide us to jihad of the sake of God. And to be present in our selves the strong spirit to go to

any field of the jihad fields, especially when the doors to Yugoslavia have been opened now or about to be opened. And we hope that Abu Bakr Mosque in which there are the brothers who will be the first to go to jihad for God's sake. May God make you successful, guide your steps to what he loves and wants, and make all of us mujahidin for the sake of God and to make you benefit from these doubts and to be the callers who will refute these doubts everywhere. Then Sheik Abd Al-Rahman got questions from the floor.

Question: What should be the punishment for the leaders who are standing against Iraq? Answer: Both who are against and the ones who are with Iraq should be killed.

Question: What an ordinary man should do regarding jihad especially in America? May God reward you. Answer: After all this lecture everyone writes a question. What should an ordinary person do to refute the doubts and to clarify the issue of jihad is a duty. You just go to any of the fields of jihad where the Muslims are needing their brethren. And the Muslims should not let them down. Because the Muslim in the brother of the Muslim who doesn't treat him unfairly and does not abandon him at the time of need. You must hasten your steps toward any field of the fields of jihad. In Afghanistan and Yugoslavia, south of Sudan, Somalia, and all these fields. Palestine and so Burma.

Question: Some people say that killing Sadat is not jihad because it led to the killing of many brothers. That is to say that the harm from this work is much bigger than the benefits and that it didn't lead to any change from it. Please clarify this point.

Answer: Sadat, who didn't rule by what God has sent, is an atheist, according to the text of the Koran. He is unjust and a sinner and must revolt against him, and he should be eliminated. And if he should not be eliminated except by killing, then he should be killed. As you are trying to burden us with the future and say that what will come after is worse or better or equal, there is something hidden that only God knows. How can you charge us with something God hasn't asked us to do? God has ordered us to eliminate this oppressor by saying, and do not depend on those who are unjust. And so you will be touched by fire. "and guard yourself against a sedition that will not only affect those among you who are unfair." He made it our duty, unless you see a flagrant atheism. It is our duty to eliminate him from his position, even if this has to be done by killing him. But regarding that he has succeeded by someone who is worse, and it is true that he is worse -- are you listening? We are not charged with knowing the future. How do you charge have charge us of it? We do not know the future and we hit the oppressor on his hands as we are

asked. Suppose another oppressor like him came, or a worse oppressor. Would you tell us what you have done. Are we responsible for the results? Who asked us about the results? You don't order us or ask us about the results. Results have always been to God, and were not assigned to the people. And this is because of God's mercy to us, that we are not asked about the results, and not what this work produced or resulted in. First thing is that we do not know the future. The second is that we are not responsible for the results. And this is something God demanded from us, and we did it. And God be glory to him assumes responsibility for all the affairs.

Question: Is assassination an Islamic word or that the apparatus of ordinance is better? Answer: May God give you the blessing and the guidance. The apparatus of the ordinance is much better.

That concludes the reading.

MR. FITZGERALD: Your Honor, at this time the government would offer certain records which have been marked as Government's Exhibits 501, 502 and 503.

THE COURT: Is this on stipulation?

MR. FITZGERALD: I believe it is without objection, Judge.

THE COURT: It is without objection. 501, 502 and 503 are received.

(Government's Exhibits 501, 502 and 503 received in evidence)

MR. FITZGERALD: At this time the government would call Avril Fugger.

MR. STAVIS: Your Honor, may we approach?

(At the side bar)

MR. PATEL: This is our second mystery witness, I think, of the day, and I believe the government wants to introduce some charts based on telephone records, which in my quick review of the charts they are incomplete and to a certain extent inaccurate. I would object to them because even if they were complete and accurate, they are misleading.

MR. FITZGERALD: Your Honor, I told counsel yesterday we would be putting in the phone records. Last night and reviewing them, I thought I would isolate the calls that are relevant rather than having the witness read them. The witness will say they are only the calls to the numbers identified in Mr. Nosair's phone books. In an effort to make it not misleading, the one phone call left out was a call made while Mr. Nosair was at work. Other than that, it doesn't purport to be every phone call made the week before the homicide, just the phone calls made to the residence. I can show you the chart. It is a two-page chart. One is phone calls from his home residence, and then

the phone numbers. There is a glossary that indicates how the phone call was identified. It goes from October 31, I believe --

THE COURT: Look. It seems to me that once an exhibit is in evidence he can summarize any portion he wants. You can summarize any portion of it that you want. You don't challenge that these calls are on the record, do you?

MR. PATEL: No. I think some of the times, like the durations --

MR. RICCO: They are basically accurate. The calls are on the phone records, Judge.

THE COURT: If they are all in the record, I am going to let it in. Whether you ought to chart other calls and whether you want to chart other calls is your business.

I will also say, though, that I understand about last minute inspiration.

MR. FITZGERALD: They came in this morning. I gave them the drafts of the chart and it got bigger -- all right, Judge.

THE COURT: I am telling you, this is something that could have been anticipated. Right?

MR. FITZGERALD: Yes, Judge.

(In open court)

THE COURT: The witness is going to be sworn, so

I will ask everybody to please sit down or stand and pay attention.

AVRIL FUGGER,

called as a witness by the government,

having been duly sworn, testified as follows:

MR. RICCO: Can we have the spelling of the witness's name?

THE COURT: F-U-G-G-E-R.

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Ms. Fugger, can you tell the jury what you do for a living.

A. I am a paralegal for the U.S. Attorney's Office in the Southern District of New York.

Q. If you would keep your voice up or sit closer to the microphone.

For how long have you worked as a paralegal at the U.S. Attorney's Office?

A. Approximately four years.

Q. Are you assigned to this case?

A. No, I am not.

MR. FITZGERALD: Your Honor, if I could read the phone numbers listed on Government's Exhibits 501, 502 and 503 in evidence.

THE COURT: Go ahead.

MR. FITZGERALD: 501 is the phone records for area code 718-921-1984. Government Exhibit 502 is the phone records for area code 201-943-3998. That has an address listed of Karen A. Mills, 577 Olympia Avenue, Cliffside Park, New Jersey. And Government Exhibit 503 is the phone records for area codes 201-332-3174. And on the third page it lists A. Waly, W-A-L-Y, 26 Weldon, apartment 22, Jersey City, New Jersey.

Q. Let me approach you, Ms. Fugger, with Government's Exhibits 501, 502 and 503. Have you had a chance to look at those items before coming to court?

A. Yes, I have.

Q. Let me also approach you with a copy of Government's Exhibit 119T. Have you had a chance to look at Government's Exhibit 119T for coming to court?

A. Yes.

Q. Let me also show you what has been marked for identification as Government's Exhibits 504A, B and C. Do you recognize these items?

A. Yes, I do.

Q. Looking at 504A, B and C, did you review and check 504A, B and C for accuracy?

A. Yes, I did.

Q. Is 504A a glossary?

A. Yes.

Q. In that glossary, does it list for phone numbers addresses or names listed in the designated exhibits, such as 502 or 503?

A. Yes, it does.

MR. PATEL: Excuse me, your Honor. Objection. I believe this may be based in part on something not in evidence.

THE COURT: I will see you again at the side.

(At the side bar)

MR. PATEL: 119T, I don't believe, is in evidence.

MR. FITZGERALD: It was offered yesterday. It is a translation of his phone book.

MR. STAVIS: Wait. 119 is in evidence.

MR. FITZGERALD: 119T, I believe we did that with the interpreter Mr. Faghali yesterday.

THE COURT: Yes, it was one of the several on the list.

MR. PATEL: Then I apologize, your Honor.

THE COURT: It is nice to know that you make mistakes, too. Welcome to the human race.

(In open court)

(Continued on next page)

BY MR. FITZGERALD:

Q. Referring to 504A, does this glossary fairly and accurately reflect for a given phone number the reference in an exhibit identifying the residence or name associated with that phone number?

A. Yes, it does.

Q. Is 504B a chart of phone calls for a designated time period for a given phone number?

A. Yes, it is.

Q. Do each of the phone calls listed on the chart appear in the phone records of the bills for that phone number?

A. Yes, they do.

Q. Is it fair to say that there were also other calls in those bills, so that this one-page chart does not include all phone calls for that bill?

A. That is correct.

Q. And the same for 504C. Is that chart, the one page, a depiction of selected calls for two of the phone records that you reviewed?

A. Yes.

Q. Do each of the phone calls reflected on the chart appear in the underlying bills?

A. Yes, they do.

Q. Is it fair to say there are also other calls

reflected in the underlying bills?

A. Yes.

MR. FITZGERALD: Your Honor, I would offer 504A, B and C.

MR. PATEL: No objection.

THE COURT: 504A, B and C are received without objection.

(Government's Exhibits 504A, B and C were received in evidence)

Q. Looking at 504, for this number 332-3174, you have a designation, 26 Weldon street, is that correct?

A. Yes.

Q. And this number 943-3998, the address 577 Olympia Avenue, comes from Government's Exhibit 502?

A. Yes.

Q. 504B, the phone records for that number at 577 Olympia Avenue, these are the calls charted in time and date order?

A. Yes.

Q. With regard to the phone number that is designated El-Gabrowny, is there another phone call that appears in the record that is not on this chart?

A. Yes, there is.

Q. On what date was that, if you recall?

A. I believe it was either the 4th or the 5th of

November. I am not sure.

Q. The top says between October 31, 1990 to November 5, 1990 until 9:00 p.m.

A. Yes.

Q. Did you chart any phone calls after 9:00 p.m. on November 5, 1990?

A. No, I didn't.

Q. If I could just ask you to read into the record just the date of the calls made for the number at Olympia Avenue to the phone number at 26 Weldon Street.

A. October 31, 1990; November 1, 1990; November 2, 1990; and November 3, 1990; November 4, 1990; and November 5, 1990.

Q. Would it be fair to say that there were two calls on each of November 3 and November 4?

A. Yes, that is correct.

Q. If you could read into the record the number of calls on the chart made to the number indicated with the 485-7407 with the reference Nidal?

A. There is a call on November 1, 1990, and a call on November 4, 1990.

Q. Would you indicate the date of the call made to the number with the corresponding entry Mahmud Abouhalima?

A. November 2, 1990.

Q. Looking at the entry for November 2, 1990, where

it has a phone number for Fatima mosque, let me approach you with what has been received in evidence as Government's Exhibit 55. Actually, it is 55A. Can you compare the phone number listed on 55A with the phone number corresponding to Fatima mosque for the call on November 2, 1990?

A. It is the same number.

Q. Looking at 504C, if you could just read into the record just the dates of the calls from the number at 26 Weldon Street to the location at 577 Olympia Avenue.

