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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X
 UNITED STATES OF AMERICA, : CR 07-543
 :
 -against- :
 : United States Courthouse
 : Brooklyn, New York
 RUSSELL DEFREITAS :
 ABDUL KADIR :
 :
 Defendants. : July 14, 2010
 : 1:30 o'clock p.m.
 - - - - - X

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

For the Government: LORETTA E. LYNCH
 United States Attorney
 BY: MARSHALL MILLER
 JASON JONES
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 Assistant United States Attorneys
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 Brooklyn, New York

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 LEN KAMDANG, ESQ.
 Federal Defenders
 Attorneys for R. DeFreitas,

KAFAHNI NKRUMAH, ESQ.
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 Attorneys for A. Kadir

1 Court Reporter: Gene Rudolph
2 225 Cadman Plaza East
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4 Proceedings recorded by mechanical stenography, transcript
5 produced by computer-aided transcription.

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9 (The following occurred in the absence of the jury.)

10 THE COURT: Please have a seat.

11 THE CLERK: Criminal cause on trial, docket number
12 07 CR 543, United States versus DeFreitas, et al.

13 Please state your appearances.

14 MR. JONES: Good afternoon, Your Honor.

15 Jason Jones, Marshall Miller, Berit Berger, Zainab
16 Ahmad and Detective Robert Addonizio at counsel table for the
17 United States.

18 THE COURT: Good afternoon to all of you.

19 MS. WHALEN: Good afternoon.

20 THE COURT: For Mr. DeFreitas?

21 MS. WHALEN: Good afternoon, Your Honor.

22 Mildred Whalen and Len Kamdang of the Federal
23 Defenders seated with Mr. DeFreitas.

24 THE COURT: Good afternoon to all of you.

25 MR. NKRUMAH: Good afternoon, Your Honor.

1 Kafahni Nkrumah and Toni Messina for Mr. Kadir.

2 THE COURT: Good afternoon to all of you.

3 First of all, let the record reflect that the jury
4 is not present and the witness is not present.

5 The Court acknowledges receiving earlier today a
6 motion in limine filed on behalf of Mr. Kadir as to certain
7 photographs that the government seeks to introduce in
8 evidence. As it was just filed, as much as I would like to
9 hope that the government had a chance to respond, I don't know
10 if the government is prepared to respond to that. If so, I
11 would like to wait until we finish with this witness this
12 afternoon or we have a break this afternoon so as not to delay
13 matters.

14 I guess my bottom line question to the government
15 is, whether this motion affects any of the two upcoming
16 witnesses, one of whom is one of the witnesses from Trinidad,
17 I believe, and the expert, Mr. Levitt.

18 MR. MILLER: Doctor Levitt, Your Honor.

19 The answer is, no, Your Honor.

20 The evidence we expect to put in through a different
21 witness, not either of those two witnesses. In the
22 stipulation that was signed that we will read probably
23 tomorrow or whenever, sometime soon, the foundation for the
24 introduction of the evidence was laid. That is, chain of
25 custody issues and other issues. 0 it is really a matter

1 of -- we could do that at a later time.

2 I would also note, Your Honor, that we did receive
3 the motion and that we are in the process of preparing a
4 response and hope to be prepared to file the response, written
5 response by, I would say, around 7:00 or 8:00 o'clock tonight,
6 depending on when we break. So within an hour or two of
7 breaking we will pull together a written response for Your
8 Honor.

9 THE COURT: Okay.

10 MR. NKRUMAH: Your Honor, may I just comment?

11 THE COURT: Yes.

12 MR. NKRUMAH: I have heard the Court's admonition
13 the other day about the late filing past the timeline. The
14 reason why I filed the motion on behalf of Mr. Kadir,
15 initially the government had -- in their to, I believe it was
16 a motion filed by the DeFreitas team, they had stated that
17 they were not going to introduce certain evidence and I -- and
18 this evidence was included in that and the -- in the -- in
19 their initial case.

20 Then afterwards, sometime during trial, they
21 informed us that they intended to introduce the pictures
22 and -- into their case in chief and that's why I had to renew
23 the motion to respond -- I mean, motion in limine, Your Honor.

24 I can try to find the motion. I may be misstating
25 the government. I see Marshall is ready to --

1 THE COURT: I don't recall the government in any
2 motion with respect to Mr. DeFreitas addressing these
3 photographs that are at issue.

4 I note that, just for the record, that defense
5 counsel had faxed to chambers a copy of the photographs that
6 are at issue. I can, later on during the break, I can pass
7 that up to the government, just to make sure that you are in
8 agreement that these are the photographs that are at issue.

9 MR. MILLER: We will check, Your Honor.

10 But the --

11 THE COURT: The exhibit numbers are named in the
12 motion itself.

13 MR. MILLER: Your Honor, just on this note, I think
14 there may be some miscommunication or some confusion on the
15 part of Mr. Nkrumah, or perhaps some misstatement by the
16 government. But I don't think so.

17 I am not aware of ever suggesting that we weren't
18 going to offer these photographs in any motion relating to
19 Mr. DeFreitas or anyone else. In fact, Your Honor already has
20 a copy of these pictures, I believe, as does the DeFreitas
21 team -- excuse me, the Kadir team, and both defendants,
22 because when we turned over our exhibit binders, we included
23 those photographs as exhibits.

24 I will provide a second copy in connection with our
25 motion just so that it is entirely clear for the record which

1 Government Exhibits are associated with this motion. But we
2 never said we weren't going to offer them. In fact, we've
3 always intended to offer them, and they were originally
4 provided to Mr. Kadir as exhibits to our extradition
5 submission into Trinidad in July of 2007.

6 This has been on the table for three years. We are
7 happy to respond. We think there is a very solid basis,
8 including an on point Second Circuit case that says that these
9 are clearly admissible. So we will provide all that
10 information to the Court.

11 But there has never been a suggestion on the part of
12 the government that we were not going to offer these. At one
13 point -- I am confident Mr. Nkrumah may have misunderstood.
14 He did approach me at one point and said are you going to
15 offer these. I think that -- that they may not be admissible.
16 We said yes, we believe we are going to offer them. We will
17 take a second look. We took a second look. We said yes, we
18 are offering them. We never said they weren't going to offer
19 them.

20 All I meant was, I don't think we ever said that,
21 but I don't doubt that Mr. Nkrumah may have misunderstood.

22 THE COURT: Regardless, there is nothing to
23 prevent -- again, I set a schedule a long time ago for
24 motions. There were motions to suppress that were made. We
25 had very long oral arguments on the motions. We went almost a

1 whole day on oral arguments on the motions in this case. I
2 set a separate schedule for motions in limine and in reviewing
3 the motion, in looking at the photos, the first question that
4 I did have was, why this wasn't raised earlier proactively.

5 MR. NKRUMAH: Your Honor, I didn't -- I will try to
6 locate the -- the response that I am speaking of that the
7 government filed and I will file it as a supplement to my
8 motion.

9 Again, Mr. Marshall, I don't believe that I am
10 incorrect, because I believe the response indicated the
11 pictures would be -- would be shown in case of either us -- in
12 case -- whether or not an entrapment defense was pursued by
13 Mr. Kadir in the case in chief.

14 I never put forth the fact that the government would
15 never enter these pictures into evidence. Of course, they
16 gave it to us in a binder. We expected based on evidence that
17 may come out in our case in chief that the evidence would come
18 out, but not in the government's case in chief and that's why
19 I filed the motion to preclude that -- admission of the
20 evidence in the government's case in chief.

21 MR. MILLER: We are happy to respond in writing. I
22 don't want to waste any more time. If we are all in
23 agreement, this thing is coming in and it is just a matter of
24 when, I don't think that's a basis for a motion in limine.

25 We will file our motion. We think there is strong

1 grounds. As I said, there is a United States versus Khalil,
2 Second Circuit case, which is directly on point indicating
3 that these documents are admissible. We will file the letter
4 and we can resolve it I think pretty quickly.

5 THE COURT: Why don't we wait for that submission
6 and, if need be, we can either meet earlier tomorrow or later
7 tomorrow, or I have some time on Friday that we can squeeze
8 this in to address it. I want to have some time to take a
9 look at the government's submission as well.

10 Okay. Is there anything else?

11 We have continued cross-examination of Mr. Francis
12 by Ms. Whalen.

13 Your witness is here? Yes?

14 MR. JONES: Yes, Your Honor.

15 THE COURT: Okay. Why don't we send for Mr. Francis
16 and also the jury.

17 (The witness is present.)

18 THE COURT: Good afternoon, sir.

19 THE WITNESS: Good afternoon.

20 (Jury present.)

21 THE COURT: Welcome back.

22 Everyone may be seated.

23 Welcome, ladies and gentlemen.

24 Good afternoon.

25 Do all the parties agree that all of our jurors are

1 present and properly seated?

2 MR. JONES: Yes, Your Honor.

3 MS. WHALEN: Yes, Your Honor.

4 MS. MESSINA: Yes, Judge.

5 THE COURT: And this is continued cross-examination
6 of Mr. Steven Francis. We are still in the government's case
7 in chief. Cross-examination is continuing by Ms. Whalen.

8 You can take the position, Ms. Whalen.

9 Good afternoon, Mr. Francis.

10 THE WITNESS: Good afternoon.

11 THE COURT: I remind you, sir, that you are still
12 under oath.

13 THE WITNESS: Yes.

14 S T E V E N F R A N C I S ,

15 called as a witness, having been previously duly
16 sworn, was examined and testified as follows:

17 CROSS-EXAMINATION

18 BY MS. WHALEN: (Continues)

19 Q Good afternoon.

20 Could I ask the jurors to take out their monitors
21 again?

22 Mr. Francis, we left yesterday looking at a video
23 from inside your truck, taking pictures of Mr. DeFreitas
24 taking pictures of the airport.

25 Do you remember that?

1 A Yes. The video of the videos of the airport, yes.

2 Q The video of the videos of the airport.

3 What I would like to do is have you look at
4 Government Exhibit 50, which are the actual videos themselves.

5 (Tape plays; tape stops.)

6 This -- have you seen the computer file for this
7 exhibit?

8 Did you review it as part of your -- the table of
9 contents for this exhibit, have you seen the table of contents
10 for it?

11 A Yes.

12 Q There are a number of video clips?

13 It's about 14 or 15, isn't that correct?

14 A I don't know the amount completely, but yes, I review
15 everything and I know everything is correct.

16 Q Okay. What I would like to do is just -- there were
17 two -- I guess I would call them practice videos on this disk
18 as well. I would like to show you one of those.

19 (Video plays; video stops.)

20 This isn't -- we are not watching the airport, are
21 we?

22 A No.

23 Q Okay. I guess for the record I will identify it from the
24 file as 1-B0-9, S-14.

25 THE COURT: I'm sorry. I couldn't hear? 1-D-09-D?

1 MS. WHALEN: 1-B, as in boy, 09, S-14.

2 THE COURT: Thank you.

3 Q Where is this video being taken?

4 A It's in the streets of Brooklyn.

5 Q Okay. Who is with you at that time?

6 A It's Sheik Mohammed, Sheik Abdullah, Mary Nayah and
7 another gentleman that used to work with Sheik Abdel Ibrahim.

8 Q Who was actually doing the filming at this point?

9 A I am.

10 Q I also would then like to refer you back to Government's
11 Exhibits 51 through 61. I will just briefly -- we are going
12 to switch the Elmo. I'm sorry.

13 These I think you testified were still shots from
14 the videos that were taken at the airport, is that correct?

15 A Yes.

16 THE COURT: Just for the record, those are all in
17 evidence already.

18 MS. WHALEN: Yes, they are, Your Honor. Looking at
19 Exhibits 51 through 61.

20 Q Mr. DeFreitas, the video camera that you and
21 Mr. DeFreitas purchased was able to take video shots as well
22 as still shots, is that correct?

23 A I'm Mr. Francis, not Mr. DeFreitas.

24 Q I'm sorry, Mr. Francis.

25 The camera that you and Mr. DeFreitas bought was

1 able to take both video pictures and regular photographs,
2 isn't that correct?

3 A Yes.

4 Q Okay. Looking at -- I guess what I am asking is, when
5 Mr. DeFreitas was shooting video in the back of the car, did
6 he only shoot video or did he also take individual pictures?

7 A He only took the videos. All -- every single video that
8 you see is a video that actually was taken on that trip. He
9 did not want pictures. He wanted video.

10 Q Okay. So then my question to you is, these still shots
11 are from those videos, is that correct?

12 A Yes.

13 Q Okay. You prepared these on your computer?

14 A No, I didn't.

15 Q Okay. How were they prepared?

16 A I have no knowledge.

17 Q Okay. So you don't know where these still shots came
18 from?

19 A The still shots are still shots from the video that was
20 presented to me.

21 Q Okay. Let me just actually -- if we can switch back to
22 the video monitor?

23 THE CLERK: Public?

24 Q I am showing you what's in evidence as part of exhibit --
25 I'm sorry. I am showing you a video that is in evidence as

1 part of Government Exhibit 50 and it is marked 1-B-09, S-17.

2 (Video plays; video stops.)

3 Okay. Just a little --

4 Looking -- then switching back, if we could, to the
5 video? The Elmo?

6 Okay. So this still shot was part of the video that
7 was taken that I just showed you, is that correct?

8 A Yes.

9 Q Okay. But, again, you didn't prepare these from -- on
10 your computer?

11 A Like I said, I didn't prepare the still shots.

12 Q Okay. Did you prepare any still shots?

13 A The still shots that were of the airport was on -- I did
14 not take or prepare any still shots.

15 Q From the video?

16 A From the video at all.

17 Q Okay. After shooting the videos that we have just looked
18 at, you and Mr. DeFreitas called Rutherford at some point,
19 isn't that correct?

20 A Yes. Sheik Rutherford was called, yes.

21 Q Okay. In one of those conversations Mr. DeFreitas told
22 Mr. Rutherford that his job was finished and he wanted
23 Rutherford to deposit one point five million in his account;
24 do you remember that?

25 A I don't recall that. But if you like to refresh my

1 memory, I will appreciate that.

2 Q Sure.

3 I am going to show you what's been marked for
4 identification as Defendant's Exhibit RD-B. For everyone
5 else, it's T-3, the transcript T-3719, 1/12/07.

6 THE COURT: That's the date? 1/12/07?

7 MS. WHALEN: Yes.

8 Actually, could I publish this to the witness only?

9 THE COURT: Yes.

10 Q I would just ask you to read that and see if it refreshes
11 your recollection?

12 THE COURT: If you can just read that to yourself.

13 THE WITNESS: Thank you.

14 (Pause.)

15 Q Did that refresh your recollection?

16 A Yes.

17 Q Okay. Was there a conversation where Mr. DeFreitas told
18 Rutherford to deposit 1.5 million in his account?

19 A Yes.

20 Q Now, during this time period when you were -- I'm sorry.
21 I will put us all back.

22 This is January 1st to January 13th, when you and
23 Mr. DeFreitas were in New York City, 2007?

24 A Repeat again.

25 Q I'm sorry. I am just sort of trying to bring you back to

1 the timeframe that we are talking about, when you and
2 Mr. DeFreitas were going to JFK Airport and that time period
3 was January 1, 2007, to January 13, 2007, correct?

4 A January, yes.

5 Q Okay. During that time period, you saw Mr. DeFreitas
6 every day, isn't that correct?

7 A Yes.

8 Q In addition to going to JFK Airport, you drove him on
9 various errands, isn't that correct?

10 A Yes.

11 Q Okay. Most of those errands -- other than the trips to
12 JFK Airport, those errands were for personal reasons, isn't
13 that correct?

14 A Yes.

15 Q Taking him to the dry cleaners, the optician, to his
16 friends?

17 A Yes.

18 Q Okay. He felt free to call you to come and pick him up,
19 isn't that correct?

20 A Yes.

21 Q Okay. He didn't have a car at this time, isn't that
22 correct?

23 A To my knowledge.

24 Q Okay. So to your knowledge, if you didn't come and pick
25 him up, he would have been walking or taking the city bus, is

1 that right?

2 A According to what he says, yes.

3 Q Okay. The next set of questions I am going to be asking
4 you are from your next trip to Guyana, when you were in Guyana
5 for the second time, and this would have been approximately
6 from January 14th to February 27th. Okay?

7 A Yes.

8 Q Now, when you got to Guyana, you met -- I mean, at some
9 point, I don't know if it was that day, you met with
10 Mr. DeFreitas, Rutherford and Nero at Rutherford's office, is
11 that correct?

12 A Yes.

13 Q At this point were Rutherford and Nero sharing office
14 space?

15 A Yes.

16 Q Had they been sharing office space when you first went to
17 Guyana?

18 A No.

19 Q Okay. Did they begin sharing office space when you
20 returned to New York City and Mr. DeFreitas was still in
21 Guyana?

