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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 15, 2010
 : 9:00 o'clock a.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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 Brooklyn, New York

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

KAFAHNI NKRUMAH, ESQ.
 TONI MESSINA, ESQ.
 Attorneys for A. Kadir

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4 Proceedings recorded by mechanical stenography, transcript
5 produced by computer-aided transcription.

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

13 THE COURT: Are the defendants here?

14 THE CLERK: Yes, Your Honor.

15 THE COURT: You can all have a seat.

16 All of the jurors just finally got here, so we have
17 to get their lunch and stuff so it will be a few minutes
18 anyway.

19 (Pause.)

20 MR. MILLER: Your Honor, one very brief issue that I
21 wanted to put on the record.

22 THE COURT: We don't have the defendants out yet.

23 MR. MILLER: Sorry.

24 THE COURT: They are being brought out.

25 Could you bring out the defendants?

1 THE MARSHAL: Would you like me to?

2 THE COURT: Yes, please.

3 (The defendants are present.)

4 THE CLERK: The jurors are ready.

5 THE COURT: Okay.

6 MR. MILLER: Your Honor, I wanted to alert the Court
7 to one quick thing.

8 THE COURT: We are waiting for Ms. Whalen.

9 MR. KAMDANG: It is fine.

10 THE COURT: Okay.

11 MR. MILLER: The parties have all discussed it.

12 THE COURT: Let me call the case.

13 MR. MILLER: Sorry.

14 THE COURT: Okay. Case on trial continued, United
15 States versus DeFreitas and Kadir, 07 CR 543.

16 Appearances for the day, please.

17 MR. MILLER: Marshall Miller, Zainab Ahmad, Berit
18 Berger, Jason Jones for the government. We are also joined by
19 Detective Investigator Robert Addonizio from the Joint
20 Terrorism Task Force.

21 Good morning, Your Honor.

22 THE COURT: Good morning.

23 For the defendants?

24 MS. WHALEN: Yes, Your Honor.

25 Good morning.

1 Mildred Whalen and Len Kamdang from the Federal
2 Defenders for Mr. DeFreitas, who is seated here at counsel
3 table.

4 THE COURT: Good morning to all of you.

5 MR. NKRUMAH: Good morning, Your Honor.

6 Kafahni Nkrumah, Toni Messina, Bruce Therrien for
7 Mr. Abdul Kadir, who is seated at defense counsel with
8 counsel.

9 THE COURT: Good morning to all of you.

10 Okay. The government wanted to place something on
11 the record --

12 MR. MILLER: Yes.

13 THE COURT: -- before we get started.

14 MR. MILLER: We just wanted to raise to Your Honor
15 and put on the record that we had some preliminary discussions
16 with defense counsel about cross-examination, particularly of
17 Detective Investigator Addonizio. And just --

18 THE COURT: I'm sorry. Before you keep going, just
19 for the record, the jury is not present and none of the
20 witnesses are present.

21 You were talking about the testimony of the
22 Detective Investigator Addonizio.

23 MR. MILLER: Yes, Your Honor.

24 First off, I would note that it is through Detective
25 Investigator Addonizio that we intend to introduce or offer

1 the photographs that are at issue in the motion in limine. So
2 I just wanted to put that on the Court's radar screen as one
3 issue that needs to be resolved before his testimony.

4 But another issue that I wanted to just raise that
5 we have discussed this morning with defense counsel is the
6 possibility that the defense might inadvertently ask questions
7 that would require Detective Addonizio to respond accurately
8 by disclosing classified information and all I wanted to do
9 with defense counsel was talk about the general areas that
10 they wanted to cover so that we could ensure that we gave them
11 a heads up and the Court a heads up if we thought any of those
12 areas would potentially implicate classified information so
13 that we could engage in the appropriate CIPA preevaluation by
14 the Court as to the appropriateness of the questions and the
15 answers that would be permissible, if substitutions were
16 necessary or some other answer would be necessary, that we
17 preview those and have the appropriate CIPA conference about
18 those.

19 My sense is that this may be an example of sort of
20 overcaution. We may not go there. I wanted to be sure that
21 all the parties have thought about it and we had prepared Your
22 Honor for it because if it seems that we are going to head in
23 that direction, that may require a conference prior to
24 Detective Investigator Addonizio's testimony. We all agree
25 that we would talk about it. As they plan their crosses we

1 would talk about it over Friday and the weekend. We may need
2 to come in on Monday and discuss it. We will certainly alert
3 Your Honor if that were the case.

4 THE COURT: Anything the defense would like to add
5 to that?

6 MR. KAMDANG: I agree with Mr. Miller. I think it's
7 reasonable to talk about those issues. I don't think,
8 especially the jury, wants to see us spend hours and hours at
9 side bar.

10 Frankly, I haven't written the cross yet.

11 THE COURT: I wouldn't subject them to that. I
12 would have to excuse them either for part of the day or for a
13 longer lunch or something. I wouldn't subject them to that.

14 MR. KAMDANG: Frankly, I haven't written the cross
15 yet. I don't foresee going into any classified areas. But it
16 is possible that -- I recognize some things are classified.
17 I'd be happy to speak to Mr. Miller this weekend. I think
18 we've had a very good working relationship in working thins
19 out. I am hopeful we can work it out.

20 If we come in Monday and there are a couple of
21 issues, we can address it. I think it makes sense for us to
22 have a discussion of the chapters and areas of cross. I don't
23 have a problem with talking about that beforehand.

24 THE COURT: Mr. Nkrumah?

25 MR. NKRUMAH: Your Honor, that -- not being privy to

1 the conversation but being able to listen to it hear here, I
2 agree with Mr. Miller and Mr. Kamdang and if there is any
3 areas, sensitive areas that I believe I may go into regarding
4 classified material, I will inform Mr. Miller over the weekend
5 and inform the Court first thing Monday morning.

6 THE COURT: Okay.

7 MS. MESSINA: There are two issues I would like to
8 bring up, if I may. I can address it now or later.

9 THE COURT: If it doesn't affect the expert, I
10 really would like to get started with the expert.

11 MS. MESSINA: It doesn't.

12 THE COURT: We can address it later.

13 MS. MESSINA: That's fine.

14 THE COURT: All right. I think that everyone is
15 here.

16 Do you want to bring in Doctor Levitt?

17 MS. AHMAD: Sure.

18 THE COURT: I guess we can get the jury as well.

19 THE CLERK: Yes, Your Honor.

20 (The witness is present.)

21 THE COURT: Good morning.

22 You can have a seat.

23 THE WITNESS: Thank you.

24 THE COURT: There is fresh water there, if you would
25 like some.

1 THE WITNESS: Thank you very much.

2 THE COURT: Be careful with the pouring. It is
3 notorious for accidents.

4 Who is going to do the cross of Doctor Levitt?

5 MS. WHALEN: Mr. Kamdang.

6 MR. KAMDANG: I will give Ms. Whalen a break.

7 THE COURT: Okay. And for the Kadir team?

8 MR. NKRUMAH: I will handle the cross, Your Honor.
9 I decided to give Ms. Messina a break.

10 THE COURT: Okay.

11 (Jury present.)

12 THE COURT: Jury entering. All rise.

13 Everyone may be seated.

14 Good morning, ladies and gentlemen. Welcome back.

15 Do the parties agree that all of the jurors are
16 present and properly seated?

17 MS. AHMAD: Yes, Your Honor.

18 MR. NKRUMAH: Yes, Your Honor.

19 MR. KAMDANG: Yes, Your Honor.

20 THE COURT: You heard the direct testimony of doctor
21 of Doctor Levitt, who is back here this morning.

22 Good morning, sir.

23 THE WITNESS: Good morning.

24 THE COURT: I remind you that you are still under
25 oath this morning.

1 We are going to proceed with cross-examination,
2 beginning with Mr. Kamdang on behalf of Mr. DeFreitas.

3 MR. KAMDANG: Thank you, Your Honor.

4 M A T T H E W L E V I T T ,

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

7 CROSS-EXAMINATION

8 BY MR. KAMDANG:

9 MR. KAMDANG: May I inquire?

10 THE COURT: Yes, you may.

11 MR. KAMDANG: Thank you.

12 Q Good morning. Doctor Levitt.

13 How are you?

14 A Good morning.

15 How are you?

16 Q I am fine. Thank you.

17 Yesterday we began your direct testimony and we were
18 talking about the structure of Al Qaeda and you had explained
19 that the structure of Al Qaeda had sort of flattened other
20 post 9/11.

21 Do you remember that testimony?

22 A Yes.

23 Q I believe that the model you used was a model of
24 concentric circles?

25 A Correct.

1 Q I just wanted to review that very briefly.

2 So the way it's basically structured, at the center
3 of the circle would be sort of this Al Qaeda central; a circle
4 outside of that would be these affiliated Al Qaeda groups; a
5 circle outside of that would be these groups that aren't
6 technically affiliated with Al Qaeda; and the last bigger
7 circle would be these so-called homegrown terrorists who are
8 not necessarily affiliated with anyone?

9 A Correct.

10 You can have connections between and across these
11 circles, of course.

12 Q Sure.

13 A It kind of explains the different ways Al Qaeda can
14 manifest itself.

15 Q I would like to talk briefly about that last, the
16 broadest concentric circle of homegrown terrorists.

17 As an expert, if someone were to tell that you
18 somebody is a homegrown terrorist, that wouldn't necessarily
19 mean that the person is an adherent of Al Qaeda, for example,
20 right?

21 A If you are speaking within these concentric circles of
22 the Al Qaeda model?

23 Q Right.

24 A Then in that sense they would be. Someone in that
25 broadest sense of the circle is pretty much by definition not

1 an Al Qaeda member as such. It is not that people carry these
2 membership cards in their wallet, as we said yesterday, in any
3 event.

4 But this would be someone who probably thinks of him
5 or herself as a like minded follower, sees maybe Bin Laden as
6 somebody inspirational but has never necessarily had any
7 contact with the Al Qaeda officials.

8 Q Okay. But the term homegrown terrorists, that circle
9 could apply to a similar model for Hezbollah, for example, or
10 Hamas?

11 There could be homegrown terrorists who were
12 adherents of these other groups as well that you could fairly
13 call homegrown terrorists?

14 A Yes and no.

15 You could have a homegrown terrorist who subscribes
16 to almost any ideology. The homegrown phenomenon though has
17 been one that is very much identified with Al Qaeda and its
18 affiliated movements.

19 There are probably some homegrown radical Shia who
20 subscribe to the Hezbollah idea and probably give money to
21 Hezbollah. I don't know of any instance like that in Hamas
22 context. I do know people who were radicalized to kind of the
23 Al Qaeda idea by fixating on Israeli-Palestinian conflicts and
24 on Hamas as a group but went the Al Qaeda way, not the Hamas
25 way.

1 Q Let me put it this way. Let's say that as an expert I
2 told that you we were talking about somebody who was an active
3 member of Al Qaeda central. As an expert, there are -- there
4 are certain educated guesses you could make based on that
5 information. For example, you could make a guess about
6 whether or not that person is a Sunni or a Shia?

7 Right?

8 A With exceptions, yes.

9 Q Just in terms of general -- an educated guess.

10 And you might have some insight as to the type of
11 training an active Al Qaeda central member might have
12 received?

13 A Just to clarify, we have moved from the outer limits --

14 Q Now in the smallest.

15 A You are talking to someone who is in the core, you are
16 talking about someone who has likely been to an Al Qaeda
17 training camp, has met with some type of Al Qaeda leader at
18 some level.

19 Q Right.

20 It wouldn't surprise you if they had spent time in
21 Waziristan.

22 Can you explain where zero stand is?

23 A Waziristan is an area in Pakistan along the
24 Afghan-Pakistan border, one of the areas in which Al Qaeda
25 leadership or some of the leadership is believed to be hiding

1 where some of the training camps are.

2 Q It wouldn't surprise to you learn somebody who was an
3 Al Qaeda central active member would have spent time there,
4 right?

5 A Possibly.

6 There are other places where Al Qaeda is. That's
7 one place.

8 Q If I told you simply that I was talking about another
9 person who all you knew was that they were homegrown
10 terrorists, you would be less comfortable making a guess about
11 whether or not they were Sunni or Shia?

12 A Correct.

13 Q In fact, one might -- you might not even be able to tell
14 whether or not they are Muslim?

15 A Again, yes and no.

16 It's possible for a person to be a homegrown and
17 radicalized to liberation movements or something like that.
18 But that's not the phenomenon that we are seeing today that we
19 are talking about.

20 So, by and large, again, not that this has something
21 to do with the faith of Islam. It has something to do with
22 the political ideology of Islamism. We are talking about
23 people who radicalized to a very particular idea of Islamic
24 militancy.

25 Q Okay. Did -- is it fair to say as a general principle

1 that the categories of say homegrown terrorists is not as
2 insightful as an Al Qaeda central member?

3 A I don't know what you mean by "insightful."

4 Q You -- the term Al Qaeda central or somebody who I told
5 you was in that -- that concentric circle, just knowing that
6 you would be able to make a more -- you would have more
7 information about that person just from that designation than
8 somebody who you only knew simply as a homegrown terrorist?

9 A Usually it goes the other way. You don't start with
10 knowing that someone is an Al Qaeda core or a homegrown. You
11 find out that someone is involved in certain types of activity
12 and through that investigation will be able to determine if in
13 fact they have ties to the core or if they are just a
14 homegrown individual. Usually it comes -- you are looking at
15 it I think with 20-20 vision maybe.

16 Q Right.

17 A Usually comes the other way. I've never been asked
18 actually this question you are posing to me, how much would
19 you know about someone if I theoretically told you he is a
20 core or homegrown terrorist. What we know is this is someone
21 who is interested in carrying out some type of act of violence
22 and it would tell us a little about how much actual direct
23 contact they likely have had with established members of the
24 group.

25 Q I am not asking you to do an investigation like that. I

1 am just trying to understand the contours of the model that
2 you told us about yesterday.

3 Okay. Let's move on.

4 We talked about some of your qualifications
5 yesterday.

6 You pretty much dedicated your professional life to
7 studying terrorism issues, is that fair?

8 A Terrorism and the Middle East, yes.

9 Q And through that, through your work, you tried to read
10 all the open source material that is available on these
11 topics?

12 A I am not going to be so bold as to say everything, but
13 certainly if there is an issue I am researching I try to read
14 available literature, yes.

15 Q By "open source," I mean simply information that's
16 publicly available.

17 A Correct.

18 Q You do independent primary research?

19 A Correct.

20 Q You said that you travel out of the country frequently?

21 A Correct.

22 Q You conduct interviews of people?

23 A Yes.

24 Q And you work with original documents?

25 A Yes.

1 Q Sometimes you even have the documents translated by
2 yourself and you don't have to work with other people's
3 translations?

4 A Sometimes. Though my foreign languages are limited, so
5 usually I have others translate documents.

6 Q And you previously worked as an intelligence analyst at
7 the FBI?

8 A Yes.

9 Q Through your work at the FBI, you learned information
10 about Al Qaeda and Hezbollah?

11 A Yes.

12 I would say I have learned more about them outside
13 that experience, but yes I learned from the government as
14 well.

15 Q Without telling us anything specific -- I don't want you
16 to get anything confidential -- you had access to some
17 information that wasn't available to the public through your
18 work as an intelligence analyst at the FBI?

19 A Once upon a time, not anymore.

20 Q And you have published a number of scholarly articles in
21 this field?

22 A Yes.

23 Q Do you have any idea how many?

24 A Many; several pages worth if we were to list them out.

25 Q Fair enough.

1 A I think you have the list.

2 Q You mentioned that you have a Ph.D in this field too?

3 A Yes.

4 Q What specifically is the Ph.D in?

5 A The degree is in international relations. The thesis was
6 on The Impact of Terrorist Attacks on Negotiation Process.

7 It's on the Arab-Israeli conflict.

8 Q Approximately how many years did it take you to earn a
9 Ph.D in international relations?

10 A Well, because I stopped in the middle and went to work,
11 my son asked me if I had a real job, if I was still writing
12 that book in the library, and the competitive part of me gave
13 in. So for a few years I really wasn't working on it.

14 I started the Ph.D in ninety, I guess, seven, and I
15 eventually got it in 2005.

16 Q Okay. In all of your years of research, in everything
17 that you have ever reviewed in terms of terrorism cases, did
18 you ever come across anything that would suggest that Russell
19 DeFreitas was an active member or was ever an active member of
20 Al Qaeda?

21 MS. AHMAD: Objection.

22 THE COURT: May I speak to counsel at the side,
23 please?

24 (Continued on next page.)

25

1 (Side bar.)

2 THE COURT: Basis of the objection?

3 MS. AHMAD: Your Honor, there are -- there certainly
4 is no argument on the government's part that Mr. DeFreitas is
5 a member of Al Qaeda. We think it's entirely inappropriate
6 for our expert witness to be asked to opine on the specific
7 facts of this case. The nature of the testimony is such that
8 it is separate from the facts.

9 We haven't shown him the material, the evidence we
10 have in this case. We haven't -- we have done that purposely
11 to avoid infecting his expert testimony. We think it's
12 inappropriate to ask for his opinion on the specific facts of
13 this case.

14 Of course, as Your Honor knows and the defense
15 knows, we don't intend to argue to the jury that Mr. DeFreitas
16 is a well-known member of Al Qaeda or anything along those
17 lines.

18 It is simply not a proper question for this witness.
19 Certainly, if we had asked this witness the question the
20 defense would object. We think it's entirely similar
21 rationale. It is inappropriate for them to ask an expert
22 witness to opine on the specific facts of this case.

23 MR. KAMDANG: Your Honor, in light of the testimony
24 about Al Qaeda and Hezbollah, and the detail that we went
25 into, I think it is a critical point. Mr. DeFreitas is not an

1 active member of Al Qaeda. I informed the government that
2 I -- these were the specific questions that I was going to ask
3 yesterday. They didn't raise an objection. They didn't
4 mention it was objectionable.

5 My cross will be about 30 more seconds. I don't
6 plan on inquiring any farther.

7 MR. MILLER: If I could just add? If I could just
8 add? In the government's opening statement, we said there is
9 no allegation in this case that the defendants, any of the
10 defendants, are members or associates of any particular
11 organization.

12 THE COURT: What is the harm in defense counsel
13 asking the question? I don't understand the objection, given
14 that that's been the position and in fact in the voir dire I
15 made that statement, based on the representation of the
16 government, to the members of the jury.

17 Perhaps you can rephrase the question somewhat.
18 Can we read back Mr. Kamdang's question, please.
19 (Record read.)

20 THE COURT: I think that's a fair question. I will
21 allow it.

22 MR. MILLER: I just don't -- this expert should not
23 opine on the facts of this case. If there are any other
24 questions, is he a homegrown radical, we strenuously object.
25 We can't ask him. We could have had him review all the

1 documents.

2 MR. KAMDANG: I will not ask --

3 THE COURT: I will qualify that. The question was
4 asked in the context of his studies and his knowledge into
5 Al Qaeda as it stands in the world, which I think he is
6 perfectly capable of responding to in terms of the facts of
7 this case. Then anything like that would have to be prefaced
8 with whether he examined any of the documents in this case and
9 so on. Because he can only give an opinion about this case
10 based on the facts of this case. If he was not provided with
11 the facts of this case, then that is a different story.

12 MS. AHMAD: Yes.

13 THE COURT: The question that Mr. Kamdang asked,
14 that's based on his knowledge of the study of Al Qaeda and
15 Middle Eastern terrorist movements as a whole. He is just
16 asking have you ever come across this name as a general
17 proposition in his studies.

18 MR. KAMDANG: Your Honor --

19 THE COURT: I think that's a fair question to ask.
20 Then given the position of the government, I don't -- I don't
21 see that that there is any harm in that.

22 MR. KAMDANG: Just -- I have three more questions.

23 One, whether or not in his research if he's ever had
24 membership in Al Qaeda.

25 I was going to ask about Hezbollah.

1 Then through his research if he ever met -- if he'd
2 ever learned, ever met Shukrijumah and Mohsen Rabbani.

3 That's it. If they are going to object again, I
4 think we should have the conversation now.

5 MS. AHMAD: Russell DeFreitas meeting particular
6 individuals is entirely based on the facts of this case. This
7 expert witness is not a law enforcement officer. It's not
8 part of his job or expertise to surveil individuals. It's not
9 part of his job or expertise to surveil particular individuals
10 to see who they meet with.

11 THE COURT: No. That's not the question that he is
12 asking. He is asking whether based on his knowledge, the
13 information that he has gathered, whether he's heard of them
14 having any meeting and perhaps you can -- I don't know. You
15 may even be able to ask --

16 MR. KAMDANG: I will be -- outside of this case.

17 THE COURT: Based on just his general studies.

18 MR. KAMDANG: Yes.

19 THE COURT: The government is free to come back on
20 redirect and ask whether he's actually looked at the facts of
21 this case or any of the documents of this case.

22 MR. MILLER: Can --

23 THE COURT: If they are going to ask that, then you
24 are free to come back and ask about the facts of this case.

25 MR. MILLER: We are then allowed to ask whether

1 experts in this case know about meetings based on the review
2 of open source material. We may ask him about experts,
3 whether we know particular meetings between say Mr. Kadir and
4 Abu Bakr based on media reporting.

5 That's what we are talking about here. We are not
6 talking -- not the first question, the question about
7 membership in Al Qaeda. Putting that aside, meetings between
8 defendants and members of these groups? It cuts both ways.
9 If they are going to ask questions about whether he hasn't
10 met, then we can ask questions about whether those meetings
11 have taken place and I have concerns about both of those
12 areas.

13 I just -- I am not sure it's proper for witnesses to
14 be opining based on open source information about whether
15 they've heard about meetings between fact -- individuals or
16 defendants and individuals in this case that are the subject
17 of testimony in this case. It seems wrong to me.

18 THE COURT: I understand the government's concern
19 and I think that that should be of serious concern to the
20 defense.

21 Then you may be opening the door there, the
22 meetings?

23 MR. NKRUMAH: I agree with the government with the
24 meetings aspects opinion -- opining on the facts of this case,
25 especially when they haven't had an opportunity to review, is

1 wrong.

2 I do believe that we have the right and we should be
3 allowed to ask the first question that Mr. Kamdang asked based
4 on his testimony yesterday which he went through who a
5 homegrown terrorist is, what are the characteristics, went
6 through the cell and everything else, based on his general
7 information, so we should be able to ask if our clients based
8 on his general information, has he found our clients to be
9 either a member or an associate of the organization.

10 But other than that, I agree with the government.

11 THE COURT: Again, I agree. I think that the --
12 certainly you can ask the general question as you had phrased
13 it. I don't see any problem with the phrasing. If you want
14 to have it read back? Then the same for Hamas and the same
15 for Hezbollah.

16 MR. KAMDANG: Okay.

17 THE COURT: But I think --

18 MR. KAMDANG: I will stay away from the individuals.

19 THE COURT: Yes. I think you may be opening up a
20 big can of worms.

21 MR. KAMDANG: I just want to -- if Ms. Whalen stands
22 up and says it is undisputed that he's never met Shukrijumah
23 or --

24 THE COURT: That's the facts of the case.

25 MR. KAMDANG: Fine.

1 THE COURT: I think you can argue the evidence. I
2 think the evidence is clear.

3 MR. MILLER: Is everybody okay -- I am also just
4 concerned, I want to make sure I understand the parameters of
5 this.

6 Can we then ask our experts whether these people
7 based on the open source reporting fit the category of
8 homegrown terrorism? S that a legitimate response?

9 The question was, based on your review do you think
10 he's a member of Al Qaeda. No.

11 Did we get up and say, do you think based on the
12 review of the same materials that he fits within the category
13 of homegrown terrorists?

14 THE COURT: No. That's not my understanding of what
15 the question is. The question is simply whether in anything
16 that he has come cross in his studies, has he found that
17 Russell DeFreitas is a member.

18 I think if you start getting into the whole
19 homegrown thing, that's a problem because to a certain extent
20 he then starts to opine on the facts of this case. Then
21 that's a problem, in terms of just sort of general membership.

22 MR. MILLER: Okay.

23 THE COURT: I think that's fair and that's fine.

24 MR. MILLER: Okay.

25 MR. KAMDANG: Okay.

1 (In open court.)

2 THE COURT: You may continue to inquire.

3 Do you want the last question read back?

4 MR. KAMDANG: I will just ask it again.

5 EXAMINATION CONTINUES

6 BY MR. KAMDANG:

7 Q Doctor Levitt, in all of your years of research, have you
8 ever come across anything that would suggest that Russell
9 DeFreitas is or ever was an active member of Al Qaeda?

10 A In all my years reviewing the materials publicly
11 available I have come across maybe a few dozen names of
12 Al Qaeda people. It is a covert organization. Most of its
13 members are not known to people in the public domain. So I
14 have come across very few Al Qaeda members and not his name.

15 Q Okay. Did you ever come across anything that suggests
16 that he was a member of Al Qaeda?

17 A I didn't know his name until this case came up.

18 Q Very good.

19 In all of your years of research, have you ever come
20 across anything that would suggest that Russell DeFreitas is
21 or ever was a member of Hezbollah?

22 A Again, I did not hear of his name until this trial. But
23 Hezbollah also, it is a covert side. You wouldn't hear of
24 those people.

25 MR. KAMDANG: That's fine. Thank you.

1 THE COURT: Anymore questions?

2 MR. KAMDANG: No more questions. Sorry.

3 THE COURT: Okay. Mr. Nkrumah, on behalf of

4 Mr. Kadir, cross-examination.

5 You may inquire when you are ready.

6 CROSS-EXAMINATION

7 BY MR. NKRUMAH:

8 MR. NKRUMAH: May I inquire, Your Honor?

9 THE COURT: Yes, you may.

10 MR. NKRUMAH: Thank you.

11 Q Good morning, Doctor Levitt.

12 A Good morning.

13 Q My name is Kafahni Nkrumah. I am the attorney for

14 Mr. Abdul Kadir.

15 How are you doing this morning?

16 A I am fine. Thank you.

17 How are you?

18 Q That's good.

19 If you don't understand any of my questions because

20 I do tend to speak a little quickly, just let me know.

21 THE COURT: We are going to slow you down, for the

22 reporter's sake.

23 A Believe you me.

24 Q Just let me know and I will repeat myself. Okay?

25 A Sure.

1 Q I want to start off by asking you a few questions about
2 Iran.

3 Do you understand?

4 A Yes.

5 Q You would agree with me that Muslims and non-Muslims
6 alike look towards Iran for more than just the sponsorship of
7 terrorism, right?

8 A I am not sure what you mean by people looking to Iran for
9 something or at all, really.

10 Q Like they look to Iran for like, as you testified to
11 yesterday, scientific and cultural center of the Shiite world?

12 A I don't think I testified about science at all yesterday.
13 I don't know people who look to Iran as a center of science.
14 Most people who look to Iran look to Iran as a center of
15 Shiaism, not necessarily state sponsorship of terrorism.
16 Those are two separate things.

17 (Continued on next page.)

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1 Q So they in fact do look toward Iran for other reasons
2 other than terrorism, correct?

3 A There are some people who look to Iran for sponsorship of
4 terrorism and others who look to Iran, especially Shia
5 Muslims, for theological or other reasons.

6 Q And you also testified yesterday that Iran was a
7 theocracy?

8 A Correct.

9 Q That is basically a state run -- a state government that
10 includes religion in its running, correct?

11 A It's a country that it's run by religious law.

12 Q And Iran became a theocracy after the Iranian revolution,
13 correct?

14 A Correct.

15 Q And that revolution was led by the Ayatollah Khomeini?

16 A Correct.

17 Q And he was in exile while he was leading that revolution,
18 wasn't he?

19 A Correct.

20 Q And basically the revolution started when the Shah had
21 murdered some students protesting on behalf of Khomeini;
22 correct?

23 A We're getting into a whole big issue here. It was more
24 than just that. There was --

25 Q That was part of it, wasn't it?

1 A That was one incident in a much, much larger area. I
2 wouldn't try to boil it down to that.

3 Q And in Iran, especially with Shia Muslims worldwide,
4 Ayatollah Khomeini is revered, isn't he?

5 A By some and not by others. For others, they have a
6 tremendous dislike for him.

7 Q And they hold a number of commemorations in Iran on
8 behalf of the Ayatollah Khomeini, correct?

9 A Absolutely. And most people have no choice but to
10 participate. It isn't a free and open society, so bus people
11 in for these commemorations and you'll get a lot of people.

12 Q Some people do come in and participate because they want
13 to, don't they?

14 A Sure.

15 Q Two of the biggest commemorations in Iran are the Iranian
16 revolution, correct? They commemorate the Iranian revolution
17 sometime in February, don't they?