A. October 31, 1990; November 1, 1990; November 2, 1990; and November 3, 1990.

MR. FITZGERALD: Thank you.

I have nothing further, Judge.

MR. STAVIS: Your Honor, we would go out of order, with your permission.

THE COURT: Mr. Ricco for Mr. El-Gabrowny.

CROSS-EXAMINATION

BY MR. RICCO:

Q. Good afternoon.

A. Good afternoon.

Q. First I would like you to take a look at Government's Exhibit 504. Let me come to you because it is a long way.

THE COURT: Is that A, B or C?

MR. RICCO: This would be A, your Honor.

Q. I notice that on this exhibit, you have telephone numbers designated for 26 Weldon Street, right?

A. Yes.

Q. And you have a telephone number designated for another address, which would be 577 Olympia Avenue.

A. Yes.

Q. However, with respect to telephone number 485-7407, that number is not designated to an address, it is designated to a person, isn't that right?

A. Yes.

Q. And that person is someone named Nidal?

A. Yes.

Q. Do you have an address that corresponds with that number?

A. No, I don't.

Q. On what basis have you designated that name to that number?

A. Referring to GX 119T, and these are the page numbers, Z3 and Z4, where this designation Nidal is made to that phone number.

THE COURT: 119T is what?

THE WITNESS: It is, I believe, a translation of a telephone.

Q. And for the phone number 718-768-4881, you have the designation there again to a person, and that person is

Ibrahim El-Gabrowny, isn't that right?

A. Yes, that is correct.

Q. You didn't put an address here, you put a name here, isn't that right?

A. Yes.

Q. And also you put a name here, Mahmoud Abouhalima, and you assigned that name to this number.

A. Yes, I did.

Q. In preparation of your testimony, you reviewed the phone records from 26 Weldon Street, isn't that correct?

A. That is correct.

Q. And the time period of those phone records was from August 1989 through January 1991, isn't that right?

A. I have to doublecheck that.

Q. Would you.

A. Sure.

They begin at the very end of May of 1990.

Q. And they go through?

A. The end of April 1991.

Q. So for the 26 Weldon Street address, you have the phone records from May 1990 through April 1991, is that fair to say?

A. Yes.

Q. In reviewing your records, isn't it a fact there were no telephone calls from 26 Weldon Street to this

telephone number prior to November 5, 1990?

THE COURT: This telephone number being?

MR. RICCO: I am sorry, your Honor. Excuse me. I am pointing.

Q. That telephone number would be the telephone number that you have designated on your chart as belonging to Ibrahim El-Gabrowny.

A. I am sorry. Could you repeat that?

THE COURT: No calls before when?

MR. RICCO: November 5, 1990.

THE COURT: Go ahead.

A. I am going to check.

Q. Please do.

(Continued on next page)

(Pause)

MR. RICCO: Your Honor, while the witness is going through this, can we have a brief side bar? I think it will speed things up.

(At the side bar)

MR. RICCO: Judge, there are no phone calls from either the Mahmoud Abouhalima phone or 26 Weldon Street prior to November 25, 1990, and all telephone calls that do relate to those corresponding names is after, several weeks after.

MR. FITZGERALD: I will stipulate to that. I will doublecheck to make sure he hasn't missed one. But I will stipulate to that.

(In open court)

MR. RICCO: Would the government be willing to stipulate that there were no telephone calls from the 26 Weldon Street telephone number to the Ibrahim El-Gabrowny telephone number prior to November 5, 1990?

MR. FITZGERALD: Yes, so stipulated.

MR. RICCO: Would the government also stipulate that there were no relevant calls from the Mahmoud Abouhalima telephone number as designated on 504 prior to November 5, 1990?

MR. FITZGERALD: Yes, from that phone number to Mr. El-Gabrowny, no phone calls prior to November 5.

Stipulated.

MR. RICCO: And that the first telephone calls that were from Mahmud to El-Gabrowny, from Weldon Street to El-Gabrowny, were several weeks after November 5, 1990.

MR. FITZGERALD: That is correct. Yes, the first phone records showing phone calls to those numbers are after November 5, 1990, from both phone numbers. So stipulated.

BY MR. RICCO:

Q. To the witness: Your phone records for Mahmoud Abouhalima, those phone records go all the way back to August of 1989, isn't that correct?

MR. FITZGERALD: I will stipulate.

MR. RICCO: Thank you.

Q. Going to 504B, 504B which is in evidence says calls to the above numbers between 31, 1990, and November 5, 1990. And on November 5, 1990, you have one call from the Jersey phone number to the El-Gabrowny phone, is that correct?

A. Yes.

Q. But in fact there were two other calls that day from the Jersey number to the El-Gabrowny residence, isn't that correct?

A. If I could just check that with the records.

Q. Please do.

MR. FITZGERALD: For the record, Mr. Ricco, the

Jersey number is 201-943-3998.

A. Yes, there are two other calls on that day.

Q. Would you tell the jury what time those calls went from 201-943-3988, to 718-768-4881, the first one that is not on this chart?

A. Yes, 10:16 a.m.

Q. That is 10:16 in the morning, right?

A. Yes.

Q. That was another call from this number at Olympia Avenue to Mr. El-Gabrowny's residence. What time was that call which is not on the chart?

A. 11:21 p.m.

Q. 11:21 p.m. on the night of November 5, 1990?

A. That is correct.

Q. Did you review the telephone records for the person named Nidal?

A. No, I did not.

Q. And I notice that on 504B, the chart that relates to the different telephone calls, somehow again addresses and others have names, right?

A. Yes.

Q. You are not trying to imply, are you, that these individuals were speaking in these calls, are you?

MR. FITZGERALD: Objection.

THE COURT: Sustained.

Q. Isn't it a fact that what this exhibit represents and what the numbers represent in 501, 502 and 503 is just that telephone calls were made from one residence to another? Isn't that right?

A. Where I have the residences as listed, yes.

Q. You have a name listed here.

A. Yes.

Q. And you are not able to tell us, are you, that, for example, Ibrahim El-Gabrowny was speaking in this call?

A. No, I am not.

Q. You are simply telling us that a telephone call was made from one residence to another, isn't that correct?

A. From one number to another, yes.

Q. With respect to the El-Gabrowny residence and the 577 Olympia Avenue residence -- and in fact the subscriber to this telephone, which is 577 Olympia Avenue, that is Miss Karen Mills, isn't that correct?

A. That is correct.

Q. There are many, many, many telephone calls between those two addresses, isn't that correct, prior to November 5, 1990?

A. Again I would have to check.

MR. FITZGERALD: I will stipulate.

Q. And that those telephone calls are at all times of the day, during the afternoons, during the evenings,

during the mornings, isn't that correct?

A. I would have to look at the exhibit.

MR. FITZGERALD: I will stipulate.

(Continued on next page)

MR. RICCO: No further questions. Thank you very much.

THE COURT: We are going to break for lunch, ladies and gentlemen. Please leave your notes and other materials behind. Please don't discuss the case. We will resume at 2:00.

(Jury excused)

THE COURT: Mr. Jacobs, you had a matter to discuss?

MR. JACOBS: Yes.

MR. JACOBS: Yes, your Honor. Apparently the government would like to call Detective Napoli this afternoon to start to lay the foundation to the introduction of the CM's. We had been told originally that it would probably be on Monday. I am ready to proceed. However, I think my colleagues may not have had a chance to review some of the evidence and some things like that. I am certainly prepared if the government wants to go forward with Napoli to do -- even though we were told Monday I am ready to proceed today in view of reply cross. I just don't know whether my colleagues are prepared to stand up and finish Napoli today. I am ready to go forward.

THE COURT: You are appearing as counsel for your colleagues?

MR. JACOBS: Yes. I just want to state, the

government asked would we be able to do it. I have been working over the last few months with Paul Ginsberg, who is the tape expert. When Napoli testifies, I would ask permission that Mr. Ginsberg sit with me so that I can confer with him during direct. If the the government had no problem with that --

THE COURT: I have no problem with that either.

MR. McCARTHY: Your Honor, I have actually been dealing with Mr. Jacobs about this over the last couple of days. My understanding as to the agreement that we reached is that Agent Napoli is being called for the limited purpose of helping to lay the foundation for the admission of tapes, not for a full-blown session of testimony. That was the commitment under which we discussed putting him on before Salem.

THE COURT: Is he going to be back later?

MR. McCARTHY: Yes. I have represented to Mr. Jacobs and I thought through him to all other counsel that we would either call him later or he will be available whenever they want to call him.

THE COURT: On that representation, then it seems to me the only thing that he ought to be cross-examined about at this point is whatever he testifies to on direct.

MR. JACOBS: I couldn't agree more. No problem. I conveyed that to counsel in the last few days and I have

no problem with the government's -- my problem is to do with the tapes.

THE COURT: Are you saying that others nonetheless will have cross-examination and you can't vouch for them?

MR. JACOBS: I haven't heard his direct with respect to the CM's. I am ready to proceed. Somebody else may want to review some of these documents that we just got this morning.

THE COURT: As I understand it, you are the main spear carrier but there may be others.

MR. JACOBS: Yes.

MR. McCARTHY: Your Honor, just so the court understands, most of what is going on is, believe it or not, aimed at trying to save time, in the hope that --

THE COURT: I am not being skeptical on that.

MR. PATEL: Your Honor, perhaps to save a little more time, with the court's permission, I would like to reserve my cross-examination of this witness until I can explore these records a little more in depth and see whether it may be appropriate for us to produce our own diagram, clearly having found out that this witness was being called five minutes before she was called, I didn't have a chance to go over it.

THE COURT: Let me see Mr. Jacobs and Ms.

Amsterdam in the robing room.

(Luncheon recess)

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

Time noted, 2:05

(Jury not present)

MR. JACOBS: Your Honor.

THE COURT: Yes.

MR. JACOBS: I would ask perhaps if your Honor would tell the jury that this is a tape expert sitting next to me so they don't think he is a defendant, unless he is Ramzi Yusef.

THE COURT: Does he want to move to intervene?

MR. JACOBS: I'm sorry?

THE COURT: Does he want to move to intervene? No?

MR. JACOBS: Move to sever.

THE COURT: Why don't I just say that he is a consultant.

MR. JACOBS: Thank you, Judge. That is perfect.

THE COURT: Somebody who borrows your watch to tell you what time it is.

All right.

AVRIL FUGGER, resumed.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

THE JURY: Good afternoon.

THE COURT: Just so we don't confuse you with the

seating arrangements, Mr. Jacobs is sitting up front at the moment with a gentleman with whom he has been consulting with on some evidence that may be received later on. It is just for the convenience of their being able to see and hear that we seated them over there. That is all that is going on.