22 A Yes.

23 Q Did you show the video to Rutherford and Nero and
24 Mr. -- and Mr. DeFreitas was there. He told to you put it on
25 Rutherford's TV. Did that happen the first day you were back

1 in Guyana?

2 A He didn't ask me to put it on the TV. He asked me to put
3 it in the computer. The computer did not work. I was asked
4 if there was any other way to show the video. We look into
5 the bag to see what kind of cables the camera brought. The
6 camera had cables to be plugged into the TV, so I was asked to
7 play the -- the video in the TV.

8 Q Was that the first day you went in Guyana, that second
9 trip?

10 A It was on the second trip, sooner than later after I
11 arrived to Guyana.

12 Q Okay. At some point did you have a conversation with
13 Donald Nero, Dawood Masood, about Shukrijumah?

14 A Yes.

15 Q Donald -- did Donald Nero, Dawood Masood, tell you that
16 he knew Shukrijumah personally?

17 A Yes.

18 Q Did he also tell you that he knew Shukrijumah since they
19 were children?

20 A He say they knew each other for long time and they have
21 actually been together studying together at some point. That
22 I remember.

23 Q Okay. He led you to believe that he knew Shukrijumah
24 fairly well, is that correct?

25 A Yes.

1 Q Okay. Now, the second time when you are in Guyana, the
2 same problems -- well, let me rephrase that.

3 The people in the group still had problems trusting
4 each other, Rutherford, Dawood, Pony Tail, Mr. DeFreitas;
5 isn't that correct?

6 A Not at the beginning. Again, started problems are --
7 arising in getting greater and greater. This is the reason
8 why there was eventually a fallout. Not at all times there
9 was disagreement or mistrust.

10 Q Okay. But part of the problem was actually getting any
11 trip to Trinidad underway, isn't that correct?

12 A Sheik Mohammed was disappointed that the trip to Trinidad
13 was delayed.

14 Q Okay. But Rutherford kept saying he would pay for the
15 trip; isn't that correct?

16 A Yes.

17 Q And Abdel Nur still didn't have travel documents, is that
18 correct?

19 A Yes.

20 Q And you had learned of a problem with Abdel Nur's travel
21 documents when you first came -- when you came to New York
22 after your first trip to Guyana, isn't that correct?

23 A Yes.

24 Q Okay. So from November to December, you were now back in
25 January, and the problem with his travel documents still

1 hadn't been resolved, is that correct?

2 A Yes.

3 Q To your knowledge, no one has had contact with
4 Shukrijumah or Abu Bakr during this whole time period, from
5 August to mid-January, is that correct?

6 THE COURT: From August 2006?

7 Q From August 2006 to mid-January of 2007?

8 A Yes.

9 Q Okay. So eventually there is a lot of going back and
10 forth with changing of the dates because of Abdel Nur's travel
11 documents and ultimately you are asked to go with Abdel Nur to
12 the travel office to try and get his travel documents, is that
13 correct?

14 A Yes.

15 Q Okay. And Rutherford wanted you to go with him because
16 he thought if you were there it would get done, is that
17 correct?

18 A He instructed me to go there because they wanted to make
19 sure that Abdel Nur did not just walk away. He was given
20 money for the travel documents or any specifics. He just
21 wanted to make sure that the information they was giving to
22 Abdel Nur by the immigration office is accurate.

23 Q Okay. I think you were alluding to the fact that
24 Rutherford just didn't want him to walk away with the money to
25 pay for the travel documents, is that correct?

1 A It's a possibility. That he had mistrust or not, that's
2 not the matter here. The matter here is that he wanted me to
3 accompany him to make sure that the information that the
4 inspectors, or whatever was related to Abdel Nur, was coming
5 back in the same fashion.

6 Q Did Rutherford give you the money to hold or did he give
7 the money to Abdel Nur for the travel documents?

8 A The first time we went it was just actually gathering
9 information that was needed for the matter.

10 Q Okay. You went back the next day to pick up the travel
11 document?

12 A Yes.

13 Q Who held the money that day? Was it you or Abdel Nur?

14 A I had the money.

15 Q Did you also hold on to Abdel Nur's travel document after
16 you paid for it?

17 A Yes.

18 Q During this time period, the people who were supposed to
19 go to Trinidad also was changing, isn't that correct?

20 A Yes.

21 Q At one point --

22 A Not really changing.

23 Q Not --

24 A There were people that wanted to also be included in the
25 trip.

1 Q Right.

2 A Abdel Nur was the one that was going, but Nero said that
3 he should be there and that he said we should all be there,
4 but it was Nero saying this. Sheik Rutherford always said
5 that he was -- he will send Abdel Nur first to get the
6 information. It was Nero speaking about who should go, who
7 should not go and so forth.

8 Q Let me go back.

9 Originally when you first got to Guyana, the very
10 first time I guess in September, the plan was for you and
11 Mr. DeFreitas and Ponytail and Nero to go to Trinidad,
12 correct?

13 A It was always the same.

14 Q Okay. I am just asking you, those four people were the
15 people that were supposed to go, right?

16 A Yes.

17 Q Then Rutherford became involved, and when you came back
18 to Guyana the second time, Rutherford was saying he wanted to
19 send Abdel Nur first, is that correct?

20 A Yes, to set up the meeting.

21 Q Then Nero wanted to go at one point, isn't that correct?

22 A Yes.

23 Q And then Nero changed his mind and didn't want to go,
24 isn't that correct?

25 A He was saying that if Abdel Nur was going and at a

1 specific time, he won't be able to go. He will go if it's
2 going after that time. He never changed his mind about going
3 to Trinidad. He said that he had a matter to attend or
4 something important for him to do and if Abdel Nur will go
5 after the date he will still be interested. If he will go
6 before, he won't be able to go. He never said I am not going
7 anymore.

8 Q Okay. When Mr. DeFreitas heard that only Abdel Nur was
9 going to go, he became upset, isn't that correct?

10 A I --

11 Q Let me rephrase that rather than say "upset."

12 He became concerned that Abdel Nur might sell the
13 idea to Abu Bakr and run away with the money, isn't that
14 correct?

15 A Yes.

16 But you are talking about different times here now.

17 Q No. I understand that. This is sort --

18 A You said before that you wanted to talk about the second
19 trip. Now you are talking about the third trip and the second
20 trip.

21 Q I guess that's what I am asking you.

22 When Rutherford told the group during the second
23 trip that Abdel Nur was going to go, didn't Mr. DeFreitas say
24 that he didn't like that idea because he thought that Abdel
25 Nur would run away with the money?

1 A No, not in the second trip. He did not actually say
2 that.

3 Q Are you sure?

4 Could I show you a document?

5 A You can show me a document. I'm sure that actually what
6 I am telling you.

7 Q Okay. I am going to show the witness only, please,
8 what's previously been marked as Government
9 Exhibit 3500-SF-93.

10 The information that I want to show you is actually
11 on the next page. I would just like you to look at the date.

12 Can I turn the page?

13 A No, not yet. Please.

14 (Pause.)

15 Yes.

16 Q Showing you the second page. I think the most relevant
17 portion is the second paragraph. But please feel free to read
18 it all.

19 (Pause.)

20 A Again, like I said, at this point he did not say that
21 actually Abdel Nur was going to sell the -- the thing because
22 actually at this point Abdel Nur was not aware of the video
23 and at this point, like I said, he needed to be present to
24 present the video. He didn't want nobody to present the
25 video. Not per se Abdel Nur. He didn't want nobody at all.

1 It was not a matter of Abdel Nur going by himself.

2 Q Okay. I guess then I can ask you, was he concerned that
3 if Ponytail went, Ponytail would show the video and try to
4 walk away with the money?

5 A Mohammed will never give the video to anyone. He needed
6 to present it himself. He actually mentioned that he will not
7 allow anyone to present it. It's not a matter of Abdel Nur or
8 Ponytail or Nero. He said they can go and set up the meeting,
9 but Mohammed said Mohammed will be presenting the video and
10 the knowledge he had of the JFK.

11 Q Okay.

12 A It was clear.

13 Q At this point where -- is the video on Rutherford's
14 computer yet?

15 A The video was taken off the computer in -- in the same
16 time that you actually discussed.

17 Q Okay. Rutherford had the video on his computer at one
18 point, is that correct?

19 A For some time, yes.

20 Q Then did you take it off of the computer shortly before
21 Rutherford completely backed out, or had you taken it off of
22 the computer sometime before Rutherford had backed out?

23 A The same day that we were having the conversation
24 about -- Sheik Rutherford came into the office and he said I
25 just sent some guy, I just spoke to my man, which is Sheik

1 Farouz. Sheik Farouz, he said that he has been in Trinidad
2 and he have learned that Shukrijumah is not in Trinidad. So
3 he was having some issues with Abdel Nur and he said I am not
4 sending Abdel Nur to Trinidad anymore.

5 Q Okay.

6 A On that note, Sheik Mohammed got disappointed. He said
7 you have -- you have us sitting here like ducks. I feel you
8 are treating us like cell. What's going with Trinidad. I
9 want to go to Trinidad. If you not, if you don't want to send
10 Abdel Nur, we can all go, or we can go with Sheik Dawood. He
11 said well, I don't have the money to send all of you right
12 now. Whatever.

13 And he said -- then when he mentioned, like I said
14 before, I already have notice from this guy name Farouz that
15 the guy Shukrijumah is not in Trinidad. So there is no reason
16 for me to send you.

17 And then we had the conversation prior to that about
18 the video, Sheik Mohammed being concerned about the video, and
19 he -- and I say well, you know, since you are not sending the
20 guy to Trinidad, I must tell you that I was asked to remove
21 the video from your computer. He got pissed off. He said you
22 guys get the hell out of my office. We walked out of the
23 office and Mohammed said, you see, the best thing we did was
24 take away the video from the computer because I know -- I
25 don't know why this man want to get involved. If they would

1 have got the video, they would have went and sell it
2 themselves.

3 Q Okay. Mr. DeFreitas was concerned that somebody was
4 going to sell the video for themselves, right?

5 A That's a different question, but yes. He was concerned
6 about the video, yes.

7 Q Okay. Things with Dawood Masood, Donald Nero, fell apart
8 about the same time as the falling out with Rutherford, is
9 that correct?

10 A Rutherford and -- Dawood sided with Rutherford. Actually
11 he took his position not to talk to us no more. He was for
12 himself, actually.

13 Q I think you testified, you were staying with -- even
14 though you had this dispute, you still continued to stay with
15 Nero?

16 A His mother's house.

17 Actually, I was advised by Sheik Mohammed that he
18 spoke to the mother about the fallout and the mother said that
19 I did not need to leave the house because this is not Sheik
20 Dawood's house. This is her house.

21 Q Okay.

22 A So I stood there.

23 Q Was Nero still living there?

24 A Yes.

25 Q Okay.

1 A I did not speak to him after the fallout. We just
2 greeted each other, Salaam, Salaam. That's it.

3 Q Okay. You start to talk -- I think eventually you talk
4 with Wahab during this trip?

5 A Yes. Sheik Wahab, yes.

6 Q Sheik Wahab takes you up to see Mr. Kadir, is that
7 correct?

8 A Yes.

9 After he seen the video and after actually Sheik
10 Mohammed had spoken to him, and Wahab has mentioned of his
11 connections and when he revealed the name of the connections,
12 that's when we went to him, yes.

13 Q Okay. So after you see Kadir, he says it will take two
14 weeks, is that right, two weeks for him to get in contact with
15 his connections?

16 A He didn't say that. He said I will get back at you guys
17 in two weeks.

18 Q Okay.

19 A To see you, what actually my -- my connections are going
20 to say about this whole thing, yes.

21 Q Okay. Then you and Mr. DeFreitas had to make a decision
22 about whether you were going to stay in Guyana or whether you
23 were going to go back to New York City?

24 A No.

25 The reason why -- in the matter of coming back to

1 the states was presented to Abdel Kadir. He say we can go on
2 to the states and it will take me a couple of weeks to get
3 back at you with the information. On that you guys will have
4 already the aerial from the Google Earth, and again I will
5 inform you of it and that was the -- the reason why we
6 were -- we were ready -- Sheik Mohammed already decided to
7 leave and this matter was presented as we were leaving.

8 Q Okay.

9 A It's not matter if we decided to leave after. We were
10 leaving and it was going to take some time for Sheik Abdul
11 Kadir to come back to us with the matter and the information.

12 Q Did you have any discussions about possibly waiting the
13 two weeks in Guyana?

14 A I don't recall.

15 Actually, I remember that we were -- we were
16 scheduling to leave, and based the fact that the two weeks was
17 going to be a wait, he proceeded to actually discuss with
18 Wahab about options actually as well.

19 Q You and Mr. DeFreitas also talked about your options,
20 about whether you should stay or whether you should go, isn't
21 that correct?

22 A There was money situations going on. Actually, for --

23 Q Let me move on to that, the money situation.

24 Mr. DeFreitas actually had to borrow money from
25 Shafiq to pay for a ticket home, isn't that correct?

1 A Yes.

2 Q He borrowed approximately \$400?

3 A \$450.

4 Q Okay. The next set of questions I am going to be asking
5 are when you -- are in the time period when you and
6 Mr. DeFreitas were back in New York City. Okay?

7 A Yes.

8 THE COURT: This was after the second trip?

9 Q This is after the second trip and the period would be
10 somewhere, the end of February of 2007 to mid-May of 2007.

11 A Thank you.

12 Q So when you come back on this trip, this is when
13 Mr. DeFreitas is stopped and searched at the airport, isn't
14 that correct?

15 A Yes.

16 Q He became very upset because he was told that he was
17 going to get a chip in his renewed passport?

18 A Yes.

19 Q Did he later learn, or did someone tell him when you were
20 present that everyone was going to have a chip put in the new
21 passport?

22 A Someone made a comment of that, yes. I don't remember
23 who, but someone made a comment.

24 Q He didn't believe them, right?

25 He thought the chip was only going to be in his

1 passport, is that correct?

2 A He mentioned this was a practice to people that were high
3 profile. That's what Sheik Mohammed said.

4 Q Okay. Mr. DeFreitas calls Kadir and tells him that he
5 has been searched, is that correct?

6 A Yes.

7 (Continued on next page.)

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1 CONTINUED CROSS-EXAMINATION

2 BY MS. WHALEN:

3 Q He made that phone call without your knowledge; isn't
4 that correct?

5 A Well, he had made many phone calls.

6 Q This phone call, the first phone call to tell Kadir that
7 he had been searched, Mr. Defreitas made that without you;
8 isn't that correct?

9 A I am not sure. Actually, I think he mentioned, I had
10 spoken to him the night getting there. I think I can recall
11 that.

12 Q Let's look at Government Exhibit 214?

13 THE COURT: You want the jury to pull out their
14 binders?

15 MS. WHALEN: Yes.

16 Q Looking at the first page of the exhibit, this is a
17 conversation taking place on March 5th, 2007, correct?

18 A Which exhibit are you actually looking at?

19 THE COURT: 214.

20 A March 5th, 2007.

21 Q Right.

22 If you can turn to the second page, if you look at
23 line 9 or 10, you say, good to hear from you my beloved
24 brother. At line 13, Abdul Kadir says, I spoke to brother
25 Mohammed. He told me the difficulty that occurred when you

1 are going in.

2 He was telling you he got a call from Mr. Defreitas
3 about the search; is that correct?

4 A Yes.

5 Q Later on, if we can go to page 9, the first line at the
6 top of the page you say, I downloaded the Google Earth; is
7 that correct?

8 A Yes.

9 Q You actually had the Google Earth -- let me rephrase.
10 You were in the FBI apartment that Mr. Defreitas was
11 staying in at that time?

12 A Yes.

13 Q You had actually had your computer with you; isn't that
14 correct?

15 A Yes.

16 Q You had actually downloaded Google Earth at that moment;
17 is that correct?

18 A Yes.

19 Q After you and Mr. Defreitas finished the conversation
20 with Mr. Kadir, you start looking for JFK Airport on the
21 Google Earth; is that correct?

22 A Yes.

23 Q I'm going to show you Government Exhibit 70. That was
24 the Google Earth map. We could publish it. It's in evidence.

25 Is this the map that you made that night or is this

1 a map that sort of came over time?

2 A First, the map was looking like maps.

3 Q Okay.

4 A I have shown it to Sheik Mohammed, the map. He said he
5 didn't want the map to look like there, he wants like
6 satellite views. He wanted the person to see it to fully
7 understand and appreciate the landmarks, the tanks --

8 Q Let me stop you there. That evening the two of you were
9 looking at the computer program trying to find the landmarks
10 for JFK Airport; isn't that right?

11 A Yes.

12 Q Mr. Defreitas didn't know how to operate a computer, did
13 he?

14 A I don't know if he knows or not.

15 Q When you were sitting there with him that evening, you
16 were manipulating the computer and he was sort of pointing at
17 things on the screen; isn't that correct?