18 A Yes.

19 Q On June 4th, June 5th is the commemoration of Ayatollah
20 Khomeini's death, correct?

21 A I'm not familiar with the actual dates of either, but the
22 date of revolution and his death are both big days for the
23 regime.

24 Q They celebrate these commemorations yearly don't they?

25 A Yes.

1 Q You testified yesterday that there wasn't an Iranian
2 embassy in Guyana, correct?

3 A Correct.

4 Q And the nearest embassies are in Argentina and Venezuela?

5 A To the best of my knowledge, yes.

6 Q Guyana and Iran, they maintain friendly relationships,
7 don't they?

8 A I don't know.

9 Q Dr. Levitt, I just want to ask you a few questions about
10 the organization known as Hezbollah. It is based in Lebanon,
11 right?

12 A Correct.

13 Q I believe you testified yesterday that Hezbollah is a
14 Shia Islamic political and paramilitary organization; correct?

15 A Not exactly how I put it, but yes, it is a radical Shia
16 Islamist organization that engages in terrorism. It has a
17 standing army of its own, a militia and it also runs social
18 programming and is part of the political system in Lebanon.

19 Q Let's talk about the social programming part for a second
20 because there are two parts to Hezbollah, correct?

21 A I would say no. Most people would say no. There is one
22 part of Hezbollah that engages in multiple different
23 activities.

24 Q The Hezbollah that you focused on isn't the social
25 services part, it's the terrorist part, isn't it?

1 A Incorrect.

2 Q You focused on the entire balloon?

3 A I don't know if they like being called balloon, but
4 because the social service organizations in particular are
5 used to raise funds and procure logistical support and
6 sometimes weapons. Even for the militia and the terrorism,
7 you can't separate them out that simply.

8 It's why here in the United States Hezbollah as an
9 organization is designated as a terrorist group, not the
10 Islamic jihad organization terrorist wing or some other wing,
11 the whole bit, the political bit, the social welfare bit, it's
12 all a terrorist group.

13 Q They operate schools in Lebanon, don't they?

14 A They do.

15 Q They operate hospitals in Lebanon?

16 A They do.

17 Q And they also offer like agricultural services in Lebanon
18 for Shia Muslims, don't they?

19 A Correct.

20 Q So it's your opinion that they do all of this just to
21 support the terrorist acts?

22 A No. It's to accomplish a variety of different means.
23 One thing is to build grass root support for the organization.

24 Hezbollah wants to create within society a sense of
25 resistance, a belief in the idea of self sacrifice, what they

1 have described as martyrdom; not necessarily to necessarily
2 blow themselves up but of self sacrifice.

3 They do this through their educational institutions,
4 which don't teach what the public schools here necessarily
5 teach, they do this through hospitals and agricultural and
6 other programs that make people indebted to them, that build
7 grass root support for them at the expense of the Lebanese
8 government itself, and so it is part and parcel of their
9 overall kind of modus operandi.

10 This is not something that I believe, to answer your
11 question, this is something they articulate very openly.

12 Q Persons who don't fully understand, have an understanding
13 of Hezbollah as you do, sir, who become sympathetic to
14 Hezbollah because of the social services work that they do for
15 poor people in Lebanon and elsewhere --

16 THE COURT: Is there a question?

17 Q -- can they be sympathetic to Hezbollah and not agree
18 with the terroristic policies that you say Hezbollah espouses?

19 A Because Hezbollah is so open about the terrorist
20 activity, because of the terrorist activity, including here in
21 the western hemisphere -- we discussed two attacks
22 yesterday -- is so well-known, I argue that it's very
23 difficult for someone to argue that they are parsing out the
24 pieces of a group like that that they like.

25 There are lots of groups, including groups in

1 Lebanon, that do all the good things that you're talking about
2 but don't also go about killing people. Those are probably
3 better altruistic groups to support.

4 It's probably a stretch to argue that someone is
5 only aware of Hezbollah's social welfare activity in Lebanon
6 and is not also aware that the group is a terrorist group that
7 until 9/11 was responsible for the deaths of more Americans
8 than any other terrorist group.

9 Q I'm not trying to imply, Doctor, that a person may not be
10 aware of that part of Hezbollah.

11 My question is, can they be aware of that part of
12 Hezbollah and disagree with it?

13 A Theoretically I would imagine so. It would be kind of
14 weird for someone to disagree with a group and still support
15 it.

16 Q Dr. Levitt, I understand that you're not a
17 law-enforcement officer, but I do understand that you have
18 worked for the FBI; correct?

19 A As an analyst. I can kill you with my pen but I never
20 carry a gun. Really, I could.

21 Q I tried to read some of those articles that you wrote.
22 Dr. Levitt. You would agree with me that it's not illegal for
23 a Guyanese citizen living in Guyana to espouse sympathy for
24 Hezbollah, correct?

25 A I can't comment on any Guyanese law, but there is no law

1 here about espousing sympathy if it's nothing more than that.

2 THE COURT: When you say "here," you mean in the
3 United States?

4 THE WITNESS: Yes, ma'am.

5 Q Yesterday -- I just want to get off that topic for a
6 quick second -- yesterday you testified about Mohsen Rabbani,
7 correct?

8 A Right.

9 Q You testified that he was alleged to have participation
10 in a bombing of AMIA in Argentina?

11 A Correct.

12 Q You stated that there was a red flag, an arrest warrant
13 out for his arrest in that bombing, correct?

14 A An Interpol red note, yes.

15 Q He hasn't been convicted of the bombing, has he, in
16 absentia?

17 A No, they don't do that in Argentina. He is currently a
18 fugitive of justice.

19 Q So it's just an allegation that he's a participant in
20 that bombing, correct?

21 A Yes.

22 Q Just a couple more questions, Doctor.

23 In your research and study about Al Qaeda, have you
24 in all of your research and study up until today, have you
25 ever identified my client, Abdul Kadir, as a member of Al

1 Qaeda?

2 A Al Qaeda is a large organization. I don't know the vast
3 majority of its members. He could be a member and I wouldn't
4 know, but I did not come across his name until this trial.

5 Q You've never come across his name before this trial as a
6 member of Hezbollah, correct?

7 A Correct.

8 Q You've never come across his name until this trial as a
9 threat to American security; correct?

10 A You can ask those questions as much as you want. It will
11 still be the case, I did not come across his name until this
12 trial.

13 MR. NKRUMAH: Thank you very much, Doctor. No
14 further questions.

15 THE COURT: Any redirect?

16 MS. AHMAD: Yes, your Honor.

17 REDIRECT EXAMINATION

18 BY MS. AHMAD:

19 Q Dr. Levitt, you were just asked about the esteem in which
20 Shias around the world hold Ayatollah Khomeini and you said
21 some revere him and some extremely dislike him?

22 A Correct.

23 Q Why do some Shias extremely dislike Ayatollah Khomeini?

24 A In the first instance, as we discussed yesterday, there
25 are some people outside the Hezbollah school who revere other

1 Ayatollahs, like Ayatollah Sistani in Iraq or, until his death
2 about a week ago, Ayatollah Fadlallah in Lebanon. Ayatollah
3 Fadlallah had been a major supporter of Hezbollah. Because he
4 didn't believe in the supreme leader of Iran being the supreme
5 Ayatollah, he broke with them, as an example, even though he
6 was a major supporter of Hezbollah.

7 Also, the current regime in Iran replaced the
8 oppressive regime of the Shah in 1979 and ultimately became --
9 some would say the first instance -- but certainly has become
10 an even more repressive regime.

11 Certainly in the past year since the so-called
12 stolen election, shooting of citizens, horrible things done to
13 people in prison, there's a tremendous amount of displeasure
14 worldwide within local communities and within the Shia
15 communities over the nature of that regime and the fact that
16 that regime engages in these violent activities in the name of
17 Shia Islam. You can imagine how a Shia Muslim would be upset
18 with this being done in that fashion.

19 Q Everything that you testified about here, has that all
20 been based upon open source or public information?

21 A Yes.

22 Q Is that public information that we have been discussing
23 widely reported and well-known?

24 A Yes.

25 Q Have you reviewed any of the government's specific

1 evidence in this case?

2 A Some.

3 Q Have you listened to any tape recordings?

4 A No.

5 Q Have you watched any surveillance videos?

6 A No.

7 Q Have you received any briefings from the Joint Terrorism
8 Task Force agents who are running the case?

9 A No.

10 MS. AHMAD: No further questions.

11 THE COURT: Any recross on behalf of in DeFreitas?

12 MR. KAMDANG: No, your Honor.

13 THE COURT: On behalf of Mr. Kadir?

14 MR. NKRUMAH: No, your Honor.

15 THE COURT: Thank you, sir. You may step down.

16 THE WITNESS: Thank you very much.

17 (Witness excused.)

18 THE COURT: Can I see counsel briefly at the side
19 for one moment.

20 (Continued next page.)

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1 (Sidebar.)

2 THE COURT: Do you know if Mr. Francis is here?

3 MS. AHMAD: Yes.

4 THE COURT: Any problem with us bringing him in
5 through the side door?

6 MR. JONES: No.

7 MS. AHMAD: I don't think so.

8 THE COURT: All right.

9 MS. MESSINA: Judge, the issue I did want to raise
10 concerned my recross of Mr. Francis. We can do the redirect
11 and I can bring it up. I'm going to need a break anyway
12 potentially after the redirect to set up my computer.

13 THE COURT: We'll see how far we go. Because we
14 started a little bit earlier today I may give them a break
15 around 11 or so.

16 How long do you think you'll be?

17 MR. JONES: I'm hoping to keep it at an hour.

18 (Continued next page.)

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1 (Open court.)

2 THE COURT: As I mentioned to you, ladies and
3 gentlemen, yesterday, we had interrupted the testimony of Mr.
4 Francis so that we could accommodate the schedule of Dr.
5 Levitt.

6 So we're going to continue with just a couple of
7 minutes retrieving Mr. Francis to come on the witness stand
8 and continue with his testimony.

9 This will be redirect by Mr. Jones.

10 Good morning, Mr. Francis.

11 STEVEN FRANCIS,

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

14 THE COURT: Resume the witness seat.

15 THE WITNESS: Thank you.

16 THE COURT: Once again, I remind you, sir, that you
17 are still under oath?

18 THE WITNESS: Yes.

19 THE COURT: Again, this is redirect examination by
20 Mr. Jones on behalf of the government.

21 MR. JONES: May I approach the witness with these
22 transcripts?

23 THE COURT: Yes, you may.

24 REDIRECT EXAMINATION

25 BY MR. JONES:

1 Q Good morning, Mr. Francis.

2 A Good morning.

3 Q Mr. Francis, I'm going to ask you a series of questions
4 regarding things you were asked about over the last few days
5 on cross-examination. Okay?

6 A Yes.

7 Q If you don't understand something, ask me to repeat it;
8 if you don't understand a word I say, ask me to repeat it.
9 Okay?

10 A Yes.

11 Q What I'm going to ask you to do, just to speed things
12 along is, if possible, answer yes or no and if not, ask and
13 then give a longer answer if necessary. Okay?

14 A Yes.

15 Q I just wanted to touch quickly on something at the end of
16 yesterday, when Miss Whalen asked you some questions about the
17 very end of the conspiracy.

18 Remember those questions?

19 A Which questions?

20 Q She's asking you about a dispute that you and
21 Mr. DeFreitas had about going to see Abu Bakr. Remember that
22 series of questions?

23 A Yes.

24 Q And it was clear from the tape, was it not, Mr. Francis,
25 that you and Mr. DeFreitas were having an argument about the

1 wisdom of going to see Abu Bakr or not going to see him; is
2 that right?

3 A Yes.

4 Q At its very core, what was the problem Mr. DeFreitas had
5 with going to see Abu Bakr, what was the real problem?

6 A He became concerned of getting caught by the authorities,
7 by actually presenting -- it became more risky for him to go
8 to Abu Bakr to present the JFK plot.

9 Q Would it also be fair to say that he was becoming worried
10 about Mr. Abu Bakr's -- how dangerous it might be to go see
11 that man?

12 A Yes.

13 Q I believe you testified on cross and on direct that there
14 are other people who had told you Abu Bakr might be a little
15 dangerous?

16 A Right.

17 Q Kareem Ibrahim?

18 A Yes.

19 Q Abdul Kadir?

20 A Yes.

21 Q After this disagreement -- that was on May 25, 2007. Do
22 you recall that from the transcript?

23 A Yes.

24 Q Was that the end of the matter, was this plot over,
25 that's it, ball game, or did it keep going?

1 A Keep going.

2 Q In fact, Mr. Francis, on the very -- that was May 25th,
3 right?

4 A Yes.

5 Q Turn to page 226 in your binder.

6 THE COURT: Exhibit 226?

7 MR. JONES: 226 T. Thank you, your Honor. If the
8 jury would indulge, pull that out, please.

9 Q Can you tell from the cover page of that transcript when
10 this conversation took place?

11 A May 26, 2007.

12 Q So the very next day?

13 A Yes.

14 Q You and Mr. DeFreitas had already had that argument,
15 correct?

16 A Yes.

17 Q Turn to page 12. I focus your attention on line 26, I
18 won't play it, but he says, My opinion, Sheik -- and sheik
19 there, he's talking about Kareem Ibrahim; is that right?

20 A Yes.

21 Q My opinion, Sheik, you got to make a lot of decisions
22 right now for yourself and us because we got to get certain
23 things off the ground.

24 That's Mr. DeFreitas?

25 A Yes.

1 Q And Mr. Ibrahim says yeah. Mr. DeFreitas says, We ain't
2 got no time to wait. Kadir, I know he's, he's hungry. Our
3 mission is to see that it's accomplished. Yeah.

4 What mission still need to be accomplished?

5 A The JFK plot.

6 Q You were asked a series of questions on cross-examination
7 about how many trips you had taken to Guyana over the years,
8 and we heard a lot of testimony about that, correct?

9 A Yes.

10 Q To be clear, the judge also asked you at one point, when
11 Miss Whalen asked you how many trips you had taken, she asked
12 you, are these trips in regard to the plot or trips overall,
13 and you said trips about the plot, correct?

14 A Yes.

15 Q Had you ever been to Guyana before this plot?

16 A No.

17 Q Did you know anyone in Guyana?

18 A No.

19 Q Before you met Russell DeFreitas had you traveled to
20 Trinidad?

21 A No.

22 Q Was it your idea to go down to Guyana?

23 A No.

24 Q Who was it that first suggested to you that you go down
25 to Guyana?

1 A Sheik Mohammed.

2 Q You were asked several questions by Miss Whalen about why
3 Russell DeFreitas was going down to Guyana on the first trip.

4 Do you recall those questions?

5 A Yes.

6 Q And I think you testified that he had some other -- some
7 business things to do as well as going down to meet with you
8 Nero and Rutherford; is that right?

9 A Yes.

10 Q Before you went down to Guyana on your first trip, do you
11 know whether Russell DeFreitas was having other meetings in
12 Guyana about a plot to blow up JFK Airport?

13 A Yes.

14 Q How do you know that?

15 A Well, he explained to me that he was going to meet with
16 the guys before my arrival.

17 Q What about before you had even met him, did he ever tell
18 you whether or not he had had conversations with these people
19 about the plot before you even met Russell DeFreitas?

20 A Yes.

21 MS. WHALEN: Objection.

22 THE COURT: Rephrase, please.

23 Q You had lots of discussions with Russell DeFreitas; is
24 that correct?

25 A Yes.

1 Q Did Russell DeFreitas ever tell you whether or not he had
2 had conversations about this idea before you met him?

3 A Yes.

4 Q And he had?

5 A Yes.

6 Q Now, when you had conversations with Donald Nero and Mr.
7 Rutherford and the others on the first trip, when you talked
8 to them, did anyone react as though this was the first time
9 they were hearing about it?

10 A No.

11 Q Miss Whalen asked you several questions about a telephone
12 call that you had with Rutherford in December of 2006. Do you
13 remember those questions?

14 A Yes.

15 Q There was a lot of discussion about when Mr. DeFreitas
16 was going to come back to New York. Do you remember those
17 questions?

18 A Yes.

19 Q I'm going to show you what's been marked as, I believe
20 it's RDA, Defense A, and -- I don't know if this is in the
21 jurors' book, but I'm going to ask you to take a look at it
22 (Handing.)

23 THE COURT: This transcript is not in the jury's
24 binder. It was played for the jury.

25 MR. JONES: Yes.

1 Q Can you just look at that briefly.

2 A Yes.

3 Q Read the top few lines for now.

4 A Yes.

5 Q Does this refresh your recollection about the tape that
6 Miss Whalen played and the conversation you had with
7 Rutherford in December?

8 A Yes.

9 Q You're asking him what's going on with the rest of the
10 story, remember asking that?

11 A Yes.

12 Q What's up with the shining, correct?

13 A Yes.

14 Q And you're trying to find out travel dates for people; is
15 that right?

16 A Yes.

17 Q Why are you so concerned with what date people are
18 traveling on, why did you need that information?

19 A I needed to give it to the FBI again. They were
20 concerned about the matter Rutherford had said that it was
21 Christmas, actually, that it needed to be done and no one knew
22 exactly which Christmas.

23 So it would be devastating actually if JFK was blown
24 up and naturally people wasn't aware of that if it was
25 Christmas of 2006.

1 Q Were you surprised that the FBI wanted to know when
2 people would be flying to carry out a terrorist attack?

3 A No, not at all.

4 Q Without giving us any detail, during the course of your
5 work as a confidential informant, were there other times,
6 unrelated to the people in this courtroom, that you tipped off
7 the FBI to terrorist threats?

8 A Yes.

9 Q Were you in charge of Russell DeFreitas's travel?

10 A No.

11 Q Did you demand that he travel on any particular date?

12 A No.

13 MS. WHALEN: May we briefly approach?

14 THE COURT: Yes.

15 (Continued next page.)
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1 (Sidebar.)

2 THE COURT: Just for the record, my deputy is
3 checking with Alternate Number five about a lunch order.

4 MS. WHALEN: It's not this question per se that I
5 have an objection to, and I'm sort of hesitant to bring this
6 up because it's going so quickly, but it is redirect and
7 asking this series of questions is pretty much
8 cross-examination.

9 All of these questions are leading. I understand
10 the need to sort of refocus him to an area but once Mr. Jones
11 gets him refocused, I think the question should turn back into
12 direct questioning and not leading questions.

13 MR. JONES: I will try to do that, your Honor. I'm
14 confident -- I understand the objection. I'm trying.

15 MS. WHALEN: I understand.

16 THE COURT: As we have discussed before, it's very
17 difficult to get the witness focused on a particular area. To
18 a certain degree I have had to give counsel some sort of
19 leeway --

20 MS. WHALEN: Understood.

21 THE COURT: -- on both sides.

22 (Continued next page.)

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1 (Open court.)

2 THE COURT: Do you want to have the last question
3 read back or do you want to rephrase?

4 MR. JONES: I will ask again.

5 Q Did you ever demand that he travel on any particular
6 date?

7 A No.

8 Q On cross-examination you were asked questions about your
9 trips to the airport with Russell DeFreitas. Do you recall
10 being asked those questions?

11 A Yes.

12 Q Do you remember being asked about a conversation that you
13 had with Mr. DeFreitas about what he did at the airport,
14 remember those questions?

15 A Yes.

16 Q If you could turn to 204 T, please.

17 A Yes.

18 Q You were asked some questions about this, on page two,
19 about jobs that Mr. DeFreitas had the airport and his
20 expertise.

21 Do you remember those types of questions?

22 A Yes.

23 Q Turn to the next page, page three, start at line nine.

24 Mr. DeFreitas says, I asked for a transfer and they wouldn't
25 give me a transfer. I just wanted to do something against

1 those bastards.

2 Who was he referring to?

3 A His boss at the Evergreen.

4 Q Evergreen --

5 A Meaning the place that he used to work for.

6 Q If you could turn to 205 T.

7 Again these were questions about driving around the
8 airport. Look at the top of page two. Remember being asked
9 about this portion of the transcript?

10 A Yes.

11 Q Miss Whalen asked you whether or not he was in a hurry to
12 get his luggage.

13 Do you remember that?

14 A Yes.

15 Q Abdollah had his luggage, I believe you testified; is
16 that correct?

17 A Yes, in the basement.

18 Q In the basement of what?

19 A Of his store, of Abdollah's store.

20 Q Not at the airport?

21 A No.

22 Q When Mr. DeFreitas says at line 17, let's go to the
23 airport, I feel like going there now, and then at line 22
24 says, cannot waste a day.

25 Cannot waste a day to do what?

1 A To do the surveillance and taking of the video of the
2 airport.

3 Q Turn to page four. Focus your attention to the top of
4 the page. You ask him, So this is the area where we have to
5 play rough? He says yes. Yes, see you, it's smart.

6 What area were you in when he said this?

7 A JFK Airport.

8 Q You were asked several questions about whether or not you
9 were on restricted areas or public roads, remember those
10 questions?

11 A Yes.

12 Q There's a reference to going into a back way. Remember
13 testifying about that?

14 A Yes.

15 Q What does that mean?

16 A That means that it was -- that place was turned into a
17 one-way and it's not really known to the people that you can
18 enter from the back, only that is a one way out. So unless
19 you have knowledge that you can go in through the back, you
20 won't be able to because it's restricted from that way.

21 Q How close were you able to get to the fuel tanks?

22 A Very close.

23 Q Had you ever seen those tanks before?

24 A No, not before.

25 Q Were there signs on the roads where you were driving

1 around that said "fuel tanks here"?

2 A I don't recall seeing that.

3 Q "Pipelines running underground," did you see any signs
4 like that?

5 A No.

6 Q Miss Whalen asked you a series of questions about whether
7 or not Russell DeFreitas ever actually showed you anything
8 about his work at the airport.

9 Remember those questions?

10 A Yes.

11 Q Well, did he ever show you a photograph from his days at
12 the airport?

13 A Yes.

14 Q What kind of photograph was it?

15 A It is a photograph that he took. He said that they
16 weren't allowed cameras inside the airport and he had taken a
17 Polaroid camera, one of those instant Polaroid cameras that
18 will take a picture and you can see it right away, and while
19 he was in front of the cargo plane, he took the picture of the
20 plane.

21 Q Now, if you could turn to 211, please. Page 11, line 18.
22 Are you with me?

23 A Yes.

24 Q There were questions about this paragraph in terms of
25 Mr. DeFreitas saying he had some bomb making back in Guyana;

1 remember those questions?

2 A Yes.

3 Q Was he talking about a sophisticated piece of explosives,
4 TNT or rockets or anything like that?

5 A No.

6 Q You testified that there was something about a bottle
7 filled with gasoline and metal; is that right?

8 A Yes.

9 Q And a wick; is that correct?

10 A Yes.

11 Q Ever heard of a Molotov cocktail?

12 A Sound familiar, yes.

13 (Continued next page)

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1 EXAMINATION CONTINUES

2 BY MR. JONES:

3 Q Based on your conversation with Mr. DeFreitas, what was
4 the point of putting metal fragments into a bottle filled with
5 gasoline and lit on fire?

6 MR. NKRUMAH: Objection.

7 THE COURT: Sustained as to form.

8 Was there discussion with Mr. DeFreitas and the
9 witness?

10 Q Did Mr. DeFreitas tell you why metal pieces in an
11 explosive bottle were important?

12 A Yes.

13 Q Why?

14 A Because when the bottle explodes the metal pieces will
15 get anyone who is passing by.

16 Q Did Mr. DeFreitas ever claim that he could actually blow
17 up anything at the airport himself?

18 A Not himself.

19 Q At the bottom of that paragraph, at line 31 and 32, it
20 says, Mr. DeFreitas says, I ain't saying I'm brilliant but
21 very knowledgeable.

22 Is that correct?

23 A Yes.

24 Q Now, based on your conversations with Mr. DeFreitas,
25 let's say in January of 2007, did Mr. DeFreitas have the men

1 necessary to run in and carry out an attack at JFK Airport
2 yet?

3 A No.

4 Q Did he have the money to carry that out?

5 A No.

6 Q Could he do this without help according to what he told
7 you?

8 A No.

9 Q Who were some of the people that might help?

10 A Sheik Abdul Kadir, Sheik Abdul Wahab, Sheik Abu Bakr, and
11 Sheik Ibrahim too. Sheik Rutherford, of course.

12 Q Now, you were asked a bunch of questions about various
13 ideas that Mr. DeFreitas had.

14 Do you remember those questions?

15 A Yes.

16 Q The job -- business ideas he had, correct?

17 A Yes.

18 Q Ms. Whalen asked you some questions about this water
19 machine that you could sell to people, right?

20 A Yes.

21 Q Well, that water machine, or that purification system, do
22 you know if anybody actually bought that system?

23 A Yes.

24 Q Who was that?

25 A Builder from Brooklyn.

1 Q Is he currently selling that water to people?

2 A Yes. He was selling.

3 Q People buy this stuff?

4 A Yes.

5 Q And you mentioned this idea about harnessing electricity
6 from a waterfall.

7 Do you remember those questions?

8 A Yes.

9 Q In your experience in Guyana, is there a lot of wealth
10 and infrastructure in Guyana?

11 A I'm sorry?

12 Q Any power problems when you were there?

13 A Power like electricity?

14 Q Yes.

15 A Yes.

16 Q Have you ever heard of generating power from falling
17 water?

18 A Yes.

19 Q Have you ever heard of hydroelectric power?

20 A Yes.

21 Q Now, there was one conversation that you had with
22 Mr. DeFreitas and Ms. Whalen asked you about it and it ended
23 in you and Mr. DeFreitas laughing about one of his ideas.

24 Do you remember that?

25 A Yes.

1 Q I would like to direct your attention back to 211 T. We
2 are going to start on page seven. I am just going to play a
3 clip that's about a minute long.

4 Permission to publish, Your Honor?

5 THE COURT: Yes. Okay.

6 MR. JONES: I'm sorry. I am on the wrong -- one
7 second.

8 (Tape plays; tape stops.)

9 Q Did you hear any laughing after he said that,
10 Mr. Francis?

11 A No.

12 Q If you will turn to 210 and directing your attention to
13 page two.

14 I will play a portion at the bottom. It will pick
15 up somewhere around line 23.

16 (Tape plays; tape stops.)

17 Mr. DeFreitas there says, he's talking about showing
18 an Arab, he says, where to put a suitcase and just put it down
19 and walk away.

20 Where is he talking about doing that?

21 A We were in the airport. He's actually talking about
22 the -- that he can actually train somebody to just walk into a
23 terminal and blow the whole terminal up without being
24 detected.

25 Q You were asked some questions I think yesterday about

1 this idea of who could go in and actually carry out the attack
2 and I believe the word was sort of Mr. DeFreitas said
3 something about Ninja style, or something like that.

4 Do you remember that?

5 A Yes.

6 Q You did security work at a mosque, didn't you,
7 Mr. Francis?

8 A Yes.

9 Q What mosque was that?

10 A Masjid Taqwa.

11 Q Did you ever run into other security guards at some of
12 these mosques?

13 A Yes.

14 Q How did some of those guards dress?

15 A Completely black.

16 Q What about their faces and their heads?

17 A Their heads are covered. Lot of times we wear the black
18 kufi or which is black hat or religious hat, sometimes a black
19 turban. Most will actually darken their beards and the
20 impression is very -- very threatening, and at night you can
21 barely -- you barely can be seen at night.

22 Q Let's talk about the videos of the airport.

23 There was a lot of questioning about the -- how the
24 video was being filmed and where Mr. DeFreitas was.

25 Do you remember those questions?

1 A Yes.

2 Q You have seen the video over the course of the last few
3 days that he was taking on that camera.

4 Do you remember those questions?

5 A Yes.

6 Q Was that perfect footage?

7 A No.

8 Q There were obstacles in the way, correct?

9 A Yes.

10 Q Seemed a little amateurish, right?

11 A Yes.

12 Q From your meetings and discussions with Mr. DeFreitas,
13 did the video need to be perfect?

14 A No.

15 Q Was it useful?

16 A Yes.

17 Q For what?

18 A To display the landmarks that he was actually talking
19 about.

20 Q Did you have any conversations with Mr. DeFreitas about
21 the quality of the video not being particularly good?

22 A Yes.

23 Q What did he want you to do about that?

24 A He wanted me to -- to correct some of the video.

25 Q What about whether or not to play sound?

1 A Yes.

2 Q Did he want you to play it or not play it?

3 A Not play the sound.

4 Q You were asked some questions about Abdel Nur, and if I
5 can focus your attention on 219 T, please.

6 I will direct your attention to page 11, if you
7 would.

8 This is a conversation between you and
9 Mr. DeFreitas, is that right?

10 A Yes.

11 Q Ms. Whalen asked you about the middle portion here, when
12 Abdel -- Mr. DeFreitas says that Abdel Nur was basically
13 begging, is that right?