Ms. Amsterdam for Mr. Hallafalla.

CROSS-EXAMINATION

BY MS. AMSTERDAM:

Q. Good afternoon.

A. Good afternoon.

Q. You said this morning that these charts were comparisons of selected telephone calls, is that correct?

A. Yes, that's correct.

Q. Were you given the power to make the selections yourself or did you consult with one of the prosecutors in connection with that?

A. I was given a draft of the, a draft version of the chart and told to look at the time frame from October 31 through November 5.

Q. So you did not do the draft yourself? One of the prosecutors did the draft?

A. I don't know who did the draft, but one of them gave it to me, yes.

Q. They told you to make certain comparisons, but

they told you what they were looking for in other words, correct?

A. They told me which time frame to center on and what telephone numbers to put -- which telephone numbers to pull out of all the telephone records.

Q. Did they tell you if they wanted the phone number to be referred to as associated with a person or an address? Was that your decision or one of the prosecutors?

A. The decision was mine in that I matched a designation to a phone number based on the exhibits I was given. If I had the original telephone records and they gave an address, I would attach it to that address, for example.

Q. If you had the original phone records and you knew who the subscriber was to the phone, you listed the address and not the person on the chart?

A. Yes. I listed the address. I listed the address.

Q. As opposed to the person --

A. Yes.

Q. -- who had subscribed to the phone?

A. Yes.

MS. AMSTERDAM: May I have one moment, your Honor.

THE COURT: Yes.

Q. Did you ever make any comparison of phone calls from the phone number attributed to Mr. Nidal to any Emad Salem?

A. Phone calls coming from the Nidal phone?

Q. Coming from the Nidal phone to Emad Salem?

A. No, I did not.

Q. Similarly did you make any comparison of any phone calls coming from the phone attributed to Mahmud Abouhalima to Emad Salem?

A. No, I did not.

Q. Were you ever given any phone records attributed to Emad Salem and asked to compare his phone calls to either Mr. Nidal or Mr. Abouhalima?

A. I don't believe so, no.

Q. Have you done any comparison with Emad Salem's phone records?

A. No.

Q. Have you ever seen any phone records attributed to Emad Salem?

A. No.

MS. AMSTERDAM: I have no further questions.

THE COURT: Anyone else? I guess not. Any redirect?

MR. FITZGERALD: Very brief, Judge.

REDIRECT EXAMINATION

BY MR. FITZGERALD:

Q. Ms. Fugger, for the period of 1990 do you know whether or not the government has the phone records of Nidal?

A. I do not.

Q. Do you know whether or not the government has the phone records of Emad Salem for 1990?

A. No, I don't.

MR. FITZGERALD: Nothing further.

RECROSS-EXAMINATION

BY MS. AMSTERDAM:

Q. The phone records that you compared, were they given to you by the government?

A. Yes, they were.

Q. The government never gave you phone records of Emad Salem to compare?

A. No.

MS. AMSTERDAM: Thank you.

THE COURT: Thank you very much. You are excused.

(Witness excused)

MR. KHUZAMI: Your Honor, the government calls as its next witness Howard Meinhardt, M-E-I-N-H-A-R-D-T.

HOWARD MEINHARDT,

called as a witness by the Government,

having been duly sworn, testified as follows:

THE COURT: If you could move your chair up and try to talk into that microphone so everybody can hear you.

Thank you.

MR. KHUZAMI: I'm sorry. Could you repeat your name, please?

THE WITNESS: Yes. Howard J. Meinhardt, M-E-I-N-H-A-R-D-T.

MR. KHUZAMI: May I proceed?

THE COURT: Please.

DIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Mr. Meinhardt, how are you employed?

A. I am a special agent with the Federal Bureau of Investigation.

Q. How long have you been a special agent with the FBI?

A. A little over 16 years.

Q. What is your current assignment?

A. I am assigned to the Cleveland division of the FBI.

MR. PATEL: I am sorry, your Honor, I can't hear.

A. I am assigned to the Cleveland division of the FBI.

Q. How long have you been assigned to the Cleveland

division?

A. For the past three years.

Q. Where were you assigned prior to being assigned to Cleveland?

A. Here in the New York division.

Q. How long were you here in New York?

A. Approximately nine years.

Q. Did you have any particular assignment while you were here in New York?

A. I was assigned to -- the last several years I was here I was assigned to the special operations group, surveillance.

Q. What is a special operations group?

A. We basically -- the group that I was involved with conducted surveillances.

Q. Directing your attention to around November of 1990, did you conduct a surveillance of an individual named Ibrahim El-Gabrowny at that time?

A. Yes, we did.

Q. Did you do that alone or were you with others?

A. I was with a team.

Q. Now, did you have any special duties or responsibilities as part of that surveillance team?

A. On that day, I was assigned to maintain the surveillance log.

Q. What does it mean to maintain the surveillance log?

A. It was to write the log, that is, to record in a time span our observations, descriptions of people, where they went, addresses, that sort of thing.

Q. Do you recall where the surveillance of Mr. El-Gabrowny began in November of 1990?

A. Yes, it began on Prospect and -- Prospect Street in Brooklyn.

Q. In Brooklyn.

How did you know that it was Mr. El-Gabrowny that you were observing?

A. We had previously had a photograph of him.

Q. Do you recall what time the surveillance began?

A. No, I don't recall the specific time.

Q. What did you first observe Mr. El-Gabrowny do?

A. We observed him entering a vehicle, a small gray Buick.

Q. Was he alone or with others?

A. He was in the Buick with another individual, a female.

Q. Can you describe the female at all?

A. She was -- she appeared to be short, fairly heavyset and she had a scarf or a shawl of some kind covering her face.

Q. Did those two individuals go anywhere in the gray Buick?

A. Yes. Initially, after they left, they were observed in the area of the Bellevue Hospital here in Manhattan.

Q. OK. What did you see Mr. El-Gabrowny do in the Bellevue Hospital area?

A. After he dropped the female off at the front door -- near the front door of the hospital, he parked the vehicle in a nearby garage and entered the hospital himself.

Q. Did there come a time when you observed Mr. El-Gabrowny depart the Bellevue Hospital area?

A. Yes, he parked in the garage.

Q. And --

A. Did you say "depart"?

Q. I'm sorry. Let me repeat the question. Did there come a time when Mr. El-Gabrowny departed --

A. Yes.

Q. -- from the Bellevue Hospital area?

A. Yes.

Q. What did you next observe him do at that point?

A. I drove over to the New Jersey area and we observed him near a Getty gas station on Central and Hoboken in Jersey City.

Q. What did you observe him do at the Getty gas

station?

A. When he pulled into there he engaged in conversation with several individuals who were there, and after a few minutes he pulled away with one of those individuals in the vehicle with him.

Q. Was the female that you described earlier with him at that time?

A. Yes, she was.

Q. What did you next observe Mr. El-Gabrowny do?

A. He drove a few blocks way to an address, 111 Reservoir in Jersey City. It was an apartment complex.

Q. What did you observe Mr. El-Gabrowny do at that address?

A. He parked the vehicle, and he engaged in a conversation with several other individuals who were there in another vehicle that was already parked there. They thereupon entered the front door of the apartment.

Q. Do you recall anything about the vehicle that the other individuals were in that Mr. El-Gabrowny spoke to?

A. It was a light colored Hyundai.

Q. Hyundai?

A. Hyundai.

Q. OK. What did you next observe Mr. El-Gabrowny do after he entered that apartment building?

A. Sometime later there were several individuals,

some of the ones who he had walked in with earlier were observed unloading a U-Haul trailer or truck and moving furniture into the apartment building.

Q. Did you observe him do anything after that?

A. Afterwards he and the female departed the area.

Q. Did you observe him anymore after he departed that night?

A. I don't recall.

Q. As you sit here today, Special Agent Meinhardt, do you recall the exact date that surveillance occurred?

A. No.

Q. Do you recall the exact time that the surveillance started and the time that it ended?

A. No, I don't.

Q. Do you recall the license plate of the car that Mr. El-Gabrowny was driving?

A. No, I do not.

Q. Do you recall the license plate of the Hyundai that contained the individuals that he spoke to on Reservoir Avenue?

A. No.

Q. Was there a time that you did know that information?

A. Yes.

Q. When was that?

A. Well, at the time of the surveillance as I was recording the log, the surveillance log, that information would have been documented on the log.

Q. Did you personally record that information in the surveillance log?

A. Yes, I did.

Q. Is that your regular practice to record that information on a surveillance?

A. Yes, it is.

Q. Did you record that information at or around the time that you made those observations?

A. Yes.

Q. Were those recordings accurate when you made them?

A. Yes, they were.

MR. KHUZAMI: Your Honor, may I approach.

THE COURT: Yes.

Q. Special Agent Meinhardt, I am going to show you what's been marked as Government Exhibit 35104A and ask you to just take a look at it.

Do you recognize that?

A. Yes, I do.

Q. What is it?

A. It is the surveillance log I conducted on November 29, 1990.

Q. Did you have an opportunity to review that before testifying today?

A. Yes, I did.

Q. After reviewing that log, did that refresh your recollection as to the date of the surveillance, the time it started and ended and the license plate of the gray Buick and the light Hyundai?

A. Yes, it did.

Q. It refreshed your recollection?

A. After reading it, I recall the -- some of the events that occurred there, and as far as actually refreshing my recollection about the exact license plate, no.

MR. KHUZAMI: Your Honor, at this time I would move Government Exhibit 35104A into evidence for the limited purpose of allowing the witness to read those items.

THE COURT: That can be done without objection, but the only items he can read are the license number and the date and the other items that he cannot recall.

Q. Special Agent Meinhardt, if you would read from that exhibit just the following items:

The date that the surveillance took place?

A. 11/29/90.

Q. The time that it began?

A. 2:45 p.m.

Q. The time that it ended?

A. 11:05 p.m.

Q. The license plate of the Buick that Mr. El-Gabrowny was driving?

A. 3KL 480.

Q. The license plate of the Hyundai that was parked at Reservoir Avenue?

A. FEF 36T.

Q. Special Agent Meinhardt, did you have an opportunity to run the license plate of the Hyundai to determine who it was registered to?

A. Yes, I have.

Q. Who was it registered to?

A. It was -- it is registered to Nidal Ayyad.

MR. KHUZAMI: No further questions.

THE COURT: Cross?

MR. RICCO: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. RICCO:

Q. Good afternoon, sir.

A. Good afternoon.

Q. Your work on this day was part of a team, isn't that right?

A. Yes, it was.

Q. You were directly working with a surveillance

team, isn't that right?