18 A I was asked by Sheik Kadir to download Google Earth,
19 actually see if I recognize the aerial of the JFK. I'm the
20 one dealing with Kadir at this point because he asked me to do
21 it.

22 THE COURT: The question is whether you were the
23 one who was actually working on the computer.

24 THE WITNESS: Yes.

25 Q Look at page 19, the transcript ends at 46 minutes and 34

1 seconds. You guys continued to try to look for things on
2 Google Earth for about another half hour; isn't that correct?

3 A I don't know how much time, but we was looking.

4 Q At the end, after a while, Mr. Defreitas said let's call
5 it a night; isn't that correct?

6 A This is a usual terms he uses. I don't know if he used
7 it that particular night, but a lot of times he was saying
8 let's call it a night, go home, go to sleep. You're tired.
9 You have to go back to your family.

10 Q Let me play a little bit of the tape for you. I'll be
11 starting at one hour and 11 minutes.

12 THE COURT: Is it on the transcript?

13 MS. WHALEN: It's not. This portion of the tape
14 hasn't been transcribed. We're actually starting at one hour,
15 ten minutes, and 58 seconds.

16 I'm sorry, could you publish this to the jury?

17 THE COURT: I'm sorry.

18 (Tape plays.)

19 Q When you said this is TWA, you're identifying landmarks
20 on Google Earth, right?

21 A I would like a bit more. I don't know exactly.

22 (Tape plays.)

23 Q Now that you've heard a little bit more, can you tell if
24 you're still trying to identify landmarks on Google Earth?

25 A He's asking me questions, asking me to read the roads.

1 Actually what I'm doing right now is zooming in, asking me for
2 the cargo area, asking me a specific road that actually drove
3 in or out, just reading out the map so he could appreciate it.

4 Q He's asking you to identify things on the Google Earth,
5 right?

6 A Right.

7 (Tape plays.)

8 MS. WHALEN: Skipping ahead about a minute and 13.

9 (Tape plays.)

10 Q Again, this recording is poor. That's because you're
11 wearing just a body wire at this point; is that correct?

12 A Yes.

13 Q You offer to make some prints. He says yes?

14 A I asked him if he wants me to make prints. He says yes.

15 Q Let's go to Government Exhibit 215. Look at the first
16 page, March 6th, the next day; is that correct?

17 A What exhibit you say?

18 Q Exhibit 215.

19 A March 6th, yes, 2007.

20 Q I'll queue you into four minutes and 40 seconds where the
21 transcript sort of starts at the beginning of page two.

22 (Tape plays.)

23 Q The document that you're holding in your hand, that's the
24 map that you made overnight; is that correct?

25 A Yes, which was actually the one he did not want. This

1 map --

2 Q That's enough. That's sufficient.

3 I'm asking you to look at Government Exhibit 216.

4 If you look at the first page, that's the telephone
5 conversation that takes place on March 7th, 2007; is that
6 correct?

7 A Yes.

8 Q This is a telephone call that you have with Abdul Kadir;
9 is that correct?

10 A Yes.

11 Q I believe that you were asked whether Mr. Defreitas was
12 presented for this telephone call. Do you remember being
13 asked that?

14 A I don't remember as we speak, but you can refresh my
15 memory.

16 Q Let me ask you, whenever Mr. Defreitas was with you when
17 you made a telephone call, you introduced him on the phone;
18 isn't that correct?

19 A If he wanted to speak to the individuals, yes. I believe
20 more than likely he also presented himself as being present.

21 Q He would say Salam; is that correct?

22 A Yes.

23 Q In this conversation where we don't hear anything about
24 Brother Mohammed, don't hear you saying Brother Mohammed is
25 here with me, that means most likely Mr. Defreitas wasn't on

1 the phone for this conversation; is that correct?

2 A Yes.

3 MS. WHALEN: I'll play it.

4 (Tape plays.)

5 Q I'll skip ahead a little bit. This is the conversation
6 where he tells you that he's not -- that his folks don't want
7 to deal with the hatchery, the Chicken and the Eggs at this
8 point; is that correct?

9 A I would like to listen to it, please.

10 (Tape plays.)

11 Q This is the conversation where Mr. Kadir is telling you
12 he doesn't want to deal with the chicken and the eggs at that
13 point?

14 A He didn't say that. He said his folks. He didn't say
15 him. He said his folks don't want to deal with it right now
16 because it's sensitive, but would keep it in mind.

17 Q What I want to move on, though, he then asks you about
18 the sword and the material for the wood and the documents for
19 his mansion. Even though he wasn't going to continue with you
20 on the chicken and eggs, he wanted you and Mohammed to do
21 things for him; is that correct?

22 A Even though the matter was put on hold, of course, he was
23 expecting us to do other things. Sheik Mohammed also expected
24 him to do other things as well.

25 Q After Kadir told you that it was on hold for now, you

1 spoke with Mr. Defreitas to let him know; isn't that correct?

2 A Yes.

3 Q You told Mr. Defreitas that you thought Mr. Defreitas had
4 spoken about being stopped at the airport too many times;
5 isn't that correct?

6 A It was a discussion about the security and he mentioned
7 to me, how do you call it, that was amazed and surprised he
8 was acting like that. I say well, probably mentioned he was
9 stopped many times, he became concerned about his own safety.
10 That is correct.

11 Q Then Mr. Defreitas proposed talking to Wahab and Osama,
12 you told him you've got to stop talking about being stopped at
13 the airport; is that correct?

14 A I don't recollect that. If you want to refresh my
15 recollection on that.

16 Q I'll show you what's marked as Defendant's Exhibit RDC.
17 This is the transcript, sir. Actually, a couple of pages,
18 I'll walk it up to you, (handing).

19 A Thank you.

20 Q I would ask you -- actually, I would ask you to read the
21 whole transcript, if you would, please.

22 A Thank you.

23 (Pause.)

24 Q Does that refresh your recollection whether you told
25 Mr. Defreitas that if he continues to talk about the airport

1 he would scare away Osama and Wahab?

2 A No, when I'm discussing with him, I said I guess you
3 mentioned too many times to Sheik Kadir the matter of your
4 stop. He became not interested. Then he jumped right away,
5 said this, that, and as I remember the conversation, actually,
6 I am telling him I remember I said that Sheik Abdul would
7 have, or actually when I mentioned, he said the man was too
8 professional, actually he was not the matter of the calls
9 about the stops at the airport but more likely it would be the
10 people that were actually probably to speak in back of him,
11 Rutherford or Dawood Masood.

12 Q You thought Mr. Defreitas had mentioned he had been
13 stopped at the airport to Mr. Kadir, Mr. Defreitas thought it
14 was the other people in Guyana who had probably gotten to
15 Kadir; is that true?

16 A No. What he mentioned, he mentioned Sheik Kadir was too
17 professional to actually take that into consideration.

18 Q Meaning Sheik Kadir was too professional to take security
19 at the airport into consideration?

20 A No, what he says, what he mentioned, mentioning too many
21 times he was stopped was not the matter of it. Even got to
22 the point of saying I'm telling the people of JFK too much for
23 the men. If you play the tape, you would be able to
24 appreciate whatever was discussed.

25 Q What I'm trying to get, this one little bit. You thought

1 that Kadir wasn't interested in the plan because Mr. Defreitas
2 had talked too much about being stopped and searched at the
3 airport; is that right?

4 A I said he had become scared.

5 Q Mr. Defreitas disagreed with you; isn't that correct?

6 A Yes.

7 Q Did Abdul Nur start calling you for money at around this
8 time?

9 A Abdul Nur had always asked for money.

10 Q His calling you and asking you for money, he called and
11 asked you for \$100 for his rent; isn't that correct?

12 A Yes.

13 Q At this time Abdul Wahab is not returning your phone
14 calls, returning your phone calls, telling you he will call
15 back later; isn't that correct?

16 A He said he would call back later, yes.

17 Q But he never firmed anything up, never got you a second
18 contact; isn't that correct?

19 A Osama was the second contact. We already had approached
20 Osama on that second trip, actually Sheik Mohammed had spoken
21 to Osama and Osama said Abdul Kadir would actually go and make
22 the contact himself.

23 Q Osama -- were you able to reach Osama when you were back
24 in New York?

25 A No.

1 Q You weren't able to reach Osama and Wahab wasn't finding
2 you other contacts; is that correct?

3 A He was trying to all the time.

4 Q He didn't get back to you either?

5 A No.

6 Q At this point you don't have Mr. Kadir at that moment.
7 You don't have Mr. Wahab at that moment. You don't have
8 Mr. Osama at that moment ready to go in on the plan; is that
9 correct?

10 A Sheik Kadir was there, but he was placed on hold and on
11 this note Sheik Mohammed went on his own journey. He wants
12 this plot to be done as soon as possible.

13 Q Let me stop you. You called Abdul Nur when Kadir and
14 Wahab and Osama were not available, you called Abdel Nur to
15 see if he was still interested in going to Trinidad; is that
16 correct?

17 A I was instructed by Mohammed he needed -- he counted on
18 Mr. Nur --

19 Q Did you call Abdul Nur?

20 A And I did.

21 Q Abdul Nur told you yes, but needed money; is that
22 correct?

23 A Yes.

24 Q Shortly after that, did you tell Mr. Defreitas that you
25 had a place for all of you to stay if you went to Trinidad?

1 A I don't know. You have to refresh my memory. I can't
2 recall that.

3 MS. WHALEN: I would like to publish to the
4 witness, your Honor.

5 Q I'm showing you what's previously been marked
6 Government Exhibit 3500-SF-127. I think the last paragraph is
7 the most relevant.

8 (Pause.)

9 A I still don't recall the matter. I'm trying to think if
10 by any chance I had any friends in Trinidad. I don't recall
11 having any, so I don't recall me saying that.

12 Q At that point had the FBI or the JTTF told you they could
13 find a place for you guys to stay if you went to Trinidad?

14 A Well, if I was going to Trinidad, I didn't have a place
15 to stay, the FBI provided me some place to stay possibly, but
16 I don't recall actually -- I don't recall it.

17 Q You also -- withdrawn. At this point did you discover
18 you still had Abdul Nur's travel documents?

19 A I knew I had the documents. We couldn't find Abdul Nur
20 in Guyana. He was doing some detail for the guy from Swiss
21 House, had disappeared a couple of days. We was coming to the
22 States. I couldn't leave the travel documents with anybody.
23 I didn't know anybody to leave it with, so I left with it. I
24 informed him of that.

25 Q Eventually around this time when you sent him money for

1 his rent, you also sent him back the travel documents; is that
2 correct?

3 A I think the travel documents was given to him by hand, if
4 I remember. I don't recall actually sending it.

5 MS. WHALEN: Again, your Honor, just to the
6 witness.

7 Q I'll show you Government Exhibit 3500-SF-130. I'll turn
8 to the second page, the last paragraph is the most relevant.

9 (Pause.)

10 THE COURT: Just a reminder to the jurors, these
11 documents that have been marked for identification only, they
12 are not in evidence and they may properly be used to refresh a
13 witness's recollection.

14 Q Does that refresh your recollection?

15 A Yes. I don't remember sending him the documents. I
16 remember handing the documents by hand.

17 Q At this point you and Mr. Defreitas met with the person
18 I'm calling undercover Mohammed; is that correct?

19 A Yes.

20 Q This was when Undercover Mohammed told you that you could
21 have the tickets that he hadn't been able to use to go to
22 Guyana; isn't that correct?

23 A Yes.

24 Q After you got the tickets, or after you knew that he was
25 going to give you the tickets, you spoke to Mr. Defreitas or

1 Mr. Defreitas told you that you would use the tickets to go to
2 Guyana; isn't that correct?

3 A Yes, the tickets were given to Mohammed. Actually, the
4 discussion was directly with Mohammed, Mohammed was present.
5 Mohammed told Mohammed, Mohammed told Defreitas, he said I
6 never used the tickets. Use them however you want them. You
7 want to use them for you, you want to give them away, whatever
8 you want to do. On that note, Sheik Mohammed told me, he said
9 with these tickets we're going to Guyana and we'll give the
10 ticket to Abdul Nur to go to Trinidad. That was the original
11 plan that Sheik Mohammed had.

12 Q Didn't you talk to him about going straight to Trinidad
13 rather than going to Guyana?

14 A I have to listen or recall the whole conversation why
15 this came about, if anything.

16 Q Let me show you, for the witness only, what's previously
17 marked for identification as 3500-SF-132. I'm going to ask
18 you to look at the last paragraph. When you're finished
19 reading the last paragraph on the first page, let me know and
20 I'll turn the page.

21 (Pause.)

22 A You want me to continue reading?

23 Q I'll turn the page.

24 (Pause.)

25 A Yes, I'm finished reading.

1 Q Did this refresh your recollection whether you suggested
2 you go straight to Trinidad?

3 A It was a conversation. I didn't actually just suggest
4 it. Like I said, Sheik Mohammed wanted to go to Trinidad with
5 Abdul Nur. Because he had mentioned before the fact that
6 after Abdul Nur had seen the videos of the shining, he had
7 mentioned that he did not want to send just Abdul Nur to
8 present this matter without his presence. Because of that, I
9 made a comment, are you going to go to Guyana first or are you
10 going to Trinidad first? I wanted to understand exactly what
11 he meant by either going to Guyana or Trinidad, again, because
12 his constant changing of plans, whether going to Guyana first,
13 going to Trinidad first, taking Abdul Nur, Kadir. He's making
14 these changes. I need to understand what is actually the
15 ultimate thing that he's going to do.

16 Q Just to back up for a minute, if Mr. Defreitas hadn't
17 been given the tickets from undercover Mohammed, he didn't
18 have the money to travel to Guyana or Trinidad at that point;
19 is that correct?

20 A That's not true.

21 Q He had the money to go?

22 A He was getting money from the government monthly. He
23 wasn't using it for rent or for living. He was making enough
24 money to travel.

25 Q He was saving that money, but he also owed Shafiq money?

1 A Which he never paid.

2 Q At this point he was trying to save money to repay
3 Shafiq; isn't that correct?

4 A Yes.

5 Q After you had been given the tickets, after Mr. Defreitas
6 has been given the tickets by Undercover Mohammed, after he's
7 told you he wants to go to Guyana, that's when you called
8 Abdul Kadir and asked him if he will come as well?

9 A Sheik Mohammed said he wants Abdul Kadir to use the third
10 ticket instead of Abdul Nur. So, he told me, Sheik Mohammed
11 said we're going to invite Abdul Nur to go with us. This is
12 what the conversation is about.

13 Q At this point, let's look at Government Exhibit 218?
14 There is a phone call that takes place on April 13th; is that
15 correct?

16 A Yes.

17 MS. WHALEN: If we could publish this to the jury?

18 Q A phone call from Abdel Nur to you; is that correct?

19 A Yes.

20 (Tape plays.)

21 Q Abdul Nur is saying he wants to get out of Guyana, he
22 wants to get away from Guyana?

23 A He wants to go to Trinidad.

24 Q He says the paragraph before, you know, this place, this
25 place, that one there, that one there, been doing, doing, off,

1 off, off, real off, you know, I just want to get away, you
2 understand what I'm saying? He wants to leave Guyana; isn't
3 that right?

4 A Yes.

5 (Tape plays.)

6 Q Is Abdul Nur asking you for money again?

7 A It's the same \$100 he mentioned before.

8 Q Let me show you, again, to publish just to the witness --

9 MR. JONES: Objection, might we approach?

10 THE COURT: Yes.

11 (Continued on next page.)

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1 (Side bar.)

2 MR. JONES: I don't know what the basis is to show
3 the witness this document N.

4 MS. WHALEN: He said it's the same \$100, the
5 conversation --

6 MR. JONES: Impeaching him?

7 THE COURT: Don't interrupt.

8 MS. WHALEN: I'm trying to confirm it is the same
9 \$100. He had the conversation back at the end of March where
10 he said he was sending it. Now it sounds like Abdul is asking
11 for more money. He says it's the same. I wanted to confirm
12 it's the same.

13 THE COURT: Before you show the document --

14 MS. WHALEN: About the conversation.

15 THE COURT: You need to clarify. I guess an
16 appropriate question, I didn't see any amount mentioned in the
17 transcript. I think it's a fair question to ask him how do
18 you know it's the same \$100?

19 MR. JONES: My only point, there's nothing to
20 refresh. He didn't say he didn't remember.

21 MS. WHALEN: My question is improper, I'll rephrase
22 it.

23 THE COURT: Then ask him, go back and ask him all
24 those other questions. If he doesn't remember, you can
25 refresh.

1 MR. JONES: The other issue, I'm not objecting, but
2 a lot of this is just where we're going to be here until
3 Christmas if we go through everything Ms. Messina went
4 through. I don't want to object all the time, we've been
5 through this, been through this. We don't need to be going
6 back at length the same thing.