14 A Yes.

15 Q He wanted out of Guyana, is that right?

16 A Yes.

17 Q From your understanding of talking to Abdel Nur, was
18 there something that was rushing him out of Guyana, other than
19 this financial issues?

20 A Yes.

21 Q What was that?

22 A He was facing problems with the law at the time.

23 Q When Mr. DeFreitas says at line 21, yes, yes. That thing
24 touched me, man.

25 What had touched him?

1 A It touch him that the guy was in despair. He did -- he
2 didn't want to stay in Guyana. He didn't want to go to jail
3 and it touch him that the guy was actually begging to get out
4 because he did not want to get caught by the police.

5 Q Ms. Messina asked you a couple of days ago if anyone in
6 this room had ever hurt you in Guyana.

7 Do you remember that?

8 A Yes.

9 Q Did anybody in connection with this conspiracy ever put
10 you in a martial arts head lock?

11 A Yes.

12 Q Who was that?

13 A Sheik Abdul Kadir.

14 MS. MESSINA: Objection.

15 THE COURT: Overruled.

16 Q Who was that?

17 A Sheik Abdul Kadir.

18 Q Did anybody else do that while you were in Guyana?

19 A No. It was actually only the attackers when I was robbed
20 by my phones.

21 Q Did that incident have anything to do with your decision
22 not to wear a wire the next time you saw him?

23 A Yes.

24 Q Ms. Messina asked you several questions about how often
25 you reported back to your handler, Louie Napoli.

1 Do you recall those questions?

2 A Yes.

3 Q Was it easy for to you find the time to call the FBI?

4 A No.

5 Q Was it your practice to sit in on a meeting and tell
6 everybody, hold on, I have to go make a phone call?

7 A No.

8 Q Did you take notes while you sat there at these meetings?

9 A No.

10 Q When you did call back to the FBI, was it possible to get
11 every detail of everything that happened into the time since
12 you last spoke to him?

13 A No.

14 Q Did you always call in the middle of the day, convenient
15 times?

16 A Yes. And sometimes even late at night.

17 Q So you'd wake up Detective Napoli, is that right?

18 A Yes.

19 Q You were asked several questions by I believe Ms. Messina
20 about the time -- and Ms. Whalen -- the time Mr. DeFreitas was
21 searched at the airport.

22 Do you remember that?

23 A Yes.

24 Q Do you remember Ms. Messina asking you whether the
25 defendant Kadir was at all concerned about that.

1 Do you remember that?

2 A Yes.

3 Q Did you have any conversations with Mr. Kadir about
4 whether you and Mr. DeFreitas should take some precautions
5 after that happened?

6 A Yes.

7 Q If you could look at 223 T, please?

8 I will be referring to pages -- pages six and seven.

9 At line 42, Mr. Kadir says, anything in terms of
10 security and whatnot, talk to them. They are going to make
11 sure that that is set right.

12 Who is he telling you to talk to?

13 A The brothers in Trinidad.

14 Q The ones that were going to pick you up?

15 A Yes.

16 Q The next page, towards the bottom, line 39, he says, the
17 other thing too, when you are travel, don't walk with anything
18 this can implicate you.

19 What did you have that might implicate you?

20 A The -- the Google maps of JFK Airport and video.

21 Q In your experience over all the months in which you have
22 been testifying about, did Mr. Kadir often speak openly about
23 this plot on the telephone?

24 A Yes.

25 Q Did he use the words "airport" or did he use other words

1 to talk about it?

2 A Other words.

3 Q In fact, did he suggest a new term for the plot?

4 MR. NKRUMAH: Objection.

5 THE COURT: Overruled.

6 A Yes.

7 Q What was that?

8 A The chicken and the eggs, the chicken hatchery and
9 chicken farm.

10 Q You were asked some questions earlier about the days, the
11 times you spent as a drug dealer in your life.

12 Do you remember that?

13 A Yes.

14 Q Was it common as a drug dealer to talk in code or to
15 use -- would you just say hey, I need some cocaine?

16 A No. You use codes.

17 Q Now, Ms. Messina asked you a bunch of questions about
18 what Kadir told you about his connections.

19 Do you recall those questions?

20 A Yes.

21 Q And if you can turn to 214 T? Start at page nine,
22 please.

23 Ms. Messina asked you the following question:

24 You were the first person in this conversation who
25 mentions anything about Google Earth.

1 Do you remember that question?

2 A Yes.

3 Q And then nothing in the -- that's the first time that
4 Google Earth comes up? That's true, isn't that right?

5 A Yes.

6 Q But if you can turn back to page five, Mr. Francis, line
7 37, he says, okay, okay, I should be hearing something from
8 those folks about the chickens early next week.

9 Did you bring that up or did he bring it up?

10 A Sheik Kadir did.

11 Q If you will turn to 216 T? . We are going to start at
12 line 42. I am just going to play a brief clip.

13 (Tape plays; tape stops.)

14 Mr. Francis, at line nine, says twice right now.

15 Do you see that?

16 A Yes.

17 Q Line 14, line 18 again, right now?

18 Correct?

19 A Yes.

20 Q Then line 22, they are going to keep in mind in case
21 anything comes up, you know.

22 Is that right?

23 A Yes.

24 Q Now, you testified that you actually went back down to
25 Guyana after this conversation, didn't you?

1 A Yes.

2 Q After this conversation, did you meet again with the
3 defendant Kadir?

4 A Yes.

5 Q Did he -- did you talk about the actual plot or just
6 random other things?

7 A We spoke about the plot and as well as other things, yes.

8 Q At what point in that conversation or any of the
9 conversations you had while you were in Guyana, did Mr. Kadir
10 tell you, this is nuts? You guys want to bomb an airport, get
11 out of my house.

12 Did he ever say that?

13 A No.

14 Q In fact, when he heard you were coming back to Guyana,
15 was he pleased or displeased?

16 A He was very happy.

17 Q Turn to 217 T, please?

18 A Which number again?

19 Q I'm sorry. 217 T?

20 A Thank you.

21 Q We will start at the bottom of the page, at line 43.

22 (Tape plays; tape stops.)

23 Just in terms of timing, chronology of this,
24 Mr. Francis?

25 A Yes.

1 Q You have already discussed with Mr. Kadir this idea to
2 blow up an American airport, is that not right?

3 A Yes.

4 Q And he's -- you are now calling and wanting to come back
5 and talk to him about it, is that correct?

6 A Yes.

7 Q Now, there was a -- a Bilal mentioned, actually the line
8 before the tape picked up at line 40.

9 Which Bilal was that?

10 Was this Rutherford, Rutherford or the other Bilal?

11 A Which page again?

12 Q I'm sorry. Page two, line 40.

13 A This is Bilal in the US.

14 Q What organization did you say Bilal had been associated
15 with?

16 A JAM.

17 Q Was that the last conversation that you had with
18 Mr. Kadir about coming down to Guyana?

19 A No.

20 Q If you will turn to page -- tab 219 T? We will pick it
21 up at page four.

22 (Tape plays; tape stops.)

23 It's actually on page five. My fault. Page five,
24 line 16.

25 MS. WHALEN: Tab?

1 MR. JONES: 219 T, at line 16.

2 Q You are asking him if he is able to help you meet with
3 who?

4 A Abu Bakr.

5 Q About the plot?

6 A Yes.

7 Q His response is yeah, sure, God willing, is that right?

8 A Yes.

9 Q Ms. Messina asked you some questions about whether or not
10 there are any recordings that you made that actually capture
11 you showing the video to Mr. Kadir.

12 Do you remember those questions?

13 A Yes.

14 Q You testified no, you didn't record that meeting where
15 you did that, right?

16 A Yes.

17 Q Well, if you could turn to 224 T, please? We are going
18 all the way to page -- line -- line 48. 224 T, line 48. We
19 will pick up around -- I think it's going to be around line
20 14.

21 (Tape plays; tape stops.)

22 Hold it.

23 Bear with me.

24 (Tape plays; tape stops.)

25 Sorry. We are on -- this is actually on page 55.

1 (Tape plays; tape stops.)

2 Speechless about what?

3 A About the -- about the way that Sheik Mohammed had
4 presented the matter of John F.K. Airport plot.

5 Q If you could turn to -- well, 226 T.

6 All right. Page 12, the bottom. Again, this is
7 where Mr. DeFreitas says, ain't got no time to waste.

8 Kadir is hungry.

9 Correct?

10 A Yes.

11 Q That's after all these meetings and phone calls with
12 Mr. Kadir about needing some time, is that right?

13 A Yes.

14 Q Did Mr. Kadir ever tell you whether or not his contacts
15 in Iran and Venezuela liked the idea or not?

16 A Yes, he did.

17 Q What did he say about that?

18 A That they liked the idea.

19 Q You were asked by Ms. Messina whether Mr. Kadir ever told
20 you the names of those people.

21 Did he?

22 A No, I don't remember. No.

23 Q Did he tell you anything about them?

24 A Yes.

25 Q Did he tell you whether or not they might have the power

1 or the money to carry this thing out?

2 A Yes. They were contacts with abilities, yes.

3 Q You just didn't know the names, correct?

4 A No names.

5 Q At this point you and the jury can put away your binders.

6 I just have a couple of more topics to go over,

7 Mr. Francis. Then I will be done.

8 You were asked a lot of questions over the last few
9 days and shown a lot of documents.

10 Do you remember that happening?

11 A Yes.

12 Q You were shown documents that were identified to you and
13 you read them on your screen up there, do you remember that?

14 A Yes.

15 (Continued on next page.)

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1 BY MR. JONES:

2 Q Those documents that you were shown, did you ever sit
3 down and type up any of those documents?

4 A No.

5 Q Before defense counsel showed them to you had you ever
6 seen them before?

7 A No.

8 Q Sometimes you were asked to read these to yourself up
9 there, right?

10 A Yes.

11 Q Is English your first language?

12 A No.

13 Q Did the government ever let you sit down and read these?

14 A No.

15 Q Did anyone ever tell you that you need to say whatever
16 was in these documents?

17 A No.

18 Q Do you remember being asked some questions on
19 cross-examination about instructions that the FBI gave you
20 during this investigation?

21 A Yes.

22 Q Questions about what the government told you about the
23 case and the investigation, do you recall that?

24 A Yes.

25 Q When the FBI found you, sir, and asked you to go and talk

1 to Mr. DeFreitas, did they tell you what they knew about --
2 did they tell you what they knew about him?

3 A No.

4 Q Did they tell you why you should go talk to him?

5 A No.

6 Q Did anyone else -- did anyone in the United States
7 government, Special Narcotics, or anyone else, ever tell you
8 who else may be cooperated in this case?

9 A No.

10 Q Did they ever tell you whether or not, when you were
11 doing things, you might be under surveillance?

12 A No.

13 Q Those pictures -- and I won't put them back up here --
14 the pictures we saw of you and some of the defendants -- Abdel
15 Nur, Russell DeFreitas and Kareem Ibrahim in Trinidad, do you
16 remember seeing those pictures?

17 A Yes.

18 Q Were you aware at the time that you were being
19 photographed?

20 A No.

21 Q When you were making these recordings and -- how many
22 hours of recordings do you think you've made?

23 A A lot.

24 Q During all that time, all of the times you were tape
25 recording calls and meetings, did the FBI ever tell you what

1 other informants or other evidence they might have?

2 A No.

3 Q When you were making those recordings -- withdrawn.

4 As you sit here today, other than the testimony that
5 you have given and the things that you have been shown by
6 defense counsel, do you know what other evidence there is in
7 this case?

8 A No.

9 MS. MESSINA: Objection, Judge.

10 THE COURT: Overruled.

11 Q Do you know what exhibits have been entered into
12 evidence?

13 A No.

14 Q Do you know who else is testifying?

15 A No.

16 Q You were asked a lot of questions about money, about
17 money provided to you as you worked for the FBI. Remember
18 that?

19 A Yes.

20 Q You were an informant through 03 or 04, you said?

21 A Yes.

22 Q You worked on other investigations, you said?

23 A Yes.

24 Q How did it work with the payment, was it the case that if
25 you came in with a good piece of information you got a reward

1 is that how it worked?

2 A No.

3 Q THE COURT: I'm sorry. Do you mean the payments by
4 the FBI?

5 MR. JONES: Yes, your Honor.

6 MS. WHALEN: Can we approach briefly?

7 THE COURT: Yes.

8 (Continued next page.)

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1 (Sidebar.)

2 MS. WHALEN: At this point, this line of questioning
3 has been clearly leading questions for a long time. Now that
4 he's getting back into the terms of his cooperation, I think
5 it really has got to switch back to direct examination.

6 MR. JONES: I asked him if he got rewards.

7 MS. WHALEN: You're asking him did you get money in
8 response for specific pieces of information. You have to
9 open --

10 MR. JONES: Why is that not a fair question?

11 MS. WHALEN: I don't think it's worded properly.
12 You're leading him and not directing him.

13 THE COURT: I disagree. I don't know how else he
14 would ask that question. What would he ask?

15 MS. WHALEN: How did you get paid? What basis did
16 you receive the money on? Did you get it for specific
17 information or did you get it as a monthly salary?

18 MR. MILLER: The last question, did you get paid for
19 information, how is that different than --

20 THE COURT: Please.

21 I don't see a problem with the question as asked.
22 Did you get paid for certain information? Did you get paid
23 for this or did you get paid for that? I don't see any
24 problem with that.

25 It would be a problem if he made a statement -- I

1 meant Mr. Jones -- if Mr. Jones made a statement and then
2 asked if that is correct or yes or no, or something like that,
3 but --

4 MR. JONES: I think he answered it.

5 I won't go back to it. I think he answered it
6 before the objection was made so I will go to the next
7 question.

8 MS. WHALEN: Again, it's not to that specific
9 question but the leading nature of it.

10 THE COURT: All right.

11 (Continued next page.)

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1 (Open court.)

2 BY MR. JONES:

3 Q The question I was about to ask you is, if you had not
4 gotten money, could you have continued to work as a full-time
5 confidential informant?

6 A No.

7 Q Did you actually at some point in this investigation try
8 to get a job?

9 A Yes.

10 Q And did the FBI make you quit the job?

11 A Yes.

12 Q Now, you were asked some questions about your first
13 narcotic conviction. Do you remember those questions?

14 A Yes.

15 Q You pled guilty to which crimes?

16 A To racketeering.

17 Q When you were first -- the racketeering, that is what you
18 testified was the attempted murder?

19 A Yes.

20 Q Was that the crime you originally were indicted for?

21 A No.

22 Q What did the grand jury indict you for first?

23 A For possession of 50 grams of crack cocaine.

24 Q Is that crime as serious as the one that you ended up
25 pleading guilty to?

1 A No.

2 Q Did the grand jury indict you for the more serious crime
3 or did you plead guilty on your own?

4 MS. MESSINA: Objection, Judge.

5 THE COURT: I'm sorry. Read the last question.

6 (Record read.)

7 THE COURT: Sustained as to the form of the
8 question.

9 Just for clarification, are you talking about the
10 federal case at this point?

11 MR. JONES: The first case, the federal case, your
12 Honor.

13 Q Are you aware of what is called a grand jury, Mr.
14 Francis?

15 A Yes.

16 Q The second crime, the more serious crime, the one that
17 you pled guilty to, is that something that the grand jury
18 indicted you for or is it something that you were charged with
19 without a grand jury?

20 A It was something that I was charged with without a grand
21 jury.

22 Q How did that come about, was it your -- withdrawn.

23 You mentioned before that you cooperated on that
24 case?

25 A Yes.

1 Q Did you admit to what you did?

2 A Yes.

3 Q You were asked some questions about the state drug case
4 that you are currently facing.

5 A Yes.

6 Q Did you own those drugs yourself?

7 A No.

8 Q You were asked some questions about this, about how you
9 drove them from New Jersey, remember that?

10 A Yes.

11 Q That's what you did, you drove the drugs around and
12 helped sell them, right?

13 A Yes.

14 Q The people who you worked for, the people you were
15 driving the drugs around for, did they allow you to take those
16 drugs and sell them how you wanted to?

17 A No.

18 Q If you had done that, if you took the drugs and sold them
19 how you wanted to, what was your impression of what might
20 happen to you?

21 A I wouldn't be sitting here right now. I will be dead by
22 now.

23 Q Miss Messina asked you whether or not you think you got
24 out of a very long sentence, remember that?

25 A Yes.

1 Q You testified you spent somewhere in the neighborhood of
2 seven years in a federal penitentiary; is that right?

3 A Yes.

4 Q Is that an enjoyable time of your life?

5 A No.

6 Q Do you think you got a pass, did you get off easy?

7 A No.

8 Q Do you remember being asked about your current agreement
9 with Special Narcotics. Do you remember those questions?

10 A Yes.

11 MR. JONES: I'm showing the witness Government
12 Exhibit 85, your Honor, which is evidence.

13 Q Mr. Francis, is that the agreement.

14 A Yes.

15 Q That agreement requires you to provide information on
16 narcotics crimes; is that right?

17 A Repeat the question.

18 Q The agreement requires you to provide information on
19 narcotics crimes; is that correct?

20 A Yes.

21 Q You've already -- have you already done that, Mr.
22 Francis?

23 A Yes.

24 Q I believe you testified when one of defense counsel asked
25 you, you already testified in the grand jury; is that correct?

1 A Yes.

2 Q Turn to the page in that agreement that says that you
3 have to provide information on terrorism investigation.

4 A No, there's -- it doesn't say this. This is for
5 narcotics, actually.

6 Q Can you turn to the page where it says Russell DeFreitas.

7 A No.

8 Q Abdul Kadir, is his name in there?

9 A No.

10 Q Do you believe that however long you end up serving in a
11 state prison has anything to do with the two men that sit in
12 this courtroom?

13 A No.

14 Q How old are you, Mr. Francis?

15 A I'm going to be 40-years-old.

16 Q If you lie about something in court, how old do you think
17 you're going to be when they let you out of jail?

18 A I don't know that. 70-years-old, maybe. More. I don't
19 know.

20 Q You might not ever get out of jail?

21 A Yes.

22 Q You have any doubts about that?

23 A No doubts.

24 MR. JONES: No further questions, your Honor.

25 THE COURT: All right. We're going to take a break

1 at this point.

2 As you know by now, the procedure is that the
3 defendants are entitled to recross examination of the witness
4 so we'll need you for a little while longer, Mr. Francis.
5 This is cross-examination so you can't discuss your testimony
6 with anyone from the government team.

7 Ladies and gentlemen, as you know the drill already,
8 you have to keep an open mind and not form or draw any
9 opinions or conclusions about this case.

10 This is a shorter break so you can't use your
11 cell-phones at this point in time. You can't look at, read,
12 listen to in any way, shape or form anything that might be
13 reported about this case or do any kind of research about this
14 case over any kind of media, and you can't talk about this
15 case among yourselves or with anyone else.

16 I guess we'll probably resume around 11:10, 11:15 or
17 so, to give you a rough idea.

18 (Jury leaves.)

19 THE COURT: Be seated.

20 You're entitled to take a break, Mr. Francis, so you
21 can step down.

22 (Witness leaves the courtroom.)

23 MS. MESSINA: There is something I wanted to bring
24 up when Mr. Francis leaves.

25 THE COURT: Yes.

1 MS. MESSINA: There was a motion the People made to
2 curtail the defense from inquiring about Mr. Francis'
3 dalliance with the daughter of Abdel Nur, Mona Nur.

4 The court ruled that that would be inappropriate to
5 investigate. I'm asking the court to reconsider its decision
6 in light of our submission that he had opened the door to that
7 examination on the following basis.

8 Mr. Francis had been holding himself out to the jury
9 as someone who worked only on the direction of Mr. DeFreitas
10 or others in the plot, that he had no independence, that he
11 made no judgments on his own, that he wasn't doing this in any
12 way for his own self-interest.

13 Specifically, Judge, he said -- that's the overall
14 theme. Specifically yesterday, Judge, when transcript 230 T
15 was put into evidence by Miss Whalen, there was a discussion
16 about the whole issue who was running, who was conducting this
17 train, and he made in all of his answers a point of saying, I
18 was just doing whatever Mr. DeFreitas wanted me to.

19 He said in the transcript on page nine, if he said
20 let's go eat, let's go drink some rum, okay -- in other words,
21 let me go back just a bit to put it in context.

22 He brings up a series of incidents where if he's
23 asked to do it, he might exercise some self judgment if it was
24 something clearly bad is what the implication is. So he's
25 saying, I'm not going to do everything you ask, for example,

1 if you ask, let's go eat, let's go drink some rum okay, then
2 he says, or let's go and fornicate, and Ibrahim Kareem says
3 okay and then Francis says, I will tell him, I won't be a part
4 of that.

5 So now he's putting himself up in a certain position
6 where he's claiming a certain morality, that he won't go
7 outside of the realm of what is appropriate, such as the
8 things that it seems to me in this conversation Islam
9 prohibits, like drinking rum, fornication, eating pork -- he
10 says that as well.

11 Now, that is contradicted specifically by the
12 fact -- and the government concedes to this -- that he had
13 sexual relations with Mona Nur.

14 We had been told we can't go into this. Now he's
15 put himself --

16 THE COURT: Nobody said anything about sexual
17 relations, just some sort of involvement with Nur's daughter.

18 MS. MESSINA: Our investigation has shown that he
19 had sexual relationships. Maybe the government can
20 corroborate that.

21 MR. JONES: First of all, it's irrelevant. Second
22 of all, I'm not aware of anywhere that we have ever argued
23 that Mr. DeFreitas had some control or lack of control over
24 Mr. Francis' romantic life. It's absurd.

25 The suggestion that the reason Miss Messina wants to

1 put that into evidence is to rebut part of an argument he was
2 having metaphorically speaking with this group of people, I
3 think is ridiculous.

4 I think the real reason clearly she wants it in is
5 to embarrass this witness in front of the jury and paint him
6 as a philanderer or whatever, and I think it's wildly
7 inappropriate.

8 THE COURT: The application is denied. It still has
9 no relevance here and the direct conversation says, well, if
10 you gave me orders to do XY and Z.

11 Did anybody give him orders to go and have an affair
12 with Miss Nur? I don't think so.

13 MS. MESSINA: That is my point. He went and did it
14 on his own.

15 THE COURT: Miss Messina, I gave you my ruling. You
16 want to note your exception, you note your exception, all
17 right, but this business of getting the last word in has to
18 stop.

19 All right. Take a break. By this clock about
20 11:15.

21 (Recess.)

22 (Continued next page.)

23

24

25

1 (In open court; jury not present.)

2 THE COURT: This is case on trial continued. All of
3 the parties are present. The jury not present. The witness
4 is not present.

5 If all of the parties are read, we can go send for
6 the witness and the jury.

7 MR. JONES: Yes, your Honor.

8 MS. WHALEN: Yes, your Honor.

9 MS. MESSINA: Yes, your Honor.

10 THE COURT: Since we had started the cross of this
11 witness by Ms. Messina, we will follow that order again.

12 MS. MESSINA: Yes, your Honor

13 STEVEN FRANCIS, resumed.

14 THE COURT: Jury entering.

15 (Jury present.)

16 THE COURT: You may all be seated.

17 Do all of the parties agree that all of our jurors
18 are present and properly seated?

19 MR. JONES: Yes, your Honor.

20 MS. WHALEN: Yes, your Honor.

21 THE COURT: Counsel for Mr. Kadir?

22 MS. MESSINA: Yes, your Honor.

23 THE COURT: Again, welcome back Mr. Francis and I
24 remind you that you are still under oath, sir.

25 THE WITNESS: Yes.

1 THE COURT: This is recross-examination by
2 Ms. Messina on behalf of Mr. Kadir. You may inquire, when you
3 are ready.

4 MS. MESSINA: Thank you, your Honor.

5 RECROSS-EXAMINATION

6 BY MS. MESSINA:

7 Q Good morning, Mr. Francis.

8 A Good morning.

9 Q I'm going to go over some of the same areas you went over
10 with Mr. Jones. And I'll ask the same thing he did. If you
11 can answer yes or no to help us get through this, please do.
12 Will that be all right?

13 A Yes.

14 Q Thank you?

15 Now, you talked about Mr. Kadir putting you in a
16 headlock.

17 Is that something that is done with people who know
18 each or recognize each other as martial arts aficionados or
19 people who like martial arts.

20 A At this point I did not know that sheik was a martial
21 arts expert.

22 Q That's not what I asked. Is that something that's done
23 when people know each other or when people are martial arts
24 practitioners?

25 A If they know each other, yes.

1 Q So the answer is yes, correct?

2 MR. JONES: Objection.

3 THE COURT: Sustained.

4 Q Did Mr. Kadir ever put you in a headlock ever again?

5 A Not after that date.

6 Q Didn't you stay with Mr. Kadir's son for a whole week?

7 A Yes.

8 Q And didn't Mr. Kadir have access to that home?

9 A Yes.

10 Q And didn't you -- withdrawn.

11 It's fair to say you didn't feel threatened by
12 Mr. Kadir at that point when you were staying at his son's
13 house, did you.

14 A I was concerned.

15 Q You stayed in his son's house without any protection,
16 didn't you?

17 A Yes.

18 Q In fact, the first meeting you said you had with
19 Mr. Kadir in his home you did not wear a wire, is that right?

20 A Yes.

21 Q Let's just talk about wearing a wire for a minute?

22 The choice of whether or not to wear a wire was
23 completely up to you, correct.

24 A No. I had to inform my -- I informed Lou Napoli of what
25 I felt on that day, and the reason why I felt uncomfortable.

1 He said, Your safety is first. If you don't feel comfortable
2 wearing the wire it's okay for you not to wear the wire.

3 Q I'm specifically referring to the date of February 19
4 when you met Mr. Kadir in his home?

5 Did you speak to Mr. Napoli before you went and met
6 Mr. Kadir about going there that day.

7 A I explained to him --

8 Q If you can answer yes or no, please do.

9 A Yes.

10 Q And at that point you said to Mr. Napoli or you asked
11 Mr. Napoli whether it was appropriated now to wear a wire, is
12 that correct? Yes or no.

13 A Yes.

14 Q And did Mr. Napoli tell you don't wear a wire,
15 Mr. Francis?

16 A This is not how the conversation was going. You asked me
17 a yes or no question -- answer. But I cannot just say yes or
18 no. I'm telling you that I explained to him the situation
19 that happened before. I did not feel safe walking in his
20 house with a wire and he said, well, Your safety is first. If
21 you don't feel safe it's okay. That was the conversation.

22 Q It's fair to say you had a discussion with Mr. Napoli?

23 A Yes.

24 Q Prior to going to see Mr. Kadir in his home, had you
25 discussed whether or not to wear a wire?

1 A Yes.

2 Q Was Mr. Napoli aware that it would be at that meeting
3 that you would be and Mr. Defreitas exposing for the first
4 time this plan to Mr. Kadir?

5 A Yes.

6 Q So that first meeting with Mr. Kadir where you exposed
7 the plan was not recorded, correct?

8 A Yes.

9 Q And then the other meeting where you are staying at his
10 son's house and you show him the map that meeting was not
11 recorded either, correct?

12 A I can't say that. I have to recollect my memory. I
13 recorded so many hours so I have to actually be recollect.

14 Q Before the trial weren't you played many, many of the
15 tapes that the government intended to introduce into evidence
16 in this case?

17 A I'm sorry.

18 Q You met with the government in preparation for your
19 testimony, didn't you?

20 A Yes.

21 Q How many times would you say you met with government
22 prosecutors?

23 A Many times.

24 Q Over a dozen?

25 A Yes.

1 Q Over 25?

2 A I don't know the amount completely.

3 Q Would it be accurate to say dozens and dozens of time?

4 MR. JONES: Judge, can we have a time frame, please?

5 THE COURT: When are you talking about?

6 Q Any time after the defendants were arrested, how many
7 times did you meet with government prosecutors in preparation
8 for this trial?

9 A I don't have a number for you.

10 Q And in addition to meeting with government prosecutors
11 you met with case agents and other law enforcement agents in
12 preparation for this trial, isn't that true?

13 A Yes.

14 Q And in some of those meetings they played you tapes,
15 isn't that true?

16 A Yes.

17 Q And those tapes related to tape-recordings you made
18 during the course of this conspiracy, isn't that right?

19 A Yes.

20 Q And in all of those tapes you heard was any one of those
21 tapes relating to the meeting at Saleem's house when you
22 showed Mr. Kadir the map?

23 A Like I said before, I don't recall if there's any tapes.
24 The tapes are there for people -- for you and the government
25 to appreciate. I can tell you the testimony and if it's on

1 tape actually -- to actually back up the testimony. If it's
2 not on tape, I don't know at this point what is being taped or
3 what is not being taped. I remember all the events that took
4 place but I do not remember when the tape or if the tape is
5 working or if it's not working. If it's unintelligible, if
6 it's not, I don't know. There's hundreds of hours of
7 recordings. I don't know what is recorded and what's not at
8 this point.