A. I'm sorry. I couldn't hear you.

Q. You were working directly with a surveillance team, isn't that right?

A. Yes, I was.

Q. In fact, however, the FBI itself works as a team, doesn't it?

MR. KHUZAMI: Objection to form.

THE COURT: Sustained as to form.

Q. The FBI agents work together, don't they?

A. Yes.

Q. When you go out and you gather surveillance, you get that information and you pass that information on to another agent, correct?

A. Yes.

Q. That agent does something else with it, isn't that right?

A. Usually.

Q. That is what I mean when I say the FBI works as a team, OK?

A. OK.

Q. On this day, you arrived sometime at 57 Prospect Park Southwest in Brooklyn, isn't that right?

A. Yes.

Q. When you got there, you knew who you were going

to observe, isn't that right?

A. We were given an individual we were to try to follow and that was his residence.

Q. You were given a photograph of the individual, isn't that right?

A. Yes.

Q. Based on that photograph, you knew, then, to follow Mr. El-Gabrowny?

A. Yes.

Q. Were you given the photographs of anyone else to observe or follow at 57 Prospect Park Southwest?

A. I don't recall.

Q. Your reason for being there was due to some investigation, isn't that correct?

A. Yes.

Q. The scope of that investigation was outside of your knowledge, isn't that right?

A. Yes.

Q. In other words, you were just there to do as you were told, to follow your orders, isn't that correct?

A. To conduct a surveillance.

Q. Mr. El-Gabrowny comes out, right, of the building at some point?

A. Yes.

Q. Someone looks at the picture and says something

to the effect, "That's him," right?

A. That would be the usual.

Q. Were there any other photographs there with you?

A. I don't recall, no.

Q. Did you know who the woman was that was with him that is identified in your report as number 1, unidentified female number one?

A. I don't recall. I don't think so.

Q. On the day that you were doing surveillance, did your team have a cameraman?

A. Probably, yes.

Q. Do you know whether or not photographs were taken of the individuals that came out of 57 Prospect Park Southwest?

A. I don't recall.

Q. Were you the team leader?

A. No, I was not.

Q. Who was the team leader?

A. I believe it would be a Mr. -- Detective Nick Garcia.

Q. I'm sorry, sir?

A. Detective Garcia.

Q. There was another agent there, his name was James Fogle, are you familiar with him?

A. Yes, I am.

Q. He is a cameraman, isn't he? He takes pictures doesn't he? If you know.

A. Well, all the agents have some photograph training, but I do not know specifically that day whether he was taking photographs, sir.

Q. Do you recall yourself whether or not someone was there with a camera? Yes or no.

A. No, I don't really.

Q. But the purpose of conducting a surveillance is to memorialize it, isn't that right?

A. To try to, yes.

Q. One of the ways you memorialize it is through a log sheet, isn't that right?

A. Yes.

Q. Another way to memorialize it is through photographs, isn't that correct?

A. Correct.

Q. Now, Mr. El-Gabrowny and the woman, they come out of 57 Prospect Park Southwest, right?

A. OK.

Q. They get into a Buick, and they leave Brooklyn, they go to Manhattan and they go to Bellevue Hospital, isn't that right?

A. Yes.

Q. The woman gets out of the car, right?

A. Yes.

Q. She goes into the building, into the hospital, at Bellevue?

A. I recall her getting out of the vehicle in front of the hospital.

Q. She went to the 19th floor, isn't that correct?

A. She was observed later on the 19th floor. I believe it is in the log.

Q. There was another officer who observed the unidentified female on the 19th floor, isn't that correct?

A. Yes.

Q. Now, who made the connection between the woman who got out of the car and the woman being on the 19th floor as being the same person, if you know?

A. I don't recall.

Q. But, based on your review of your records, you know that the woman that was observed coming out of 57 Prospect Park Southwest was observed on the 19th floor inside Bellevue Hospital by someone, isn't that correct?

A. Yes.

Q. At some point Mr. El-Gabrowny also enters the hospital, isn't that right?

A. That's correct.

Q. That point is after he parked the car, isn't that right?

A. Correct.

Q. There is a visit or something that takes place there, isn't that right? Something takes place there in the hospital?

A. I just know they went into the hospital and they went up to one of the floors of the hospital. I don't know if they were visiting or what.

Q. OK. Do you know whether or not Mr. Nosair was in Bellevue Hospital on that day?

A. No, I don't.

Q. That was outside of the scope of your duties and knowledge for that day, isn't that right?

A. I just don't recall as far as that specific that day, specifically then.

Q. At some point they leave the hospital, right?

A. Yes.

Q. They get back in the Buick?

A. Yes.

Q. This time they don't go back to Brooklyn, right?

A. Correct.

Q. They go to New Jersey?

A. Correct.

Q. They go into a gas station, isn't that right?

A. Yes.

Q. Mr. El-Gabrowny doesn't buy gas in the gas

station, does he?

A. I don't recall him buying or purchasing gas.

Q. What he does is he has a conversation with some men there at the gas station, isn't that right?

A. Yes.

Q. From the gas station they leave with one of the men, right?

A. Yes.

Q. They drive to 111 Reservoir avenue, isn't that right?

A. Correct.

Q. When they pull up in front of this location, they meet a group of some other men, isn't that right?

A. Correct.

Q. They start -- they greet these men, right?

A. Yes.

Q. They start talking?

A. Yes.

Q. Those men, the men that they met at 111 Reservoir, arrived there separately and apart from Mr. El-Gabrowny in that car, isn't that right?

A. Yes.

Q. And, to your knowledge, those men arrived there in a Hyundai, isn't that correct?

A. Correct. It was there as they pulled up.

Q. They were already there?
A. I recall seeing the vehicle there.
Q. They were not at the hospital, if you recall?
A. Right. I did not observe them at the hospital.
Q. Your investigation traced the license plate of that Hyundai to Nidal Ayyad, isn't that right?
A. Yes.
Q. At a New Jersey residence, isn't that correct?
A. Yes.
Q. The men who were in the Hyundai spoke to Mr. El-Gabrowny and the unidentified woman, right?
A. Yes.
Q. They go into the building, right?
A. Correct.
Q. They come back out of the building and they go to a U-Haul truck?
A. Correct.
Q. And they open the truck and they start taking furniture out?
A. I observed several of the individuals removing furniture from the truck.
Q. They were moving furniture into the building, weren't they?
A. Yes.
Q. After this took place, Mr. El-Gabrowny and the

unidentified woman left that location?

A. Yes.

Q. They went to a grocery store and bought some groceries, isn't that right?

A. I don't recall what occurred the rest of the evening.

Q. Take a look at your report, please. Can you take a look at your log, 35104?

A. I don't have it in front of me.

Q. You don't. I'm sorry.

MR. KHUZAMI: Mr. Ricco.

MR. RICCO: May I approach the witness, your Honor.

THE COURT: Yes.

Q. You have had a chance to look at your log?

A. Yes.

Q. The question is: The two of them went into an Arabic grocery store, isn't that correct?

A. Mr. El-Gabrowny and another unidentified male were observed entering a grocery store at -- on Sip Avenue in Jersey City.

Q. At this point the unidentified woman drives away, isn't that right?

A. Correct.

Q. You follow her, isn't that right?

Isn't that correct?

A. No. We did not follow her.

Q. She comes back to the grocery store, isn't that correct?

A. Yes, she does.

Q. And out comes Mr. El-Gabrowny and another individual carrying grocery bags, isn't that right?

A. That's correct.

Q. And they get back into the car?

A. Yes.

Q. They go back to 111 Reservoir where the moving was taking place, isn't that correct?

A. Correct.

Q. At some point after that, Mr. El-Gabrowny departs from the area, isn't that right?

A. We have our surveillance discontinued.

Q. At that point?

A. At 11:05.

Q. The reason to discontinue the surveillance at that time, was it by schedule?

A. It would appear that we were working a 3-to-11 shift, and so the shift would have been over by that time. I believe there was a call placed to the case agent and he suggested that -- to go ahead and depart.

Q. Do you know, Agent Meinhardt, whether or not

Mr. El-Gabrowny was surveilled by the FBI on any other days in November of 1990?

A. I don't recall.

Q. Did you participate in any other surveillances at 57 Prospect Park Southwest, Brooklyn?

A. I recall on a couple of occasions surveilling him, but I don't recall the dates or the time frame.

Q. I'm sorry, sir?

A. I do recall surveilling him, conducting surveillances in that vicinity on other occasions, but I don't recall the number of times or the exact time span.

Q. OK. On November 29, 1990, the time that you saw Mr. El-Gabrowny come out with the unidentified female, was that the first and only time that you saw him at that location on that date?

A. On that day, I believe -- yes.

Q. Now, finally, the information that you got from the Hyundai, the license plate number --

A. Yes.

Q. -- and the information as to the registered owner, that information was passed on to another agent in this case, isn't that right?

A. Yes.

Q. This investigation at this point was an FBI investigation, isn't that right?

A. Yes, it was.

Q. It was not a New York City Police Department investigation, isn't that right?

A. It was an FBI investigation. I don't know if there was a separate investigation by the New York Police Department. I don't know if the New York Police Department had a separate investigation, but there was an FBI investigation I was involved in the surveillance on.

MR. RICCO: Thank you very much, sir.

THE COURT: Mr. Stavis, representing Mr. Nosair.

CROSS-EXAMINATION

BY MR. STAVIS:

Q. On November 29, 1990, had you heard of a person by the name of El Sayyid Nosair?

A. I don't recall.

MR. STAVIS: May I approach the witness, your Honor, with 35104.

THE COURT: Is there a letter on that, too? 35104?

MR. STAVIS: A.

THE COURT: A. OK.

A. OK. Yes, that was my writing.

Q. You wrote the name El Sayyid Nosair on the case caption, is that correct?

A. Yes, I did.

Q. On November 29 of 1990, had you ever heard the name Karen Mills Nosair?

A. I don't think so. I don't recall.

Q. Did you know on November 29, 1990 whether the woman you saw exiting 57 Prospect Park was Karen Mills Nosair?

A. I do not recall.

MR. STAVIS: I have no other questions of this witness, your Honor.

THE COURT: Anyone else? Any redirect?

MR. KHUZAMI: Briefly, please, your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. KHUZAMI:

Q. Special Agent Meinhardt, you were asked by Mr. Ricco whether or not you recalled whether any photographs were taken during the surveillance you testified about.

A. Yes, I recall being asked that.

Q. Is there anything in your log that would refresh your recollection as to whether or not photos were taken during that surveillance. If you can, just answer the question yes or no before you look at it.