7 THE COURT: I'm not so sure it's exactly the same
8 area. Otherwise I would have interjected, things being asked
9 over and over again.

10 MS. WHALEN: In my mind I'm eliciting it for a
11 different purpose. I do apologize going over the same area.

12 MR. JONES: Two other things. One, can I ask
13 again, please, if we're going to refresh the recollection not
14 to say something is a transcript just identify the number,
15 give it to the witness.

16 Second of all, well -- that's it.

17 THE COURT: If it's a transcript that's not in
18 evidence, you can just say, identify it for identification as
19 ID whatever.

20 MS. WHALEN: Yes, your Honor.

21 THE COURT: Then we'll probably break in about
22 15 minutes or so. Is your client still okay?

23 MS. WHALEN: I'll check.

24 THE COURT: You want to check before we get
25 started?

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(Pause.)
MS. WHALEN: Okay.
THE COURT: We can go for another 15 minutes.
(Continued on next page.)

1 (Open court.)

2 Q Mr. Francis, let me back up for a minute. Mr. Nur is
3 asking you for money here; isn't that correct?

4 A Yes.

5 Q You're saying the same \$100 that you had said you were
6 going to be sending him; is that correct?

7 A Yes.

8 Q But approximately -- you had told him you were going to
9 be sending the money about two weeks ago; isn't that correct?

10 A He was, again, a miscommunication between me and Abdel
11 Nur. He had express interest in money numerous times, not
12 only to me but to Sheik Mohammed. Sheik Mohammed advised me
13 to be careful with him, not to be actually sending money to
14 him. It was kind of an unusual situation because he was
15 actually facing being kicked out of the house and I needed
16 certain okays as well as Sheik Mohammed as well as the FBI
17 actually if I was giving to him. I send him the \$100 because
18 he was going to be homeless if he didn't get the \$100.

19 Q I want to clarify. When you had told him two weeks
20 earlier that you're going to be sending money, you hadn't
21 actually sent it to him, right?

22 A I cannot recall exactly the amount of time when it
23 happened about the \$100 and how long was the wait. I'm just
24 explaining to you what was going on; that Abdel Nur was a
25 person if he sees you taking --

1 Q Let me stop you right there.

2 THE COURT: May I ask a different point?

3 At the time you had this conversation that we just
4 listened to, number 218, the one we were listening to now, at
5 that point had you sent him the \$100?

6 THE WITNESS: I'm not sure. The reason being he
7 asked on two occasions, asked for \$100 for his rent. He asked
8 also for money for his daughters because his daughters needed
9 some money for school and that his wife was actually in the
10 hospital or something like that. In any case, I don't know
11 about what was the period and we're dealing right now about
12 the monies of the rent or the monies that he was asking for
13 his daughters because he needed tuition for school. This is
14 the dilemma.

15 THE COURT: Ms. Whalen?

16 Q In any event, after you had this conversation with Abdel
17 Nur, you had a three-way conversation with Mr. Defreitas;
18 isn't that correct, Mr. Defreitas, Abdel Nur and yourself?

19 A Yes.

20 Q You agreed to send him money; isn't that correct?

21 A Yes.

22 Q Then the next day I'm going to look at, Government
23 Exhibit 219.

24 (Pause.)

25 MS. WHALEN: I'll move this up to 12:40, your

1 Honor. -- 12:34, actually.

2 (Tape plays.)

3 Q What did Mr. Defreitas mean by that?

4 A They know each other since we're young and Abdul Nur --
5 it's complicated.

6 Q Safe to say Mr. Defreitas didn't think Abdul Nur took him
7 seriously?

8 A I can't say that. He's mentioned there to speak to him
9 for whatever reasons he felt Abdul Nur would actually listen
10 to me or not.

11 (Tape plays.)

12 (Continued on next page.)

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1 EXAMINATION CONTINUES

2 BY MS. WHALEN:

3 Q When say here, you are referring to Abdel Nur or Kadir?

4 A We discuss the fact that he want to send Abdel Nur on a
5 different flight and I said that he should come actually with
6 us on the same flight.

7 Q Okay.

8 A Meaning Sheik Mohammed.

9 Q Then I am going to move us to page 11 of the transcript.
10 Actually, just to save time, I will just read it.

11 So -- starting at 22 minutes and 57 seconds into the
12 recording, which should put us -- I'm sorry.

13 Could everyone turn to page ten?

14 It will be on or about line 36.

15 (Tape plays; tape stops.)

16 Okay. Here when you are talking about he and he
17 being upset, you are referring to Abdel Nur and the
18 conversation that you had yesterday, is that correct?

19 A He wasn't upset. He want to get out of Guyana.

20 Q Okay. That's -- that's the conversation that you were
21 referring to, correct?

22 A Yes.

23 Actually, we are referring to the conversation
24 of -- the matter of Abdel Nur traveling and the matter of the
25 third ticket and the changes and as well as Mohammed buying

1 the ticket for Abdel Nur.

2 Q Let me just stop you.

3 I am just talking about, if you look at page eleven,
4 line 21, where it says and he request help. He beg. And I
5 don't like the begging part.

6 You say he was.

7 Mr. DeFreitas says, I remember Jelani said.

8 You said, he sounded like crying yesterday.

9 DeFreitas said, yes, man, yes. That thing touched
10 me, man.

11 You said, man.

12 He said, touched me bad.

13 That's referring -- that conversation, the he is
14 Abdel Nur, right?

15 A Yes.

16 Q I would like you to go to the transcript for Government
17 Exhibit 221.

18 (Tape plays; tape stops.)

19 When you are talking about 100, he's referring to a
20 hundred dollars, is that correct?

21 A Yes.

22 Q Now, this conversation takes place on May 2nd?

23 A Yes.

24 Q Do you believe that this is the same \$100 or do you
25 believe at this point it's probably the second \$100?

1 A The second one hundred mentioned.

2 (Tape plays; tape stops.)

3 Q Okay. So then I am just asking you to go to Government
4 Exhibit 222.

5 This is a telephone call between you and
6 Mr. DeFreitas and Abdel Kadir, correct?

7 A Yes.

8 Q It takes place on May 7, 2007?

9 A Yes.

10 Q If everybody could turn to page five? I'm sorry.
11 Actually page four. I apologize.

12 A Which page?

13 Q Page four.

14 A Thank you.

15 Q Okay. I am going to begin the recording at five minutes
16 and 49 seconds into the recording, which should put us on page
17 four, at line 37.

18 (Tape plays; tape stops.)

19 Okay. Now, here at line two, you are saying the
20 Sheik would like to know if there is anything else you need.

21 Is that correct?

22 A Sheik Mohammed.

23 Q Prior to calling Mr. Kadir, you had a conversation with
24 Mr. DeFreitas, isn't that correct?

25 A Yes.

1 Q You told Mr. DeFreitas that there are two issues that you
2 wanted to clarify with Abdul Kadir, is that correct?

3 A If I can listen to the tape.

4 Q Actually, let me -- I am going to show you a document
5 that I am marking as RD -- Defendant's Exhibit RD-D.

6 This is ID 77, S-8.

7 I am going to bring this up to you because it is
8 multipages. We are starting on page eleven.

9 A Thank you.

10 Q If you could read to page 13? Through page 13.

11 A Thank you.

12 (Pause.)

13 Yes.

14 Q Does that refresh your recollection about the
15 conversation?

16 A Yes.

17 Q Did you tell Mr. DeFreitas that you wanted to clarify
18 these two issues?

19 A Yes.

20 Q Okay. Then I am just going to take you to page nine of
21 Government Exhibit 222. I am going to be starting at eleven
22 minutes and 45 seconds into the recording, which should put us
23 on or about line seven or eight or nine of page nine.

24 (Tape plays; tape stops.)

25 That's just confirming with Mr. DeFreitas that you

1 had gotten the issues cleared up that you wanted to get
2 cleared up, is that correct?

3 A Yes.

4 Q Okay. Just to sort of finish up this time period, while
5 you are in New York, you are still giving Mr. DeFreitas rides,
6 isn't that correct?

7 A Yes.

8 Q You will be driving him to work and to his friends'
9 homes, to the mosque, isn't that correct?

10 A Yes.

11 MS. WHALEN: Actually, Your Honor, this would be a
12 good time for a break.

13 THE COURT: All right. Ladies and gentlemen, we are
14 going to take a little break now for maybe 15, 20 minutes or
15 so.

16 Remember to keep an open mind, not to form or draw
17 any conclusions about the case.

18 This is a fairly brief break so you won't be able to
19 use your cellphones.

20 Remember that you can't read, look at, in any way,
21 shape or form, listen to anything that might be reported about
22 this case, or do any kind of research about this case and you
23 can't talk about the case among yourselves or with anyone
24 else.

25 We will be with you approximately 10 minutes to

1 four, thereabouts.

2 Watch your step there.

3 (The following occurred in the absence of the jury.)

4 THE COURT: Okay. All be seated.

5 Mr. Francis, you are still on cross-examination. So

6 you can't discuss your testimony with the government team.

7 But you can also take a break for about 15 minutes.

8 THE WITNESS: Thank you.

9 THE COURT: You can step down.

10 THE WITNESS: Thank you.

11 THE COURT: You can discuss scheduling.

12 THE WITNESS: Thanks.

13 (Witness leaves courtroom.)

14 THE COURT: You all can take a break.

15 Is there anything you wanted to address now?

16 No. Okay. About ten to four.

17 (Recess taken.)

18 (Continued on next page.)

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1 (Open court.)

2 THE COURT: This is case on trial continued. We are
3 resuming after the break. The jury is not present. The
4 witness is not present.

5 Is everyone ready for the witness and the jury?

6 (All answer in the affirmative.)

7 THE COURT: Witness first.

8 (Pause.)

9 THE COURT: Jury entering.

10 (Jury present.)

11 MS. WHALEN: May I continue?

12 THE COURT: Be seated everyone.

13 Yes.

14 MS. WHALEN: Thank you, your Honor.

15 THE COURT: Do all the party agree that all of our
16 jurors are present and properly seated?

17 (All answer in the affirmative.)

18 THE COURT: Mr. Francis, welcome back to you as
19 well.

20 THE WITNESS: Thank you.

21 THE COURT: I remind you, sir, that you are still
22 under oath.

23 THE WITNESS: Yes.

24 THE COURT: Again, ladies and gentlemen, this is
25 continued cross-examination by Miss Whalen on behalf of

1 Mr. DeFreitas.

2 You may inquire when you are ready.

3 BY MS. WHALEN:

4 Q Mr. Francis, this last set of questions that I'm going to
5 be asking you is from the trip, the third trip you made to
6 Guyana and then on to Trinidad, from that time period. Okay?

7 A Thank you.

8 Q So you and Mr. DeFreitas go back to Guyana, isn't that
9 correct?

10 A Yes.

11 Q Okay. At this point, again, to your knowledge, no one
12 had spoken to Abu Bakr about this plan yet; is that correct?

13 A Yes.

14 Q And when you go to Guyana, Mr. DeFreitas stays in
15 Georgetown for most of the time, isn't that correct?

16 A Yes.

17 Q And you stay for the most part in Linden with Mr. Kadir's
18 son; is that correct?

19 A Yes.

20 Q Now, the ticket for Nur to travel to Trinidad was
21 purchased in Guyana; is that correct?

22 A Yes.

23 Q And I believe you said that Mr. DeFreitas paid for the
24 ticket?

25 A Yes.

1 Q And you said that the money came from money that he had
2 from Shafiq?

3 A Yes.

4 Q Is that still part of the same \$400 that he had borrowed
5 to go back to New York at the end of February of 2007?

6 A Yes.

7 Q And were you present when Mr. DeFreitas booked and bought
8 the ticket?

9 A Sheik Mohammed gave me the money for the purchasing of
10 the ticket.

11 Q So you actually went and purchased the ticket yourself?

12 A Yes, per the instructions of Mohammed, yes.

13 Q Was Mr. Nur with you or no?

14 A We were -- the three of us went to see the lady and then
15 the following day I came back with the -- to pick the ticket
16 up.

17 Q When you say "the lady," is that the travel agent?

18 A Yes, the travel agent that actually was dealing with us,
19 yes.

20 Q And Mr. Nur traveled to Trinidad on a different flight
21 than you and Mr. DeFreitas, isn't that correct?

22 A Yes.

23 Q And you were supposed to travel first but because of
24 plane delays he actually ended up traveling first?

25 A Yes.

1 Q And when you get to Trinidad, you got there I think you
2 said much later in the evening; is that correct?

3 A Yes.

4 Q And he didn't wait at the airport for you; correct?

5 A No.

6 Q And it took about two days for you and Mr. DeFreitas to
7 hook up with Mr. Nur again; is that correct?

8 A Yes.

9 Q Did he call you, did Abdel Nur call you during this time
10 period to let you know where he was?

11 A No.

12 Q Did you have a working cellphone in Trinidad?

13 A I have my own cellphone which is just actually a U.S.
14 number.

15 Q But did Mr. Nur know this number?

16 He could have called you on that number; is that
17 correct?

18 A Yes.

19 Q And is that the same number that he had been calling you
20 on the Government Exhibit that we have been hearing?

21 A Yes.

22 MS. WHALEN: I'm just going to ask everyone to turn
23 to the transcripts for Government Exhibit 224.

24 Q Looking at the first page of Government Exhibit 224, this
25 is a conversation that is taking place late in the evening of

1 May 24th; is that correct?

2 A Yes.

3 Q And this conversation, the transcript is very big -- the
4 conversation was pretty long, it lasted into the small hours
5 of the following morning; is that correct?

6 A Yes.

7 MS. WHALEN: I'm going to ask everybody to please
8 turn to page six of the transcript.

9 Q Just to sort of not replay everything we heard before,
10 but in this conversation Kareem Ibrahim is talking to Mr.
11 DeFreitas and talking to you about Abu Bakr; is that correct?

12 A Yes.

13 Q And Yasin, is that Abu Bakr's name too?

14 A Yes.

15 Q Yasin Abu Bakr?

16 A Yes.

17 Q At line three -- actually, line one, Mr. DeFreitas is
18 asking if Yasin would support the project if he was
19 approached; is that correct?

20 A He's asking Sheik Ibrahim, yes.

21 Q Sheik Ibrahim is saying the man is actually broke, is
22 that right?

23 A That was Sheik Ibrahim saying, yes.

24 Q On page seven at line six, Mr. DeFreitas says, Is it true
25 what they say, that he used to be involved with the Syrians,

1 and then going down to line nine, Mr. DeFreitas says, people
2 say he, he was a hitman for them -- meaning the Syrians, and
3 Ibrahim said, yeah, people say so, right?

4 A Yes.

5 Q And when they are saying "him," they mean Yasin Abu Bakr,
6 right?

7 A Yes.

8 Q I am going to go to page nine. Starting -- I'm getting
9 as close as I can to the top of page nine, which is about
10 16 minutes and 43 seconds into the conversation, but it may
11 not start exactly there.

12 (Tape plays; tape stops.)

13 Q I know that it's hard to hear Mr. Ibrahim, but he's
14 asking -- he's telling Mr. DeFreitas and you that the national
15 security would know where you were staying because the address
16 you had to declare when you came into the country; is that
17 correct?

18 A It was not the same address that Ibrahim had.

19 Q The address was the address that you had received from
20 Mr. Kadir; isn't that correct?

21 A Yes.

22 Q And Mr. DeFreitas is asking you which address you put on
23 the boarding cards; is that correct?

24 A Yes.

25 Q And did you fill out both boarding cards?

1 A He usually asked me to fill out his paperwork, yes.

2 Q And in this occasion did you fill out your paperwork and
3 his paperwork?

4 A Yes.

5 Q Going to page 20. I'm starting the recording at of
6 36:27, which should put us at line 26 of page 20 of the
7 transcript.

8 (Tape plays; tape stops.)

9 Q In this portion of the conversation Kareem Ibrahim is
10 talking about the Shias.

11 Is he saying that Yasin Abu Bakr didn't back the
12 Shias when he had this revolt, or he didn't inform the Shias
13 when he had this revolt?

14 A He did not inform the Shiites.

15 Q Does Kareem Ibrahim also have a concern that Abu Bakr is
16 not friendly to the Shias?

17 A This is not the point of the conversation.

18 Q He is just telling you a historical fact; is that the
19 point of the conversation?

20 A He's just saying the reason -- he added another reason to
21 actually his disagreement with bringing this plot to Abu Bakr.

22 Q But at this point Kareem Ibrahim did not what the plot
23 was?

24 A At this point he did not know. At this point he
25 mentioned, because the way that our stay was there was

1 missionary trying to get money for the mosque that actually
2 Sheik Kadir wanted to.

3 Q Later on in this same conversation, Mr. DeFreitas decides
4 to tell Kareem Ibrahim about the plan, isn't that correct?