9 Q I understand?

10 So your answer is you don't remember if there was a
11 tape made from the showing of the map, from the time you
12 showed the map.

13 A That is correct.

14 Q During this trial did you hear a tape talking about you
15 being at that meeting showing Mr. Kadir a map?

16 A As I said before, I don't remember.

17 Q During this trial you don't remember if you heard that
18 tape?

19 THE COURT: It's been answered and it's
20 argumentative. Move on, please.

21 Q Later in that same night you did wear a wire, didn't you?

22 A Like I said before, I don't remember the exact times
23 where I wear the wire. The audio is there for us to
24 appreciate and for me to recollect my memory and for you guys
25 to appreciate the actual facts. I don't remember every single

1 detail of the recordings and when we was recorded. And you
2 know I'm sorry I'm a human being. I cannot remember
3 everything. I'm very sorry about that.

4 Q Let me rephrase to help you?

5 It's fair to say, isn't it, Mr. Francis, that after
6 the first time you met Mr. Kadir, when you talked about the
7 plot for the first time with him you did not wear a wire, that
8 is not recorded, correct? You remember that.

9 A The first meeting I did not wear a wire, that's correct.

10 Q And subsequent to that when you met Mr. Kadir in other
11 occasions you did wear a wire, correct?

12 A Not in every occasion.

13 Q No?

14 But at some point is it fair to say you felt
15 comfortable enough with Mr. Kadir to wear a wire.

16 A That's not true.

17 Q I'll withdraw the question. I'll ask it a different way?

18 Before I do that let me ask you another question.
19 Mr. Jones asked you about whether Mr. Kadir ever said to you
20 get out of my house, right? Do you remember him asking you
21 that.

22 A Yes.

23 Q Did Mr. Kadir ever say to you my contacts are ready,
24 let's move forward with this plan? If you can answer yes or
25 no, please do.

1 A No. He didn't say that.

2 Q Did Mr. Kadir ever say to you the plan is no longer
3 sensitive, my contacts don't feel it's sensitive any more,
4 they are ready to go forward?

5 A No. He didn't say that.

6 Q Did Mr. Kadir go with you to Trinidad?

7 A No, he didn't.

8 Q Did Mr. Kadir tell you in advance of you going to
9 Trinidad that he did not want to go?

10 A He said he couldn't go.

11 Q Mr. Francis, when you learned my client was in Trinidad
12 you were very surprised, weren't you?

13 A That is correct.

14 Q And you also had no idea my client was on route from
15 Trinidad to Iran, is that correct?

16 A That's correct.

17 Q You said that some of your -- the information you gave
18 detective nap or Mr. Napoli was as detailed as it could be; is
19 that a fair statement?

20 A Yes.

21 Q And in the -- you reported to Mr. Napoli after you
22 originally met my client in his home and you showed him the
23 plan, correct?

24 A I informed him of all my doings as soon as I was and as
25 diligent as I could. Sorry about my English.

- 1 Q How long have you lived in the United States?
- 2 A I stayed in the United States since the 90's.
- 3 Q Since when?
- 4 A Since 1990.
- 5 Q 1990 exactly?
- 6 A Yes.
- 7 Q That year?
- 8 A Yes.
- 9 Q And you speak Spanish, correct?
- 10 A Yes.
- 11 Q You speak English, correct?
- 12 A Yes.
- 13 Q And you also speak Arabic, correct?
- 14 A Yes.
- 15 Q And you learned Arabic at a later age than you learned
- 16 English, right?
- 17 A Yes.
- 18 Q In fact, you learned Arabic, when would you say, what
- 19 year?
- 20 A Between '94 and 2000.
- 21 Q And would you consider yourself to speak Arabic as well
- 22 as you speak English?
- 23 A No.
- 24 Q But you speak three languages?
- 25 A Yes.

1 Q You don't consider yourself an unintelligent man, do you,
2 Mr. Francis?

3 A It's not for me to consider that.

4 Q All the conversations you've had in this case with all of
5 the parties were in English, correct?

6 A Yes.

7 Q And all of the conversations you had with the prosecutors
8 in this case and with their agents were in English, right?

9 A Yes.

10 Q You didn't need an interpreter?

11 THE COURT: All of the testimony has been given here
12 in English. Move on. Without the help of an interpreter.

13 Move on.

14 MS. MESSINA: Thank you.

15 (Pause.)

16 Q You told Mr. Jones that you didn't think you got off easy
17 in the sentence you got in your federal court case. Did I
18 phrase that correctly? Is that what happened? Is that what
19 you said?

20 A I didn't say that. It was Mr. Jones actually that asked
21 me and he said yes or no.

22 Q Did you think you got off easy?

23 A I don't think I got off easy, no.

24 Q Would you agree with me that doing seven years in jail
25 was a lot better than doing a life sentence?

1 A It all depends how you see it and actually what the
2 involvement -- what's involved in the situation here at hand.

3 Q How do you see it? Do you think doing a life sentence is
4 better than seven years?

5 A Of course not, if it's only the context of time.

6 Q You told Mr. Jones that it's your understanding that
7 whatever happens to Mr. Kadir or Mr. Defreitas in this case
8 won't impact you; is that correct? Is that your
9 understanding?

10 A That is correct.

11 Q And you told them you have been involved in other
12 investigations since you became a confidential informant,
13 correct?

14 A Yes.

15 Q Yet, it's correct that you haven't been sentenced yet,
16 right?

17 A Yes.

18 Q And it's correct that the fact of your cooperating here
19 and the fact of these men being prosecuted will impact what
20 sentence you get? Yes or no.

21 A I don't know that. You asked me a personal question and
22 now you asked a general question.

23 Q Let's look at what's marked as Government's Exhibit 85
24 again?

25 First of all, you don't have yet a date for

1 sentence, correct.

2 A That's correct.

3 Q Do you think that these prosecutors will be in touch with
4 the prosecutors at Special Narcotics about how you've been
5 working in this case?

6 A Yes.

7 Q And by the terms of your cooperation agreement you must
8 -- withdrawn.

9 MS. MESSINA: Judge, I'm asking that Government's
10 Exhibit 85 -- it's already in evidence -- be displayed to the
11 jury as well as the witness.

12 THE COURT: Is there a question?

13 MS. MESSINA: Yes.

14 THE COURT: It's displayed on the monitor.

15 MS. MESSINA: I was waiting for it to come up.

16 Q According to this agreement, Mr. Francis -- I'm going to
17 point out the last line of paragraph 12 -- if the case doesn't
18 lead to prosecution, will you get any reward for your
19 cooperation?

20 A According to what I'm reading, it says no.

21 Q And you were informed of this cooperation agreement,
22 correct, before you agreed to it?

23 A Yes.

24 Q And it was read to you by a lawyer line by line, correct?

25 A That's correct.

1 Q And you understand that? And you understood it, correct?

2 A Yes.

3 Q Just a couple of more questions?

4 Yesterday Ms. Whalen asked you about a part of a
5 conversation which you had with Mr. Defreitas which sounded
6 almost like an argument about who was in charge. Do you
7 remember that.

8 A Yes.

9 Q And during that conversation at one point Mr. Defreitas
10 says to you -- and this is referring to Exhibit 230 T, page 6.
11 He says something, you want me to meet them --

12 A 230?

13 Q I don't know that you need to look at your book yet.
14 Just one question about one line?

15 He says to you at one point you want me to meet the
16 man tomorrow, yes or no? Because the sheik in Guyana told me
17 Mohammed I couldn't stop you because he was insisting to go.
18 He wanted to stop me.

19 First of all, you're talking to Mr. Defreitas in
20 this conversation, correct.

21 A Yes.

22 Q And Mr. Defreitas says that to you. Who was he referring
23 to when he said because the sheik in Guyana wanted to stop me?

24 A He was referring to Sheik Kadir.

25 MS. MESSINA: Just one second, your Honor. I may be

1 finished.

2 (Pause.)

3 Q During that week you spent at Mr. Kadir's son's house how
4 many times, if you recall, did you actually meet Mr. Kadir?

5 A A few times.

6 Q You didn't show him the plan for several days, the map,
7 isn't that right, after you got to his son's house? Yes or
8 no.

9 A Yes.

10 Q And isn't it a fact that most of the conversations you
11 had with Mr. Kadir, whether they be by phone or in person,
12 involved his interest in knowing how the plan for the mosque
13 was going and what you and Mr. Defreitas were doing to promote
14 that plan?

15 A That was also part of the conversations, that's correct.

16 MS. MESSINA: I have no further questions.

17 THE COURT: Any recross examination on behalf of
18 Mr. Defreitas?

19 MS. WHALEN: Yes, your Honor.

20 RE CROSS-EXAMINATION

21 BY MS. WHALEN:

22 Q Mr. Defreitas, Mr. Jones --

23 THE COURT: Mr. Francis.

24 MS. WHALEN: Mr. Francis, I'm sorry.

25 Q Mr. Francis, Mr. Jones talked to you about your first

1 conviction this morning, is that correct?

2 A Yes.

3 Q He said you had originally been indicted for an offense
4 that involved 50 grams of crack cocaine, is that correct?

5 A Yes.

6 Q That offense also involved a kilogram of heroin, is that
7 correct?

8 A There was no heroin there.

9 Q I show you what's been previously marked as Government's
10 Exhibit 3500 SF 158.

11 MS. WHALEN: Judge, this should only be published to
12 the witness.

13 THE COURT: I'm sorry. That is SF 358.

14 MS. WHALEN: No. 158.

15 THE COURT: I'm sorry.

16 Q So, do you recognize this as the original indictment in
17 your case?

18 A Yes.

19 Q And I'm asking you to look at paragraph two.

20 A Yes.

21 Q And it says that it involves -- well, 50 grams of crack
22 cocaine?

23 A Yes.

24 Q And I'm asking you to look at paragraph three.

25 A Yes.

1 Q And it involves a kilogram of heroin, is that correct?

2 A Yes.

3 Q Now, that charge, possession or conspiracy to distribute
4 50 grams of crack cocaine or a kilogram of heroin, carries a
5 mandatory minimum sentence of ten years in jail, is that
6 correct?

7 A Correct.

8 Q By cooperating you were sentenced to seven years in jail,
9 is that correct?

10 A Yes.

11 Q You actually served about six years in jail, is that
12 correct?

13 A Yes.

14 MS. WHALEN: No further questions.

15 THE COURT: Any redirect?

16 MR. JONES: Your Honor, just two questions.

17 REDIRECT EXAMINATION

18 BY MR. JONES:

19 Q Mr. Francis, Ms. Messina asked you about this
20 conversation in which Russell Defreitas says the Sheik going
21 to tell me if you want to go I can't stop you. Do you
22 remember her asking you about that?

23 A Yes.

24 Q Do you remember the next part of the sentence where he
25 says but if you're going to go I'm going to help you? Do you

1 remember that?

2 A Yes.

3 MR. JONES: No further questions.

4 THE COURT: Any further recross-examination?

5 MS. MESSINA: Yes, your Honor.

6 RECROSS-EXAMINATION

7 BY MS. MESSINA:

8 Q Mr. Francis, to your knowledge, Mr. Kadir never assisted
9 in calling Abu Bakr to set up a meeting between you,
10 Mr. Defreitas and Abu Bakr, is that correct?

11 A Yes.

12 Q And isn't it a fact when he was referring to helping you,
13 what he did was call his student to help you find a place to
14 stay in Trinidad when you were there? Isn't that a fact?

15 A And also instruct them about the meeting with Abu Bakr.

16 Q Mr. Defreitas, when I ask the question and you can answer
17 yes or no, could you please do that?

18 A I'm Mr. Francis.

19 Q I'm sorry. Mr. Francis.

20 A Thank you. I appreciate it.

21 Q You are welcome?

22 And sometimes when you answer my questions it sounds
23 like you have a --

24 THE COURT: Do you want to not make a speech.

25 That's stricken. Ask a question, if you are going to ask a

1 question.

2 Q Do you have an agenda of your own in your participation
3 in this conspiracy?

4 MR. JONES: Objection.

5 THE COURT: Sustained.

6 Q Do you stand to gain something --

7 THE COURT: Sustained.

8 Q Mr. Francis, --

9 THE COURT: Beyond the scope of redirect.

10 Q When you went to Trinidad and you said Mr. Kadir helped
11 by connecting with a student of his -- correct so far?

12 A Yes.

13 Q You didn't list the address of Kareem Ibrahim as the
14 place you were staying when you came into the country, did
15 you?

16 A No.

17 Q And that was because Mr. Kadir didn't set you up to stay
18 with Kareem Ibrahim, correct?

19 A No.

20 Q He gave you the address of one of his students, correct?

21 A That's the address to give to the -- that was the address
22 to be put down in the information that they give you in
23 customs.

24 Q Immigration?

25 A Immigration.

1 Q Whose address was that, Mr. Francis?

2 A I don't know exactly whose address. It was an address
3 given to me by Abdul Kadir for that purpose.

4 Q Did it correspond with one of his students?

5 A Yes.

6 Q Did you go to that address?

7 A No.

8 Q Did you go to the address and even look at it? I know
9 you didn't stay there. Did you even go dot address and look
10 at it?

11 A No, I didn't.

12 Q Okay.

13 MS. MESSINA: No further questions.

14 THE COURT: Any further redirect?

15 MR. JONES: No, your Honor.

16 THE COURT: Sir, you may step down.

17 THE WITNESS: Thank you very much.

18 (Witness excused.)

19 THE COURT: Can I just speak to counsel at the side,
20 please, for a minute?

21 (Sidebar.)

22 THE COURT: I just wanted to make sure that you had
23 your next witness lined up and ready to go.

24 MR. MARSHALL: We do. We intended to read the
25 stipulation at this time to the jury.

1 THE COURT: Okay.

2 MR. MARSHALL: Put in those pieces of evidence that
3 are subject to the stipulation and then call Mr. Bennett.
4 Ms. Messina had an application with respect to Mr. Bennett
5 which I think was pending. So that had to do with precluding
6 something.

7 MS. MESSINA: We can do it here.

8 THE COURT: What was the application with respect to
9 Mr. Bennett?

10 I don't understand. We had all of this motion
11 practice about experts and you've had the 3500 material for a
12 month and a half and I keep getting these last-minute motions
13 on behalf of Mr. Kadir. I'm frankly fed up with it.

14 MS. MESSINA: I understand.

15 THE COURT: This is delaying jury time.

16 MS. MESSINA: I understand.

17 It's in relation to a 302 filled out .

18 THE COURT: Do you really understand? I keep
19 getting this.

20 MS. MESSINA: I do.

21 THE COURT: You keep doing it.

22 MS. MESSINA: I'll try not to do it again. I need
23 to address this issue.

24 THE COURT: What is it?

25 MS. MESSINA: It's on a 302. There's information

1 about Mr. Bennett refers to a man named Khalid Hassan who is
2 the person who ends up with Mr. Kadir's luggage and that's the
3 house they go to retrieve the luggage.

4 Included in that 302 is information that Mr. Bennett
5 had known Khalid Hassan since childhood and he has connections
6 to his criminality and he believes him to be a member the JAM
7 and has been seen at demonstrations for JAM and at a mosque
8 relating to JAM.

9 I believe that's completely collateral to the issue
10 of why they are bringing him on the stand, which is as an
11 expert to explain what JAM is and that man is not a member of
12 the conspiracy but merely held by client's luggage, that that
13 should be precluded from coming into testimony as it's totally
14 collateral to the issue at hand and it's prejudicial. By them
15 hearing that this man who happened to have my client's luggage
16 is a member of JAM they will make all sorts of speculation
17 about our clients being associated with JAM to which there's
18 absolutely no evidence.

19 THE COURT: We had testimony he knew Abu Bakr for
20 years, who was the founder of JAM.

21 MS. AHMAD: To give you the full background on this,
22 Mr. Khalid Hassan, who is the JAM member at issue, didn't
23 merely end up with a Abdul Kadir's luggage when Mr. Kadir was
24 arrested at immigration in Trinidad. He asked that his
25 luggage be given do Khalid Hassan. He responded to the police

1 officer call and came and took custody of it. It was not mere
2 happenstance he ended up with it. As you've seen through
3 redirect examination the level of assistance Abdul Kadir gave
4 the conspiracy in terms of linking them to JAM and vital
5 assistance in knowing how to deal with Abu Bakr and accessing
6 him is an issue in direct dispute in this case. We very
7 strongly disagree with the characterization of this as
8 collateral.

9 THE COURT: I'll not going to preclude the
10 government's questioning in that regard. Your application is
11 denied.

12 So then we're going to read the stipulation.

13 MR. MILLER: I'm going as to read a portion of the
14 exhibit that would be entered into evidence, with your Honor's
15 permission.

16 THE COURT: Okay.

17 (In open court.)

18 MR. MILLER: With your Honor's permission we would
19 read a stipulation.

20 THE COURT: Yes.

21 MR. MILLER: Your Honor, if I could use the Elmo.

22 THE COURT: I'm sorry.

23 MR. MILLER: Based on the stipulation I would ask
24 that your Honor allow us to publish to the jury as I read it.

25 THE COURT: Yes.

1 Can the jury see it on your monitors?

2 MR. MILLER: I wanted to point out that Government's
3 Exhibit 120 -- before I zoom in -- is what I am reading from.

4 This is entitled United States of America against
5 Russell Defreitas, et al. And it reads as follows:

6 It is hereby stipulated and agreed by and between
7 the United States of America and the defendants Russell
8 Defreitas and Abdul Kadir by their attorneys that:

9 1. Own May 20 2007, Abdel Nur flew from Cheddi
10 Jagan International Airport in Guyana to Piarco International
11 Airport in Trinidad.

12 2. Later and May 20, 2007, defendant Russell
13 Defreitas and Steven Francis flew from Cheddi Jagan
14 International Airport in Guyana to Piarco International
15 Airport in Trinidad.

16 3. Government's 114 is the Immigration Arrival Card
17 submitted by Russell Defreitas on May 20, 2007 upon arrival at
18 Piarco International Airport in Trinidad.

19 4. Government's Exhibit 114 and this stipulation
20 are admissible into evidence without the necessity of calling
21 law enforcement officers, records custodians or other
22 witnesses.

23 It's dated Brooklyn, New York, July 12, 2010 and
24 signed by the parties.

25 And based on the stipulation we offer Government's

1 Exhibit 120 as well as the underlying record, Government's
2 Exhibit 114.

3 THE COURT: This is by stipulation. Therefore, they
4 are admitted.

5 (So marked.)

6 MR. MILLER: May I publish Government's Exhibit 114
7 to the jury?

8 THE COURT: Yes.

9 Let me advise the jury: This stipulation evidence
10 means simply that the government and the defendants accept the
11 truth of a particular proposition or fact and as there is no
12 disagreement there is no need for evidence apart from the
13 estimation. You must accept the stipulation as evidence,
14 regard that fact as proven, and give it whatever weight you
15 choose in this case. In this case the parties have stipulated
16 to the admissibility of certain evidence. You may publish.

17 MR. MILLER: Thank you, your Honor.

18 Just pointing to the back page of the document and
19 identifying this as Government's Exhibit 114 by the sticker on
20 the back and turning to the front toward the top it says
21 Trinidad and Tobago Immigration Arrival Card and under the
22 name last or family name Defreitas, first or given name
23 Russell. And then provides an address of 118-42 154 Street in
24 Jamaica, Queens, New York for Mr. Defreitas and intended
25 address in Trinidad it says LP # 3, Haig Street, Caranage,

1 phone number is provided, 868-498-2058 and the name Hassan.
2 Signed at the bottom, R. Defreitas. And it says visiting
3 friends and relatives is the main purpose of visit is the box
4 checked.

5 I would now like to read Government's Exhibit 121
6 and publish it to the jury.

7 THE COURT: Yes.

8 MR. MILLER: I'll pull it out so the exhibit sticker
9 can be seen Government's Exhibit 121.

10 This is also entitled United States of America
11 against Russell Defreitas et al. reads as follows:

12 It is hereby stipulated and agreed by and between
13 the United States of America and the defendants Russell
14 Defreitas and Abdul Kadir by their attorneys that:

15 1. On May 31, 2007, defendant Abdul Kadir flew from
16 Cheddi Jagan International Airport in Guyana to Piarco
17 International Airport in Trinidad on his way to Venezuela and
18 then the Islamic Republic of Iran.

19 2. Government's Exhibit 115 is the Immigration
20 Arrival Card submitted by defendant Abdul Kadir on May 31,
21 2007 upon arrival at Piarco International Airport in Trinidad.

22 3. On June 1, 2007, law enforcement officers in
23 Trinidad arrested defendant Abdul Kadir at Piarco
24 International Airport on board Aeropostal Flight 861 from
25 Piarco International Airport in Trinidad to Simon Bolivar

1 Airport in Venezuela, with a final destination of the Islamic
2 Republic of Iran.

3 4. On June 1, 2007, at the time of the arrest, law
4 enforcement officers in Trinidad took possession of the
5 carry-on bag belonging to defendant Abdul Kadir. Later that
6 evening, at the request of defendant Abdul Kadir, the carry-on
7 bag and its contents were released to Khalid Hassan of number
8 38 River Estate Circular Road, Diego Martin, Trinidad.

9 5. On June 2, 2007, lawsuit officers in Trinidad
10 executed a search warrant at the residence of Khalid Hassan in
11 Diego Martin, Trinidad and recovered Government's Exhibits
12 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161,
13 162, 163, 164, 165, 166 and the Iranian currency identified as
14 Government's Exhibit 167 from defendant Abdul Kadir's carry-on
15 bag. In addition, officers recovered an electronic data
16 storage drive, identified as Government's Exhibit 131, from
17 defendant Abdul Kadir's carry-on bag.

18 6. Government's Exhibits 115, 150 through 167 and
19 this stipulation -- I diverged from the stipulation just for
20 the purposes of moving it along -- are admissible into
21 evidence without the necessity of calling law enforcement
22 officers, records custodians or other witness.

23 It's dated July 12, 2010 and signed by the all the
24 parties.

25 The government would offer Government's Exhibit 121

1 as well as the exhibits identified in the stipulation into
2 evidence.

3 THE COURT: They are admitted by stipulation of the
4 parties.

5 (So marked.)

6 MR. MILLER: I would like to publish Government's
7 Exhibit 115 for the jury.

8 THE COURT: Yes, you may.

9 MR. MILLER: Again, directing the court and the
10 jury's attention to the back page where Government's Exhibit
11 115 sticker is indicated and I turn back to the front. The
12 exhibit is entitled Trinidad and Tobago arrival card and the
13 name given on the arrival card is Abdul Kadir and the city and
14 town for Mr. Kadir is listed as Linden, Guyana and the
15 intended address in Trinidad is again LP # 3, Haig Street,
16 Caranage, the name Assim Mohammed and under intended address
17 in Tobago it says in transit to Caracas, Flight Number VH 861
18 at 11:00 o'clock a.m. on June 1, that is, 1-6-07.

19 The bottom is stamped 31 May, 2007 by an immigration
20 officer in the Republic of Trinidad and Tobago and is signed.

21 Should we bring in the next witness, your Honor?

22 THE COURT: Yes. You may call your next witness.

23 MS. AHMAD: The government calls Calvin Bennett.

24 C A L V I N B E N N E T T,

25 having been duly sworn was examined and

1 testified as follows:

2 THE CLERK: State your name and spell it.

3 THE WITNESS: My name is Calvin Bennett, and it is
4 spelled, C A L V I N, B E N N E T T.

5 THE COURT: Good afternoon, sir.

6 THE WITNESS: Good afternoon.

7 THE COURT: There is water there for you in case you
8 would like. I just caution you because sometimes it tends to
9 spill. You can speak into the microphone and adjust it so
10 that you are comfortable with it and just speak in a nice,
11 clear voice and slowly, so we can get your testimony
12 accurately.

13 Who is going to inquire? Ms. Ahmad.

14 MS. AHMAD: I will. May I inquire, your Honor?

15 THE COURT: Yes, you may.

16 DIRECT EXAMINATION

17 BY MS. AHMAD:

18 Q Good morning, Mr. Bennett.

19 A I am security manager employed with Atlantic Energy
20 Company of Trinidad and Tobago.

21 THE COURT: Excuse me, sir. You need to wait for
22 the question to be asked, first.

23 Q Good morning, again. You were telling us where you work?

24 A Yes.

25 Q And you said Atlantic Energy Company?

1 A Yes, ma'am.

2 Q What's your job there?

3 A I am the security manager with the company.

4 Q And how long have you worked for Atlantic Energy Company?

5 A 2008, March of 2008 I took up duties there.

6 Q What did you do before that?

7 A I was the superintendent of police attached to the Police
8 Special Branch.

9 Q Was this the Trinidad and Tobago Police Service?

10 A Yes, ma'am.

11 Q How long did you work for the Trinidad Police Service?

12 A 38 years.

13 Q What was your position when you first started?

14 A Police constable.

15 Q And what year was this?

16 A This was in 15 of April 1971.

17 Q What other positions did you hold after that?

18 A I hold the rank of corporal, sergeant, inspector,
19 assistant superintendent and finally superintendent of police.

20 Q Were you the superintendent of police when you retired?

21 A Yes, ma'am.

22 Q And when did you retire?

23 A I retired in March 2008.

24 Q Mr. Bennett, are you familiar with the group Jamaat
25 Al-Muslimeen?

1 A I'm also familiar with this group.

2 Q Does it go by the name an acronym JAM?

3 A Yes.

4 Q Did you investigate JAM during your time as a police
5 officer?

6 A Yes, I did.

7 Q What branch of the Trinidad and Tobago Police Service
8 were you assigned to for the majority of your time there?

9 A The Special Branch.

10 Q What are the responsibilities of the Special Branch?

11 A The responsibilities of the special branch would be
12 dignitary protection and intelligence gathering.

13 Q Did you work for both of those units?

14 A Yes. I worked for both of those units.

15 Q How long did you work in the intelligence gathering unit?

16 A I worked in the intelligence gathering unit for
17 approximately 18 years.

18 Q Were you ever a supervisor within that section?

19 A Yes. I was a supervisor within that section.

20 Q For how long?

21 A I would say for 15 of those years.

22 Q And how many people did you supervise?

23 A Approximately 35.

24 Q Can you describe for us the general responsibilities of
25 the intelligence gathering section?

1 A The intelligence gathering section would be mainly
2 responsible for collating and disseminating intelligence to
3 various arms of the government and also external agencies when
4 they were requested.

5 Q About how much of the time that you spent in that unit
6 was dedicated to investigating JAM?

7 A I would say about 80 percent of the time.

8 Q What methods did you use to investigate JAM?

9 A We used several methods, such as we used surveillance.
10 We employed electronic means and we also employed sources.

11 Q And by sources do you mean people within the group JAM?

12 A Yes.

13 Q Did you conduct any undercover operations?

14 A No. We did not do undercover operations. A special
15 branch service. The main reason for that is the country is so
16 small that it would not have been a success.

17 Q Have you ever participated in interviews of JAM members?

18 A Yes, I have.

19 Q You said you also worked in the dignitary protection
20 unit, is that correct?

21 A That's correct, ma'am.

22 Q Did you do any work investigating JAM in that unit?

23 A Yes, ma'am.

24 Q What type of work?

25 A We received several reports that there were JAM members

1 who were actually trailing the prime minister on his various
2 missions and travels throughout Trinidad and since I was
3 familiar with most members of JAM at the time I was detailed
4 to head the security detail of the prime minister's unit.

5 Q Your main goal as looking out for JAM members who you
6 said were trailing the prime minister?

7 A Yes.

8 Q Were you ever station abroad in your time with the
9 Trinidad and Tobago Police Service?

10 A Yes, I was.

11 Q Where were you stationed?

12 A I was at the Trinidad Tobago Consulate in New York.

13 Q How long were you at the consulate?

14 A I was at the consulate from 1999 until about the end of
15 2006.

16 Q What was your position there?

17 A I was the security counsel.

18 Q What was your responsibilities?

19 A My responsibilities there was to interview Trinidadians
20 in distress, also to work with the other intelligence agencies
21 within the United States and also to supply information back
22 home on intelligence matters for the Trinidad and Tobago
23 government.

24 Q Did you do any work related to JAM when you were at the
25 U.S. Consulate?

1 A Yes, I did.

2 Q What kind of work?

3 A I did investigative work based on the fact that there
4 were numerous JAM members who were detained at the
5 correctional institutions in Brooklyn.