A. On some of the cover sheets, sometimes you will note whether photographs were taken, or --

Q. Could you take a look at your log, which I believe is next to you, and see whether or not there is anything in there that refreshes your recollection as to whether or not photos were taken during that surveillance.

A. In the log itself, I don't have anything noted here.

Q. Let me direct your attention to the top left-hand corner of the first page --

A. I'm sorry. Yes, there is a section for photos to check off, and I do not have the photo log checked off, the photo section.

Q. What does that indicate to you?

A. No photos were obtained.

MR. KHUZAMI: No further questions.

THE COURT: Mr. Ricco for Mr. El-Gabrowny. Go ahead.

MR. RICCO: No questions, your Honor. Thank you.

THE COURT: OK. You are excused. Thank you very much.

(Witness excused)

MR. McCARTHY: Your Honor, the government calls Louis Napoli, and I just need a moment with counsel.

LOUIS NAPOLI,

called as a witness by the Government,

having been duly sworn, testified as follows:

MR. McCARTHY: May I, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. McCARTHY:

Q. Good afternoon, Mr. Napoli.

A. Good afternoon.

Q. Could you tell us please, how you are employed?

A. I am employed by the New York City Police Department.

THE COURT: Excuse me. Can you move up, please, and point the microphone and try to talk into it.

Q. Why don't you repeat your last answer for anyone who hadn't heard it.

A. I am employed by the New York City police department.

Q. How are you employed by the New York City Police Department?

A. As a detective.

Q. How long have you been a detective?

A. Since 1984.

Q. Detective Napoli, are you currently assigned to the investigation of this case?

A. Yes, I am.

Q. Is that with a task force that combines federal agents and New York City police?

A. Yes, it is.

Q. How long have you been with the task force?

A. Since '83.

Q. Let me direct your attention to the months of May and June of 1993. I would ask you whether you were working in connection with this case at that time?

A. Yes, I was.

Q. Was one of your jobs in the investigation the collection and securing of conversations that were tape recorded by a confidential informant?

A. Yes, it was.

Q. Was that tape recording done under the supervision of the task force?

A. Yes, it was.

Q. Could you tell us, please, the name of the confidential informant.

A. Emad Salem.

Q. In May and June of 1993, under the supervision of the task force, can you tell us, please, what types of devices Emad Salem used in tape recording subjects of your investigation?

A. The devices that we used were Nagras, a cassette recorder and a device which had to be downloaded. It was fairly new.

Q. What do you mean by "downloaded"?

MS. STEWART: I didn't catch that, Judge.

THE COURT: It was a device that had to be downloaded. It was fairly new.

Q. What do you mean by "downloaded"?

A. After use, the device or instrument had to be downloaded by a computer.

Q. Was that downloading done onto a particular object?

A. It was downloaded onto a cassette.

Q. Was it done onto an optical disk at one time?

A. I think so.

Q. Now, you mentioned Nagra recordings.

A. Right.

Q. What is a Nagra?

A. It is a device that -- it is a recording device which can be secreted in one's body or clothing or a piece of equipment carried by them.

Q. I am approaching you with what's been marked for identification as Government's Exhibit 399. Are you familiar with items of this type?

A. Yes, I am.

Q. Can you tell us, please, what Exhibit 399 is.

A. It is a Nagra.

Q. Now, to be clear, do you know whether this is the Nagra or one of the Nagras that was actually used in

connection with this investigation?

A. It is probably one that is similar to the one that was used.

Q. When you say "similar," what do you mean by that?

A. They are all the same. I just don't know if this is this was the exact one that was used.

MR. McCARTHY: Your Honor, the government offers 399 for purposes of demonstration only.

MR. JACOBS: No objection.

THE COURT: 399 is received for that purpose.

(Government's Exhibit 399 for identification was received in evidence)

MR. McCARTHY: Thank you, your Honor.

Q. Can you please open up 399. Now, could you hold that item up to the jury for a moment.

THE COURT: Why doesn't he step down because it is difficult to see at a distance.

MR. McCARTHY: Thank you.

THE COURT: Also if you are going to pose any questions, use that microphone. Thank you.

Q. Detective Napoli, why don't you step over here.

Now, Detective Napoli, can you please demonstrate for us how it is that you load a reel onto the Nagra?

A. Usually --

THE COURT: Could you also please talk into the

microphone when you do it. Thank you.

A. The Nagra usually comes with one blank reel and a reel that is going to be put on to it.

Q. Let me interrupt you for just a moment. Why don't I hold it for you and you can point perhaps so the jury can see.

A. This would be the fresh reel that is going to be used to record. You place it on this one, you reel the tape around on here on to the blank one. As you do that, you close it, and when it is going to be used it is activated by whatever mechanical device, or a personal device like this, and which starts the recording of the conversation.

MR. McCARTHY: Your Honor, indicating for the record, Detective Napoli just turned the machine on and off.

Thank you. You can resume your seat.

Q. Now, Detective Napoli, would you tell us, please, where the Nagra machines that Emad Salem used under the supervision of the task force during May and June of 1993 were located during your investigation?

A. One was placed in a briefcase that he carried and there were two placed in the -- in his vehicle.

Q. Why two in the vehicle?

A. Well, he took -- was with them quite a bit of hours during the day, and was in quite a bit long conversations. So one of the Nagras only -- the extent I

think is three hours and 10 minutes so not to --

MS. STEWART: Objection, Judge, move to strike.

THE COURT: He can testify to the capacity of the machine.

MS. STEWART: I think the question was why -- could we have a side bar perhaps?

THE COURT: No.

MS. STEWART: Wasn't the question, then, why did he have a machine with this kind of capacity, and he's testifying about what happened --

THE COURT: No, he was asked why there were two machines. He was explaining why there were two machines. Go ahead.

Q. Detective Napoli, let me ask you a couple of questions. The Nagra that you just showed us, what kind of reels were adaptable to it as far as you knew in 1993?

A. There were two, one which had the capacity of three hours and ten minutes and the other one had a capacity of two hours.

Q. What was mainly used in connection with this investigation?

A. Mainly three-hour-and-ten-minute tapes, unless we had an urgency that we had to use a two-hour tape.

Q. Why would an urgency cause you to use a two-hour tape?

A. Because we didn't have any three-hour tapes with us.

Q. OK. Can you tell us whether Mr. Salem was able to control -- withdrawn.

Let me invite your attention to the Nagra that was placed inside the briefcase that you mentioned.

Do you know, sir, whether Mr. Salem was able to control when that Nagra ran for purposes of recording and when it did not?

A. Yes, he was able to control it.

Q. OK. Why not just keep the tape rolling?

A. Like I said before, he was with them for quite a long period of time and to have one Nagra just running endlessly would have been a poor management of time, and then we would have run into the factor that he would have had to constantly go out and change the tapes. This would have added suspicion towards him and it would have been detrimental to our case.

(Continued on next page)

Q. How was the Nagra powered? What is the source of the power?

A. It is powered by batteries, two double A batteries that are in the back of the Nagra that I just showed you, and those batteries also had to be changed with every tape changing.

Q. Every time you had to change the tapes you had to change the batteries as well?

A. Yes, we did, because we weren't sure -- after the original three hours we weren't sure how long the batteries were actually kept in there, so we didn't know how strong they were. So they were changed on that basis, that when the tapes were changed that the batteries were changed. That way we were sure we wouldn't be short changed.

Q. Give us an idea how much time it takes to take a reel out and put a reel in?

A. It depends on the circumstances, how much security you had.

Q. Let me interrupt you. Suppose you weren't rushed.

A. Two to three minutes.

Q. About how long does it take to change the batteries?

A. Couple minutes. The entire thing takes about two to three minutes.

Q. Detective Napoli, did you have a partner during the course of the investigation in May and June of 1993?

A. Yes, I did.

Q. Who was that?

A. Special Agent John Anticev.

Q. What agency is John Anticev with?

A. The FBI.

Q. What procedure did you follow in this case for providing Mr. Salem with tapes, taking the tapes back from him after they were used, and securing that evidence?

A. We would meet Mr. Salem on a particular day and load the Nagras in the briefcase and the two that were in the car. At that point, he would go on his assignment and we would then see him the next day, where we would then retrieve the tapes that we gave him and any other ones that he used. The day before we usually gave him like two to three tapes extra because of the amount of time that he spent with these people, and that he would have to do his own changing.

Q. You mentioned that you would get the tapes from him the next day?

A. Yes. On the majority of times the very next day we retrieved the tapes. I think there was only one time where it took three days before we retrieved the tapes.

Q. Who held onto the tapes during the interim? That

is, from the time an investigative incident would end and the time you would pick up the tape, who would hold onto the tapes?

A. Mr. Salem.

Q. Generally speaking, where were the tapes held during that period of time?

MR. JACOBS: Objection.

MR. McCARTHY: Let me rephrase it, your Honor?

THE COURT: Yes.

Q. When you would pick up the tapes, where did you usually pick up the tapes from?

A. We would remove them from the Nagras, the ones that were still installed, and the ones that he had already removed he had already put into a white evidence envelope that we also supplied him.

Q. He would give you those?

A. Yes, he would.

Q. Detective Napoli, I am a placing before you what has been marked for identification as Government's Exhibit 309A. Let me ask you first, do you recognize that item?

A. Yes, I do.

Q. Without reading the handwritten contents of it, can you tell us first, please, what is it that you recognize it to be?

A. It is an evidence envelope that we would put the

tapes in after retrieving them from Mr. Salem.

Q. Can you tell us what type of information -- and let me be clear. Without reading the handwritten information that is on this envelope, can you tell us, please, what type of information is recorded on the envelope?

A. The thing that is recorded on here is the actual file number of the case, the CM, the actual tape, the date that the recording was made --

Q. Let me interrupt you. I don't mean to step on your answer. You mentioned CM. Can you tell us what CM means?

A. It is consensual monitoring.

Q. Go ahead. What else is recorded?

A. The date that the CM was recorded on, the date that it was picked up by myself or Special Agent Anticev, and sometimes who was actually in the tape.

Q. Did others besides yourself and Special Agent Anticev occasionally pick the tapes up?

A. Yes.

Q. With respect to the entries on the envelopes that are marked tape number, where you have a particular CM, agent supervision of the interception, where you have a named person, the date of interception and the date the tape was removed from the equipment and the time the tape was

removed from the equipment, who fills that out?

A. I do.

Q. When is that information filled out?

A. When I remove the tape and will receive the tape.

Q. With respect to the date of interception, what does that entry refer to?

A. That refers to the actual date that the recording was on.

Q. How do you know that information? That is, what is your source of information for filling in that blank?

A. That source of information was Emad Salem.

Q. With respect to the other entries, that is, for example, tape removed from equipment where there is a date and a time, who is the source of that information?