5 A Yes.

6 Q And he didn't tell you in advance that he was going to be
7 telling Kareem Ibrahim about the plan, did he?

8 A No.

9 Q Before this moment, did Kareem Ibrahim strike you as
10 someone who was rich?

11 A No.

12 Q Did he strike you as someone who would be able to pay a
13 million and a half dollars that Mr. DeFreitas had been talking
14 about for the plot?

15 A No.

16 Q And I think you said he lived above a store, but it
17 wasn't a big department store, it was just like a little
18 bodega kind of store, right?

19 A Yes.

20 Q Now, at this point I believe it's May 24th, you and
21 Mr. DeFreitas had been staying with Kareem Ibrahim for about
22 four days; is that correct?

23 A Yes.

24 Q And neither of you had ever met Kareem Ibrahim before; is
25 that correct?

1 A Yes.

2 Q But Mr. DeFreitas, at the bottom of page 42 of the
3 transcript, line 30, Mr. DeFreitas says, and I'm looking at
4 you because you got such great knowledge and you're truthful.

5 And there he's talking about Mr. Ibrahim; is that
6 correct?

7 A Yes.

8 MS. WHALEN: Now, I'm going to ask everyone to go to
9 page 44, line 27.

10 Q Mr. DeFreitas sort of ends that long paragraph with, So
11 you can see this project with your permission Sheik, and he
12 says yeah, and Mr. DeFreitas says, all right Annas. And
13 that's an indication to you to sort of hook up a computer or a
14 TV so that you can watch the JFK video; is that correct?

15 A He asked me to do it, so I did, yes, meaning Sheik
16 Mohammed asked me to play the video for him.

17 Q Was it a television or computer?

18 A It was a television.

19 MS. WHALEN: If everyone would turn to page 46 of the
20 transcript. I'm going to start the recording at 1:29:17,
21 which should bring us fairly quickly to line two of the
22 transcript on page 46.

23 (Tape plays; tape stops.)

24 Q I'm going to be starting the recording at 1:31:14 which
25 should put us at the top of the page.

1 (Tape plays; tape stops.)

2 Q When he's talking about, I want you to look at this
3 tomorrow, make a copy of it and you can be a very wealthy man
4 on that, is he talking about the water purification machine
5 CD?

6 A Yeah, we discussed the matter of the JFK plot. He
7 showing the DVD that he was carrying with him, which he show
8 Kadir. He also show Sheik Ibrahim at this point, and this is
9 that, yes.

10 Q He was also trying to get Kareem Ibrahim to invest into
11 this water machine?

12 A Yes.

13 Q And then just going to page 48, line two. You've looked
14 at the video, so when Mr. DeFreitas says, Annas is going to
15 explain, he's now asking to you explain the Google map; is
16 that correct?

17 A After the video, the map was actually brought on and
18 shown to him.

19 Q And he asked you to point things out on it; is that
20 correct?

21 A Yes. There were two sets of things. Sheik Mohammed did
22 not want only the map, he wanted also to be able to present
23 still shot which I wasn't doing on the computer, so he asked
24 me to blow up, if I was able to blown up more the map and I
25 did blow them up, but they were so big that actually I

1 couldn't make them out.

2 So they were -- there are 3D versions of the map
3 which were blown up and then there was the map. So I had to
4 actually, wherever the tanks were here, then he will see the
5 tanks blown up bigger here. That's what happened.

6 Q So I'm not sure that I understand. When you're saying
7 the map, were you using the computer and Google Earth at this
8 time or had everything been printed out?

9 A Printout.

10 Q And the exhibit that I showed you earlier, I believe it's
11 Government Exhibit 62, the Google Earth map of JFK, is that
12 the same map or is that a map that you made at a later date,
13 or an earlier date?

14 A That is the same map, but that's not what he wanted. He
15 wanted the same map huge.

16 Q So how big would you estimate the map was that you took
17 with you -- that you took to Trinidad?

18 A The map was about this size here (Indicating), which mean
19 it will be like the -- the map will be three foot by -- it
20 will be say like four or five foot by probably three foot.

21 THE COURT: Indicating the size of the witness box,
22 and we can have that measured later if need be.

23 Q I keep saying that you showed the video. How was the
24 video carried, did you still have the video camera or were you
25 using something else?

1 A I still had the video camera with me, and with all the
2 attachments as well as there was thumb drive where you can
3 plug in the same chip that was in the camera, plug it into the
4 thumb drive, which is a card reader, and you can place in the
5 computer or you can actually attach the camera to the computer
6 or attach it to a CD.

7 Q But at that point in Trinidad you had both the video
8 camera and the thumb drive?

9 A Yes.

10 Q I'm going to page 64 of the transcript. At line 13,
11 you're trying to confirm that Sheik -- when you say Sheik, you
12 mean Kareem Ibrahim -- actually has a contact with someone who
13 could purchase the JFK plot; is that correct?

14 A I like to actually listen to that first.

15 Q Oh, sure.

16 This is at 2:22:17, which should put us fairly close
17 to line 13 on page 64 of the transcript.

18 (Tape plays; tape stops.)

19 Q So in this conversation you're trying to confirm that
20 Kareem Ibrahim does have the ability to contact people who
21 could pull this off, correct?

22 A Yes.

23 Q And he's telling you that he only has contact with
24 scholars so he's going to have to send someone out; is that
25 correct, to make other contacts?

1 A Two things here actually. There is point where he says I
2 have the contact and then there is a point where he says he
3 don't have the contact based on certain conversation that was
4 put in play, but he do at the end say that he had people that
5 were working on that matters and that he'll have them contact,
6 contact them in Iran about the matter.

7 Q But you're questioning him because you want to make sure
8 that he does have those contacts; is that correct?

9 A Yes.

10 Q If you look at page 65, I don't think we need to replay
11 it, but this is the conversation about what the price should
12 be, and Mr. DeFreitas says, a million dollars -- sorry,
13 starting at line 15, Mr. DeFreitas says, if is a million
14 dollars, half a million dollar, I don't know, and Ibrahim says
15 I think you should bargain for a million, correct?

16 A Yes.

17 Q And this was the money for the video and the Google Earth
18 account; is that correct?

19 A Yes.

20 Q I'd ask everyone to turn to Government Exhibit 225.

21 I just want to clarify one thing. If you look at
22 the first page of Exhibit 224, it says May 24, 2007 at
23 11:24 p.m., right?

24 A Yes.

25 Q If you look at 225, again it says May 24, 2007, right?

1 A Yes.

2 Q But 225 is a conversation that actually takes place the
3 following day; isn't that correct? It's a conversation that
4 takes place after the conversation in 224, right?

5 A I'm not sure. Actually, I have to --

6 Q I'll play it a little bit.

7 A Yes.

8 MS. WHALEN: I'm going to start the conversation at
9 1:10:30 into the recording, which should put us at the top of
10 page two of the transcript.

11 (Tape plays; tape stops.)

12 Q I'm starting the recording at ten minutes and 30 seconds,
13 which will put us at the top hopefully of page two.

14 (Tape plays; tape stops.)

15 Q Let me take you a little further in because it might make
16 more sense. Going to page three of the transcript, the
17 conversation there. Are you there?

18 A Yes.

19 (Tape plays; tape stops.)

20 Q Does this help you realize that this conversation took
21 place after the conversation in 224?

22 A Yes. It happened after the previous conversation, yes.

23 Q Quickly, first, during this conversation, you call Abdul
24 Kadir to let him know the plan has changed, isn't that
25 correct?

1 A Yes.

2 Q And then going to page 17 line 21. Mr. DeFreitas is
3 again volunteering Sheik Kadir, or he volunteers Sheik Kadir's
4 account for the money from the plot to be deposited into his
5 management account; is that correct?

6 A Yes.

7 Q And again, you want to call Sheik Kadir because that
8 hadn't been discussed before; is that correct?

9 A Yes. When you meant never been discussed before, what do
10 you exactly meant by that?

11 Q I mean that at that point with Kareem Ibrahim, you hadn't
12 told Sheik Kadir that that was going to be part of the plan
13 with Kareem Ibrahim, right?

14 A Yes.

15 Q So it's another change in the plan that you wanted to let
16 Sheik Kadir know about; is that correct?

17 A He got to be aware of actually what was going on.

18 Q Okay. Then on page 39, starting at line 24, Kareem
19 Ibrahim started talking about how they had -- he says, we just
20 have to be careful how much money we're moving.

21 And he said, when big money move into an account,
22 they say, where you get this money? And DeFreitas says, we
23 gonna split it up. Then he brings up the fact that he's got a
24 nonprofit organization that he could file some papers for and
25 the money could then be deposited in that account; is that

1 correct?

2 A Yes.

3 Q Going to page 46, line 29.

4 A Yes.

5 Q Kareem Ibrahim asks, Well let me ask you something, that,
6 that, the mapping of the thing, could it be done like in
7 blueprint? And Mr. DeFreitas says sure.

8 Mr. Ibrahim is asking for the Google map to be done
9 as a blueprint?

10 A No. The same way that -- same fashion which Sheik Abdul
11 Kadir wanted to know where the pipeline is. It was the same
12 question about the blueprint because Sheik Ibrahim wanted to
13 know exactly where the pipeline is that Sheik Mohammed is
14 talking about.

15 Q And Mr. DeFreitas, when he says it could be done like a
16 blueprint and Mr. DeFreitas says sure, you hadn't seen
17 Mr. DeFreitas in possession of any blueprints, had you?

18 A No.

19 Q Mr. DeFreitas in this conversation with Kareem Ibrahim
20 starts to talk about how the operation is going to be run; is
21 that correct?

22 A Yes.

23 Q So if we could go to page 29 of the transcript.

24 A Which transcript?

25 Q Still 225.

1 A The page?

2 Q 29.

3 A All right.

4 Q We're going to start the recording at 59 minutes, which
5 you should put us fairly close to line 11 of the transcript.

6 (Tape plays; tape stops.)

7 Q Let's go to page 28. Starting the recording at 58:30.

8 (Tape plays; tape stops.)

9 Q Mr. Francis, Mr. DeFreitas is talking about being a ninja
10 product. Had Mr. DeFreitas ever trained as a ninja?

11 A He had martial arts training. I don't know what to what
12 extent.

13 Q Did you ever see him exhibit this martial arts training?

14 A I see his ghi and his belt.

15 Q You saw his ghi and his belt?

16 A Yes.

17 Q Do you know how long ago he had worked in martial arts?

18 A To my understanding he trains every day for an hour or
19 more.

20 Q And you worked in martial arts as well, right?

21 A Yes.

22 Q Did you ever train together?

23 A No.

24 MS. WHALEN: I'm going to ask everybody to go to page
25 53, please. I'm going to start the recording at 1:34:53 into

1 the recording, which should put us at about line 30 on page
2 53.

3 (Tape plays; tape stops.)

4 Q Again, this is Mr. DeFreitas talking about how the attack
5 could be carried out, but again you had never seen him with a
6 rocket; is that correct?

7 A No.

8 Q And you had never seen him train in martial arts; is that
9 correct?

10 A No.

11 Q No meaning that you've never seen him train, right?

12 A No.

13 Q Had you ever seen him train in martial arts?

14 A Have I ever seen him, meaning Sheik Mohammed?

15 Q Yes.

16 A I say no.

17 Q Had you ever seen him with a rocket?

18 A I say no.

19 Q I'm just clearing it up for the record.

20 MS. WHALEN: I'd like to pass a transcript out to
21 the jury.

22 (Pause.)

23 THE COURT: That is Government Exhibit 230?

24 MS. WHALEN: Yes, your Honor.

25 THE COURT: Do you have an extra copy for the court

1 by any chance?

2 MS. WHALEN: Yes, your Honor. I'm handing one to
3 the witness.

4 A Thank you.

5 THE COURT: This will be 230 T, the transcript, a
6 transcript for 230, which is already in evidence.

7 Again, remember, ladies and gentlemen, that it is
8 the audio recording that controls and is the actual evidence
9 and not the transcript. The transcript is simply an aid.

10 Before you start, is there by any chance an extra
11 transcript for the media folks?

12 MS. WHALEN: Yes.

13 THE COURT: Thank you. No more interruptions.
14 Sorry.

15 Q At some point there was more discussion about whether or
16 not you and Mr. DeFreitas and Mr. Nur should still try to seek
17 out Abu Bakr, isn't that correct?

18 A Yes.

19 Q So I'm going to begin to play Government Exhibit 230.

20 (Tape plays; tape stops.)

21 Q Do you remember who you're speaking to at this point, Mr.
22 Francis?

23 A I have to listen more of the conversation.

24 (Tape plays; tape stops.)

25 Q Mr. DeFreitas says that -- he's talking about, when he

1 says I got a feeling that what they done to me last trip, this
2 trip here would be worse. He's talking about the search at
3 the airport; is that correct?

4 A Yes.

5 (Tape plays; tape stops.)

6 Q When Mr. DeFreitas says because I'm not going there, he's
7 talking about not going to Abu Bakr; is that correct?

8 A Yes.

9 Q When he says, And he, he had spoken to them about this
10 matter, you know, are you referring to Abdul Nur talking to
11 Abu Bakr?

12 A Yes.

13 (Tape plays; tape stops.)

14 Q Do you know who is speaking there?

15 A You mean Sheik Mohammed or you mean Sheik Ibrahim?

16 Q There's a person who was just speaking a moment ago, did
17 you recognize that voice?

18 A It sound like Sheik Ibrahim, but I'd like to hear a
19 little more, please.

20 (Tape plays; tape stops.)

21 Q Do you know --

22 A Sheik Ibrahim.

23 Q Do you know who Mr. DeFreitas is talking about when he
24 says he's saying thing?

25 A The young fellow is the guy who walked out, who was

1 mentioning, his disagreement or his difference about Abu Bakr.

2 Q The young man who just left felt differently about Abu
3 Bakr and Kareem Ibrahim?

4 A No.

5 Q He felt the same?

6 A Felt the same.

7 Q When they are talking about "he," they are talking about
8 Abu Bakr, right?

9 A Yes. (Tape plays; tape stops.)

10 Q When you say, If you were to ask me let's go and meet the
11 man, you're talking about Abu Bakr as well; is that correct?

12 A That is correct. (Tape plays; tape stops.)

13 Q At this point, Mr. Francis, it sounds like your telling
14 Mr. DeFreitas that you would still be willing to meet with Abu
15 Bakr but you're going to abide by his decision not to; is that
16 correct?

17 A No.

18 Q That's not correct?

19 A I'm saying that whatever decision he choose to do is
20 actually what I'll do.

21 Q But before you said on page four, in the middle of the
22 page, you say if you, if you was to ask me, let's go and meet
23 the man, you know, I have not the slightest fear, the
24 slightest worry.

25 So in effect you're saying if you tell me to go meet

1 the man I'll go, but if you tell me not to I'll abide by your
2 decision; is that correct?

3 A That's correct. His decision.

4 (Tape plays; tape stops.)

5 Q When Mr. DeFreitas is talking here, the fact is that
6 nobody, not Abdel Nur, not Abdul Kadir, nobody had seen Abu
7 Bakr for six years so they didn't know what the man was into;
8 is that correct?

9 A Abdul Kadir mentioned that he hadn't seen him for three
10 years and he mention he hasn't seen Abu Bakr in six years.

11 Q So Mr. DeFreitas is saying Abdel Nur hasn't seen him for
12 six years, he doesn't know what the man is about anymore; is
13 that correct?

14 A That's what Sheik Mohammed is saying.

15 (Tape plays the tape stops.)

16 Q Mr. Francis, Mr. DeFreitas seems to think that you are
17 trying to pressure him to go see Abu Bakr; is that correct?

18 A I don't know what he thinks. I said that it is his
19 decision.

20 Q But he's getting pretty upset, right?

21 A He seems to me.

22 Q And he seems to think that you're trying to force him to
23 do something he doesn't want to do, isn't that right?

24 A I don't see why he feel like that when I just said it's
25 your decision. (Tape plays.) (Continued next page)

1 CONTINUED CROSS EXAMINATION

2 BY MS. WHALEN:

3 Q What issue is being talked about?

4 A It has been numerous times when he has asked me to give
5 input into the matter, whatsoever. I have eluded the
6 conversation based on the fact I have no knowledge of
7 bombings, no knowledge of this or that. So, the only thing I
8 say and I have continuously said over and over is that I'm
9 here to please Alah, to help you. Apparently, he was fed up
10 with that. I never give any input on the matter. That's what
11 is actually happening right now.

12 Q It wasn't an issue of whether or not you were in charge?

13 A Why would I be in charge?

14 Q I'm asking you. This wasn't an issue of you being in
15 charge?

16 A He approached me about the matter. How am I in charge?
17 He's taking me to places, introduced me to people. How am I
18 in charge?

19 Q Is this an issue of you being in charge, yes or no?

20 A I'm not in charge.

21 (Tape plays.)