6 Q Have you ever led any training seminars sponsored by the
7 Trinidad and Tobago Police Service?

8 A I did partake in training special branch officers.

9 Q What general topics?

10 A On surveillance and dignitary protection.

11 Q And did you receive any awards or commendations for your
12 work as a police officer?

13 A Yes, ma'am, I received several.

14 Q What type of awards?

15 A Commendation for dedication and devotion to duty and also
16 long service award.

17 MS. AHMAD: Your Honor, at this point the government
18 moves to qualify Mr. Bennett as an expert in Jamaat
19 Al-Muslimeen or JAM.

20 THE COURT: Do you wish to voir dire on behalf of
21 Mr. Defreitas?

22 MR. KAMDANG: No, your Honor.

23 THE COURT: Any objection?

24 MR. KAMDANG: No, your Honor.

25 THE COURT: As to Mr. Kadir, do you wish to voir

1 dire?

2 MS. MESSINA: No, your Honor.

3 THE COURT: Any objection?

4 MS. MESSINA: No, your Honor.

5 THE COURT: Mr. Bennett is qualified as an expert in
6 Jamaat Al-Muslimeen.

7 As I mentioned to you, ladies and gentlemen, at the
8 end of the case I will be giving you specific instructions
9 about how you are to assess the testimony of expert witnesses.

10 You may proceed.

11 MS. AHMAD: Thank you, your Honor.

12 THE COURT: The witness is so qualified.

13 Q Mr. Bennett, what type of group is JAM?

14 A JAM is a extremist Islamic religious group.

15 Q What are their stated goals?

16 A Their stated goals is to create a Islamic state within
17 Trinidad and Tobago.

18 Q And by Islamic state do you mean a country that was
19 governed Islamic law?

20 A Yes.

21 Q Are they based in Trinidad and Tobago?

22 A Yes. They are based in Trinidad and Tobago.

23 Q When was the organization founded?

24 A The organization was founded December of 1979.

25 Q By who?

1 A By one Yasin Abu Bakr.

2 MS. AHMAD: Your Honor, may I show just the witness
3 an exhibit?

4 THE COURT: Yes.

5 Q Can you see this on your monitor, Mr. Bennett?

6 A Yes.

7 Q Do you recognize this individual?

8 A Yes. I recognize is this individual.

9 Q Who is this?

10 A He's Yasin Abu Bakr.

11 THE COURT: Can we have an exhibit number?

12 MS. AHMAD: I apologize. This is Government's
13 Exhibit 8. And at this point I would move to introduce
14 Government's Exhibit 8 into evidence.

15 MR. KAMDANG: No objection.

16 MS. MESSINA: No objection.

17 THE COURT: It's admitted.

18 (So marked.)

19 Q Mr. Bennett, you described JAM as a extremist Islamic
20 organization, is that correct?

21 A Yes.

22 Q Are JAM members more typically born Muslim or people who
23 converted to Islam?

24 A People who converted to Islam. They are all people who
25 converted to Islam.

1 Q Are you aware that there are two major sects within
2 Islam, Sunni and Shia?

3 A Yes, ma'am.

4 Q Do you know to what sect of Islam JAM members typically
5 belong?

6 A They are mostly and at least they are considered and they
7 consider themselves Sunni Muslims.

8 Q How important are these sectarian differences within JAM?

9 A They are not very important.

10 Q Why is that?

11 A The group was founded as such. They would convert them
12 to Islam and they are not born Muslims. They do not consider
13 themselves in that aspect as Sunni or Shiite Muslims. It does
14 not matter to them.

15 MS. AHMAD: Your Honor, may I publish Exhibit 8 to
16 the jury?

17 THE COURT: Yes.

18 MS. AHMAD: I'll just put it on the board here.

19 (Continued on next page.)
20
21
22
23
24
25

1 EXAMINATION CONTINUES

2 BY MS. AHMAD:

3 Q Where is JAM headquartered, Mr. Bent?

4 A JAM headquarters is located at number one Mucurabo Road,
5 in Trinidad.

6 Q What sort of facility has JAM built at its compound?

7 A JAM built a facility that caters for worship, just
8 worship in the form of a mosque. Also have a school on the
9 compound and previous buildings where members stay.

10 Q This school, is it accredited by the government of
11 Trinidad and Tobago?

12 A No, ma'am.

13 Q Who attends this school?

14 A Mostly children belonging to members of the JAM.

15 Q Do any Muslims besides JAM members attend the school?

16 A No, ma'am.

17 Q You said there is a mosque on the compound as well?

18 A A mosque on the compound as well.

19 Q Are you aware that Muslim religious leaders are known as
20 Imam?

21 A Could you represent, please?

22 Q Are you aware that Muslim religious leaders are known as
23 Imam?

24 A Yes, ma'am.

25 Q Who is the Imam of the JAM mosque?

1 A Yasin Abu Bakr.

2 Q As Imam, does he give sermons at the mosque?

3 A Yes, he does.

4 Q What type of sermons -- how do his sermons compare to
5 those given at other mosques?

6 A His sermons usually took a unique flavor in that it's
7 more political than religious.

8 Q What type of political issues does he express interest in
9 during these sermons?

10 MS. MESSINA: May we have a timeframe?

11 MS. AHMAD: Sure.

12 Q Going back to the years 2005 through 2007, what sort of
13 political issues was Abu Bakr expressing an interest in?

14 A He was expressing an interest in the -- any Muslim who
15 has been actually incarcerated or killed on US soil or other
16 areas within the countries other than United States. In other
17 words -- if I may go further?

18 Q Sure.

19 A What happens in Iran and Iraq would have been part of his
20 sermon.

21 Q I see.

22 What opinions does he generally express towards
23 actions that the US takes against Muslim countries?

24 A He refers to the US as infidels and oppressors of the
25 Muslim religion.

1 Q Mr. Bennett, have you -- do you know of an individual
2 named Khalid Hassan who resides at number 38 River State
3 Circular Road in Diego Martin, Trinidad?

4 A Yes, ma'am.

5 Q Is Mr. Hassan a member of JAM?

6 A Yes, he is a member of JAM.

7 Q Have you observed him at various JAM events?

8 A Yes, ma'am?

9 Q Can you describe some of those?

10 A Some of those would have been protest demonstrations and
11 also attention where he attends the mosque on Fridays to the
12 prayers which is referred a to as Jumah.

13 Q Jumah?

14 A Yes, ma'am.

15 Q Does JAM have ties to any foreign governments outside
16 Trinidad and Tobago?

17 A Yes, ma'am.

18 Q What countries does it have ties to?

19 A We -- our intelligence sources knew for a fact that he
20 had ties with Libya.

21 Q When did JAM first develop connections to Libya?

22 A In 1980s.

23 Q How did that come about?

24 A That came about because of, again, intelligence sources
25 indicated that they were supplying training and finance to the

1 organization Libya.

2 Q Libya was supplying training and financing to JAM
3 members?

4 A Yes.

5 Q What type of training?

6 A Training in arms.

7 Q Abu Bakr ever visit Libya?

8 A Yes, he visited Libya on several occasions.

9 Q Did he develop a relationship with any of the senior
10 government officials?

11 A Yes, ma'am.

12 Q Who, for example?

13 A He had close relations with President Muammar Khadafi.

14 Q Was Abu Bakr's relationship with Mr. Khadafi publicly
15 reported?

16 A Yes, ma'am.

17 Q Was Muammar Khadafi well-known in Trinidad and Tobago in
18 the 1980s?

19 A Yes. He was fairly well known.

20 Q What was he well-known for?

21 A He was well-known for the bombing of Pan Am airplane.

22 Q Approximately how much money did the Libyan government
23 give JAM?

24 A We estimate a figure to be in the tune of roughly two
25 million TD dollars.

1 MS. MESSINA: Can we have a timeframe?

2 Q In the 1980s, how much money was Libya supplying JAM
3 annually?

4 A It's through banks that we did our investigations and we
5 estimated to be two million TD dollars.

6 Q Can you give us a rough --

7 THE COURT: I'm sorry. When you say TD dollars,
8 that's Trinidad --

9 THE WITNESS: Trinidad and Tobago currency.

10 Q Can you give us an estimate of how much two million TD
11 dollars is in US dollars?

12 A 1980s would have been four US dollars to one TD dollar.

13 Q About 500,000 US dollars?

14 A Yes.

15 Q Okay. During the sermons Abu Bakr gave at the JAM mosque
16 in the 1980s, did he ever talk about the Pan Am bombing?

17 A Yes, he spoke about the pan Pam bombing.

18 Q What did he say about it?

19 A He figured that the -- the Pan Am bombing -- the bombing
20 of the Pan Am airplane was attributed to Muammar Khadafi and
21 which he strongly objected to.

22 Q I see.

23 A And strongly denounced.

24 Q He denounced the connection between Khadafi and the
25 bombing?

1 A Yes.

2 Q Besides the money they received from Libya, how else in
3 the 1980s did JAM fund their activities?

4 A Through criminal activities.

5 Q What type of criminal activities?

6 A Armed robberies.

7 Q Anything else?

8 A Yes; and the trafficking in narcotics.

9 Q Now, was all of this criminal activity conducted in
10 Trinidad and Tobago or was some of it conducted abroad by JAM
11 members?

12 A No. Some of it was conducted abroad by JAM members.

13 Q Where?

14 A In the United States.

15 Q Would the money then be sent back?

16 A The money would be sent back to Trinidad and Tobago.

17 Q You told us earlier that one of JAM's stated goals was to
18 establish an Islamic state within Trinidad and Tobago, is that
19 correct?

20 A That is correct.

21 Q Did there come a time when JAM actually tried to
22 overthrow the government of Trinidad?

23 A Yes, ma'am.

24 Q When was that?

25 A That was in July the 27th, 1990.

1 Q Was it a peaceful coup or a violent coup?

2 A It was a very violent coup, ma'am.

3 Q How many people died?

4 A Around -- estimated around 80 people died in that coup.

5 Q Were any members of the government killed or injured?

6 A Yes.

7 Q Who was killed?

8 A Minister member of Parliament, Mr. Devens.

9 Q Which government officials were injured?

10 A The -- the Prime Minister of Trinidad and Tobago at the
11 time, Mr. Arthur Napoleon Robinson.

12 Q How was he injured?

13 A He was shot on his leg.

14 Q What government facility did JAM attack during the coup?

15 A The JAM attacked the police headquarters, Parliament
16 building and the lone television station at this time,
17 Trinidad Tobago television house.

18 Q Is the Parliament building known as the Red House?

19 A Yes, ma'am.

20 Q Can you describe -- were all these attacks conducted
21 simultaneously?

22 A That's right, ma'am.

23 Q Can you please describe the attack on the police
24 headquarters?

25 A The police headquarters took the form of a car bomb. A

1 car entered the entrance to the building and immediately on
2 reaching where the police officer was on duty, the bomb
3 exploded, causing massive damage to police headquarters,
4 mayhem and actually trauma among police officers who were
5 caught in a state of shock and they were surprised at the
6 attack and they tried to clamber out of police headquarters
7 by making the entry to the front of the building but it was
8 only set back by gunfire coming from the Red House.

9 Q You mean, the JAM attack on the Red House?

10 A Yes.

11 The building is very near to police headquarters. A
12 lot of police officers were injured trying to climb the back
13 wall.

14 Q Was this a suicide attack?

15 A Yes. This was a suicide attack because the driver died
16 instantly.

17 Q Can you tell us how the attack at the Red House
18 proceeded?

19 A The Red House was an invasion by approximately, we will
20 say, about 80 members of the JAM who stormed the Red House and
21 immediately started firing shots in the air, in the ceiling.

22 Q What kind of weapons were they carrying?

23 A They had an assortment of rifles, of weapons. AK 47's,
24 they had hand pistols and rifles.

25 Q What did they do when they first entered the building?

1 A When they first entered the building, they -- they
2 directed the attention to the Prime Minister of Trinidad and
3 Tobago. Detail immediately covered him and in so doing a shot
4 was fired by the JAM member and the Prime Minister was shot on
5 his leg, his right leg.

6 Q How was the security detail treated?

7 A With indignity, I would say. They were stripped of their
8 clothing, their hands were tied behind their backs and they
9 were ordered out of the Red House in just their underpants.

10 Q Were there any police officers at the Red House at this
11 time?

12 A Yes, several police officers on duty at the Red House at
13 this time.

14 Q Did the JAM members attack them?

15 A They were all killed.

16 Q How many people would you say were inside the Red House
17 at the time of the attack?

18 A I will say roughly about 100 people, including civilians,
19 staff of the Red House, police officers and members of
20 Parliament.

21 Q How many of these people were held hostage?

22 A All members of Parliament were held hostage. So that
23 would have been around roughly 40 people.

24 Q At the same time you mentioned JAM launched an attack on
25 Trinidad's only television station?

1 A Yes, ma'am.

2 Q Can you describe that attack?

3 A That attack was led by Yasin Abu Bakr.

4 Q Did he have anyone with him?

5 A Say again.

6 Q Did he have anyone with him?

7 A Yes.

8 There were other members of JAM with him and they
9 immediately took over the television station, held a gun to
10 the head of the announcer, the manager of the station there,
11 and immediately asked him to come on air.

12 Q Now, you mentioned a gun. How many weapons did the JAM
13 members who stormed the television station have?

14 A I would say about 36 weapons in all.

15 Q What happened after they took over the television
16 station?

17 A After they took over the television station, Abu Bakr,
18 the leader, asked for calm and he asked the nation to be calm,
19 they have taken over the government and everything would be
20 peaceful.

21 Q Who did Abu Bakr want to become the new head of
22 government of Trinidad and Tobago?

23 A Abu Bakr said that he would like to be a part of the
24 government and he indicated the position that he would have
25 liked to held which was Minister of National Security.

1 Q What did the television station broadcast after Abu Bakr
2 had given his speech?

3 A Muslim music and Muslim prayers.

4 Q You mentioned that Abu Bakr participated specifically in
5 the attack of the television station.

6 Did he have any role in coordinating or planning the
7 simultaneous attacks at the police station and the seat of
8 Parliament?

9 A Yes, ma'am.

10 Q What sort of role did he have?

11 A He was the -- he was the leader and would have been given
12 directions from the television station.

13 Q He was giving directions of JAM members?

14 A Yes.

15 Q How did this coup end?

16 A The coup ended by the building being surrounded by
17 members of the armed forces, Trinidad Tobago regiment.

18 Q Which building are you speaking of?

19 A I am speaking of the Red House in particular. And also
20 the television station, they also surrounded the television
21 station.

22 Q What happened after the Army surrounded the station and
23 the Parliament?

24 A After the Army surrounded the buildings, they eventually
25 came out with their hands in the air.

1 Q Did JAM try to work out any agreement with the government
2 before surrendering?

3 A Yes.

4 They worked out an amnesty.

5 Q Amnesty means that they -- they thought the government
6 agreed not to prosecute?

7 A Not to prosecute them, that's right.

8 Q After the coup was over, did the government try to take
9 back that grant of amnesty?

10 A Yes, they tried to. They did try to.

11 Q Were they able to in the end?

12 A No.

13 They -- it went all the way to the Privy Council and
14 the Privy Council rule that the amnesty was legal.

15 Q The Privy Council is a court based in London?

16 A Yes, the final Court of Appeals of Trinidad and Tobago.

17 Q Is Trinidad and Tobago a commonwealth country, part of
18 the British commonwealth?

19 A Yes.

20 Q Has Yasin Abu Bakr ever been prosecuted by the
21 Trinidadian government?

22 A Yes, ma'am.

23 Q For what crime?

24 A For conspiracy to murder and sedition.

25 Q Now, this coup attempt that we have just been describing,

1 was -- it was obviously well-known and well publicized in
2 Trinidad Tobago, is that fair to say?

3 A That's quite fair to say.

4 Q How well publicized was it within the Caribbean region
5 generally?

6 A Yes, it was within the Caribbean region.

7 Q Was it in the newspapers for just a day or for a long
8 period of time?

9 A For a period of time and it was -- it's also media,
10 electronic media in those countries.

11 Q Now, you told us that Abu Bakr was prosecuted for
12 conspiracy to murder and sedition?

13 A Yes, ma'am.

14 Q What is sedition?

15 A Sedition is an act against -- this is by word or
16 deed -- against members of the population, any member or any
17 sector of the population.

18 Q Has anyone else in Trinidad Tobago ever been prosecuted
19 for sedition?

20 A No. This is the first time that anyone was prosecuted
21 for sedition.

22 Q Has Abu Bakr ever been convicted of any crime?

23 A No, ma'am.

24 Q Directing your attention to the years 2006 and 2007.

25 What was JAM's reputation in the Caribbean community

1 at that time?

2 A They were notorious for their involvement in criminal
3 activities.

4 Q Were they still a well armed group?

5 A Yes. They were still a well armed group, you would say.

6 Q Did there come a time in 2005 when the authorities
7 discovered a large weapons stash at the JAM compound?

8 A Yes, ma'am.

9 Q Can you tell us about that, where -- what kind of weapons
10 were found and where were they located?

11 A In 2005, acting on a tip, the police along with the Army
12 scooped down on the JAM and Muslim compound at Mucurabo Road
13 and they discovered a catch of arms hidden under the flooring
14 of mosque.

15 Q About how many guns and how much ammunition did they
16 find?

17 A They found about ten weapons and 500 rounds of assorted
18 ammunition.

19 Q This is, you said, underneath a concrete floor of the
20 mosque?

21 A Yes. They had to use drills actually to get at it.

22 Q What kind of access did the public have to Abu Bakr?

23 Is it easy to get in to see him or not?

24 A No. It is controlled access to him.

25 Q Who controls it?

1 A The security.

2 Q His own security detail?

3 A Yes, ma'am.

4 Q Are his security guards armed?

5 A Well, we hope not because many -- on many occasions if
6 they have to appear in court with him, they are searched.

7 Q When they come to court they don't have weapons?

8 A Yes, ma'am.

9 MS. AHMAD: I have no further questions, Your Honor.

10 THE COURT: Okay. Cross-examination on behalf of
11 Mr. DeFreitas.

12 MR. KAMDANG: One moment, Your Honor.

13 (Pause.)

14 (Continued on next page.)

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1 CROSS-EXAMINATION

2 BY MR. KAMDANG:

3 Q How are you, Mr. Bennett?

4 A Fine, thank you, sir.

5 Q You were testifying that based on your experience as a
6 police officer in Trinidad about JAM?

7 A Yes, sir.

8 Q And you were a police officer from 1971 to March 2008?

9 A Yes, sir.

10 Q And you retired in March 2008?

11 A Beg your pardon, sir?

12 Q You retired in March 2008?

13 A 2008.

14 Q Congratulations.

15 A Thank you.

16 Q You worked in the intelligence gathering section?

17 A That's correct.

18 Q And through your work in the intelligence gathering
19 section you investigated JAM?

20 A Yes, sir.

21 Q I think you said that you actually became familiar with
22 most of the members of JAM?

23 A Yes, I became familiar with a lot the members of JAM,
24 actually.

25 Q In any of your experiences working as a police officer in

1 Trinidad, did you ever come across any information that would
2 suggest that Russell DeFreitas, my client, was ever a member
3 of JAM?

4 A No, sir.

5 MR. KAMDANG: Thank you.

6 THE COURT: That is the end much your cross, Mr.
7 Kamdang?

8 MR. KAMDANG: Yes.

9 THE COURT: I like the record to be very clear.
10 Any of cross-examination on behalf of Mr. Kadir?

11 MS. MESSINA: Yes, Judge.

12 CROSS-EXAMINATION

13 BY MS. MESSINA:

14 Q Good afternoon, Mr. Bennett.

15 A Good afternoon.

16 Q Is JAM now considered to be a legal organization?

17 A JAM has been formed by a company, under the Companies
18 Act. Whether the body is a legal organization, yes, the body
19 has been a legal organization because they have been formed
20 under the Companies Act.

21 THE COURT: What is that act?

22 THE WITNESS: When you register.

23 THE COURT: It's registered?

24 THE WITNESS: Yes. As a religious organization.

25 Q Their compound, as you call it, has a school in it?

1 A Correct.

2 Q It has several buildings where people can live inside; is
3 that correct?

4 A That's correct.

5 Q As well as it has a mosque; is that right?

6 A Yes.

7 Q And JAM members in Trinidad and Tobago -- let's go back
8 to 2006 to 2007, and even up till now -- they are free to
9 practice their religion in that mosque; is that right?

10 A Yes, they are free to practice their religion.

11 Q And they are free to walk around the street?

12 A Yes, they free to walk around the streets.

13 Q And is there any particular warrant out for the arrest of
14 Abu Bakr now?

15 A No, there is no particular warrant for his arrest, as far
16 as I know.

17 Q Or in 2006 and 2007, was there any particular warrant for
18 his arrest by Trinidad and Tobago?

19 A No.

20 Q So Mr. Abu Bakr was a free man in that time and could
21 meet with people at his will; is that correct?

22 A Yes, he could meet with people at his will.

23 Q Do you know if there are occasions when foreign
24 dignitaries come to town and they actually seek to meet Abu
25 Bakr?

1 A No, I can't recall of any.

2 Q Have you ever heard of occasions where actually
3 representatives of the United States government have sought to
4 meet Abu Bakr prior to -- for example, having President Obama
5 go down and visit Trinidad and Tobago?

6 A No, ma'am.

7 Q Now, Abu Bakr, do you know his original birth name?

8 A Yes, ma'am.

9 Q Would that be Lennox Phillips?

10 A That's correct.

11 Q And he was formerly a police officer, right?

12 A That's correct.

13 Q Just in terms of the composition of Trinidad and Tobago,
14 is the Muslim community one of the smaller communities in
15 Trinidad and Tobago -- I should say the African Muslim
16 community opposed to the Indian Muslim community?

17 A Yes.

18 Q Is there some tension between the Hindu community, the
19 Catholic community and African Muslim communities in Trinidad
20 and Tobago?

21 A I know there is some tension between the Mulim community
22 and the Afro Muslim community.

23 Q So there is tension between Muslims who are nonAfro
24 Muslims and Muslims who are Afro Muslims, is that what you're
25 saying?

1 A I prefer to describe them as the Muslim community, which
2 is the Orthodox Muslims and the JAM.

3 Q And is it -- I don't understand, when you say JAM, are
4 most members -- is everyone who is African Muslim in Trinidad
5 and Tobago a member of JAM?

6 A Oh, no, not at all.

7 Q Now Abu Bakr, do you know when he changed his name, about
8 what time of his life, what period?

9 A Around 1970, early 1970's.

10 Q Do you know if he went to school to university in
11 Trinidad?

12 A No, ma'am.

13 Q He did not or you don't know?

14 A No, he did not. Our records did not show that he went to
15 university.

16 Q Do you know where he went to university?

17 A I don't know where he went to university, but I know his
18 children went to university in Libya.

19 Q But you don't know where he went to university?

20 A I don't know.

21 Q Do you know if he went to university?

22 A I know he did not go to university in Trinidad and
23 Tobago.

24 Q Do you know if he went to university?

25 A Outside of Trinidad and Tobago, I would not be able to

1 say.

2 Q Okay, you don't know. One more question.

3 How old would you say he is now?

4 A I would say he's around 55, 56 now.

5 Q In the 2006 till now time period, he's never been
6 convicted of a crime, is that correct?

7 A Not that I know.

8 Q Is it fair to say the biggest concern of his organization
9 is to some extent limited to what's going on in Trinidad and
10 Tobago?

11 Is the focus on Trinidad and Tobago, as you said,
12 trying to create an Islamic -- let me withdraw that and start
13 again.

14 Is his agenda still the same as what you described
15 in your direct testimony, to create an independent Islamic
16 state within Trinidad and Tobago?

17 A Yes. We have no reason to believe that he has deviated
18 from that intention.

19 Q So, in other words, his major emphasis is on focusing on
20 what's happening in Trinidad and Tobago and carving out a
21 space for African Muslims in Trinidad and Tobago; correct?

22 A Well, I wouldn't say -- probably that's one of his main
23 focus, but he also focuses on what takes place outside of
24 Trinidad and Tobago in the Muslim world.

25 Q But that is his main focus, what is going on in Trinidad

1 and Tobago?

2 A Yes.

3 MS. MESSINA: No further questions.

4 THE COURT: Any redirect?

5 MS. AHMAD: Yes, your Honor.

6 REDIRECT EXAMINATION

7 BY MS. AHMAD:

8 Q Mr. Bennett, I believe you testified that JAM is
9 registered as a religious organization under the Companies
10 Act?

11 A Yes, ma'am.

12 Q When did they register?

13 A They registered in December, 1979.

14 Q This was before they developed ties to Libya?

15 A This is before they develop ties to Libya.

16 Q Before the coup attempt?

17 A Before the coup attempt.

18 Q And you were asked about whether there were outstanding
19 warrants for Yasin Abu Bakr in the 2005, 2006 time period?

20 A Yes.

21 Q Was Mr. Abu Bakr being prosecuted by the Trinidadian
22 government around that time?

23 A Yes.

24 Q For what types of crimes?

25 A For conspiracy to murder and sedition.

1 Q And those crimes were pending?

2 A Yes, still pending.

3 Q And these sedition charges, I believe you told us that
4 sedition involves threatening a particular group within a
5 community?

6 A Yes, ma'am.

7 Q Was Mr. Abu Bakr prosecuted for threatening Muslim
8 groups?

9 A That's right, ma'am.

10 Q What kind of threats -- were these Muslims who were not
11 JAM members?

12 A No, they were not JAM members.

13 Q What kind of threats did he direct towards Muslims who
14 weren't members of JAM?

15 A He said in one of the sermons that they must contribute
16 zakat to the organization or it will be taken from them by
17 force.

18 Q They must contribute zakat?

19 A Yes.

20 Q Is zakat money?

21 A This is financial contributions that Muslims make.

22 Q He said if non-JAM Muslims didn't pay him he would take
23 money from them by force?

24 A That's correct, ma'am.

25 Q Were these charges widely publicized?

1 A Yes, they were widely publicized in the Caribbean region.

2 Q In the Caribbean region?

3 A Yes.

4 Q And the search you talked about on your direct testimony
5 where a large amount of arms and ammunition were found
6 underneath the floor of the mosque, was that search widely
7 publicized?

8 A That search was widely publicized also.

9 MS. AHMAD: No further questions, your Honor.

10 THE COURT: Any recross by defendant, Mr. DeFreitas?

11 MR. KAMDANG: No, your Honor.

12 THE COURT: Or by Mr. Kadir?

13 MS. MESSINA: No.

14 THE COURT: Thank you, sir. You are excused. Thank
15 you.

16 (Witness excused.)

17 THE COURT: Ladies and gentlemen, I have been
18 informed that your lunches are here. We will take a break for
19 lunch at this time and before I let you go let me just speak
20 briefly to counsel.

21 (Continued next page.)

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1 (Sidebar.)

2 THE COURT: I want to figure out how long, whether I
3 should give them until about a quarter to two and then we can
4 deal with the motion later on, or if you wanted to reply
5 orally to the government's response that was filed yesterday.

6 MR. NKRUMAH: I would like a chance to reply.

7 THE COURT: Why don't we address that notion later
8 on so we can get through the witnesses and let the jury go.

9 MR. MILLER: My sense will be, we have three
10 witnesses left in the case, your Honor, two of them will be
11 fairly short.

12 They are here, one is here and the other is coming,
13 so we can put these on this afternoon. Detective Investigator
14 Addonizio is going to be our final witness and he's the
15 subject of both the motion that you just described as well as
16 the issue that we talked about, about the cross.

17 So perhaps we could move forward on the other issues
18 and then save Detective Investigator Addonizio for Monday
19 morning, but that is just an idea that popped into my head.

20 MS. BERGER: The next two witnesses will be very
21 short.

22 THE COURT: I will let them have a little extra long
23 lunch until 2 o'clock.

24 (Open court.)

25 THE COURT: We are trying to figure out where we are

1 administratively. We'll give you a little bit of an extra
2 long lunch today. We will start again at 2 o'clock.

3 Remember during the lunch break you are able to use
4 your cell-phones but not to talk about the case, you can't
5 talk about the case among yourselves or with anyone else. You
6 can't do any kind of research or look at or listen to or view
7 anything that might be reported over any media, whether it's
8 paper or Internet or anything else concerning this case and of
9 course remember to keep an open mind and not to form or draw
10 any opinions or conclusions about this case at this time.

11 All right. You can retire to your lunch and enjoy.

12 (Jury leaves.)

13 THE COURT: Have a seat. The jury is no longer
14 present.

15 Just very quickly, Mr. Miller, the first stipulation
16 that you read, what number was that assigned?

17 MR. MILLER: 120. The second was 121.

18 THE COURT: All right. So then we'll follow the
19 plan that we talked about at the sidebar. So you can come
20 back at 2 o'clock.