A. I am.

Q. When is this filled out?

A. When I pick up the tape, that morning.

Q. Agent Napoli, as you sit here today, are you able to remember the dates that particular Nagras were picked up?

A. No, not without looking at them.

Q. I am sorry. I didn't hear your answer.

A. You mean all the tapes when I picked them up?

Q. Yes. In other words, to be clear, if I were to show you a Nagra recording in an envelope, would you be able to tell looking at that what date you picked it up?

A. Yes, I would.

Q. You would. I am showing you 309A, and before I go on, let me just address one other item on the evidence envelope. We have talked about the top half of the envelope. Can you tell us, please, what is it that is set forth in the bottom half of the envelope?

A. Set forth on the bottom of the envelope is who actually handles the tape, from when I receive it to when it goes to recording to when it goes into evidence.

Q. Can you give the ladies and gentlemen of the jury, please, some idea of what it is you would do after you received a tape from Mr. Salem.

A. I would get the tape and bring it into the office where I would then bring it to the recording department, and they would duplicate the tape. The original tape was put back into this envelope and held as evidence, and the other duplicates were then sent to the translator for interpretation.

Q. For the record, I have removed from 309A the envelope, a Nagra tape which was contained in a white envelope, on the inside. Can you examine that, please, for a moment.

How can you tell by looking at that which Nagra it is.

A. On the front of each piece of tape we would mark

the date, the case number, and my initials, which would be written over here -- I can't see it, but it should be written on the front part of the tape. Also, my initials are scratched on here, on the metal part of the tape.

Q. Thank you. Can you put that back together?

Can you explain to us what the white envelope inside the brown envelope is?

A. The white envelope was the envelope that we put the tape in when we retrieved it from the street. This would be the initial envelope that we would put it into, and when we brought this into the office to be given over for duplication.

Q. Thank you. Showing you 309A for identification, can you tell us, Agent Napoli, what is the date that you picked up Exhibit 309A from Emad Salem?

A. This was picked up on May 20 of 1993, at 8:00 a.m. in the morning.

Q. Showing you 301A for identification, what do you recognize that to be?

A. Say that again?

MR. JACOBS: Your Honor, just so the record is clear, I have no objection to the detective reading from the evidence envelope. It is not in evidence but just so the government is clear, I have no objection --

THE COURT: The reference to the date.

MR. JACOBS: The record should indicate what he is doing. That's all.

MR. McCARTHY: Thank you, Mr. Jacobs.

Q. In connection with 301, can you tell us what that is?

A. This is a CM number 1, which is a Nagra which was removed from Mr. Salem on the 18th -- no, the 8th of May, by Special Agent John Anticev.

THE COURT: The 8th of May of '93?

THE WITNESS: Of '93.

(Continued on next page)

Q. Going through each of the exhibits, can you tell us as we go through them what the exhibit number is, what the CM number is, and what the date it was removed by the agent is, starting with Government's Exhibit 302A.

MS. AMSTERDAM: Your Honor, I have an objection. Could you give me one moment? I would like to speak to Mr. McCarthy.

THE COURT: All right.

(Pause)

MS. AMSTERDAM: Your Honor, may we approach the side bar, please.

(At the side bar)

MS. AMSTERDAM: Your Honor, this agent is going to go through all the CM's, a number of which were not retrieved from him but were retrieved from Special Agent Anticev. He has no knowledge of that. He wasn't there. He is only reading off the document. I would object to him introducing those tapes.

MR. McCARTHY: Your Honor, I understood that there was no issue other than how much lapse of time there was between the time Salem had them and the time the agent picked them up. They were together some of the time but they weren't together all the time. I didn't think it was a controversial issue. I can bring Anticev in here.

THE COURT: Apparently it is. We will bring

Anticev.

(In open court)

BY MR. McCARTHY:

Q. Detective Napoli, I would like to go through this first pile and ask you if we could pick out the ones where you are the agent who is listed as the agent supervising. Showing you Government's Exhibit 304A, are you able to tell --

A. No, that is not me.

MR. JACOBS: Your Honor, if Mr. McCarthy wants to take a few minutes and pull them out, it might move it along.

MR. McCARTHY: It will just take me a second, Judge.

Q. Let's try the next pile and see if we do better. Showing you 321A, 322A, 323A, 324A, 325A, 326 -- all these numbers have A after them -- 327, 328, 329, 330, all the ones from 321A through 335A, are you the agent on each one of those?

A. Yes, I am.

MS. STEWART: Objection, Judge.

THE COURT: Overruled.

MS. STEWART: We can't follow the testimony, Judge. We can't tell what he is referring to. We have no list of exhibits.

THE COURT: Overruled.

MS. STEWART: Are we supposed to guess what he is showing to this agent?

THE COURT: Miss Stewart, I will hear you at an appropriate time.

Q. Can you tell us, please, what 321 is?

A. 321 is CM number 20. It was retrieved on May 30 of '93 at 9:30 in the morning, by myself.

Q. Thank you. 322A?

A. 322A is CM21, which was retrieved at 5:30 of '93 by myself at 9:30 in the morning.

Q. 323A?

A. 323A is CM22, which was retrieved on May 30 of '93, at 9:30 in the morning, by myself.

Q. 324A?

A. 324A is CM24, retrieved on May 31 '93, at 10 a.m. in the morning, by myself.

Q. 325A?

A. 325 is CM 25, retrieved on May 31, 1993, by myself.

Q. Is there a time?

A. No, there is no time listed on this.

THE COURT: If you would move a little bit further back from the microphone.

Q. Move back from the microphone because it is

muffling the sound.

326A?

A. 326A is CM 23, which was retrieved on May 31 '93 at 10 a.m. in the morning by myself.

Q. 327A?

A. Is CM 29, which was retrieved on June 1, 1993, at 2:00 p.m. in the afternoon, by myself.

Q. 328A?

A. 328A is CM 26, which was retrieved on June 4, 1993, at 9:00 a.m. in the morning, by myself.

Q. 327A?

A. 327A is CM29, which was retrieved on 6/1 of 93, at 2:00 p.m. in the afternoon, by myself.

Q. 329A?

A. 329A is CM 27, which was retrieved on June 4, 1993, at 9:00 a.m. in the morning, by myself.

Q. 330A?

A. 330A is CM 28 which was retrieved on June 4, 1993, at 9 a.m. in the morning by myself.

Q. 331A?

A. 331A is CM 30, which was retrieved on June 7 of 1993, at 10 a.m. in the morning by myself.

Q. 332A?

A. 332A is CM31, which was retrieved on June 7, 1993, at 10 a.m. in the morning by myself.

Q. I am showing you 333A.

A. 333A is CM 32, which was retrieved on June 7, 1993, at 10:00 a.m. in the morning, by myself.

Q. Detective Napoli, let me interrupt this process for a moment and direct your attention to 333A and 332A, which we have just shown you.

Q. You referred earlier in your testimony to one occasion when there was a three-day lapse.

A. Yes, I did.

Q. Between the time you understood an investigative event had ended and the time you picked up the tape?

A. Yes.

Q. Directing your attention to 332A and 333A for identification, do the CM's contained in those tapes represent those occasions?

A. Yes.

THE COURT: What about 30 and 31A?

Q. I am directing your attention, Detective Napoli, to CM 31, which is identified as Government's Exhibit 332A, and CM 32, which is identified as Government's Exhibit 333A. Are the CM's contained in those envelopes the occasions that you told us about, where there was a three-day drag between the time of an event and the time you picked up the tape?

A. Yes, these are the tapes regarding that event.

Q. Showing you 334A and 335A -- let's start with

334A. Can you tell us what CM, what date you picked it up and whether it is you?

A. Right. 334A is CM 33, which was picked up on June 8 of '93 by myself at 1:30 in the afternoon.

Q. And 335A?

A. 335A is CM 34, which was picked up on June 9 of '93, at 9:00 in the morning by myself.

Q. A few more, Detective. Showing you 336A for identification.

A. 336A is CM 35, which was picked up on June 9, 1993, at 9:00 a.m. in the morning by myself.

Q. Showing you 337A.

A. 337A is CM 36, which was picked up on June 13, 1993, at 9:00 a.m. in the morning, by myself.

Q. 339A?

A. 339A is CM 37, which was picked up on June 14, 1993, at 8:00 a.m. in the morning, by myself.

Q. 340A?

A. 340A is CM 38 which was picked up June 14, 1993, at 8 a.m. in the morning by myself.

Q. 341A?

A. 341A is CM 39, which was picked up on June 14, 1993 at 8:00 in the morning by myself.

Q. 342A?

A. 342A is CM 40, which was picked up on June 15,

1993, at 8:00 a.m. in the morning by myself.

Q. 346A?

A. 346A is CM 43, which was picked up on June 17, 1993, at 9:00 a.m. in the morning by myself.

Q. 347A?

A. 347A is CM 42, which was picked up on June 17, 1993, at 9:00 a.m. in the morning by myself.

Q. Let me just go back for a moment to 346A which you identified as CM 43. Do you see that there is an entry for which you have read tape removed from equipment 6/17/93?

A. Yes, I do.

Q. Let's go down to the first line of the chain of custody on the envelope.

A. First line of chain of custody states that I received the tape on 6/16, so I must have made a writing error when I put 6/17/93.

Q. As you sit here today, do you know whether it is -- as you look at this item, do you know whether it is the entry that says tape removed from equipment on June 17 or the chain of custody marked June 16 which is accurate?

A. June 16 would be accurate.

Q. Are you certain about that?

A. Yes, I am.

Q. Let me show you 347A. Can you tell us, please, what the date of interception is on that?

A. The date of interception on this was June 16 of '93.

Q. And the date the tape was removed from the equipment?

A. On 6/17 of 93.

Q. Can you tell us what the first line in the chain of custody says?

A. June 17 of '93.

Q. What time?

A. 9:00 a.m. in the morning.

Q. Comparing 347 and 346, Detective Napoli, who did you turn 347 over to?

A. 347 was turned over to the recording unit, as was 346. On the receiving end down here, I have 6/16, and they were both picked up at the same day. So on CM 347, it should be 6/17.

Q. Just to go back for a moment, because it is a little confusing, with respect to the day the tape was removed from the equipment on these two exhibits, 346A and 347, is it your testimony that you believe the equipment was removed on June 17?

A. Yes.

MS. STEWART: Objection, Judge.

THE COURT: Overruled.