22 Q Who is Mr. Defreitas talking about trying to make him go?

23 A Abdel Nur is saying we go to jum'ah, again this whole
24 matter, he's actually concerned about his safety, going to
25 Abu Bakr and there's a reason he's getting a little

1 disappointed here, the fact I'm saying I'm not scared of the
2 guy. I'm not the target so I'm not scared of going to see the
3 guy. He's presenting the target to JFK, not me. Why should I
4 not go?

5 (Tape plays.)

6 Q Again when he's talking about the cocaine, he means the
7 time he found cocaine in his luggage and turn it in; is that
8 correct?

9 A Yes.

10 Q He thinks that they suspect even though he turns it in,
11 he had something to do with it; is that correct?

12 A Yes.

13 Q Also concerned about the stamps in his passport making
14 him look suspicious; is that right?

15 A Yes.

16 Q Because he said in his old passport, he had multiple
17 stamps. In this, he only had Guyana, right?

18 A Yes.

19 (Tape plays.)

20 Q Right here he's talking about the search that happened
21 the second time he came pack from Guyana; is that correct?

22 A Yes.

23 (Tape plays.)

24 Q Is Abdul Nur there laughing?

25 A Yes.

1 (Tape plays.)

2 THE COURT: I'm sorry. You said Abdul Nur?

3 MS. WHALEN: Yes, is there, present.

4 Q At this point Abdul Kareem is there?

5 A Yes.

6 Q Mr. Defreitas and you and Abdel Nur?

7 A Yes.

8 Q Abdul Nur is trying to get something to drink from the
9 store; is that right?

10 A I believe so.

11 Q Are you saying that to put an identification into the
12 recording?

13 A Yes.

14 (Tape plays.)

15 Q At this point is Mr. Defreitas still there or is he gone?

16 A He got upset and stand up and left.

17 (Tape plays.)

18 MS. WHALEN: I would like everyone to turn to
19 Exhibit 226. If you could turn to page 9, starting the
20 recording at one hour, 23 minutes, 55 seconds which hopefully
21 will put us at line 11 of the transcript on page 9.

22 Q You're saying Mecca. You don't mean Mecca. This is the
23 trip to get the tickets to Iran?

24 A Mecca is Mecca.

25 Q This is May 26th, 2007, this transcript?

1 A Yes.

2 Q This is at the airport; is that correct?

3 A Yes.

4 Q You're talking to Kareem Ibrahim. You're saying when we
5 get back, I will do the research on the pilgrimage from
6 England to Mecca. Do you mean Mecca or is this code for
7 getting the ticket for the man to be able to travel to Iran?

8 A Sheik Ibrahim said the guy will do Hajj, umbrah, go to
9 Iran. Right now we're talking about the trip from England to
10 Mecca and then we'll discuss later about the trip to Mecca to
11 Iran. Hajj is not Iran, it's Mecca.

12 Q This isn't code?

13 A You asked me what do I mean from England to Mecca, I said
14 the guy was going from England to Mecca on Hajj and umbrah,
15 from there making it Hajj or umbrah in Mecca, he would go to
16 Iran. I said Iran or Mecca, I meant Mecca.

17 Q You're talking about purchasing the tickets. Are you
18 going to purchase the ticket for the whole way?

19 A I wasn't purchasing any tickets. I needed the
20 information of the guy in England. The only way the guy would
21 give me the information so I could give information to the FBI
22 was if I actually tell him something like that.

23 Q Kareem Ibrahim, did you leave the thumb drive with Kareem
24 Ibrahim that the had video of JFK on it?

25 A I left the chip with the video, all the prints under the

1 instructions of Mohammed.

2 Q Going to page 13.

3 A Okay.

4 MS. WHALEN: Starting the recording, one hour
5 30 minutes and one second into the recording which hopefully
6 will put us at about line 4 or 5 on page 13.

7 Q Is that Abdel Nur asking you for money again? He's
8 asking for a computer?

9 A No, one of his daughters' computer went down. He was
10 mentioning to me she had actually mentioned about the computer
11 being down, that she needed a part for the computer, if I was
12 able to actually locate a part for her in the states. That's
13 what he's referring there.

14 MS. WHALEN: Going to page 21; starting at one
15 hour, 40 minutes and 46 seconds into the recording which
16 should put us, I would guess, line 4 of page 21 of the
17 transcript.

18 (Tape plays.)

19 Q Let me read it out. Starting at line 1, Mr. Defreitas
20 says what I want. Ibrahim says he might want to go back to
21 show for his people, just show the photograph, photograph it.
22 Ibrahim, photograph I've only seen a copy. Defreitas says
23 yes. Ibrahim says photograph, but when he go back there,
24 Defreitas says use microfilm.

25 Had you ever seen Mr. Defreitas with microfilm?

1 A They're talking about the prints actually, talking about
2 the chip actually for the computer. They're going back and
3 forth into he should not just send out, meaning Sheik Ibrahim
4 should not send out information but should copy it and send it
5 to Iran, send it to Iran or whatever. On that note, Ibrahim
6 says no, I'm not sending anything to anybody. They have to
7 come here. They have to look at it and the person that is
8 going to carry out the plot, the person that's going to attack
9 JFK, he will carry the microchip, which actually explains to
10 that particular person what to explain to everybody. He will
11 be the person in charge of the group. That's what the
12 discussion is about.

13 Q Mr. Defreitas is talking about photographing it and
14 turning it into microfilm. Did you ever see Mr. Defreitas
15 with microfilm?

16 A No. Actually, the conversation is about copying the
17 information so that the guy, Ibrahim Kareem, will not lose the
18 original copies, will actually give out copies of it. What
19 he's using here is the wording. That's what he meant by the
20 conversation.

21 Q That's what he meant but he actually said right here, he
22 says microfilm, right?

23 A Yes.

24 MS. WHALEN: No further questions.

25 THE COURT: May have I see counsel at this time,

1 please?

2 (Side bar.)

3 THE COURT: Are you going to take the next witness
4 out of order?

5 MR. MILLER: I've been informed the witness,
6 Dr. Levitt, actually his family member's son is having an
7 operation tomorrow. What we would like to do is put him on,
8 get as far as we can then my sense is get his direct in, his
9 cross first thing in the morning. He could head back to
10 Washington where he's from, help his family, if that's all the
11 right with the court?

12 THE COURT: DC?

13 MR. MILLER: Yes.

14 MS. WHALEN: I don't understand.

15 MR. JONES: The suggestion is to pause at this
16 point, put on Dr. Levitt so he can probably get his direct in
17 today or if not, get as much done as we can now so he can go
18 back to Washington to deal with his family.

19 THE COURT: You want to put him on today?

20 MR. JONES: With your Honor's permission.

21 MR. MILLER: Do cross tomorrow morning, the first
22 thing, send him back to Washington, pick up with Mr. Francis.

23 THE COURT: What I can do is have -- we can have
24 Mr. Levitt start at 9:00 o'clock tomorrow.

25 MS. WHALEN: That's fine. I didn't understand what

1 was being proposed.

2 THE COURT: I didn't understand either.

3 MR. MILLER: Sorry.

4 THE COURT: Why don't we -- how long do you think
5 your direct is?

6 MS. AHMAD: About 35 to 40 minutes.

7 THE COURT: Why don't we do this. What time do you
8 want Mr. Francis here tomorrow?

9 MR. MILLER: As far as we're concerned, he can sit
10 here.

11 THE COURT: Let's let the jury go, take a break.
12 Then we'll deal with the scheduling of Mr. Francis. We'll
13 take a little break. Then we'll start with Mr. Levitt.
14 You're going to do Mr. Levitt?

15 MS. AHMAD: Yes.

16 MS. MESSINA: My husband is out of town. I thought
17 we were breaking at 6:00. My three kids are okay, but I
18 wouldn't want to leave much later than 7:00.

19 THE COURT: How old?

20 MS. MESSINA: 12, 14 and 17.

21 THE COURT: I've explained to them before some of
22 the attorneys may be in and out. If you have to leave, that's
23 fine.

24 (Open court.)

25 THE COURT: As I had mentioned to you yesterday,

1 we're going to go a little bit longer today because of the
2 abbreviated schedule. We're at the point where
3 cross-examination of Mr. Francis is over but we're not done
4 with you yet, Mr. Francis. There's redirect and recross
5 examination. However, we are at this point, at least for
6 today, we're not going to continue directly into the redirect
7 of Mr. Francis. We're going to, because of scheduling
8 reasons, purely administrative reasons, we're going to at
9 least get started with another witness, take him out of order
10 and interrupt. There's absolutely nothing wrong with that.
11 Of course, at the end of the case, if you need to have any
12 testimony, need to review any of the testimony of any of the
13 witnesses or all the witnesses, then you just let us know that
14 and we will provide that for you.

15 Why don't we take a brief break now? I'm still
16 expecting, hopefully, we will be ending somewhere close to
17 6:30, give or take a few minutes. Tomorrow we're probably
18 going to start earlier in the day, again, just to accommodate
19 the scheduling of this witness. Hopefully, we'll also move
20 the case along a little bit further, more quickly.

21 We're still on schedule, believe it or not, even
22 with some of the differences in the scheduling that we've had
23 this week and even with the holiday.

24 Remember, you have to keep an open mind. Don't form
25 or draw any opinions or conclusions about the case. You can't

1 talk about the case. It's still a very brief break. It's
2 late in the day. If you have to check in with your kids or
3 something, just try to keep that to a minimum so that we can
4 get started in ten minutes or so. Don't talk about the case
5 yet, ladies and gentlemen.

6 (Jury leaves courtroom.)

7 (Continued on next page.)

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1 (The following occurred in the absence of the jury.)

2 THE COURT: You can all be seated.

3 Okay. Mr. Francis, as I said, we are going to need
4 you back here tomorrow to continue with your testimony. At
5 this time it's redirect examination by the government.

6 THE WITNESS: Yes.

7 THE COURT: We are not going to need to you be here
8 so early tomorrow. But just if you are here by 10:00 o'clock
9 in the morning, that should be fine.

10 THE WITNESS: Thank you.

11 THE COURT: Okay. Mr. Francis, you are free. You
12 can step down. We don't need you further for the rest of
13 today.

14 THE WITNESS: Thank you. Have a great night.

15 THE COURT: We will see you back here tomorrow.

16 (Witness leaves courtroom.)

17 Okay. Why don't you all also take a break for about
18 ten or 15 minutes and I think that should still take us until
19 about 6:30. We will just do the direct examination then of
20 Mr. Levitt, to begin tomorrow morning with his cross.

21 MR. JONES: Thank you, Judge.

22 MR. MILLER: Thank you.

23 (Recess taken.)

24 (Continued on next page.)

25

1 (The following occurred in the absence of the jury.)

2 THE COURT: Okay. This is case on trial continued.

3 All the parties are present. The witness is not

4 present. The jury is not present.

5 Are you all set? We can bring -- I notice that some
6 of the jurors may have put their transcripts -- that was for
7 230, Ms. Whalen. Why don't -- some are out and some look like
8 they were put in. I am going to have them just put it into
9 their -- there should be a little pocket, I think, on the
10 looseleaf. I will mention to them that -- I meant to do that
11 before they walked out.

12 All right. Do you want to bring Doctor Levitt in
13 and put him on while we go get the jury?

14 Is that L E V I T T?

15 MS. AHMAD: Yes, Your Honor.

16 THE COURT: You can come right up. You can have a
17 seat for now.

18 MR. MILLER: I want to make sure there are no
19 exhibits. I don't think there are. I will get the binder out
20 of the way.

21 THE COURT: Okay.

22 (Jury present.)

23 THE COURT: Jury entering.

24 Everyone may be seated.

25 Do all the parties agree that all of our jurors are

1 present and properly seated?

2 MR. KAMDANG: Yes, Your Honor.

3 MR. NKRUMAH: Yes, Your Honor.

4 MS. AHMAD: Yes, Your Honor.

5 THE COURT: Welcome back, ladies and gentlemen.

6 This is the next witness for the government, again,
7 taken out of order.

8 THE CLERK: Please raise your right hand.

9 (The witness is duly affirmed by Clerk of Court.)

10 THE CLERK: Thank you.

11 Please state and spell your name.

12 THE WITNESS: Doctor Matthew Levitt, M A T T H E W,
13 L E V I T T.

14 THE COURT: Thank you.

15 Ms. Ahmad, you are going to inquire for the
16 government?

17 MS. AHMAD: Yes, Your Honor.

18 Thank you.

19 THE COURT: You may inquire.

20 DIRECT EXAMINATION

21 BY MS AHMAD:

22 Q Good afternoon, Doctor Levitt.

23 A Good afternoon.

24 Q Where do you work?

25 A I work at a Think Tank called the Washington Institute

1 for Near East Policy.

2 Q What is your position there?

3 A I'm a Senior Fellow and I direct a program on
4 counterterrorism and intelligence.

5 Q Can you tell us generally what your responsibilities
6 entail?

7 A I oversee the production of our analysis on issues
8 relating to counterterrorism or intelligence. So if we have a
9 visiting fellow who is writing on the issues that I cover I am
10 responsible for them, for what they write. I am to publish my
11 own articles, journal articles, editorial articles, write
12 books. I lecture widely. I teach.

13 Q Where do you teach?

14 A I teach at Johns Hopkins University's School of Advanced
15 International Studies, SAIS. That's in Washington.

16 Q Do you have any other jobs besides your fellowship at the
17 institute?

18 A I have affiliations with other institutions. They are
19 not jobs. They are adjunct affiliations at George Washington
20 University, at the Council on Foreign Relations here in
21 New York, at the Combating Terrorism Center at West Point.

22 Q Have you ever worked in government?

23 A I have.

24 Q In what department?

25 A I served as a counterterrorism intelligence analyst at

1 the FBI, from 1998 through November 2001. I left the
2 government and went to the Washington Institute, where I am
3 now again. But in-between I worked at the Department of the
4 Treasury as the Deputy Assistant Secretary For Intelligence
5 and Analysis.

6 Q What did you do at the Counterterrorism at the FBI?

7 A I provided tactical and strategic analytical support to
8 FBI investigations, focused on Middle Eastern terrorist groups
9 and their presence here in the United States.

10 Q What kind of training did you receive at the FBI?

11 A Variety of different types of training courses, some
12 provided by the Bureau, some provided by others in the
13 intelligence community. Things with names like
14 Counterterrorism Analysis Course, Advanced Counterterrorism
15 Analysis Course, et cetera.

16 Q What Middle Eastern terrorists groups did you focus on?

17 A Focused on a variety of groups, primarily most of my time
18 was on groups involved in the Arab-Israeli conflicts. That
19 included both Jewish extremists groups and groups like Hamas
20 and Palestinian Islamic jihad.

21 But I also served as a team member in other Al Qaeda
22 related issues, such as Millennial plot and 9/11.

23 Q What did you do at the Treasury Department?

24 A At the Treasury I was the Deputy Assistant Secretary for
25 Intelligence and Analysis, which is a Senior Executive Service

1 position within the department. So I was a Senior Manager
2 within the department.

3 But I was also the Deputy Chief of Treasury's
4 intelligence shop. So that had both kind of line of command
5 up through the Department of the Treasury and a parallel one
6 up through the intelligence community to the Director of
7 National Intelligence. So I was technically the Deputy Chief
8 of one of the smaller but one of the 16 US intelligence
9 agencies.

10 Q Tell us a little bit about your educational background?

11 Do you hold any graduate degrees?

12 A I do. I have a bachelor's degree in political science.
13 I have a masters of law and diplomacy from the Fletcher School
14 of Law and Diplomacy, at Tufts University, near Boston. I
15 have a Ph.D in international relation, also from the Fletcher
16 School at Tufts.

17 Q In your current position at the Washington Institute, do
18 you focus on any terrorist groups in particular?

19 A Washington Institute for Near East Policy, as the name
20 suggests, is focused specifically on US policy in the Middle
21 East. I focus on some larger trend issues, like terror
22 financing, for example, which will cut across a wider array of
23 groups. But primarily I am focused on groups that have
24 Middle East nexus. That will include groups like Al Qaeda,
25 Hezbollah, Hamas and others.

1 Q Let's talk about Al Qaeda.

2 How have you gone about researching Al Qaeda?

3 A The way I go about doing any of the research that I do is
4 I start with reading the available literature that's out
5 there. I interview officials and experts, both here in the
6 United States and elsewhere. So I travel a lot to the
7 Middle East, to Europe, really a lot of other places. I am
8 going to Australia soon. On Al Qaeda issues, in particular.

9 I do primary field research, which means going out
10 and doing research on the ground. Sometimes that involves
11 interviewing convicted terrorists, sometimes that involves
12 interviewing government experts, policy makers or intelligence
13 or law enforcement officials, academics, journalists. But
14 going out and doing research on the ground.