21 MR. MILLER: One other idea that occurred to us that
22 might again continue to move things along is, if we resolve
23 the issue of the photographs, we could, we would like to have,
24 we have plenty of time to put on Detective Investigator
25 Addonizio for his direct testimony and then that might even

1 make things clearer for the other outstanding issue of the
2 cross and any potential for entering into --

3 THE COURT: I understand the issue of the photos.
4 What is the other issue as to the cross?

5 MR. MILLER: We mentioned it a little bit earlier.
6 I wanted to speak with counsel about the areas of their cross
7 to ensure that it didn't suggest that there might be a problem
8 which we want to bring to your Honor so that we can resolve it
9 under the SEPA statute.

10 I frankly don't think it's likely, but I thought it
11 was prudent to raise so that we could avoid, as Mr. Kamdang
12 suggested, long sidebars or sending the jury out for long
13 periods of time.

14 THE COURT: If you all can talk about that during
15 the lunch hour, we have an hour and 15 minutes that I've given
16 to the jury, and discuss that aspect with each other, you will
17 still have time to get something to eat. I don't want people
18 fainting during the day.

19 MR. KAMDANG: Your Honor, by that you mean the issue
20 of the photos?

21 THE COURT: No. I'm assuming that the issue of the
22 photos is contested.

23 MR. KAMDANG: I don't think we can go forward with
24 the direct. I think that's what Mr. Miller is saying has to
25 be resolved.

1 THE COURT: I understand that. But I'm ready to
2 entertain Mr. Nkrumah's reply to the government orally. I
3 have had a chance to look at the papers. I took a look at the
4 government's response last night.

5 I'm pretty much prepared to rule on that this
6 afternoon. I'm just thinking that if you at all can resolve
7 the issue of any potential classified information questions --

8 MR. KAMDANG: I don't know that that is proper.
9 What Mr. Miller suggested that is we do the arrest. That
10 might help clarify so this weekend we could work it out.

11 We certainly don't oppose Agent Addonizio doing the
12 direct and maybe come back for the cross on Monday. I think
13 that is what Mr. Miller was suggesting.

14 THE COURT: I'm sorry, did I lose something in the
15 translation?

16 MR. MILLER: My suggestion, having heard Mr.
17 Kamdang -- things started moving more swiftly after Mr.
18 Francis took the stand, and having heard Mr. Kamdang say that
19 he hadn't prepared the full cross yet, what my proposal is to
20 keep things moving along is just to do the direct.

21 We can move forward with the whole thing, we take no
22 position. We wanted to provide the court with the various
23 options. Detective Investigator Addonizio is ready to testify
24 on direct, if that would be helpful to move things along.

25 THE COURT: I would like to go as far as we can go

1 with the jury today until 5 o'clock. They were here very
2 early today. They did work until almost 7 o'clock yesterday
3 from fairly early in the day too, I might add.

4 So as far as we can get until 5 o'clock is fine with
5 me. Then that will give you all, I guess, time to talk about
6 the classified information issue.

7 MR. KAMDANG: Over the weekend?

8 THE COURT: Yes.

9 MR. KAMDANG: Fine.

10 THE COURT: All right.

11 (Luncheon recess.)
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1 AFTERNOON SESSION

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

3 THE COURT: Please be seated.

4 (The defendants are present.)

5 This is case on trial continued.

6 All the parties are present. The jury is not
7 present. None of the government's witnesses are present.

8 Who is your next witness?

9 MS. BERGER: Your Honor, the government's next
10 witness is Steven Merkler.

11 THE COURT: Merkler?

12 MS. BERGER: Yes.

13 THE COURT: Spell that, please.

14 MS. BERGER: M E R K L E R.

15 THE COURT: Thank you.

16 That's with a P H?

17 MS. BERGER: With a V.

18 THE COURT: Okay. Is everyone ready so we can get
19 started?

20 MR. KAMDANG: Yes, Your Honor.

21 MR. NKRUMAH: Yes, Your Honor.

22 THE COURT: Is your witness right outside? Do you
23 want to bring him in and have him seated while we send for the
24 jury?

25 MS. BERGER: Yes, Your Honor.

1 (The witness is present.)

2 THE COURT: Good afternoon, sir.

3 There is water there if you like. Be careful with
4 that pitcher. It can be a little treacherous.

5 THE WITNESS: Thank you.

6 THE COURT: Ms. Berger, are you going to be
7 questioning the witness?

8 MS. BERGER: Yes, Your Honor.

9 THE COURT: Who is going to be doing the cross?

10 MR. KAMDANG: I will.

11 THE COURT: Mr. Kamdang.

12 And Mr. Nkrumah or Ms. Messina?

13 MR. NKRUHAH: I will, Your Honor.

14 THE COURT: Okay.

15 (Jury present.)

16 THE COURT: Jury entering. All rise.

17 No getting sick allowed.

18 (Coughing.)

19 Everyone --

20 A JUROR: I swear to God, I didn't do it. I have
21 nothing to do with it.

22 THE COURT: Everyone may be seated.

23 Do all the parties agree that all of the jurors are
24 present and properly seated?

25 MR. JONES: Yes, Your Honor.

1 MR. KAMDANG: Yes, Your Honor.

2 MR. NKRUMAH: Yes, Your Honor.

3 THE COURT: Okay. The government may call its next
4 witness.

5 MS. BERGER: Thank you, Your Honor.

6 The government calls Steven Merkler.

7 THE CLERK: Raise your right hand.

8 (The witness is duly affirmed by clerk.)

9 THE CLERK: Please state and spell your name for the
10 record.

11 THE WITNESS: Steven, that's with an E V E N, last
12 name is Merkler, M E R K L E R.

13 THE COURT: Good afternoon, sir.

14 I am going to ask you please to speak slowly and
15 clearly and you can adjust that mike so that you are
16 comfortable.

17 You may inquire, Ms. Berger.

18 MS. BERGER: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. BERGER:

21 Q Good afternoon.

22 A Good afternoon.

23 Q Where do you work, sir?

24 A I am with the New York office of the FBI.

25 Q In what division of the FBI do you work?

1 A Special Ops Flight Operations.

2 Q What is the Special Ops Flight Squad?

3 A It's a surveillance squad that does aviation
4 surveillance.

5 Q What's your position in that squad?

6 A I am an investigator specialist.

7 Q How long have you worked in the FBI?

8 A Nine years and four months.

9 Q How long have you been a part of the aviation
10 surveillance unit?

11 A About six years.

12 Q What are your general duties as part of this unit?

13 A Aviation surveillance, supporting ground surveillance
14 teams.

15 Q What types of cases do you work on?

16 A Everything from organized crime, foreign
17 counterintelligence, counterterrorism; a variety of things.

18 Q Did you have any specialized training for this unit?

19 A I had -- prior to my aviation experience, I did ground
20 surveillance training and aviation experience was in '04, the
21 Airborne Law Enforcement Officers Association, in Charlotte,
22 North Carolina. That was in 2004.

23 Q You testified that you were doing ground surveillance
24 before you joined the aviation unit?

25 A That is correct.

1 Q What did you do before you were doing ground
2 surveillance?

3 A I was a police officer for twenty-six years with the
4 South Plainfield, New Jersey Police Department.

5 Q What type of aircraft do you typically use to conduct
6 surveillance operations?

7 A It's a Cessna 208 single engine turbine engine.

8 Q At what height does this plane typically fly at?

9 A We normally fly at 7500 feet.

10 Q Is that the height at which you conduct surveillance as
11 well?

12 A That is correct.

13 We can go higher but the norm is 7500.

14 Q Is the plane used by the FBI every day?

15 A When it is available, as far as pilot availability, and
16 weather. If the weather is good, of course, we fly.

17 Q Is it used by multiple crews?

18 A Yes, it is.

19 Q How many flight missions do you typically do per month?

20 A Well, depends on the weather. Missions, usually about
21 ten, I would say.

22 Q How long is each flight mission?

23 A Normally, four and a half, five hours; sometimes a little
24 more, sometimes a little less.

25 Q What do you actually do inside the plane during these

1 flight operations?

2 A I work the camera system and call the air surveillance to
3 the ground surveillance teams.

4 Q What type of cameras are used when you are conducting
5 aerial surveillance?

6 A We have a Flir, a thermal imaging camera on board, as
7 well as two daytime cameras, with a zoom up to
8 3000 millimeters.

9 Q I would like to direct your attention to January of 2007.

10 THE COURT: None of the jurors should have their
11 phones here.

12 A JUROR: I'm sorry.

13 THE COURT: If you have your phones here, hand them
14 to the marshal, please, if you have one.

15 Q Directing your attention to January of 2007.

16 Were you part of a team conducting aerial
17 surveillance on January 3rd, 4th, 9th and 10th, 2007?

18 A That is correct.

19 Q What was your role in those four surveillance operations?

20 A I was on board the Cessna 208 and calling the
21 surveillance from the air to the ground team.

22 Q Directing your attention to January 3rd of 2007.

23 Where did you begin your surveillance?

24 A We began the surveillance in the area of Euclid Avenue in
25 Brooklyn, New York.

1 Q Were you following a vehicle?

2 A That is correct.

3 Q What type of vehicle?

4 A It was a black pick-up with a Harley Davidson insignia on
5 the cover of the -- the bedcover.

6 Q Generally speaking, where did you follow that vehicle?

7 A Well, we started in the area of Euclid Avenue. We ended
8 up in -- at JFK Airport.

9 Q Were you making a video recording as you were conducting
10 the surveillance?

11 A All -- all video -- all surveillances are videotaped on
12 board the Cessna 208. That's our policy.

13 Q On January 4th of 2007, where did you begin your
14 surveillance on this day?

15 A Again, in the area of Euclid Avenue in Brooklyn.

16 Q Again, were you following a vehicle that day?

17 A The same vehicle, and we ended up at JFK Airport.

18 Q I believe you testified that was a black truck with a
19 Harley Davidson insignia on it?

20 A That is correct.

21 Q Where did you follow that truck that day?

22 A We started in Euclid Avenue and wound up again at JFK
23 Airport.

24 THE COURT: I'm sorry. This was still on the 3rd?

25 MS. BERGER: Now on January 4th, Your Honor.

1 THE COURT: On the 4th.

2 Thank you.

3 Q When you conducted surveillance on January 3rd and 4th,
4 did you have any knowledge about the facts of the case that
5 you were conducting surveillance for?

6 A Very little, other than we'd be picking up a black
7 pick-up with a Harley Davidson insignia on the bed liner
8 cover.

9 Q I would like to show you what's been marked as Government
10 Exhibit 62 and Government Exhibit 63.

11 MS. BERGER: May I approach the witness, Your Honor?

12 THE COURT: Yes, you may.

13 This is for identification?

14 MS. BERGER: Yes, Your Honor.

15 Q Let's start with Government Exhibit 62.

16 Do you recognize that?

17 A Yes, I do.

18 Q What do you recognize that to be?

19 A This is a DVD and it was the surveillance from January 3,
20 2007. It was originally on VHS. It was transferred to the
21 DVDs, which I reviewed.

22 Q Are those your initials on the disk?

23 A That is correct.

24 It is dated 7/2/2010.

25 Q Is that the date on which you reviewed the disk?

1 A Yes.

2 Q Turning to Exhibit 63. What is that?

3 A Dated 7/2/2010 and it was the surveillance from

4 January -- January 4th, 2007.

5 Q The 7/2/2010, is that the date that you reviewed that
6 video?

7 A That is correct.

8 Q Those are your initials on it?

9 A Those are my initials.

10 Q Are these fair and accurate copies of the recordings that
11 you made during your surveillance on January 3rd and 4th of
12 2007?

13 A Absolutely.

14 Q Thank you.

15 MS. BERGER: Your Honor, I'd move Government
16 Exhibit 62 and Government Exhibit 63 into evidence at this
17 time.

18 MR. KAMDANG: No objection.

19 MR. NKRUMAH: No objection.

20 THE COURT: They are in evidence as Government
21 Exhibits 62 and 63.

22 (Marked.)

23 MS. BERGER: I have no further questions, Your
24 Honor.

25 THE COURT: Cross-examination?

1 MR. KAMDANG: Thanks, Your Honor.

2 THE COURT: This is on behalf of Mr. DeFreitas
3 Mr. Kamdang.

4 CROSS-EXAMINATION

5 BY MR. KAMDANG:

6 Q How are you, sir?

7 A Thank you, sir.

8 Q Is it Agent Merkler or Mr. Merkler?

9 A It's investigator specialist. I am not an agent, no,
10 sir.

11 Q Investigator specialist. Can I just call you
12 Investigator Merkler?

13 A Investigator for short.

14 Q How are you, Investigator Merkler?

15 A Thank you.

16 Q Okay. You said the name of the squad that you are with
17 was the Special Ops Flight Operations Squad?

18 A That is correct.

19 Q Okay. Now, when you go out to do surveillance or
20 specifically in this case when you went out to do
21 surveillance, you weren't working alone?

22 A No.

23 Q You were part of a team?

24 A We have a pilot, copilot and I was in the back of the
25 plane doing the operation.

1 Q Was there anybody on the ground that was part of the
2 team?

3 A Not with our team. There is a ground surveillance team
4 that we support.

5 Q You were in contact with the ground team?

6 A That is correct.

7 Q All of you work for the FBI?

8 A That is correct.

9 Q All of you were salary employees?

10 A Yes, that is correct.

11 Q Okay. In watching the truck in this case you use
12 different types of equipment and we talked briefly about the
13 plane.

14 It's a two seater?

15 A No. It's actually larger than that.

16 Q It's larger than that?

17 A Yes. Pilot, copilot and you can actually put probably
18 place four people in the rear of it. But normally we fly solo
19 in the rear with a pilot and copilot up front.

20 Q Okay. So it's typically two people?

21 A Three people usually.

22 Q Now, you personally don't own the plane, right?

23 A No.

24 Q The FBI owns the plane?

25 A It's an FBI plane.

1 Q The FBI pays for the plane?

2 A That is correct. Maintenance, fuel, yes.

3 Q Okay. Sustained communication with the ground crews, I
4 assume you use radios?

5 A That is correct.

6 Q Those are also owned by the FBI?

7 A That is correct.

8 Q Now, you were the specific agent who operated the camera
9 in this case?

10 A Yes, sir.

11 Q I think you said there were three cameras?

12 A There is one -- it's one camera. It's a gimbal with
13 three cameras within that gimbal.

14 Q Can you tell us a little bit about the three cameras?

15 A We have two daytime cameras and also a Flir camera, which
16 is thermal imaging. That's a -- for nighttime.

17 Q Can you basically describe what a thermal imaging camera
18 does?

19 A Infrared, detects heat sources on the ground.

20 Q All of these cameras -- you said you fly an average of
21 7500 feet?

22 A That is correct.

23 Q These cameras are designed to capture images at a great
24 distance?

25 A That is correct.

1 Q It is safe to say these cameras are more sophisticated
2 than, say, a normal camcorder?

3 A Absolutely.

4 Q I couldn't just go into Target and buy one of these
5 cameras?

6 A No. Because -- no, you couldn't. It's not possible.

7 Q These cameras are more high tech?

8 A Very high tech.

9 Q Okay. You didn't pay for these cameras out of your own
10 pocket?

11 A No. I couldn't afford it.

12 Q I couldn't either.

13 The FBI owns these cameras as well?

14 A That is correct.

15 Q Is there any other equipment that you use when you are
16 doing the surveillance mission that we haven't talked about?

17 A No. It's just the camera system and the radio
18 communication with the ground team.

19 Q Okay. Let's talk about the actual surveillance in this
20 case.

21 You conducted surveillance on the truck on four
22 occasions?

23 A That is correct.

24 Q That was January 3rd?

25 A Yes, sir.

1 Q And January 4th?

2 A Yes, sir.

3 Q January 9th?

4 A Yes.

5 Q And January 10th?

6 A That is correct.

7 Q And just to be clear, that's all 2007?

8 A That is correct.

9 Q Okay. Now, you said that the -- each mission lasts about
10 four and a half hours?

11 A Yes, sir.

12 Q Does that include all the prep time?

13 A No.

14 We preflight the aircraft before we take off. It
15 takes about half hour to get on station and then about four
16 and a half, five hours of actual surveillance on station time.

17 Q For a mission to last about four and a half hours, how
18 long does the entire operation take?

19 A Five and a half, six hours, preflight.

20 Q You said that -- was it the case that on all four of
21 these dates you picked up the car on Euclid Avenue?

22 A That is correct. That is correct.

23 Q Okay. How did you know to -- to be looking at Euclid
24 Avenue?

25 A We were advised before we left our base where we start

1 the mission at.

2 Q Did you have to get to the -- the plane in a position
3 first and then the car came into view or did you have to find
4 the car?

5 A I believe we were on station and the car pulled up. If I
6 could recall. I am not even sure. There are four dates and I
7 think maybe once or twice it was there prior to us actually
8 pick up the surveillance.

9 Q You were able to pick up a truck with a Harley Davidson?

10 A Yes. The truck was stopped. That is correct. In the
11 area of Euclid Avenue.

12 Q With the high tech cameras?

13 A That is correct.

14 Q Okay. I am just curious about how long each of these
15 missions took, if you can recall.

16 A I think about four hours, four and a half hours
17 each -- each day.

18 Q Okay. Now, it is fair -- it is fair to assume because
19 you work for the FBI that you are not lucky enough to be your
20 own boss?

21 A I am not my own boss.

22 Q You have superiors that you answer to?

23 A That is correct.

24 Q They hold you accountable?

25 A That is correct.

1 Q You couldn't just take the team and go take the plane up
2 around Coney Island and surveil the beach on the weekend?

3 A No. We don't do that.

4 Q You have to ask permission?

5 A We have missions that we support.

6 Q In this case, the orders to -- I know you said you
7 didn't know the facts of this case.

8 In this case, you received orders to conduct this
9 surveillance?

10 A That is correct.

11 Q That's how it normally works?

12 A Yes.

13 Our schedule is prioritized as far as the caseload.

14 Q Okay.

15 A It could be this case or another one but we get
16 instructions from head -- from the New York office on priority
17 cases.

18 MR. KAMDANG: Okay. Thank you.

19 Your Honor, I have no further questions.

20 THE COURT: Cross-examination?

21 MR. NKRUMAH: Yes.

22 THE COURT: This is cross-examination on behalf of
23 Mr. Kadir.

24 (Continued on next page.)

25

1 CROSS-EXAMINATION

2 BY MR. NKRUMAH:

3 Q Good afternoon.

4 A Good afternoon.

5 MR. NKRUMAH: May I inquire, Your Honor?

6 THE COURT: Yes, you may.

7 Q Good afternoon, Investigator Merkler.

8 How are you doing today?

9 A Okay. Thank you, sir.

10 Q Question, do you surveil in Linden, Guyana?

11 A In Linden, Guyana?

12 Q Yes.

13 THE COURT: Linden, Guyana.

14 A Negative.

15 Q Have you?

16 A Out of the country?

17 Q Yes.

18 A No, sir, never.

19 MR. NKRUMAH: No further questions.

20 THE COURT: Any redirect?

21 MS. BERGER: No, Your Honor.

22 THE COURT: You've gotten off the easiest of anybody
23 in this case.

24 Okay. Thank you.

25 You may step down.

1 THE WITNESS: Thank you.

2 (Witness excused.)

3 THE COURT: The government may call its next
4 witness.

5 MS. BERGER: Thank you, Your Honor.

6 The government calls Deep Chopra.

7 THE CLERK: Pleas stand and raise your right hand.
8 (The witness is duly affirmed by clerk.)

9 THE CLERK: Please be seated.

10 Please state and spell your name for the record.

11 THE WITNESS: Deep Chopra, D E E P, C H O P R A.

12 DIRECT EXAMINATION

13 BY MS. BERGER:

14 THE COURT: Good afternoon, sir.

15 THE WITNESS: Good afternoon.

16 THE COURT: There is water there for you in case you
17 would like it. You can adjust the microphone so that you are
18 comfortable with it.

19 Just going to ask that you speak slowly and clearly.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you.

22 You may inquire, Ms. Berger.

23 MS. BERGER: Thank you, Your Honor.

24 Q Good afternoon.

25 A Good afternoon.

1 Q Where do you work, sir?

2 A I work for the US Customs and Border Protection.

3 Q How long have you been an officer with Customs and Border
4 Protection?

5 A I have been with them since April 2003.

6 Q Is that commonly referred to as CBP?

7 A Yes, it is commonly referred to as CBP.

8 Q What's your educational background?

9 A I have a law degree.

10 Q Have you received any special training as a CBP officer?

11 A Yes.

12 I have attended the Immigration officer basic
13 training course at the Federal Law Enforcement Training
14 Center.

15 Q Generally speaking, what types of training do you
16 receive?

17 A It encompasses several training aspects, one of them
18 being systems access.

19 Q What assignments have you had within CBP?

20 A You mean, I have had or do I have now?

21 Q What have you had in the past and then what assignment do
22 you currently have now?

23 A In the past I was assigned to primary passenger
24 processing and secondary passenger processing; and at this
25 point I work for the US Customs Border Protection as a program

1 manager.

2 Q What do you do as a program manager?

3 A I manage several travelers security admissibility

4 programs, one of them being systems access.

5 Q Do your duties at CBP include responsibility for records

6 of border crossings?

7 A Yes, it does.

8 Q I would like to show you what's been marked for

9 identification as Government Exhibits 100 through 113.

10 MS. BERGER: Your Honor, may I just approach the
11 witness to have him look through this pile?

12 THE COURT: Surely.

13 MS. BERGER: Thank you.

14 Q If you can just take a look at all of those.

15 A Sure.

16 (Pause.)

17 You say one hundred to?

18 Q 113.

19 A 113.

20 (Pause continues.)

21 Yes.

22 Q Do you recognize these documents?

23 A Yes, I do.

24 Q What are they?

25 A These are border crossing records.

1 Q When are documents like this made?

2 A It is derived from the advanced passenger information
3 system as an APIS. This information -- this is biographic and
4 documentary information about the subject who is traveling in
5 or out of the country. It is transmitted into the system by
6 the airline industry at the point of travel.

7 Q Is it the regular practice of CBP to keep these type of
8 records?

9 A Yes.

10 Once transmitted by the airline industry into the
11 CBP system, it is kept in the CBP custody.

12 MS. BERGER: Your Honor, I'd move Government
13 Exhibits 100 through 113 into evidence.

14 MR. KAMDANG: No objection.

15 MR. NKRUMAH: No objection, Your Honor.

16 THE COURT: They are admitted. That's Exhibits 100
17 through 113.

18 (Marked.)

19 MS. BERGER: Your Honor, may I publish these to the
20 jury?

21 THE COURT: Sure.

22 MS. BERGER: Thank you.

23 Q Mr. Chopra, I would like to start with Government
24 Exhibits 100 through 107. I will display them on the screen.

25 This is Government Exhibit 100 on the screen.

1 Can you tell us who this record pertains to?

2 A Based on the personal information displayed, this record
3 belongs to subject named Russell Mortimer DeFreitas, born on
4 July 7, 1943.

5 Q Generally speaking, what type of information would an
6 exhibit like this contain?

7 A It contains personal information and location information
8 with regards to the travel. Personal information is mostly
9 confined to biographic information as in last name, first
10 name, date of birth and documentary information as in number
11 of the -- the document number, the country issuing the
12 document and the type of document.

13 Q For Government Exhibit 100, what is the date of travel
14 that's shown on this document?

15 A That is displayed in the location information area, where
16 it says crossing date. The date on that exhibit is May 13,
17 2005.

18 Q Where did Mr. DeFreitas travel to on that date?

19 A The travel is to Georgetown airport, which is located in
20 Guyana.

21 Q Where did Mr. DeFreitas travel from?

22 A He has departed -- he departed on that record from
23 John F. Kennedy Airport at New York.

24 Q And Government Exhibit 101 is on the screen. The same
25 questions, what's the date pertaining to this record in 101?

1 A Crossing record date is February 23, 2006. It's an
2 outbound travel. I beg your pardon. It's an inbound travel
3 into John F. Kennedy Airport out of Georgetown airport from
4 Guyana.

5 Q This is also for Russell DeFreitas?

6 A That is correct.

7 Q And Government Exhibit 102 is on the screen.

8 Just tell us the date of travel on this -- for this
9 record?

10 A The date of travel on this border crossing is August 17,
11 2006.

12 Q And can you say where Mr. DeFreitas was traveling to?

13 A He was traveling to Georgetown airport, in Guyana.

14 Q And from where was he traveling?

15 A He was traveling from John F. Kennedy Airport in
16 New York.

17 (Continued on next page.)

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1 BY MS. BERGER:

2 Q Government Exhibit 103. Who does this record pertain to?

3 A This record pertains to Russell DeFreitas.

4 Q What is the date of travel?

5 A The date of travel on this record is January 1st, 2007.

6 Q Where was Mr. DeFreitas traveling to?

7 A Subject was traveling to John F. Kennedy Airport, New
8 York.

9 Q From where was he traveling?

10 A From Port of Spain in Trinidad Tobago.

11 Q I'm putting on Government Exhibit 104. Same question.
12 What is the date of travel for this record?

13 A Date of travel on this record is January 13, 2007.

14 Q Where is Mr. DeFreitas traveling on this date?

15 A Traveling to Georgetown Airport in Guyana.

16 Q Where was he traveling from?

17 A Traveling from John F. Kennedy Airport in New York.

18 Q 105. Same question. What was the date of travel?

19 A Date of travel on this record is February 28, 2007.

20 Q Where was Mr. DeFreitas traveling to?

21 A Arriving into John F. Kennedy Airport, New York.

22 Q From where?

23 A From Georgetown Airport in Guyana.

24 Q Government Exhibit 106. The date of travel for this
25 record?

1 A Date of travel on this record is May 10, 2007.

2 Q Where was Mr. DeFreitas traveling to?

3 A He traveling to Georgetown Airport in Guyana.

4 Q From where?

5 A Departing from New York, JFK.

6 Q 107. What is the date of travel on this record?

7 A Date of travel is May 26, 2007.

8 Q Where was Mr. DeFreitas traveling to?

9 A He's arriving at JFK Airport in New York.

10 Q From where?

11 A From Port of Spain in Trinidad and Tobago.

12 Q I'd like to direct your attention to Government

13 ExhibitS 108 through 113.

14 I will PUT 108 on the Elmo. Who do these records
15 pertain to?

16 A These pertain to Steve Francis. Date of birth,
17 October 20, 1970.

18 Q Do these records generally contain the same type of
19 information that you testified with for the records for
20 Mr. DeFreitas?

21 A Yes.

22 Q Can you tell us what the date of travel is on Government
23 Exhibit 108?

24 A Date of travel on this exhibit is September 20, 2006.

25 Q Where is Mr. Francis traveling to on that date?

- 1 A He's arriving at Port of Spain in Trinidad and Tobago.
- 2 Q From where?
- 3 A From John F. Kennedy Airport, New York.
- 4 Q Government Exhibit 109. What is the date of travel for
- 5 this record?
- 6 A October 28, 2006.
- 7 Q Where is Mr. Francis traveling to?
- 8 A He's arriving at John F. Kennedy Airport in New York.
- 9 Q From where?
- 10 A From Port of Spain, Trinidad and Tobago.
- 11 Q Exhibit 110. Tell us the date of travel for the record.
- 12 A January 13, 2007.
- 13 Q Where was Mr. Francis traveling to on this date?
- 14 A Arriving at Georgetown Airport in Guyana.
- 15 Q From where?
- 16 A From John F. Kennedy Airport in New York.
- 17 Q Government Exhibit 111. Tell us the date of travel.
- 18 A February 28, 2007.
- 19 Q Where was Mr. Francis traveling to?
- 20 A Arriving at John F. Kennedy Airport in New York.
- 21 Q From where?
- 22 A From Georgetown Airport in Guyana.
- 23 Q And Government Exhibit 112. Can you tell us the date of
- 24 travel for this record.
- 25 A May 10, 2007.

1 Q Where was Mr. Francis traveling on this date?

2 A He's traveling to Georgetown Airport in Guyana.

3 Q From where?

4 A From John F. Kennedy Airport in New York.

5 Q Last one. Government Exhibit 113. Can you tell us the
6 date of travel for this record?

7 A May 26, 2007.

8 Q Where was Mr. Francis traveling to on this date?

9 A He's arriving into JFK Airport at New York.

10 Q From where?

11 A From Port of Spain, Trinidad and Tobago.

12 MS. BERGER: I have no further questions.

13 THE COURT: Cross-examination.

14 MR. KAMDANG: Yes, your Honor.

15 THE COURT: On behalf of Mr. DeFreitas.

16 CROSS-EXAMINATION

17 BY MR. KAMDANG:

18 Q How are you, Agent Chopra?

19 A Fine.

20 Q Good. Were you the agent who prepared these exhibits?

21 A Yes, I printed them from the system.

22 Q Now, do these exhibits contain the total amount of travel
23 for the people who are listed here?

24 A Yes, as the system reflects, it has everything that is
25 within U.S. Customs custody.

1 Q Pertaining to these witnesses?

2 A Pertaining to the witnesses.

3 MR. KAMDANG: Thank you. No further questions.

4 THE COURT: On behalf of Mr. Kadir, any questions?

5 MR. NKRUMAH: No questions, your Honor.

6 THE COURT: Any redirect?

7 MS. BERGER: No, your Honor.

8 THE COURT: Thank you, sir. You may step down.

9 (Witness excused.)