Q. On each occasion?

A. Yes.

Q. Showing you 348A.

A. 348A is CM 46, which was removed on June 18 of '93 at 8:00 a.m. in the morning.

Q. By whom?

A. By myself.

Q. Showing you 349A.

A. 349A is CM 47, which was removed on June 18, 1993, at 8:00 a.m. in the morning by myself.

Q. Government's Exhibit 351A?

A. 351A is CM 49, which was retrieved on June 20 of '93 at 7:30 a.m., by myself.

Q. 352A?

A. 352A is CM 48, which was retrieved on June 20 of 1993, at 7:30 in the morning, by myself.

Q. 354A?

A. 354A is CM 51, which was retrieved on June 20 of 1993, at 7:30 in the morning, by myself.

Q. A few more. 358A?

A. 358A is CM 55, which was removed on June 21, 1993, at 8:00 a.m. in the morning by myself.

Q. 359A?

A. 359A is CM 54, which was retrieved on June 21, 1993, at 8:00 a.m. in the morning by myself.

Q. 3671A?

A. 361A is CM 57, which was retrieved on June 23, 1993, at 7:30 in the morning, by myself.

Q. 362A?

A. 362A is CM 58, which was retrieved on June 23, 1993, at 7:30 a.m., by myself.

Q. 363A?

A. 363A is CM 59, which was retrieved on June 23, 1993, at 7:30 in the morning, by myself.

Q. 364A?

A. 364A is CM 60, which was retrieved on June 23, 1993, at 7:30 a.m. in the morning by myself.

Q. Finally, 365A?

A. 365A is CM 61, which was retrieved on June 23, 1993, at 7:30 in the morning, by myself.

(Continued on next page)

THE COURT: We are going to take a short break, ladies and gentlemen. Please leave your notes and other materials behind. Please don't discuss the case. We will resume in a short while.

(Jury excused)

THE COURT: Ms. Stewart?

MS. STEWART: Judge, I was never given any of the covers for these tapes. I was not even given a computer-generated list that would say CM 33 is located on 334A. I understand now that two of my colleagues have been given papers, but there are 11 of us here, Judge. If they are going to put in evidence -- I have never seen a trial where you didn't at least have the paper in your hand. Maybe you couldn't go through it but at least you had it in your hand at the point where the witness is on the stand testifying about the item.

THE COURT: He was testifying about envelopes in which items of evidence are contained. As you say, your colleagues were given copies of those.

MS. STEWART: Two of my colleagues.

THE COURT: If you have an objection, you make it, and I rule on it. Please don't start sending editorials after I rule.

MS. STEWART: Judge, I was really disturbed because he was not at first naming the CM. He was saying

338A --

THE COURT: As I recall it, you didn't wait until he started naming the CM's.

MS. STEWART: He only did it after I made the outburst, Judge. I am sorry.

THE COURT: I am sorry, too. Please don't do it again. Short break.

(Recess)

(Continued on next page)

(Jury present)

THE COURT: Mr. McCarthy?

MR. McCARTHY: I have one brief matter left with the witness.

THE COURT: Go ahead.

DIRECT EXAMINATION (Continued)

BY MR. McCARTHY:

Q. Detective Napoli, I am placing before you Government's Exhibit 331A, which you have identified as CM30; government's Exhibit 332A, which you have identified as CM31; and Government Exhibit 333A, which you have identified as CM32.

Do you see those?

A. Yes, I do.

Q. Is there a three-day gap with respect to all of those three exhibits from what is called the date of interception on the envelope to the date that the tape was removed from the equipment?

A. Yes, there is.

MR. McCARTHY: Thank you, your Honor.

THE COURT: Cross?

Mr. Jacobs, representing Mr. Mohammed Saleh.

Go ahead.

CROSS-EXAMINATION

BY MR. JACOBS:

Q. Good afternoon, detective.

A. Good afternoon.

Q. My name is John Jacobs. I represent Mohammed Saleh, over there.

A. I know who he is.

Q. You know him, right? OK. Am I correct, Detective, that Mohammed is on one tape, CM32, I guess marked for identification, Mr. McCarthy?

MR. McCARTHY: I think it is --

Q. 333A for identification, is that correct?

A. As far as this tape, it has Emad Salem and Siddig Ali on this one, CM32.

Q. Are you aware of any other tape that he is on of these CM tapes that we have been talking about?

THE COURT: His answer to your question was, I think, that Emad Salem and Siddig Ali are on that one.

Q. On that one?

A. On this one.

Q. That is 32?

A. Yes.

It is so stated on the outside. I don't know what is on the inside. But written on the outside it has Emad Salem and Siddig Ali.

Q. Let me show you 3332A --

THE COURT: Mr. Jacobs, you are going to have to

use microphones because the interpreters can't hear you. Don't talk on the way to the witness box. Thank you.

Q. I'm sorry.

332A is CM31. Does that envelope indicate that that is the tape that my client's on?

A. Yes, it does.

Q. Open them up, if you can.

THE COURT: You want him to open both of them?

MR. JACOBS: Yes, please.

Thank you, your Honor.

Q. Looking at the two inside envelopes, the white envelopes that are contained therein, is that correct, that my client is on CM31 and not CM32, if you know, Detective Napoli? If you know?

A. Your client is on the one from CM31.

Q. Are you sure about that?

A. So it states on this piece -- on this envelope.

Q. You make the envelope out?

A. Yes, I made it out.

Q. You make out, 32, the other one?

A. Yes, I did.

MR. JACOBS: May I see 32?

May I approach, your Honor.

THE COURT: Yes.

Q. Did you ever see that document?

A. A copy of it, I have, yes.

Q. After looking at that document would I be correct --

THE COURT: That document is an exhibit? Can we call it something?

(Counsel conferred)

MR. McCARTHY: May I have a moment, your Honor.

THE COURT: Yes.

MR. McCARTHY: May we approach briefly?

THE COURT: Yes.

Why don't you just talk to one another.

MR. JACOBS: Sure.

MR. McCARTHY: OK.

(Counsel conferred)

MR. McCARTHY: I think Saleh's A, your Honor.

Q. Having looked at Saleh A for identification, Detective, is it possible that there is an error in your recording of CM32 and CM31, if you know?

A. Yes. There is a possibility.

Q. Is it possible that you have the wrong tape in the wrong envelope and your recording is in error concerning my client and what tape he is on?

A. Yes. It is.

Q. Let's talk about the tape process that the task force had in this case. The first CM tape is May 7, 1993,

is that correct, CM1?

A. Yes, it is.

Q. Is it fair to state that any other tape made by Salem before May 7 is not an authorized tape, is that correct?

A. That is correct.

Q. You testified in direct that one of your jobs was to collect and secure tape recordings, is that correct?

A. Yes, it is.

Q. OK. I trust other agents were also involved in that procedure, is that correct?

A. Correct.

Q. In other words, if you had a day off, or there was some other particular reason, or you were doing something else, some other agent would be responsible for giving Salem the tapes and picking them up, correct?

A. Correct.

Q. Taping didn't stop when you had a day off, correct, or a vacation?

A. No, it did not.

Q. When you say that tapes were made under the supervision of the task force, let me ask you some questions about that:

Did Emad Salem sign a document called an FD473, consent to tape form?

A. Yes, he did.

Q. Do you have that with you today?

A. No, I don't.

MR. JACOBS: Mr. McCarthy, perhaps we can discuss that later. Thank you.

I would reserve on that, your Honor.

THE COURT: OK.

Q. What is an FD473?

A. It is a document which gives us the right to monitor a conversation which the particular person that is signing it is present at. That is what consensual monitoring is.

Q. Did Mr. Salem, the person involved, sign one for each particular taping session or did he sign a general one?

What do you recall he did concerning the taping under the supervision of the task force?

A. He signed a general one, not one every day.

Q. Before he began taping under the supervision of the terrorist task force, did he receive certain instructions?

A. Yes, he did.

Q. Did you give him the instructions?

A. I don't recall, but I don't think it was me that gave it to him.

Q. Were you aware on May 7 that he had recorded

other people in connection with this case?

A. You mean before --

Q. May 7.

A. May 7?

Q. May 7 is the first CM in this case that we had marked for identification, is that correct?

A. You are asking me was I aware --

Q. That he was taping other people in this investigation before May 7.

A. No, I was not.

Q. Were you aware that he was taping you, Detective Napoli, before May 7?

A. No, I was not.

Q. Certainly, if he was taping you, Detective Napoli, that was something that was not done under your supervision, correct?

A. No, it was not.

Q. Now, the taping process that began on May 7, do you know whether the task force received permission from FBI headquarters to do that process, if you know?

A. Yes, they did.

Q. In other words, there was an application made to conduct this consensually monitoring on or about May 7, is that correct?

A. Correct.

Q. That was on the basis of a written application by the task force to FBI headquarters, is that correct?

A. Correct.

Q. Am I correct also that a consensually monitored tape is one where one of the parties to the conversation is consenting to the recording, is that correct?

A. Correct.

Q. In other words, on CM32, which is a conversation between Salem, Siddig Ali and my client, Mohammed Saleh, Salem was consenting to that to be recorded, is that correct?

A. Salem was consenting, yes, that's correct.

Q. Siddig Ali was not cooperating with the government at that point, correct?

A. Correct.

Q. So Siddig Ali and my client, Mohammed, didn't know that they were being taped, to your knowledge, correct?

A. Correct.

Q. The purpose was to gain evidence in a criminal investigation, correct?

A. Correct.

Q. You and the task force understood that the tapes could play a significant part in the investigation, correct?

A. Correct.

Q. You were attempting to do that knowing that the

tapes might one day be played here in court before a jury, correct?

A. Correct.

Q. You and the task force made every effort, as you said, to supervise the taping process, correct?

A. Correct.

Q. You gave a lot of general answers to Mr. McCarthy concerning this taping process. Let me see if I can ask you some more specific questions.

Salem had several methods of taping, is that correct?

A. Correct.

MR. JACOBS: May I borrow that machine?

MR. McCARTHY: Yes.

Q. Salem had one of these in a briefcase, correct?

A. Correct.

Q. Did he ever wear one on his person?

A. No, not to my recollection.

Q. You understand --

THE COURT: Indicating Exhibit 399.

MR. JACOBS: I'm sorry. 399. Thank you, your Honor.

Q. You have had experience where informants have actually worn these on their person, is that correct?

A. Correct.

Q. But in this case, that method was not utilized by the task force, is that correct?

A. Correct.

Q. He had two of these in the car, is that correct, his car?

A. Yes, he did.

Q. These consensually monitored conversations are done, properly so, without court approval, is that correct?

A. Say that again?

Q. They are done without court approval, you don't need court approval from some judge to do that, is that correct?

A. Correct.

Q. That is because one of the parties consents, is that correct?

A. Correct.

Q. Now, in describing this machinery, am I correct, there are certain pieces that he had that are not present here in court, such as the microphones, is that correct?