15 Q Are these the same methods you use to investigate groups
16 like Hezbollah?

17 A Yes.

18 Q Do you do any research into countries that either sponsor
19 or otherwise support terrorist groups?

20 A I do.

21 Q What are some of those countries?

22 A Well, the first among equals countries that sponsor
23 terrorism is Iran, so designated every year by the State
24 Department.

25 Followed, I'd argue, in order of importance by Syria

1 and Sudan.

2 I have testified before Congress and I have written
3 many articles and I have lectured very widely. I don't right
4 now but at one point I taught a course that included a section
5 on Iranian state sponsorship of terrorism.

6 Q You said you testified before Congress. On what subject
7 have you testified?

8 A Hezbollah issues, Al Qaeda issues, Middle East peace
9 process issues, terror financing issues; a wide array of
10 issues relating to Middle East terrorist groups.

11 Q Have you testified in court before on these same topics?

12 A Yes.

13 Q Have you written any articles or books that talk about
14 the topics we have just discussed, Al Qaeda, Hezbollah and
15 Iran?

16 A How much time do you have?

17 Yes. This what is I do for a living. So I have
18 written quite a few. Some of them are editorial, meaning
19 opinion articles; some of them are scholarly journal articles
20 in the journals that are peer reviewed. You can't just
21 publish anything you want. I have also written books. But I
22 have written a lot.

23 MS. AHMAD: Your Honor, at this time the government
24 moves to qualify Doctor Levitt as an expert in Al Qaeda,
25 Hezbollah and Iran.

1 THE COURT: Does the defense wish to voir dire?

2 MR. KAMDANG: He seems fine, Your Honor.

3 THE COURT: No objection then?

4 MR. KAMDANG: No objection.

5 THE COURT: As to defendant Kadir?

6 MR. NKRUMAH: No objection, Your Honor.

7 THE COURT: Mr. Levitt is so qualified.

8 At the end of the case, ladies and gentlemen, I am
9 going to be giving you some specific instructions as to how
10 you should evaluate the testimony of an expert witness as well
11 as other witnesses.

12 You may proceed.

13 MS. AHMAD: Thank you, Your Honor.

14 THE COURT: As I said, the witness is so qualified.

15 EXAMINATION CONTINUES

16 BY MS. AHMAD:

17 Q Doctor Levitt, let's start with Al Qaeda.

18 Can you tell us what type of group Al Qaeda is?

19 A Al Qaeda is a radical Islamist terrorist group, which I
20 would describe as nihilist, meaning they really do want to
21 attack you any time they can. They are not out to achieve
22 achievable political objective. This is not about gaining
23 back territory or gaining back political rights. This is
24 about making the world their kind of radical Islamist
25 ideology.

1 We should be clear, it is different from the Muslim
2 faith. This is a political ideology.

3 Q What do you mean by the term "Islamist"?

4 A The term Islamist means that they put forward a very
5 particular variation of Islam and in their understanding
6 anybody who doesn't practice Islam and practice it the way
7 they believe it is to be practiced is an infidel and is
8 someone who can be killed.

9 (Continued on next page.)

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1 Q Are you familiar with the term kufr?

2 A I am.

3 Q What does that mean?

4 A An infidel.

5 Q Are you familiar with the Arabic term jihad?

6 A Yes.

7 Q Can you tell us what that means.

8 A Well, it's sometimes a loaded term because it has two
9 meanings. On the one hand, it can mean personal improvement.
10 It can mean to strive, meaning to strive to be a better
11 person; maybe to become more observant or, in the context of
12 Islamic faith maybe to say be better about fasting during the
13 holy month of Ramadan.

14 But it also has a very different and no less rooted
15 in Islamic ideology meaning of fighting the perceived or real
16 enemies of Islam.

17 In this context, it is a distinctly violent
18 definition and here too it has two components to it. One is a
19 defensive jihad, meaning that if there is a perceived enemy of
20 Islam that is attacking Muslim people, that there is a
21 requirement to defend the Islamic nation, the ummah, which
22 means Islamic nation, that would be defensive jihad.

23 And there is also the offensive jihad, which is more
24 about conquering territory and making people observe the kind
25 of Islam they believe in, and that is distinctly offensive.

1 Q What type of jihad does Al Qaeda purport to engage in?

2 A Specifically offensive jihad. You can imagine an attack
3 like 9/11 is nothing about defending anybody. By definition
4 offensive.

5 Q Talking a little bit more about the ideological
6 underpinnings, have you heard of an individual named Hassan
7 al-Banna?

8 A Yes.

9 Q Can you tell us who he is?

10 A Hassan al-Banna was an Egyptian who the founder of a very
11 prominent group called the Muslim Brotherhood. Ikhwan
12 al-Mus-Limeen in Arabic -- Ikhwan Mus-Limeen means
13 brotherhood -- founded in the late 1920s in Egypt.

14 And his idea was that Western imperialism -- the
15 British had been in control of Egypt -- not only political but
16 cultural imperialism was undermining Muslim identity and the
17 way to go about reclaiming their faith and reclaiming their
18 countries was specifically through a revival of Islamic
19 practice.

20 For many that is all it was. But it also led to
21 several attempts at revolt and revolution against
22 Arab governments in the Middle East, including in Egypt.
23 Hassan al-Banna was killed, and while the Muslim Brotherhood
24 still exists today, there are some Brotherhood elements that
25 just believe in Islamic revivalism and there are others that

1 are much closer to the terrorist groups that we know today.
2 In fact, many of the most senior leaders of groups like Hamas
3 or Al Qaeda are former and in some cases current members of
4 the Muslim Brotherhood.

5 Q Who was Hassam al-Banna's successor at leading the
6 government Muslim Brotherhood?

7 A The most important person to follow him was a person
8 named Syed Qutb.

9 Q Did Syed Qutb change the underpinnings of the movement in
10 any way?

11 A He took them in a slightly different direction. For
12 Hassan al-Banna the primary objective was to bring people back
13 to the core practice of Islam.

14 People had not been in his eyes sufficiently
15 orthodox, and to bring people back to the Muslim faith was the
16 first and foremost thing that had to be done and then, and
17 only after that, would it be appropriate to go and fight the
18 kind of violent or offensive jihad against the real perceived
19 enemies of Islam.

20 Syed Qutb said we really can't wait for that
21 chronological order of things. You can't just make everybody
22 better Muslims and then go and fight the enemies of Islam
23 since the enemies of Islam are enemies today, you need to do
24 both simultaneously.

25 He argued that one would help the other, that in

1 some cases people would become more practicing and then they
2 would be in a position to believe of the need to go and fight
3 jihad.

4 For him fighting jihad was a religious requirement.
5 For others he argued, being involved in fighting on behalf of
6 the Muslim nation, which is kind of cross borders, it wasn't
7 one country, would bring people back to the practice of Islam.

8 Q Did Hassan al-Banna or Syed Qutb express a view in any
9 written published work?

10 A Many. The most important is Syed Qutb's Milestones.
11 Al-Bannas' handbooks and books like Message of the Teachings
12 are also very prominent.

13 Q Going back to Al Qaeda. Can you tell us a little bit
14 about its organizational structure?

15 A Al Qaeda's organizational structure has shifted a little
16 bit. It does have a core. There is actually a group called
17 Al Qaeda. Prior to 9/11 it was more prominent and a little
18 more hierarchical.

19 Post 9/11 and post the counter terrorism,
20 international counter terrorism response that has cracked down
21 on terrorism worldwide there has been kind of a flattening of
22 the Al Qaeda structure.

23 But more importantly is understanding that Al Qaeda
24 is also a little bit of an idea. So you have kind of
25 concentric circles is the best way I put it, you have the Al

1 Qaeda core, Ben Ladin, deputy Ayman al-Zawahiri, who had been
2 a senior Brotherhood leader in Egypt years ago, in the core.

3 You then have in the next periphery affiliates of Al
4 Qaeda. They are their own groups and they may not agree with
5 Al Qaeda core on everything, but they subscribe to Al Qaeda,
6 they pledge allegiance, ayat, pledge of allegiance to Ben
7 Ladin's Al Qaeda.

8 So that concentric circle could includes groups like
9 Al Qaeda in Iraq, Al Qaeda in Islamic groups in Africa, Al
10 Qaeda in the Arabian Peninsula, Saudi Arabia and Yemen, for
11 example.

12 The next concentric circle would be other formed
13 groups which are actually groups of leaders and members but
14 they are not members of the Al Qaeda franchise either because
15 they don't want to be in some cases or because, in several
16 cases, they have tried to join and Al Qaeda for one reason or
17 another, maybe because they haven't proven themselves enough,
18 haven't accepted them as such.

19 But they share a common ideology; they see
20 themselves as pursuing the same goals through the same means
21 and will say very publicly, We are not Al Qaeda but we're
22 really one and the same in terms of what we do and why we do
23 it and how we do it.

24 Now the most recent iteration in the kind of largest
25 concentric circle is home grown radicalization, people who

1 don't necessarily have any membership in any terrorist
2 organization as such. Not like anybody necessarily carries a
3 membership card in their wallet, but they're not actually
4 members of any group. They may not have ever been in touch
5 in-person with an actual member of a terrorist group; they
6 didn't necessarily go to a training camp, but either by
7 meeting someone in their neighborhood or by meeting people, or
8 even just reading things on line, just kind of virtual
9 radicalization, they have become fellow travelers.

10 They see themselves kind of the way those other
11 groups do, but as individuals as part of the Al Qaeda
12 movement, part of the Al Qaeda idea, and there have been an
13 alarming number of cases now, individuals like that with no
14 concrete ties to a terrorist group who have tried to carry out
15 some type of attack.

16 Q What are some of the things that motivate people you call
17 home grown radicals who affiliate with Al Qaeda?

18 A The spectrum or menu of things that prompt people to be
19 amenable to and then that prompt them to be radicalized I
20 argue are as varied as the individuals, individual
21 personalities themselves, there is no cookie cutter answer to
22 that question.

23 Sometimes it's a local grievance having nothing to
24 do with ideology or religion at all. Sometimes it has to do
25 with reading things on line and subscribing to a radical

1 global narrative; being very fixated on a particular conflict,
2 like the Arab-Israeli conflict or Chechnya or Iraq or
3 Afghanistan, and buying into the idea that radicals put forth
4 that there is a specific Western war against Islam.

5 And then radicalizers will try and stop these
6 individuals, again sometimes people in-person, sometimes on
7 line or in chat rooms, and often will try and take the local
8 grievance, whatever it is, that is making someone upset and
9 say, Look, what's happening to you here, wherever here maybe,
10 is really no different than what is happening to your Muslim
11 brothers elsewhere. There is this effort by the West, this
12 war against Islam, and this is how it's manifesting itself
13 against you.

14 There are many, many ways this can happen. One
15 should not expect, if one is studying these issues, which I
16 have, to find a whole lot of commonality. You'll find some
17 common trends, but you will find more variation than anything
18 else.

19 MS. AHMAD: May I use the Elmo?

20 THE COURT: Of course.

21 MS. AHMAD: The exhibit I want to show is Government
22 Exhibit 7, which is already in evidence.

23 THE COURT: Yes.

24 Q Dr. Levitt, do you recognize this person?

25 A I do.

1 Q Who is this?

2 A This is an Al Qaeda operative named Adnan Shukrijumah
3 having a bad hair day.

4 Q Does Adnan Shukrijumah go by any other name?

5 A He does. Jaffar or Jaffar the Pilot.

6 Q You said he an Al Qaeda operative. Can you tell us a
7 little bit about his background with Al Qaeda?

8 A Right after 9/11 senior US officials very publicly
9 announced that this individual is plotting attacks against the
10 United States and tried in several instances, using several
11 different passports to try and enter the United States.

12 He's been put on the FBI's most wanted list and was
13 highlighted in press conferences by the Attorney General and
14 senior FBI officials.

15 They accuse him of plotting attacks against the
16 West, and he has been put forward as someone who would be one
17 of the most likely people to be plotting attacks against the
18 United States and Europe because he's lived in the West, he's
19 lived in the United States; he's lived in the Caribbean, he
20 speaks fluent English; he can pass as an Arab, he was born in
21 Saudi Arabia; he can pass as a Latino; lived here in Brooklyn
22 and in South Florida and Guyana, the Caribbean and therefore
23 is considered as a very dangerous individual.

24 He first came to the attention of authorities when
25 they were interviewing captured Al Qaeda operatives,

1 interrogating them, when his name first came up in
2 interrogations of Al Qaeda senior operatives.

3 Q Does he have a particular expertise?

4 A Bomb maker.

5 Q You mentioned that he's on the FBI's most wanted list.
6 Is Adnan Shukrijumah able to move about freely or is he in
7 hiding?

8 A A little bit of both. If you're put on the FBI's most
9 wanted list and people speak about you publicly, I imagine
10 you're very careful about when you travel.

11 One of the reasons that officials have been
12 concerned about him is that because, A, he's suspected of
13 having multiple passports. They talk about American,
14 Guyanese, Saudi, Canadian, possibly other passports.

15 There have been sightings of him all over the place,
16 probably most of which are false, but it's created a sense
17 that he does travel.

18 He is known to have left the United States months
19 before 9/11 and gone to the Caribbean, that's to Trinidad, and
20 then after that it's unclear. He's believed to be in the
21 Afghan/Pakistan area.

22 Q Directing your attention to the years 2005, 2006 and
23 2007. Where were there reported sightings of Adnan
24 Shukrijumah at that time?

25 A All over; United States, Latin America, Caribbean, all

1 over.

2 Q Were these widely reported in the press?

3 A They were. You can imagine reporters love this stuff.
4 Local reporters love to have a local angle on a major
5 international terrorism story, and so it wasn't just covered
6 by the New York Times, it was frequently covered by a whole
7 lot of local papers in all the different localities where he
8 was supposedly spotted.

9 Q Were there any other senior Al Qaeda operatives rumored
10 to be in the Caribbean in the years 2006, 2007?

11 A Not that I am aware of.

12 Q Now, you'd also mentioned a group Hezbollah earlier. Can
13 you tell us a little about Hezbollah.

14 A Hezbollah is a U.S. designated terrorist group based out
15 of Lebanon. It is not part of the Al Qaeda family franchises,
16 it's a very different type of organization.

17 Al Qaeda is a radical Sunni terrorist group from the
18 Sunni school, which is the dominant school within Islam, and
19 the Hezbollah school is a Shia organization and because of
20 that Shia affinity it is very, very close to Iran, which is
21 Shia country.

22 Q Has Hezbollah engaged in any terrorist attacks?

23 A Certainly.

24 Q You mentioned they are based in Lebanon. Were all of
25 their attacks in Lebanon or they have they carried out attacks

1 elsewhere?

2 A Hezbollah hasn't carried out attacks in Lebanon, that's
3 where it's from. It fights Israel, which is a sworn enemy,
4 along the border and offensively in Israel, sending operatives
5 across the border into Israel and shooting rockets into
6 Israel.

7 But, more importantly, it's carried out many attacks
8 internationally. When it first started out, it did carry out
9 attacks in Lebanon against international peacekeeping forces
10 there, US and French in particular.

11 After those forces left, it didn't carry out attacks
12 in Lebanon, but it has since carried out attacks in South
13 America, bombing the Israel embassy in Buenos Aires, Argentina
14 in 1992 and bombing a Jewish community center known by its
15 Spanish initials AMIA, all caps, also in Buenos Aires,
16 Argentina in 1994.

17 It attempted but failed to carry out the bombing of
18 the Israel embassy in Bangkok, Thailand, also in 1994,
19 together with Iran in each of those -- Iran also played a role
20 in each of those -- and together with Iran is believed to be
21 responsible for the bombing of the US Air Force barracks at
22 Khobar Towers, Saudi Arabia in 1996.

23 (Continued next page.)

24

25

1 CONTINUED DIRECT EXAMINATION

2 BY MS. AHMAD:

3 Q You mentioned Argentina.

4 What kind of presence does Hezbollah have in South
5 America generally?

6 A A very significant presence in South America. Primarily
7 in an area called the triborder area where Argentina, Paraguay
8 and Brazil. The three country borders meet north of Argentina
9 around Paraguay.

10 Elements of Hezbollah support this triborder area
11 that were supplying from the report for the 1992 and 1994
12 bombings, are known for providing a whole lot of financial
13 support through criminal activity, drugs and other things for
14 Hezbollah.

15 Q How widely reported is it in South America of Hezbollah?

16 A Extremely widely reported, especially in the wake of
17 these two bombings. Not only in terms of the bombings,
18 anniversary of the bombings, but the ongoing investigations
19 into these bombings which especially during the latter '94
20 bombing of the AMIA Jewish Center continues today, there's
21 been a lot of controversy about these investigations.

22 There were rumors then President Menem of Argentina
23 took bribes from Iran to downplay Iran's role in that track,
24 whether true or not, put the issues on the front pages of the
25 papers again and again. Even a few months ago the Argentinian

1 prosecutor indicted another suspected Hezbollah individual who
2 used to live in Argentina, lives in Colombia, issued warrants,
3 red notices -- that's what they call them through Interpol,
4 the international police agency for variety of Hezbollah and
5 Iranian officials suspected of playing a role in that attack,
6 putting it in the news.