10 THE COURT: May I see counsel, please.

11 (Continued next page.)

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1 (Sidebar.)

2 THE COURT: Is that it for the extra witnesses?

3 MR. MILLER: Correct.

4 THE COURT: Maybe we will give them a break sooner
5 than anticipated.

6 MR. MILLER: We have another issue. Perhaps we
7 should let them go.

8 MR. KAMDANG: Take a break and talk about it then.

9 THE COURT: All right.

10 (Open court.)

11 THE COURT: We have been moving at a very quick pace
12 this afternoon as you can see. Actually, your midafternoon
13 break came a little bit sooner than we had anticipated so
14 we're going to give you a break before we address the next
15 witness.

16 Overall, you should know that we are -- I'm always
17 very nervous when I say this -- actually a little bit ahead of
18 schedule.

19 Bear with us, trust us; when we take these breaks,
20 we are really working on the case so sometimes I tell you
21 15 minutes and we bring you back a little bit later. It's
22 really because we really are working to make sure that once
23 you're here we move along quickly with the presentation of the
24 evidence.

25 Bear with us. I'm going to give you about

1 20 minutes. I have some administrative things to discuss with
2 the attorneys that don't concern you.

3 In the meantime, remember, keep an open mind, don't
4 form or draw any conclusions about the case or anything that
5 you have seen or heard here in the courtroom. You may not
6 discuss the case among yourselves or with anyone else and you
7 can't read or listen to, look at or do any kind of research
8 over any kind of media in connection with this case.

9 All right. We will be with you shortly.

10 (Jury leaves.)

11 THE COURT: Be seated, please.

12 The jury is no longer present.

13 What would you like to address first? You want to
14 address the motion in limine by Mr. Nkrumah?

15 MR. MILLER: Certainly. Whatever your Honor wishes.

16 THE COURT: Let me give Mr. Nkrumah an opportunity
17 to respond to the opposition that was filed by the government.

18 Mr. Nkrumah, you may proceed when you're ready.

19 MR. NKRUMAH: Thank you, your Honor.

20 Your Honor, I had an opportunity to review the
21 government's reply. I believe the government is misplacing
22 its fate on United States versus Khalil, at 214 F.3d 111,
23 Second Circuit, 2000.

24 In the government's reply, the government has stated
25 that this case is similar to the Khalil case. It is my

1 argument, your Honor, that the only place that this case is
2 similar is in the one charge of conspiring and threatening to
3 use weapons of mass destruction.

4 Your Honor, in the Khalil case there was also a
5 firearm charge, using, carrying a firearm during and in
6 relation to a crime of violence.

7 There is no firearms charged in this matter. There
8 is no firearm charged in this matter, therefore, the
9 introduction of pictures to prove that point of the firearms
10 charge is not applicable in this case as it was in Khalil.

11 Also, your Honor, in Khalil, the judge ruled that
12 the evidence was admissible for the following reasons. The
13 photographs in question were taken during the period in which
14 one of the conspirators purchased bomb components and
15 constructed five bombs, as they showed the conspirators
16 brandishing a shotgun wearing garb that is associated with
17 violent militants -- whatever that garb happened to be, I
18 didn't know that they had a violent militant garb store -- but
19 the judge in that case said that Mr. Mezer, Abu Mezer, not
20 only was brandishing a shotgun in the picture but wearing
21 violent militant garb and assuming a posture of marketing, and
22 that the photographs were relevant to rebut the defense's
23 portrayal of Mr. Mezer as having no destructive objective and
24 posing no real threat.

25 In this matter, your Honor, there are a couple of

1 issues that stand out. First of all, the government has no
2 data, no way -- the government is unable, excuse me, to tell
3 the time and date in which these photos were taken.

4 These photos were retrieved off of Mr. Kadir's flash
5 drive, a flash drive that he was traveling to Guyana with --
6 he was traveling to Iran with on the date that he was
7 arrested.

8 There is no indication whatsoever -- there has been
9 no occasion whatsoever made by the People when these pictures
10 were taken and how they can be relevant to this case in chief.

11 Also, your Honor, again, the important point is the
12 charges that were laid out in Khalil, the carrying, using and
13 carrying of a firearm during and in relation to a crime of
14 violence allowed the pictures -- that charge allowed the
15 pictures to be relevant. It was one of the charges that
16 was -- that was -- it was one of the charges in the
17 indictment, one of the issues that needed to be proven.

18 The government correctly, your Honor, points out the
19 four evidentiary rule tests that have to be met.

20 One second, your Honor.

21 (Pause.)

22 MR. NKRUMAH: The government correctly points out
23 the four evidentiary tests, four part evidentiary test that
24 must be met before this type of evidence is allowed in.

25 As set forth in United States v. Downing, 297 F.3d,

1 6659, Second Circuit, 2002. To admit evidence of prior bad
2 acts a trial court must find that the evidence passes a four
3 part test.

4 First, the evidence must be offered for a proper
5 purpose. There is no proper purpose in offering this evidence
6 but to prejudice the jury against Mr. Kadir.

7 It must be relevant. This evidence is not relevant,
8 your Honor. There is no firearm charges alleged in this
9 indictment. There are no instances in which any of the
10 conspirators, indicted or unindicted, have been shown --
11 testimony has been brought forth to show that weapons were
12 involved.

13 Three. It must be substantially more probative than
14 prejudicial. That, your Honor, is a burden that the
15 government cannot pass.

16 These pictures are being shown by the government
17 truly as -- the pictures that are being offered by the
18 government in their case in chief are prejudicial. There is
19 no doubt about the fact that they are prejudicial.

20 They do not go to any issue in this case other than
21 the government will try to argue my client's state of mind.
22 The charges that the government has brought forth in this case
23 precludes them from offering these pictures in the case in
24 chief.

25 There are no weapons charges. Weapons have not been

1 mentioned in this case at all and they want to show a picture
2 of my client shirtless -- I don't think that is military garb,
3 it might be because I don't know where the store is, but I
4 don't think that is violent military garb. He's shirtless
5 with weapons that Iran may not -- it's our contention, your
6 Honor, that the weapons are not even real.

7 THE COURT: The weapons certainly look awfully real
8 from the photographs that were provided by the government in
9 their submission.

10 There is one photograph where I believe that
11 Mr. Kadir's daughter, or one of his daughters appears to even
12 be loading one of the smaller firearms, at least the barrel is
13 open.

14 I'm not familiar with the terms, but whatever, where
15 the bullets go is open from there. They don't look like any
16 toy weapons I've seen and, in any event, I've never heard of
17 three grownups, especially a man in his sixties, buying toy
18 guns and then posing with them in the kind of poses that all
19 of them have with -- I think there are a total of five guns,
20 including one gun that looks like some sort of a machine gun.

21 He doesn't have enough hands to hold all of the
22 guns. Three of them are in his waistband at one point in one
23 of the photographs.

24 MR. NKRUMAH: Your Honor, they may look --

25 THE COURT: The reason why I mention that is, the

1 point being, even though he may not be dressed as the
2 defendant in Khalil was dressed, in whatever they are calling
3 military garb, we didn't -- the picture was not included with
4 the case so we don't know, but certainly it can be called some
5 sort of an aggressive or military stance in the way the photo
6 has been taken, the pose in the photo.

7 MR. NKRUMAH: Your Honor, I would somewhat agree
8 with you if those photos were taken here in America.

9 I would ask the court to take into account exactly
10 where these photos were taken from and also the fact that
11 Guyana is not a country as advanced as America.

12 I would also ask the court to take note of the fact
13 that in a certain period of America's history there were
14 periods in which entire families posed with weapons, with the
15 modern weapons of that time and that wasn't considered a
16 militant or a violent --

17 THE COURT: We're not talking about that period of
18 United States history.

19 MR. NKRUMAH: The reason why I bring up that
20 analogy, your Honor, is that --

21 THE COURT: I don't know what kind of evidence
22 you're asking me to rely on in terms of what the mores are of
23 the Guyanese society in terms of posing with guns. I don't
24 understand.

25 MR. NKRUMAH: Your Honor, I'm not asking to you rely

1 on any evidence. I'm making a comment based on the court's
2 comment that it looked vicious and militant and everything
3 else.

4 In the same argument the court has made to me, I
5 would say to the court, it may look like that, it may look
6 like that in our eyes, it may look like that from where we sit
7 here in America, but we don't know what mores, we don't know
8 what the -- what the atmosphere and customs of Guyana is at
9 the time that these photos were taken.

10 At the time that these photos were taken, again, we
11 still don't even know when the photos were taken. If they
12 were taken during the course of the conspiracy or sometime
13 before, if they were taken some time before, how does it go to
14 prove his state of mind, if they were taken some time before,
15 your Honor.

16 Again, your Honor, this evidence is not relevant.
17 It's not relevant in the fact that there are no weapon charges
18 involved here. It is not relevant in the fact that we have no
19 idea when these pictures were taken, none. We don't know if
20 these pictures were taken two years before, at any point
21 two months before. My client met Mr. DeFreitas and Mr.
22 Francis. We have no idea when these pictures were taken.

23 All we have are pictures that the government found
24 on Mr. Kadir's flash drive that shows him posing with weapons
25 that may or may not be real. Again, they may not be real,

1 your Honor, despite the fact that they look real.

2 There are many toy guns today, many that are made to
3 look identical to real weapons, to the point in which a few
4 years ago they -- the government cautioned toy makers in
5 making these type of weapons because people were getting shot
6 in these streets walking around with phony weapons.

7 So we can't look at a picture and tell if they are
8 real or not or if they even look real. The government has no
9 proof to put forth that these guns were real. The government
10 has no proof to put forth that these pictures were taken at
11 the time.

12 THE COURT: Okay. If you have nothing new to say, I
13 will let the government respond to the argument.

14 MR. NKRUMAH: The admission of these pictures is
15 prejudicial and should not be allowed on the government's case
16 in chief.

17 THE COURT: Thank you.

18 MR. MILLER: The first point that --

19 THE COURT: Can I just ask you, I was going to ask
20 you anyway, is there some indication, either from the
21 photographs themselves or the flash drive, as to when these
22 photographs were taken?

23 MR. MILLER: No. I think the most anyone could tell
24 is when they were loaded up onto the flash drive. I don't
25 have that information handy. The flash drive wasn't the

1 instrument that took the pictures. I don't think there is
2 anyway to know from the flash drive when the pictures were
3 taken.

4 From the government's point of view, the relevant
5 date and the relevant issue is not when the pictures were
6 taken. As I understand the Khalil case, those pictures in the
7 Khalil case I don't believe were found on Abu Mazer's person
8 at the time he was engaged in the plot to use a weapon of mass
9 destruction.

10 These photographs were. They were found in
11 Mr. Kadir's possession during what the government contends was
12 plot business, which is a trip to Iran to pitch the plot. So
13 the fact that he's carrying with him during the midst of the
14 plot, in fact at the apex of the plot, the travel to Iran, is
15 a relevant date.

16 That is different than Abu Mezer. In Abu Mezer the
17 photos were taken then. Here we have the defendant engaging
18 in plot business with the photographs in his possession as he
19 travels to Iran to bring information about the plot. So that
20 is number one, your Honor.

21 I want to put one issue to the side, which is.
22 Mr. Nkrumah argues that the reason that the Second Circuit
23 approved the admission of these pictures in Khalil had to do
24 with the charges and that is with a firearm charge.

25 If your Honor looks at the case, 214 F.3d at 116,

1 the charges are described and they are quite different than
2 how Mr. Nkrumah is characterizing them. It says both Abu
3 Mezer and his codefendant were indicted on one count
4 threatening to use a weapon of mass destruction, to wit: a
5 pipe bomb, and then it cites the violation, one count of
6 conspiring to do so.

7 Then it says, and this is the important part, in
8 addition, Abu Mezer was charged with one count of using and
9 carrying a firearm, to wit: a pipe bomb.

10 So the charge there had nothing to do with the
11 pictures. For Mr. Nkrumah to say that the reason the pictures
12 were admitted was to prove the 924(c) charge is inaccurate.

13 It had nothing to do with that. In fact, as the
14 court discusses in its reasoning, it's discussing the issue of
15 rebutting exactly the same type of defense that has already
16 been advanced by Mr. Kadir; namely, that Abu Mezer was arguing
17 that he didn't intend to engage in this conspiracy and that he
18 basically pretended to engage in the conspiracy as a way to
19 get money. That's essentially the defense in the Abu Mezer
20 case.

21 Here, as articulated both at opening statements and
22 by counsel, we have a defendant who is arguing that he didn't
23 intend to join the conspiracy despite evidence that the
24 government argues shows to the contrary, and that he did so --
25 if I understand the defense correctly as articulated by

1 Miss Messina a couple of days ago -- that he pretended to go
2 along, Abu Mezer pretended to go along, or claimed he
3 pretended to go along before he was convicted, in order to get
4 money for his mosque.

5 So we have the precise same contours of the same
6 defense and so the fact that on the trip, that we will assert,
7 and we think the evidence showed, the defendant engaged in an
8 effort to go to Iran to pitch the plot; that he's carrying
9 with him during that plot business these photographs is highly
10 relevant both to his intent and state of mind, which the
11 government must prove in its case in chief, as well as to
12 rebut the argument that defense counsel has already advanced.

13 I would note that in the Abu Mezer case, the Khalil
14 case, those pictures were admitted in the government's case in
15 chief because of the defense that -- it says in the opinion
16 in light of the argument in its opening statement.

17 Mr. Nkrumah said a few times it may come in during
18 the defendant's case, you know, in crossing his character
19 witnesses or other people, but the Second Circuit hasn't
20 required some sort of waiting game where the issue has already
21 been raised and presented to the jury in opening statements or
22 in cross-examination.

23 The defendant also argues that somehow the fact that
24 these firearms possessed in militant poses don't add up to the
25 same thing as the Abu Mezer case because Abu Mezer was in a

1 posture of martyrdom.

2 I would argue that makes the government's proposed
3 admission of these photographs a stronger case. In Abu Mezer,
4 they had the concern of the extra prejudice of the fact,
5 potential prejudice at least, that he was assuming a posture
6 of martyrdom.

7 We're not going to argue that these photographs show
8 a posture of martyrdom. We're going to argue that these
9 photographs both are relevant to intent and state of mind for
10 the reasons we have already discussed, as well as rebut the
11 defense argument.

12 But the biggest issue in Abu Mezer raised by the
13 court was the 403 issue, and the government's argument is that
14 the potential for prejudice is less here than it is in the Abu
15 Mezer case because of that fact that we're not going to argue
16 some posture of martyrdom.

17 So for the reasons set forth in the government's
18 submission, we think the Khalil case is as on point as one
19 could expect the case to be in this circumstance. It's rare
20 when you find a case that is this close to the facts at hand
21 in an evidentiary matter.

22 There are also going to be slight differences
23 because each case is different, but what we have here is
24 essentially the same issue presented and we have both the
25 District Court's decision and the Second Circuit's opinion

1 that this is an appropriate piece of evidence for both
2 purposes from the government's point of view, for the case in
3 chief as well as for rebutting the defense's position.

4 (Continued next page)

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1 THE COURT: Let me ask the government there. In
2 connection -- withdrawn.

3 There are in addition to the photographs of
4 Mr. Kadir, there are a couple of pictures, or some pictures of
5 Mr. Kadir's son and daughter, or a son and a daughter. I
6 think he has more than one of each if I'm correct. Am I
7 correct?

8 MR. NKUMAH: Yes, your Honor.

9 THE COURT: Also posing with the weapons. Thus far
10 from the evidence I've heard, it has not been argued by the
11 government that any of Mr. Kadir's children were involved in
12 the plot. There was testimony that Mr. Francis was put up at
13 the home of one of Mr. Kadir's sons while he was visiting in
14 Guyana, but pretty much that was it.

15 Why would the pictures of the children be relevant
16 here?

17 MR. MILLER: There are three reasons why the
18 pictures of the children are relevant. The first one is were
19 these pictures to have been found in some drawer in
20 Mr. Kadir's home, it would potentially -- we would still be
21 arguing admissibility in a rebuttal sense. What's relevant is
22 the fact from the government's point of view, the defendant is
23 taking these photographs with him to Iran on plot business.
24 The fact, from the government's point of view, essentially we
25 intend to argue in addition to rebutting, this is potentially

1 these photographs show sort of his bona fides; that is, he's
2 photographs are photographs showing they're militant poses,
3 multiple people involved in militant poses. We think it's
4 relevant from that perspective. They're all taken together.
5 You can tell by the circumstances of the photographs and the
6 location of the photographs they're taken contemporaneously,
7 possessing the same weapons.

8 The second reason would be, my understanding that
9 the defense is going to argue that the defendants -- already
10 argued -- the defendants' goal here is to raise money for
11 this mosque. One of the individuals in the photographs is a
12 leader of that mosque, one of the daughters, Sauda Kadir is a
13 teacher, an important player in that mosque. We think that
14 also becomes relevant depending on how the defense continues
15 to advance.

16 Third, the fact that one of the guns apparently now
17 the claim is going to be the guns are fake. The fact that in
18 one of the pictures of the daughter, she looks to be loading
19 the gun, will clearly rebut a claim this is a fake gun. Those
20 are the three reasons we think those pictures are relevant.

21 THE COURT: I have given a great deal of thought --

22 MR. NKRUMAH: Your Honor, may I just further
23 comment on what the government replied?

24 THE COURT: You may if it's different from what you
25 already said.

1 MR. NKRUMAH: Yes, your Honor.

2 It's the government's contention Mr. Kadir is going
3 to Iran to advance the plot. It's not our contention, there's
4 no evidence that's been put forth in front of the jury that
5 Mr. Kadir was headed to Iran to advance the plot.

6 THE COURT: Of course, that would be the defense
7 contention. I wouldn't expect you to contend otherwise. At
8 least based on the evidence that has been presented during the
9 course of this trial, I think there is sufficient evidence
10 there for the jury to infer that Mr. Kadir was in fact heading
11 to Iran for that purpose and ultimately it's up to the jury to
12 make that determination.

13 MS. MESSINA: Might I add a that, which is part of
14 their position contradicted by their evidence, in fact,
15 Mr. Francis and Mr. Defreitas were Ibrahim's help to find
16 someone, they didn't know Mr. Kadir was going to Iran or --

17 THE COURT: Which it attests then to the fact
18 Mr. Defreitas was right to be worried people like Rutherford,
19 for that matter, who might, if they had possession of the
20 videotape of the JFK videotape, and possession of the
21 Google Earth maps might on their own go and sell it and cut
22 him out. I still don't see how that cuts against the
23 government's theory. Again, it's a theory that can be
24 accepted or rejected by the jury.

25 MS. MESSINA: Mr. Kadir had nothing on his drive

1 that was either Google download, or anything else relating to
2 the plot. There was nothing on his hard drive. These
3 photos -- it's the government's total speculation, all based
4 on speculation.

5 MR. MILLER: I set forth the government's motion
6 reciting to parts of the record which corroborate the
7 government's theory.

8 THE COURT: I've considered all of the arguments.
9 The government's motion is granted in part and denied in part.
10 It's granted to the extent that the photographs of Mr. Kadir
11 will be admissible in their case in chief. I'll not permit
12 them to use in their case in chief the photographs of the
13 daughter and the son. It seems to me, pursuant to the Khalil
14 case, which I don't find -- granted, it's not on all fours,
15 but it is somewhat similar to the facts here and as in Khalil,
16 the photographs are relevant to rebut important trails by the
17 defense in this case of Mr. Kadir as having no destructive
18 objective and posing no real threat to the safety of human
19 beings in general.

20 The defense in its opening stated rather forcefully
21 that Shiite Muslims go to Iran in the same way that Catholics
22 go to the Vatican, also portrayed Mr. Kadir as a devoted
23 family man, a hard worker and he may be all of those things.
24 However, the defense also emphasized, at least the daughter,
25 went to study in the University of Iran where they teach

1 ethics and other religious precepts of Islam. All of that
2 goes to infer along with -- withdrawn. That together with
3 the extensive cross-examination by the defense of Mr. Francis
4 and poring over the transcripts and, in particular,
5 emphasizing those portions of the transcript that showed that
6 Mr. Kadir was involved in the project to build a mosque in
7 Guyana, a Shiite mosque in Guyana; that he was interested in
8 raising funds; that he had students who impliedly were
9 religious students of his; that he even had his students in
10 Trinidad's help to put up Mr. Defreitas and Mr. Francis on the
11 trip to Trinidad; that it was part of Mr. Kadir's philosophy
12 and they were discussing, meaning Mr. Francis and Mr. Kadir
13 were discussing some of Mr. Kadir's religious philosophy about
14 how you cannot destroy institutions until -- you can't be
15 depressive or go on the offensive if you haven't built your
16 own institutions. I know that's not a direct quote, it's a
17 partial quote, but as best as I can from my memory.

18 All of that taken together is a very strong
19 insinuation or implication or argument that Mr. Kadir is a
20 religious person whose only interest is in promoting religious
21 observance, in promoting the social infrastructure, if you
22 will, on behalf of the Muslim community, and, therefore, he is
23 a peaceful man.

24 Certainly there was much ado made about that as well
25 in the opening and the defense has been arguing all along that

1 his intent in going to Iran was simply to deal with building
2 of the mosque and that he never had any intentions of
3 following through with the plot. These photographs go towards
4 rebutting that in the way that was permitted, in the court's
5 view, in the Khalil case.

6 As I said with respect to the children, I think it's
7 somewhat removed. I think it is important, just bears
8 mentioning, even though it is difficult to tell -- I don't
9 know if it's possible to tell when the photographs were taken.
10 I know, at least based on the portrayal of Mr. Kadir, it
11 doesn't look like it was taken ten years ago or fifteen years
12 ago or twenty years ago. The children are grown children,
13 certainly consistent with what their approximate ages should
14 be at or around 2007. I think it is important Mr. Kadir had
15 these photographs on him at the point and time that he was on
16 his way to Iran through Venezuela.

17 For all those reasons those photographs are
18 admitted.

19 With respect to the children, I'm not admitting
20 then. Again, I caution the defense if you open the door, that
21 allows the government to move the court to reconsider its
22 ruling.

23 MS. WHALEN: We would ask for a limiting
24 instruction on behalf of Mr. Defreitas at the time these
25 photographs are introduced.

1 THE COURT: That they're not to be considered as to
2 him?

3 MS. WHALEN: Yes.

4 THE COURT: You want to take maybe a ten-minute
5 break? There's one more issue, I'm sorry.

6 MR. MILLER: The issue is this. We're happy to go
7 ahead, keep moving the ball forward, the progress going with
8 respect to getting towards the end of the trial. Generally
9 after a witness testifies; your Honor advises the witness even
10 though cross hasn't started, he's on cross-examination. Given
11 the witness here is the case agent who works with us all the
12 time, who would be helping us with summations, other issues,
13 given he will go through many pieces of evidence during his
14 testimony, we would ask, because he won't have actually
15 started cross-examination, that the government be permitted to
16 continue to work with him over the weekend and we spoke to,
17 able to speak to Ms. Whalen although not yet Mr. Nkrumah and
18 Ms. Messina. I don't believe they have an objection. We want
19 to preview. Otherwise we might have concerns of doing his
20 testimony broken in half. It would give us three days we're
21 not able to work with him.

22 THE COURT: I don't know how long Mr. Addonizio's
23 testimony is going to go. I'm not keeping the jury beyond
24 5:00 o'clock.

25 MR. MILLER: We may complete his testimony before

1 that. I'm not certain. The application would be until
2 cross-examination actually starts that your Honor not give him
3 that instruction; that he be allowed to continue working over
4 the weekend.

5 THE COURT: Any objection to that?

6 MR. KAMDANG: I'll defer to the court.

7 MR. NKRUMAH: We defer to the court.

8 MS. WHALEN: The only thing we had discussed with
9 the government, Mr. Addonizio not be able to bring his
10 transcript, not review it with him.

11 MR. MILLER: We'll make sure he doesn't have the
12 transcript.

13 THE COURT: That's reasonable given his sort of
14 special status.

15 MR. MILLER: Thank you.

16 THE COURT: On the government team. Let's take a
17 ten-minute break.

18 Ms. Ahmad, a question. I don't know if you would
19 know, she refers to the religion and Shiite is to the
20 follower? I'm not sure if I'm using it correctly.

21 MS. AHMAD: No, actually the Arabic word is Shia.
22 It's transliterated two different ways in English, S H I A and
23 S H I I T E which has led to some people pronouncing Shiite.
24 It's a difference in translation. The word is always Shia.
25 It's just because -- I don't think it's transliterated as

1 Shiite anymore, but it was in the '70s, caught on, so led to
2 a lot of confusion.

3 THE COURT: The reporter asked and I was not sure.
4 Thank you.

5 (Recess.)

6 THE COURT: This is case on trial continued. All
7 of the parties are present. Can I move forward without
8 Ms. Messina being here?

9 MR. NKRUMAH: Yes, you can, your Honor.

10 THE COURT: I apologize for taking a little longer
11 on the break, but I did want to draft a limiting instruction.
12 I wanted to run it past the parties before we actually went
13 forward with Mr. Addonizio's testimony.

14 Let me read it to you so I can get your feedback.
15 It is as follows: Some photographs, mark whatever the exhibit
16 numbers are, 132 --

17 MR. MILLER: I'll have to get them for you.

18 THE COURT: I have them on your exhibit. I didn't
19 have a chance to write it.

20 MR. MILLER: The three we want to put in 132, 138,
21 139 relating to Mr. Kadir.

22 THE COURT: Photographs marked Exhibits 132, 138,
23 139 were introduced during the testimony of Detective
24 Investigator Addonizio depicting the defendant Abdul Kadir
25 with a number of firearms. Mr. Kadir is not charged with

1 committing any crime involving firearms. He is on trial only
2 for the acts alleged in the indictment. You may not consider
3 this evidence as a substitute for proof that Mr. Kadir
4 committed the crimes charged by the government. You may not
5 consider this evidence as proof that Mr. Kadir has a bad
6 character or propensity to commit the crimes charged by the
7 government.

8 This evidence may be considered by you only to the
9 extent that it bears upon defendant Kadir's knowledge, intent
10 or motive to commit the acts charged in the indictment.

11 Furthermore, this evidence may be considered only
12 against Defendant Kadir and may not in any respect enter into
13 your deliberations as to Defendant Defreitas. I will give you
14 more detailed instructions at the end of the case with respect
15 to the elements of the charged crimes and how to assess the
16 evidence presented at trial.

17 Is that satisfactory to the government?

18 MR. MILLER: Fine with the government, your Honor.

19 THE COURT: Ms. Whalen?

20 MS. WHALEN: Yes.

21 THE COURT: Mr. Nkrumah?

22 MR. NKUMAH: Yes, your Honor, thank you. I was
23 going to ask you a limiting instruction when we came back.

24 THE COURT: That being said, are you ready?

25 MR. MILLER: Yes. Should Detective Addonizio take

1 the stand.

2 THE COURT: Sure.

3 (Continued on next page.)

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1 (Jury present.)

2 THE COURT: Jury entering.

3 All right. Everyone may be seated.

4 Welcome back, ladies and gentlemen.

5 Do the parties all agree that all of our jurors are
6 present and properly seated?

7 MR. KAMDANG: Yes, Your Honor.

8 MR. NKRUMAH: Yes, Your Honor.

9 MR. MILLER: Yes, Your Honor.

10 THE COURT: Again, please bear with us. I know the
11 break was a little bit longer than expected. Again, trust
12 that we were working to make things run a little bit more
13 smoothly once we got started with respect to the continued
14 presentation of the evidence. These are matters that are
15 solely the province of the Court and not matters for the jury.
16 So you are not to speculate as to what is happening during
17 this time.

18 The government may call its next witness.

19 MR. MILLER: Your Honor, the government calls Robert
20 Addonizio.

21 THE CLERK: Raise your right hand.

22 (The witness is duly affirmed by clerk.)

23 THE CLERK: Please be seated.

24 Please state and spell your name for the record.

25 THE WITNESS: Robert Addonizio, A D D O N I Z I O.

1 DIRECT EXAMINATION

2 BY MR. MILLER:

3 Q Good afternoon.

4 . Where do you work?