A. Correct.

Q. So I don't have to keep running back and forth, there is a series of --

THE CONSULTANT: Jacks.

Q. I knew my consultant was here for something.

There is a series of jacks.

MR. JACOBS: Thank you.

I knew there was a good reason, Judge, he was here. There is a series of jacks in the back and that's where the microphones go, is that correct?

A. That's where the mikes go, yes, that is correct.

Q. And these microphones had an on-off switch, is that correct?

A. That's correct.

Q. For whatever the reason, Salem had the ability to turn the machine on and off as he so desired, for whatever reason he desired, correct?

A. Correct.

Q. As you said, he might have turned them off because he wanted to save tape or he might have turned them off for any reason that was in his head, correct?

A. Correct.

Q. You are certainly not prepared to state, for example, with respect to my client Mohammed Saleh that 32 in front of you is a full and accurate tape of the entire conversation that he had, correct?

You don't know that, do you?

MR. McCARTHY: Objection to the form of the question.

THE COURT: Do you have any personal knowledge about whether that tape contains the entirety of the

conversation or whether there was more to it.

THE WITNESS: No. I don't know if there was more to it.

Q. Detective Napoli, in this investigation, you were never present when any of the 60 some odd FBI tapes were made, were you, sir?

A. No, I was not.

Q. In other words, not only were you not physically present, were you there observing any of the meetings yourself?

A. No, I was not.

Q. So, in other words, with respect -- let's take 32, for example, the one involving my client, Mohammed Saleh.

That is a tape that was made where, to your knowledge, no FBI agent was present, correct?

A. Correct.

Q. No FBI agent surveilled the meeting, correct, to your knowledge, if you know?

A. To my knowledge, I think it was surveilled.

Q. Did you ever hear of a system where law enforcement monitors conversations as they occur, consensually monitored calls or body tapes are actually monitored at the same time by law enforcement?

A. Yes, I am.

Q. One of the technical devices that is used is called a transmitter, is that correct?

A. Correct.

Q. The technical name of the equipment is called a Kel, K-E-L, is that correct?

A. Correct.

Q. A Kel transmitter is some form of microphone with a transmitter where agents can sit in a parked car or another room or another apartment and they can listen to the conversations as they occur, is that correct?

A. Correct.

Q. With respect to the 60 some odd FBI CM's that you have been talking about, was any conversation monitored by the task force, to your knowledge?

A. By the use of the Kel?

Q. By any device.

A. The only devices are the ones that I said.

Q. So, in other words, when you say that, nobody, obviously speaking Arabic, was listening to the conversations as they took place, is that correct, at the same time?

A. Well, I think towards the end, I think at the safe house there might have been --

Q. OK.

A. But --

Q. Please continue.

A. But not then, no.

Q. So there may have been a mechanism -- the safe house you are describing, this location where Salem had a number of the defendants go to that was set up by the FBI and the task force, is that correct? Is that a fair statement. If it is not, tell me so.

A. Yes.

Q. In that place the FBI itself had the equipment, set the equipment up and ran the equipment, correct?

A. Correct.

Q. Leaving that aside for the moment, the CM's that Mr. McCarthy has shown you for identification, those were not monitored, if you know, by the FBI or by the task force, is that correct?

A. Correct.

Q. Is it fair to state that some point as you were doing this process blank tapes were given to Salem, is that correct?

A. Correct.

Q. Would you agree with me that, based upon your own testimony, it is clear that Mr. Salem knew how to load the tape, take the tape off, is that fair to say?

A. Yes, it is.

Q. Without demeaning your background, is it fair to

say, you are not a tape expert?

A. Correct.

Q. In other words, you have never testified in state court or federal court about the actual taping itself, whether a tape is authentic or has been tampered with, things like that, correct?

A. Correct.

Q. There are certain people we call tape experts that do that, correct?

A. Yes, that's correct.

Q. But you have a certain expertise in loading these Nagras, putting them on the machine, taking off the machine, correct?

A. Correct.

Q. Do you know if Salem had rerecording equipment in his residence or some other location and he was rerecording these CM's?

A. No, I do not.

Q. Have you located other tapes than the CM's in this case after the arrest of these defendants that are here?

A. Have we located --

Q. Your task force located additional tapes that he was making that were not authorized after the arrest of these defendants?

A. Yes, we did.

Q. You are among those people recorded --

THE COURT: Mr. Jacobs, if you could talk into the microphone, but keep some distance from it.

MR. JACOBS: OK.

I never normally work with mikes, Judge, but, OK.

Q. In any event, these tapes were acquired after the arrest in this case, correct?

A. Are they required?

Q. They were acquired.

A. Acquired, yes, they were.

Q. These were the nonauthorized tapes, correct?

A. Correct.

MR. McCARTHY: Objection.

THE COURT: They were not tapes that were made as part of the consensual monitoring program that you described before, correct?

THE WITNESS: Correct.

Q. Now, Detective, did you have a reporting system yourself concerning what tapes you gave him and what tapes you picked up, other than the envelopes which have been marked for identification?

A. No, we did not.

Q. When you say "we did not," is it fair to state that the task force did not have a reporting system on the

number of tapes given to Salem, is that correct?

A. That is correct.

Q. So we don't know as we sit here now if there are only 60 tapes that were given to him or 160 or 360, do we?

A. No. When we gave him a tape, we would like load the machine, and then we would give him like maybe two. So the next day when we picked up the tape, you know, and if he give us the ones that were loaded and there was two extra, we knew exactly how many there were. We didn't just keep feeding him tapes for the purpose of feeding him tapes.

Q. When you say" feeding him tapes for the purpose of feeding him tapes," is there a document prepared by the task force that would tell this jury the number of tapes by serial number given to Emad Salem that you can tell this jury so that we can account for the exact number of tapes given to this person? Yes or no.

A. No, there is not.

Q. Is it fair to state that on some occasions Salem would take the actual tapes off the machine and just hand then to you physically, is that correct?

A. Correct.

Q. Would you know which dates he did that on, sir?

A. No. I can't recall the dates.

Q. So you don't know what date this man took the tape, took it off the machine, what he did with it, and he

just handed you back a tape, correct?

A. Correct.

Q. OK. Would you know whether he handed you back a copy or an original, if you would know?

A. No, I would not.

Q. So if we looked at CM32, the conversation with my client, allegedly on 6/4/93 -- why don't you take it out and open it up, please.

You can open up 31, too, at the same time.

Q. Do you have them both?

A. Yes, I do.

Q. Is there any indication on those tapes in your handwriting when you gave those two particular documents to Mr. Salem?

A. It should be on the front part of the tape.

Q. Please take a look and tell us if that appears, sir.

A. There appears to be some writing on this, but I really can't tell for sure.

Q. How about the other one?

A. Hold on.

Q. There is an FBI lab number on it, is that correct, that was done sometime later when the lab was processing it, is that what you are reading or something else?

A. No. In the beginning of the tape, like I said before, we would put the case number, the date and my initials or whoever was --

Q. Well, on the tape of my client, can you show that to the jury where your name and the date appear, CM32 or 31, whichever the number may be, where you put your name on the tape, June 4, 1993, with your name and number?

A. It is in the beginning here in pen.

THE COURT: Mr. Jacobs, would you come to a convenient break point within the next five minutes?

MR. JACOBS: Sure.

THE COURT: Thank you.

A. Do you want me to look at the other tape?

Q. Yes, please.

A. Likewise.

(Continued on next page)

Q. That was made when?

THE COURT: When you say that was made when --

MR. JACOBS: I am sorry.

Q. You say your name and the date June 4 is on that document -- on the tape?

A. No, there is just writing in the beginning of it.

MR. JACOBS: May I approach the witness, your Honor?

THE COURT: Yes.

Q. Detective, holding that tape and envelope, am I correct that the envelope --

MR. McCARTHY: Mr. Jacobs, can we know for the record --

Q. Detective, which one have you got in your hand? 31 or 32?

A. 32.

Q. Let's take a look at 32, and am I correct that the white envelope has a serial number 38862? Correct? SS/38862, correct?

A. Yes, it does.

Q. Would you read to the jury the number on the tape, serial number on the tape?

A. 38737.

Q. Not the same number?

A. No.

Q. So the tape itself, the serial number and the envelope don't match? Correct?

A. Correct.

Q. Would you look at 31 -- and I will stop after this, if that's OK with your Honor.

THE COURT: Fine.

Q. Would you agree with me that tape number 31 has serial number 38869 and the tape itself is 38707, and that the envelope that has the tape doesn't match the serial number? Is that correct, sir?

A. Correct.

Q. One last question. Detective, if I were to tell you that of your 60 tapes there isn't one envelope and tape that matches serial numbers, would that surprise you, sir?

A. Yes, it would.

(Continued on next page)

MR. JACOBS: I have nothing further at this time, your Honor.

THE COURT: Ladies and gentlemen, we are going to break until next Monday, from your standpoint. Please leave your notes and other materials behind. Please don't discuss the case. We will see you on Monday. Please don't either read, hear or see anything about this case in the intervening days. Thank you.

(Jury excused)

THE COURT: Yes.

MR. STAVIS: Your Honor, I believe that defense counsel and the government are trying to work out some outstanding issues with regard to 3500 material for Mr. Salem. I believe that is the next witness. I don't know if there will be a need for a conference or not, but I think the government is anticipating calling Mr. Salem perhaps as early as Monday.

MR. McCARTHY: I think we are going to be able to work it out, your Honor. I think we will get to him on Monday, although I think I may call Anticev before him to get the rest of the envelopes in.

MR. STAVIS: I don't know if there will be a necessity for a conference, if we should schedule one now.

THE COURT: That is absurd. You don't know whether there will be a conference and you don't know when

everyone will be available.

Don't wave at me, please.

MR. JACOBS: I am sorry.

THE COURT: If you need a conference, I will be available for all the days between now and Monday, I assure you.

MR. JACOBS: Your Honor, I told Mr. McCarthy before I did have some questions on the 3500 material. I know your Honor has just gotten it. There are some matters that we need to deal with. The direct may be a whole week.

THE COURT: You said you had some assignment for me and I promised you I would do that, and we will get together when?

MR. JACOBS: It is really up to your Honor.

THE COURT: I thought you had scheduled something with my deputy. Did you?

MR. JACOBS: Not yet, your Honor. Obviously.

THE COURT: You can call her.

MR. JACOBS: Fine.

THE COURT: Anything else? Thank you.

(Proceedings adjourned until 9:30 a.m., Monday, March 3, 1995)