7 Q How does Hezbollah finance its operations?

8 A Gets a lot of money Iran, very much enjoys state
9 sponsorship from Iran, as much as \$200 million a year from
10 Iran. That is to fund all its activities.

11 Hezbollah is a political organization. They have
12 seats in the Lebanese parliament. Cabinet members also run
13 social welfare organizations and religious institutions.
14 These are used to build ground root support for the
15 organization, for financial, statistical support not only for
16 political and social, but militant and terrorist activities as
17 well.

18 In order to fund all these activities, they have a
19 whole lot of independent fundraising, more than any other
20 Islamist terrorist group. Hezbollah is very proactively
21 engaged in a wide variety of criminal activity from cigarette
22 smuggling and different parts of the drug process -- not
23 necessary drug making -- but taxing, providing cutting agents,
24 etcetera, transporting, counterfeit goods, watered-down baby
25 formula -- you name it, lots of different criminal activity.

1 Hezbollah is also known to run supposed charity organizations,
2 I say supposed because on paper they are altruistic
3 humanitarian organizations, but in fact several of them have
4 been designated by the United States government for
5 specifically providing financial support to Hezbollah as a
6 terrorist group.

7 In one case the Islamic Resistance Support
8 Organization, IRSO, the Treasury Department designated this
9 group as a Hezbollah terrorist charity and put on its web site
10 a copy of the donation form where you could check off to give
11 money for orphans, buy bullets, to buy rockets. I would argue
12 the bullets and rockets are not the self-improvement jihad,
13 but the final jihad.

14 Q What's the relationship between Hezbollah social welfare
15 and political?

16 A Hezbollah officials are open about the fact there's one
17 Hezbollah organization, various components. First of all,
18 individuals may do a tour of duty in one branch of Hezbollah
19 today, a tour of duty in another branch of Hezbollah tomorrow,
20 no less or more important or legitimate.

21 They're also very open about the fact they use,
22 whether it's the charity example I just cited or other
23 elements of it's organization to benefit not only the social
24 welfare and political wings but the terrorist wings and the
25 kind of standing militia they have in Lebanon. Aside from the

1 Lebanese army, Hezbollah has its own army in Lebanon.

2 Q You've mentioned Iran's relationship to Hezbollah.

3 What is the nature and history of that relationship?

4 A Intimate. Hezbollah was created by Iran's intelligence
5 services, Ministry of Intelligence and Security, MOIS, the
6 Revolutionary Guard, still maintains very close relationships
7 to those institutions. Many academics, government officials,
8 especially in the United States and Europe have described
9 Hezbollah as in many ways more capable than Al Qaeda, not
10 because it's carried out more attacks, but because it has
11 benefited from the training that it gets in Iran, from and in
12 Iran, in particular the art of intelligence,
13 counterintelligence and is a very dangerous organization.

14 Q What type of say does Iran have in the violent activities
15 that Hezbollah undertakes?

16 A Hezbollah is its own organization, has kind of a Lebanese
17 identity, a kind of pan-Shia identity, also has a pro-Iran or
18 Iranian proxy identity. In each of its international
19 terrorist attacks, the two attacks in Argentina, for example,
20 the attack against U.S. forces stationed in Saudi Arabia, the
21 attempted bombing of the Israeli embassy in Bangkok, each of
22 these did not only Iran gave the green light, but also
23 participated in the attacks, enabled Hezbollah to benefit
24 using its state offices, state officials to carry out these
25 attacks.

1 Q The full name of Iran is the Islamic Republic of Iran?

2 A Yes, IRI.

3 Q What kind of government does Iran have?

4 A Two, really; has theocratic, religious government, but I
5 put it this way. Iran has an elected government, elected
6 president, parliament. Since the election last year, it's
7 been very hotly and widely publicly debated how fair and free
8 those elections are. In fact, not anybody can run in them.
9 You have to be approved by the religious or revolutionary
10 leadership. It is that leadership by the supreme leader who
11 is an Ayatollah, highest level within the Shia-Islam, that
12 side of the government controls all the most important parts
13 of the government. It's the supreme leader, not the elected
14 president who gets to decide who runs for the elected seats,
15 also controls the media, judiciary, the army and police and
16 the Revolutionary Guard and all the elements of actual power
17 are controlled by this unelected theocratic and quite extreme
18 leadership.

19 MS. AHMAD: It's 6:30. I have ten minutes left, at
20 the most.

21 THE COURT: Go ahead.

22 Q Who is the current supreme leader of Iran?

23 A It's Ayatollah Khomeini.

24 Q Who preceded him?

25 A Ayatollah Khamenei.

1 We can look up the exact spellings on Google. I
2 apologize.

3 Q Who is the leader before that?

4 THE COURT: The jury can't do that. The jury can't
5 do research about anything on this case.

6 Q Who led Iran before the Ayatollah's revolution?

7 A In 1979, there was a shah, or a king.

8 Q You said Iran is a theocracy. What is the particular
9 religious organization?

10 A Shia-Islam.

11 Q What role does Iran play in the world's Shia community?

12 A It is the only Shia-Islamic state out there and is a very
13 dominant role that it plays. It promotes Shia-Islam
14 worldwide. It sponsors Shia centers of learning, mosques
15 worldwide. Shia communities throughout the world will send
16 people to the religious schools in Iran in particular. Now
17 since the war in Iraq, Saddam Hussein is no longer in control
18 there, they have the ability to send people to the Shia
19 schools in Iraq as well, the two major schools.

20 Q What is the stature of the supreme leader of the
21 worldwide Shia community?

22 A For many he's considered the worldwide leader of
23 Shia-Islam. Some have selected for themselves different
24 ayatollahs as their primary source of religious inspiration.
25 For many Ayatollah Sistani in Iraq is more prominent as a

1 religious figure. For many it's the supreme leader of Iran
2 and those who adhere to the Hezbollah school certainly see it
3 that way, subscribe much to the Iranian Ayatollah supreme
4 leader of Iran as the supreme theological voice in Shia-Islam.

5 Q Are you familiar with the concept of the Iranian
6 worldwide revolution?

7 A Yes.

8 Q Explain it to us.

9 A After the Iranian revolution in 1979, there was this idea
10 among the Iranian revolutionaries of exporting the revolution,
11 enabling, inspiring, supporting Shia communities elsewhere in
12 the world who lived, minority communities to do the same, to
13 rise up and to empower themselves and to resist against the
14 government's there. There's long been animosity between Iran
15 and many of the Arabic gulf states, Saudi Arabia, Kuwait,
16 where there are Shia communities in terms of Iran's historical
17 fomenting of revolution among the local Shia communities
18 there.

19 Q Do Iran's embassies around the world play any roles in
20 supporting this revolution?

21 A Yes.

22 Q What role do they play?

23 A They are the forward footprint of the Iranian regime,
24 able to liase with local Shia communities, able to build
25 support within local Shia communities, to not just bring

1 religious education to the local Shia communities but very
2 specific Shia interpretation of Islam, for example, one that
3 argues the supreme leader of Iran is the greatest voice in
4 Shia theology as opposed to, for example, Ayatollah Sistani in
5 Iraq, until he died about a week ago, Sheik Fadlallah in
6 Lebanon.

7 Q Does Iran have an embassy in Guyana?

8 A No.

9 Q Where is the nearest Iranian embassy to Guyana?

10 A Argentina and Caracas, Venezuela.

11 Q Have you heard of someone named Murtaza Tavasoli?

12 A Iran's ambassador in Venezuela.

13 Q Have you ever heard of Mahsen Rabbani?

14 A Mahsen Rabbani is a fugitive of justice today, wanted by
15 the Argentinians for his role in the 1994 bombing of the AMIA
16 Jewish Cultural Center. He is an Iranian who came to
17 Argentina around 1984, served as an Imam in a Shia mosque
18 there. Some years later, about ten years later, in 1994 just
19 a few months before the bombing of the AMIA Center in July,
20 around March he became the cultural attache, assuming the
21 diplomatic post with diplomatic immunity at the Iranian
22 embassy. He maintained that post for a few years. I think it
23 was until about 1998, though he had left the country in 1997
24 and was dis-invited back, not allowed to return to Argentina.
25 At least once he's been arrested in Europe based on this

1 Interpol arrest warrant but had been released because of
2 Argentina's inability to provide enough information to satisfy
3 that particular government's extradition request.

4 Q You said cultural attache at the Iran embassy?

5 A Yes.

6 Q Do they all have cultural attaches?

7 A I know many of them do. I assume all do, traditional
8 diplomatic post. Others do as well.

9 Q What does that post involve as staff?

10 A Traditionally cultural attache promotes the culture of
11 the country in which the diplomat is residing. In the case of
12 the Iranian attaches, most notably the case of Mahsen Rabbani,
13 that was a position that was used as cover for Iranian
14 intelligence agents.

15 Q Everything you've told us about Mahsen Rabbani's alleged
16 involvement in the bombings in Argentina, is that widely
17 publicized information?

18 A Very.

19 Q Where is it publicized?

20 A Senior officials have talked about this very publicly,
21 been in the press, the New York Times on down. As you can
22 imagine, it received significant amounts of press in Latin
23 America. That's where it happened, both at the time of the
24 bombings when the indictment first came out, when he left the
25 country, when he was declared person non grata, not allowed to

1 come back, released later in Germany when the Interpol red
2 warrant notice was issued; frankly comes up about once a year
3 at least and in the years shortly after the attack, a lot more
4 than that.

5 (Continued on next page.)

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1 MS. AHMAD: I have no further questions, Your Honor.

2 THE COURT: We are going to need you to come back,
3 sir, tomorrow morning. We are going to start very early, at
4 9:00 o'clock tomorrow.

5 Ladies and gentlemen, as I said, we are going to
6 start very early, at 9:00 o'clock.

7 One thing, that extra transcript that you got today,
8 could you just make sure that you put in your looseleaf
9 binders? There is a little pocket in there, if you can put it
10 in the pocket on the side so it doesn't get lost.

11 Great.

12 We are going to start tomorrow at 9:00 o'clock, in
13 the hopes that we can finish with Doctor Levitt tomorrow.
14 Then we will continue for the rest of the day with the other
15 witnesses.

16 It is very important, again, that you keep an open
17 mind and not form or draw any conclusions about anything that
18 you have seen or heard here, presented here in the courtroom.
19 It is very important, as tempting as it may be, remember that
20 you cannot do any kind of research or reading or anything,
21 viewing on TV, radio, magazines, print, newspaper media, of
22 any kind, Internet blogs, reference materials, anything of the
23 sort in connection with any of the evidence in this case or
24 anything connected with this case.

25 You can't talk about the case among yourselves or

1 with anyone else.

2 All right. So get some rest. We will see you
3 tomorrow at 9:00 o'clock.

4 Thank you so much for your patience today.

5 (The following occurred in the absence of the jury.)

6 THE COURT: You can all have a seat for a moment.

7 Doctor, since you are under cross-examination, you
8 can't discuss your testimony with anyone from the government
9 team. You can certainly discuss just administrative
10 scheduling and so on.

11 Okay?

12 THE WITNESS: Thank you.

13 THE COURT: You are excused. We will just need you
14 back here tomorrow at 9:00 o'clock.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you.

17 (Witness excused.)

18 I just wanted to talk about a couple of other
19 scheduling matters that have come up.

20 As you will recall, we broke early yesterday because
21 juror number three had an eye doctor appointment. If you will
22 recall from the voir dire, she had some surgery. She needs to
23 have follow-up next week. She tried to have the doctor give
24 her an appointment for Friday but that didn't work out.

25 Again, she has another appointment on the 20th,

1 which means that we will have to break at about 2:30 again to
2 accommodate that.

3 She doesn't think that this is going to be a weekly
4 thing. I was concerned that -- I am sure she will let us know
5 if it is something that's going to affect her ability to read
6 or her health and we will follow up with that when she comes
7 back next week. She had brought in a note from the doctor
8 indicating the necessity for the follow-up.

9 That is that. That will abbreviate our week next
10 week somewhat.

11 I am hopeful that if we move the case along,
12 hopefully the case will go to the jury maybe July 26th, as we
13 had originally anticipated. I'm sure the jury will be pleased
14 to upload the time up front and to front load it and perhaps
15 end a couple of weeks early.

16 Just in the off chance that we don't, I had had a
17 matter that I needed to attend to August 5th and that had to
18 be changed to August 3rd. I still expect that if they are in
19 deliberations that that shouldn't prevent them from coming in
20 and I certainly will be in phone contact as best as I can with
21 my staff and I certainly will be back here by the afternoon. I
22 don't see that that should prevent them from coming in and
23 continuing deliberations, if that is where we are at that
24 point. Hopefully we are not going to go up to that point.

25 So tomorrow we will have a full day. Hopefully, we

1 can finish with this witness in the morning. Mr. Francis will
2 be coming back at 10:00 o'clock tomorrow. Obviously, I can't
3 gauge what -- does the government have a guesstimate on
4 redirect?

5 MR. JONES: I am hoping, Your Honor, about an hour.
6 Obviously, the -- well, I think the -- the estimates have been
7 difficult so far but I am hoping about an hour. I am not
8 going to dwell on much and try to move as fast as I can.
9 Because there are two very different defenses, you know, I
10 need a little time. I am not going to just go over --

11 THE COURT: I am just asking for scheduling
12 purposes. I don't like attorneys to feel that they
13 necessarily have to be rushed. You have to do what you have
14 to do. The same for the defendants. I just want to have an
15 idea for scheduling purposes.

16 MR. JONES: An hour, Your Honor.

17 THE COURT: Then the government is going to provide
18 a response to the defendant's motion in limine, I hope
19 tonight.

20 MR. MILLER: Yes, Your Honor.

21 We will try to turn that around in about an hour.

22 THE COURT: You can get it in tonight because I
23 don't think I am going to wait around for it tonight.

24 MR. MILLER: Fair enough.

25 THE COURT: Normally I would but I don't think that

1 we are going to get to that issue, I don't think, tomorrow.

2 What happened with the Trinidadian witnesses and the
3 stipulations?

4 MR. MILLER: We did reach a stipulation, Your Honor,
5 with respect to the testimony of three of the witnesses. We
6 reached actually two stipulations to manage the three witness'
7 testimony. So at this point we just have one Trinidadian
8 witness left, who is really the expert witness.

9 THE COURT: Okay.

10 MR. MILLER: We intend to read those stipulations
11 into the record at the appropriate time, probably sometime at
12 a break between witnesses tomorrow.

13 THE COURT: Okay. It's possible that we can reach
14 that Trinidadian expert tomorrow? You need to reach him
15 tomorrow?

16 MR. MILLER: He has been here for a while. So we
17 would very much like to reach him tomorrow, if we could.

18 THE COURT: Okay. All right. So we will talk
19 scheduling some more tomorrow. Tomorrow is Thursday. Then we
20 will have -- it is possible -- I will see, once I see the
21 government's response tomorrow morning or tonight, whether we
22 will need to meet on Friday at some point and we will work
23 that in to -- I have a few things that adjourned so I have
24 some time that opened up, if we need that time.

25 Okay.

1 MR. MILLER: Just for further scheduling, it is our
2 expectation that we will try to -- that we may rest on Monday.
3 That would be our current prediction. Although it could bleed
4 into Tuesday. I think we expect to rest if that timeframe. I
5 want to put everybody on notice about that.

6 We received the names of a couple of witnesses from
7 Mr. Kadir's team but no other 3500 material. We will keep you
8 informed as to the progress, but if there is any additional
9 reports or notes, we would like to get them.

10 MS. MESSINA: In relation to that, I will be
11 providing tomorrow -- I just got some photos from Mr. Kadir's
12 family that we may be seeking to introduce. I will provide
13 those to the government tomorrow.

14 THE COURT: Okay. Can you just make sure that you
15 get a copy for the Court as well?

16 MS. MESSINA: Yes, Your Honor.

17 THE COURT: Thank you.

18 The defense is still, as far as you understand, on
19 board with the projected schedule with each of the defendants
20 testifying at this point? Obviously, you are free to change
21 your mind up to the last minute. Again, just to get an idea
22 of where we are.

23 MS. WHALEN: Your Honor, I think we -- what we would
24 like to do is call Louis Napoli first, the case handler and
25 then that's probably going to make the final determination as

1 to whether Mr. DeFreitas testifies.

2 THE COURT: Okay. All right.

3 The government was going to supply a response to the
4 defense requests to charge I think by Friday is what we had
5 discussed?

6 MS. BERGER: Yes.

7 MR. MILLER: Yes, Your Honor.

8 THE COURT: All right. Everyone have a good night.
9 Thank you.

10 (Matter adjourns until 9:00 o'clock, July 15, 2010.)

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