5 A I'm a detective investigator for the Kings County
6 District Attorney's office.

7 Q For how long have you -- was the Kings County District
8 Attorneys office also known as the Brooklyn District
9 Attorney's office?

10 A Yes, it is.

11 Q For how long have you been a detective investigator at
12 that office?

13 A About eleven-and-a-half years.

14 Q What are your duties there as a detective investigator?

15 A When I work -- at the DA's office, I work investigations
16 after arrests and before trials, to enhance cases.

17 Q What did you do before becoming a detective investigator?

18 A I was a Welfare fraud investigator for the City of New
19 York.

20 Q What is your current assignment?

21 A The FBI's Joint Terrorism Task Force.

22 Q What's the position that you have there called?

23 A Task Force Officer.

24 Q So you -- where do you report to work each day?

25 A The FBI office.

1 Q The Joint terrorism Task Force office?

2 A Yes.

3 Q Is the Joint Terrorism Task Force often referred to as
4 the JTTF?

5 A Yes.

6 Q Can you describe for the jury what the Joint Terrorism
7 Task Force or JTTF is and what it does?

8 A Basically it is a group of agencies comprised of law
9 enforcement, intelligence and military that investigate
10 counterterrorism investigations.

11 Q What agencies lead the Joint Terrorism Task Force in
12 New York?

13 A The FBI and the NYPD.

14 Q And the NYPD, of course, is the New York City Police
15 Department?

16 A Yes.

17 Q What kinds of terrorism cases does the JTTF New York
18 investigate?

19 A They work cases here in New York domestically and also
20 international cases.

21 Q For how long have you been assigned to the JTTF as a Task
22 Force officer?

23 A A little over six years.

24 Q Can you describe for the jury what your duties are as a
25 Task Force officer?

1 A I conduct investigations into threats against US
2 interests here in New York and abroad.

3 Q Did there come a time when you began working on this
4 case?

5 A Yes.

6 Q Can you describe for the jury how that came about?

7 A We received a tip from a source in Guyana about a threat
8 to JFK Airport.

9 Q What kind of squad were you working at that time?

10 A I was working a squad that investigated tips that came
11 into a hot line, and other sources -- the tips came in from
12 other sources in addition to the hot line.

13 Q When was it that the tip that you mentioned from Guyana
14 about JFK came in?

15 A In January 2006.

16 Q Without telling us what the content of the tip was, what
17 if anything did you do as a result?

18 A I opened an investigation into Russell DeFreitas.

19 Q Do you see Russell DeFreitas enter court today?

20 A Yes, I do.

21 Q Can you describe where he is sitting and what he is
22 wearing?

23 A The man over there in the cream shirt.

24 THE COURT: Indicating for the record Mr. DeFreitas.

25 Q What was your role in the investigation that followed?

1 A I was one of the lead investigators.

2 Q Have you been a lead investigator throughout the case?

3 A Yes, I have.

4 Q Can you describe for the jury what you did when you
5 opened the investigation?

6 A I conducted various record checks.

7 Q Record checks of -- on whom or in what -- what kind?

8 A Into Mr. DeFreitas and any possible associates.

9 Q Were you able to confirm at that time where Mr. DeFreitas
10 was?

11 A Yes.

12 Q Where was he?

13 A He was in Guyana.

14 Q Did you learn anything about his work history?

15 A Yes.

16 We learned that he did -- he worked at JFK
17 International Airport.

18 Q Did there come a time when Mr. DeFreitas returned to the
19 United States?

20 A Yes.

21 Q When was that?

22 A That was approximately February of 2006.

23 Q What if anything did you do in connection with the
24 investigation at that point?

25 A He was placed under 24-hour surveillance.

1 Q What was the purpose of performing such surveillance?

2 A We wanted to see where he lived and who his associates
3 were.

4 Q Did you also look into where he was going during the day?

5 A Correct, yes.

6 Q What other steps did you take at that time in connection
7 with the investigation?

8 A At that time we tried to find a confidential informant
9 that was working for the FBI that may know some of
10 Mr. DeFreitas's associates.

11 Q When you say someone who knew some of Mr. DeFreitas's
12 associates, had you already determined who some of his
13 associates were?

14 A Yes.

15 Surveillance had determined a couple of people that
16 he was meeting with and associating with.

17 Q In basic terms, you were looking for someone who knew
18 someone that Mr. DeFreitas knew?

19 A Correct.

20 Q Were you able to identify anyone?

21 A Yes.

22 Q Who were you able to identify who knew someone in common
23 with Mr. DeFreitas and was a confidential informant?

24 A Steven Francis.

25 Q Why did you want to identify someone who knew a person in

1 common with Russell DeFreitas; that is, why did you want to
2 identify an informant who had that information?

3 A It would be easier for that person to come to know
4 Mr. DeFreitas.

5 Q So once you have identified Steven Francis as having that
6 one step removal from Mr. DeFreitas, what did you do?

7 A I contacted his handlers.

8 Q In particular, did you contact a detective?

9 A Yes, Detective Louis Napoli.

10 Q Where does -- where did Louis Napoli work at the time,
11 back in 2006?

12 A He was a NYPD detective, working for the Joint Terrorism
13 Task Force.

14 Q I think you may have said this, but what was his
15 relationship between Detective Napoli and Steven Francis at
16 the time, back in early 2006?

17 A Detective Napoli was the handler for Mr. Francis.

18 Q Can you describe for the jury what that means, what the
19 law enforcement term handler means?

20 A Basically, he's the confidential informant's supervisor.

21 Q Was Detective Napoli assigned to the JTTF?

22 A Yes.

23 Q Did you subsequently have a meeting with Detective Napoli
24 and Steven Francis?

25 A Yes.

1 Q Can you describe what happened during the meeting?

2 A During that meeting we showed Mr. Francis a photograph of
3 Mr. DeFreitas and one of his associates. Mr. Francis didn't
4 know them. And then we give him information where he can meet
5 Mr. DeFreitas.

6 Q Did you -- how did you know where he might be able to
7 meet Mr. Defers?

8 A Through surveillance.

9 Q Was that a public location?

10 A Yes.

11 Q Did you or Detective Napoli provide any more information
12 to Steven Francis about Russell DeFreitas besides where he
13 might be and the photo --

14 A No.

15 Q -- and his name?

16 A No.

17 Q Did you tell -- did you or Detective Napoli tell Steven
18 Francis anything about what you learned from the tip that you
19 mentioned earlier?

20 A No.

21 Q Did you mention or did Detective Napoli mention JFK
22 Airport in any way?

23 A No.

24 Q Did you or Detective Napoli mention Guyana or the
25 Caribbean region?

1 A No.

2 Q Did you or Detective Napoli indicate in any way why you
3 were interested in Russell DeFreitas?

4 A No, we did not.

5 Q Why not?

6 A We basically wanted Mr. Francis to go into the situation,
7 meet Mr. DeFreitas and just be a blank slate and not know any
8 information about what we were investigating.

9 Q At that time was Mr. Francis working on any other
10 investigations with the JTTF?

11 A Yes.

12 Q What kinds of investigations?

13 A Terrorism investigations.

14 Q Do you have a ballpark number of about how many
15 investigations he was working at the time?

16 A I would say, between seven and ten investigations.

17 Q Did Steven Francis subsequently meet the defendant,
18 Russell DeFreitas?

19 A Yes, he did.

20 Q Approximately when was that?

21 A That was around July of 2006.

22 THE COURT: Can you slow down a little bit,
23 Mr. Miller?

24 MR. MILLER: Sure.

25 THE COURT: Okay.

1 MR. MILLER: Thank you, Your Honor.

2 Q Now, Detective Addonizio, during the course of the
3 investigation, did you gather many hours of recordings of
4 conversations involving the defendants and Mr. Francis and
5 others?

6 A Yes.

7 Q It is fair to say, it would be more than a hundred hours?

8 A Yes.

9 Q Were all of those hours -- was every one relevant to the
10 charges in the case?

11 A No.

12 Q Fair to say, many were?

13 A Yes.

14 Q Were all of those recordings that related to these
15 defendants turned over to the defense?

16 A Yes, they were.

17 Q With respect to transcripts, did you assist with the
18 process of creating the transcripts?

19 A Yes.

20 Q Can you describe generally how that process came about?

21 A When the tapes came in, they would either go to the
22 FBI -- at the time of the investigation they all went to the
23 FBI. They did an initial transcript.

24 After the arrests, some of them went out to a
25 service. The service completed them. They were reviewed by

1 Mr. Francis and then they were reviewed by investigators and
2 prosecutors.

3 Q Now, Detective Addonizio, did you ever show Steven
4 Francis or Donald Nero or any other witness any of the FBI's
5 reports in the case?

6 A No.

7 Q Other than the exhibits that they identified in court,
8 did you show Francis or Nero or any other witness any of the
9 other evidence in the case?

10 A No.

11 Q Did you ever tell any of the witnesses in the case who
12 the other witnesses were?

13 A No.

14 Q During Steven Francis's meetings with Russell DeFreitas
15 and others, or at least with Russell DeFreitas here in the
16 United States, was the FBI performing surveillance of some of
17 those meetings?

18 A Yes.

19 Q During some of those meetings, did the FBI agents listen
20 to anything?

21 A Yes.

22 Q When I say "FBI agents," I am also referring to Task
23 Force officers, okay?

24 A Yes.

25 Q Was that contemporaneous, that is, were they listening to

1 some of those conversations while the conversations were
2 happening?

3 A Sometimes.

4 Q Is that standard FBI practice in managing informants in a
5 sensitive situation?

6 A Yes.

7 Q Did Mr. Francis know that that was happening?

8 A No, he did not.

9 Q I want to direct your attention to approximately December
10 of 2006.

11 Where was the defendant Russell DeFreitas at that
12 time?

13 A In Guyana.

14 Q Did you learn that Russell DeFreitas was looking for an
15 apartment to use in the United States when he returned?

16 A Yes.

17 Q Did you take any investigative steps at that point?

18 A Yes.

19 We went looking for an apartment. We approached the
20 New York City Housing Authority to see if they had anything
21 available.

22 Q An available apartment?

23 A Apartment, yes.

24 Q Did the New York City Housing Authority have available
25 apartments?

1 A Yes.

2 Q So was it vacant at that time?

3 A Yes, it was.

4 Q Did securing that apartment cost the government any
5 money?

6 A No.

7 Q What did you do at that point once you located the
8 apartment at the New York City Housing Authority?

9 A We told Mr. Francis that we had an apartment and
10 Mr. Francis told Mr. DeFreitas.

11 Q Did you or a Task Force officer or FBI agent direct
12 Mr. Francis to offer that apartment?

13 A Yes.

14 Q Why, why did you do that?

15 A Basically at that point we wanted to manage the risk. We
16 didn't know if Mr. DeFreitas was giving Mr. Francis all the
17 information so when he came back it would be easier for us to
18 know where he was and to follow him and conduct surveillance.

19 Q You could conduct surveillance better if you knew exactly
20 where his apartment was?

21 A Yes.

22 Q With respect to JFK International Airport, what's the law
23 enforcement agency whose job it is to enforce the law and
24 protect JFK International Airport?

25 A The Port Authority Police of New York and New Jersey.

1 Q Port Authority police department?

2 A Police department.

3 Q Is that a separate agency from the New York City Police
4 Department?

5 A Yes, it is.

6 Q Is the Port Authority police department or some members
7 of the Port Authority police department, are they a part of
8 the Joint Terrorism Task Force?

9 A Yes.

10 Q Does the JTTF have access to Port Authority police
11 department capabilities and law enforcement techniques?

12 A Yes.

13 Q Including those capabilities and techniques at the
14 airport?

15 A Yes.

16 Q So through the Port Authority police department, did the
17 JTTF obtain information and footage from cameras at the
18 airport?

19 A Yes.

20 Q Are there a lot of cameras at the airport?

21 A Yes, there are.

22 Q Would you describe it as a comprehensive system?

23 A Yes.

24 Q Do some of the cameras at JFK Airport have the capability
25 of photographing and reading license plates?

1 A Yes.

2 MR. KAMDANG: Objection as to form, Your Honor.

3 THE COURT: I'm sorry. Can you read the question
4 back to me?

5 (Record read.)

6 THE COURT: Overruled.

7 What was the answer?

8 A Yes.

9 Q Does the JTTF have access to that information through the
10 Port Authority police department Task Force officers at the
11 JTTF?

12 A Yes.

13 Q In January of 2007, during the period when there were
14 those four trips that Mr. Francis and Mr. DeFreitas took to
15 the airport, do you remember that time period?

16 A Yes.

17 Q Did you alert the Port Authority police department
18 regarding that plan to conduct surveillance at JFK Airport?

19 A Yes, we did.

20 Q Did you discuss what actions would be taken in connection
21 with that surveillance of the airport?

22 A Yes.

23 Q Was the Port Authority police department itself directed
24 not to arrest or otherwise pull over Francis and DeFreitas as
25 they drove around the airport?

1 A Yes.

2 Q Did Francis know that?

3 Did you communicate that to Francis?

4 A No.

5 Q Why did the JTTF direct the Port Authority police
6 department not to stop or arrest Mr. DeFreitas or Mr. Francis?

7 A Basically, we just -- for -- just for helping -- just for
8 the case, just to make sure that they were able to go where
9 Mr. DeFreitas wanted them to go.

10 Q Was there also surveillance -- was the JTTF also
11 performing surveillance?

12 A Yes.

13 Q Of what was happening at the airport?

14 A Yes.

15 Q I want to direct your attention to June 1st of 2007.

16 Were you working that day?

17 A Yes.

18 Q What were you working on?

19 A I was working on this investigation regarding the attack
20 of the JFK Airport and I was obtaining arrest warrants for
21 Mr. DeFreitas, Mr. Kadir and others.

22 Q Were you also helping to coordinate the arrests that
23 followed the issuance of those arrest warrants?

24 A Yes.

25 Q Were those arrest warrants signed by a judge in this

1 courthouse?

2 A Yes, they were.

3 Q I want to direct your attention to approximately 9:00 pm
4 that day, on June 1, 2007.

5 Where were you at that time on that day?

6 A I was at 26 Federal Plaza, in Manhattan.

7 Q What's 26 Federal Plaza in Manhattan?

8 A That's the headquarters of the FBI New York office.

9 Q Did there come a time that evening when you saw the
10 defendant Russell DeFreitas?

11 A Yes.

12 Q Where?

13 A In the processing room at 26 Federal Plaza.

14 Q Can you explain what the processing room at 26 Federal
15 Plaza is?

16 A After a subject is arrested, they are brought in for
17 fingerprinting and identification.

18 Q So were you involved in the actual arrest of
19 Mr. DeFreitas?

20 A No.

21 Q What was happening when you first saw Mr. DeFreitas?

22 A He was being at this fingerprinted.

23 Q Did you personally engage in that processing, the
24 fingerprinting and the other activities you mentioned?

25 A No.

1 Q Did there come a time when you saw Mr. DeFreitas again
2 that day?

3 A Yes.

4 Q Whereabouts?

5 A In the interview room in 26 Federal Plaza.

6 Q Did you engage in an interview of Russell DeFreitas?

7 A Yes.

8 Q Okay. We will come back that.

9 When the interview was complete, what investigative
10 steps did you take?

11 A We asked Mr. DeFreitas if we could search a backpack that
12 he had on his person when he was arrested.

13 Q How did he respond when you asked him for permission to
14 search the backpack he had on him at his arrest?

15 A He told us that we could.

16 Q What did you do?

17 That you could search it?

18 A Yes.

19 Q What did you do at that time?

20 A At that time we had a form for him to sign, him giving
21 consent to us to search the backpack.

22 Q Okay. So it is a consent to search form?

23 A Yes.

24 Q Is that a standard FBI form?

25 A Yes.

1 MR. MILLER: Your Honor, I would like to show a
2 document just to the witness.

3 THE COURT: Yes, you may.

4 Q Directing your attention to what's been marked for
5 identification as Government Exhibit 181. Showing you both
6 pages.

7 THE COURT: I'm sorry. What was the number of that
8 exhibit?

9 MR. MILLER: 181.

10 THE COURT: Thank you.

11 Q Do you recognize that document?

12 A Yes.

13 Q What is that?

14 A That's the consent to form search. Consent to search
15 form. Sorry.

16 Q And do you see your signature on that document?

17 A Yes.

18 Q Do you recognize that as the consent to search form that
19 you executed that night?

20 A Yes.

21 MR. MILLER: Your Honor, the government would offer
22 Government Exhibit 181.

23 THE COURT: Any objection?

24 MR. KAMDANG: No, Your Honor.

25 MR. NKRUMAH: No, Your Honor.

1 THE COURT: It is admitted as Government's
2 Exhibit 181.

3 (Marked.)

4 MR. MILLER: Thank you.

5 May I publish it to the jury?

6 THE COURT: You may.

7 Q Directing your attention then to Government Exhibit 181.
8 I will start at the top there.

9 Can you describe for the jury what you did with this
10 document on the evening of June 1, 2007?

11 A After he gave his verbal consent, I filled in the form to
12 state what item I was searching, which was the red backpack.
13 Then I read the form to Mr. DeFreitas.

14 Q This is your handwriting where it says red backpack
15 including all personal items?

16 A Yes.

17 Q By the way, I asked you about but the evening of June 1,
18 2007.

19 By this point, the time that you filled out this
20 consent to search, was it still June 1st or had it become
21 June 2nd?

22 A We went into June 2nd.

23 Q After you filled out Government Exhibit 181 by putting in
24 red backpack including all personal items, what did you do
25 then?

1 A I read the form to Mr. DeFreitas.

2 Q Including both the printed information and what you had
3 written?

4 A Yes.

5 Q Then what did you do?

6 A Then I had Mr. DeFreitas read it and he initialed after
7 each line.

8 Q So you read it out loud and then you had Mr. DeFreitas
9 read it to himself?

10 A Correct.

11 Q Then you said you had him initial after each line.

12 Can you point out for the jury where Mr. DeFreitas's
13 initials are?

14 A Here.

15 Q Is it fair to say, sir, you are pointing to the initials
16 after the lines marked two, three and four?

17 A Yes.

18 Q Then what happened, sir?

19 A Then Mr. DeFreitas signed and dated the form.

20 Q Can you show the jury where he signed and dated the form?

21 A The signature is right here and the date here.

22 Q At the top signature line on page one that you pointed
23 out as well as the date line?

24 A Yes.

25 Q The handwriting there is Mr. DeFreitas's?

1 A Yes.

2 Q And then did you -- you or somebody else sign that
3 document?

4 A I signed the form below Mr. DeFreitas.

5 Q After Mr. DeFreitas had given you oral and then written
6 consent to search the backpack, what did you do next?

7 A We searched the backpack.

8 Q Was Mr. DeFreitas present while you searched the
9 backpack?

10 A Yes, he was.

11 MR. MILLER: May I approach, Your Honor?

12 THE COURT: Yes.

13 (Continued on next page.)

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1 BY MR. MILLER:

2 Q I'm going to show you what's been marked for
3 identification as Government's Exhibits 185, 186, 187, 188,
4 189, 190, 191, 192, 193, 194, 195, 196 and 197.

5 A Yes.

6 Q Do you recognize those documents?

7 A Yes.

8 Q What are those documents?

9 A These are items recovered from Mr. DeFreitas's backpack.

10 Q Is it fair to say these are some of the pertinent items,
11 not every single item?

12 A Correct.

13 MR. MILLER: Your Honor, the government would offer
14 185 through 197.

15 THE COURT: Any objection?

16 MR. KAMDANG: One moment, your Honor.

17 (Pause.)

18 MR. KAMDANG: No objection.

19 MR. NKRUMAH: No objection.

20 THE COURT: They are admitted as Government Exhibits
21 185 through 197.

22 (So marked.)

23 Q Sir, after you searched Mr. DeFreitas's backpack in his
24 presence and took custody of the evidence, what happened to
25 the evidence at that point?

1 A It was taken from the premises.

2 Q Did you also you fill out the back page of this report,
3 Government Exhibit 181?

4 A Yes.

5 Q Did you fill in the information that is written at the
6 top?

7 A Yes.

8 Q And did you ask Mr. DeFreitas to do anything?

9 A Yes. He signed the form.

10 Q And did you sign the form?

11 A Yes.

12 Q You were saying that the evidence was taken where?

13 A Taken to the FBI office.

14 Q And is that the Joint Terrorism Task Force's office?

15 A Yes.

16 Q What kind of a facility is the Joint Terrorism Task Force
17 office?

18 A A secured compartmentalized information facility.

19 Q Is that often known by the acronym SKIF?

20 A Yes.

21 Q And what level of security is there at SKIF?

22 A The highest level security.

23 Q Highest level of the FBI?

24 A Yes.

25 Q Are there some FBI agents who are not allowed to enter

1 that facility?

2 A Yes.

3 Q Where were they kept at the SKIF, at the JTTF?

4 A In our squad area, at the desk of the investigator.

5 Q And in 2009 was it then transferred to the Evidence
6 Collection Unit and then later taken to the U.S. Attorney's
7 office before the trial?

8 A Yes.

9 Q I want to start by directing your attention to Government
10 Exhibit --

11 MR. MILLER: May I publish, your Honor?

12 THE COURT: Certainly.

13 Q Government Exhibit 187. Do you recognize this document?

14 A Yes.

15 Q What is it?

16 A The ticket stub with the first six letters of
17 Mr. DeFreitas name -- last name.

18 Q Can you point out for the jury where the first six
19 letters of Mr. DeFreitas's last name are?

20 A Top left here. (Indicating.)

21 Q And what flight does this ticket stub boarding pass
22 relate to?

23 A A flight on August 17th.

24 Q What year?

25 A Of 2006.

1 Q From where to where?

2 A From New York to Georgetown.

3 Q Did this flight happen during the course of the plot to
4 attack JFK Airport?

5 A Yes, it did.

6 Q Did the U.S. Government pay for this ticket?

7 A No.

8 Q Directing your attention to Government Exhibit 185.

9 A Yes.

10 Q Do you recognize this document?

11 A Yes.

12 Q What is this document?

13 A This is a receipt from a flight.

14 Q What flight does this receipt relate to?

15 A A flight from Georgetown to New York. Russell DeFreitas'
16 name is on it, and it's on February 28th of 2007.

17 Q Directing your attention to Government Exhibit 186.

18 A Yes.

19 Q What's this document?

20 A A boarding pass for Russell DeFreitas.

21 Q Is it for the same flight?

22 A Yes.

23 THE COURT: When you say the same flight --

24 MR. MILLER: I'm sorry.

25 Q The same flight as Government Exhibit 185, which you said

1 was a receipt?

2 A Yes.

3 Q Did this flight from Georgetown, Guyana to JFK Airport on
4 February 28, 2007, did this flight happen during the course of
5 the plot to attack JFK Airport?

6 A Yes.

7 Q U.S. Government pay for that ticket?

8 A No.

9 Q I want to direct your attention now to Government
10 Exhibit 188.

11 A Yes.

12 Q And 189. I show you the stickers on the back. Now I'm
13 directing your attention to the front part. Can you tell the
14 jury what these documents are?

15 A 188 is a ticket stub and 189 is a receipt.

16 Q What flight does Government Exhibit 188 relate to?

17 A Flight from Port of Spain to New York.

18 Q What date was that?

19 A May 26th.

20 Q Do you know what year, based on the stamp on the back?

21 A 2007.

22 Q And directing your attention then to Government
23 Exhibit 189. What flight does this refer to?

24 A Flight from Georgetown, Guyana to Trinidad on the 20th of
25 May, 2007.

1 Q And does this trip from Georgetown, Guyana, the flight
2 from Georgetown, Guyana to Port of Spain, Trinidad on
3 Government Exhibit 189, and from Port of Spain back to New
4 York JFK Airport on May 26, 2007, do these flights relate to
5 the plot to attack JFK Airport?

6 A Yes.

7 Q Can you remind the jury when during the plot these
8 flights took place?

9 A This is when Mr. DeFreitas and Mr. Francis flew to
10 Guyana. Mr. Francis stayed at Mr. Kadir's house and then they
11 went to Trinidad to present the plot to Abu Bakr.

12 Q And then the flight from Port of Spain to New York JFK?

13 A Yes.

14 Q That's the return flight?

15 A Yes.

16 Q Who paid for these tickets?

17 A The U.S. Government.

18 Q Why?

19 A Again, we wanted to manage the risk. These gentlemen
20 were intent on presenting the plan to Mr. Back who is a known
21 terrorist, so we wanted to know when they were going, who were
22 they going with, so we had information to do surveillance and
23 make sure that we knew everything that was going on.

24 Q I want to direct your attention to Government
25 Exhibit 190.

1 Do you recognize this exhibit?

2 A Yes.

3 Q What is this?

4 A It's Russell DeFreitas's US passport.

5 Q On the inside cover, is that a picture of Mr. DeFreitas?

6 A Yes.

7 Q Approximately when -- can you see here when the passport
8 expired?

9 A December 2007.

10 Q And in 2007, when US passports were issued, did the new
11 passports contain some kind of a chip?

12 A Yes.

13 Q Can you explain that, what kind of a chip?

14 A The same type of chip in the passports that contained
15 information that would be verified later on for our purposes.

16 Q That could be run through active databases?

17 A Yes.

18 Q Did you have a chance to go through this passport?

19 A Yes.

20 Q Do you know about how many stamps are in this passport?

21 A About 36.

22 Q Thirty-six, you said?

23 A Yes.

24 Q At this want to direct your attention to Government

25 Exhibit 191 --

1 THE COURT: I'm sorry. When you say "stamps," what
2 kind of stamps are you talking about?

3 THE WITNESS: Entry and exit stamps.

4 MR. MILLER: Thank you, your Honor.

5 Q Directing your attention to Government Exhibit 191. Do
6 you recognize this document?

7 A Yes.

8 Q And what is this document?

9 A An employee ID card for Russell DeFreitas.

10 Q From what company?

11 A Evergreen International Airlines.

12 Q According to the identification card, what was
13 Mr.DeFreitas' job?

14 A He was a training supervisor.

15 Q When did this ID card expire?

16 A December 31, 1991.

17 Q You found this when and where?

18 A I found this on June 1st when he was arrested, June 1,
19 2007, when he was arrested, in his backpack.

20 Q In his backpack he was carrying at the time of his
21 arrest?

22 A Yes.

23 Q I want to direct your attention to Government
24 Exhibit 192.

25 Do you recognize this document?

1 A Yes.

2 Q What's this document?

3 A This is the flier that Mr. DeFreitas and Mr. Francis made
4 with Abdul Kadir.

5 Q This was seized in the backpack?

6 A Yes.

7 Q Do you know who the person is in the top left-hand
8 corner?

9 A Yes.

10 Q Who is that?

11 A Ayatollah Khomeini.

12 Q And who was the Ayatollah Khomeini?

13 A The supreme leader of Iran during the revolution.

14 Q Directing your attention to the middle of the page. Is
15 there a photo there?

16 A Yes.

17 Q Who is that a photograph of?

18 A The defendant, Abdul Kadir.

19 Q Under Mr. Kadir's photo do you see the address there?

20 A Yes.

21 Q Do you recognize that address?

22 A Yes.

23 Q Whose address is that?

24 A Mr. Kadir's address.

25 Q How do you know that?

1 A I've been to his house.

2 Q I want to direct your attention to the line below the
3 address about the Masjid account. Can you read that line to
4 the jury.

5 A It says account name, Linden Islamic Trust. The account
6 number 6805519. Swift RDGLGYGD.

7 Q Do you know what that account number and Swift number
8 relate to?

9 A The account number is the bank account number and Swift
10 number is an international code needed for bank transactions.

11 Q Going back for a moment to Government Exhibit 191. Do
12 you know what Evergreen International Airlines is?

13 A It's an airline, a shipping company.

14 Q Does it have a presence at JFK Airport?

15 A Yes.

16 Q What kind of items does it ship, does it ship cargo,
17 people?

18 A Cargo.

19 Q I want to direct your attention to Government
20 Exhibit 193. Do you recognize that document?

21 A Yes.

22 Q What's that document?

23 A A 2006 appointment book received from Mr.DeFreitas'
24 backpack.

25 Q Are the Post-its put there for ease of using in the

1 courtroom or were they there at the time?

2 A They were put there by me.

3 Q I want to direct your attention to page 15 of this
4 address book.

5 THE COURT: Page what?

6 MR. MILLER: Page 15 of the appointment book,
7 Government Exhibit 193.

8 Q Do you recognize any names on that -- I see you have put
9 a mark at the top; is that right?

10 A Actually, no.

11 Q I'm sorry. Do you see any names you recognize?

12 A Yes.

13 Q What name do you recognize?

14 A Dawud.

15 Q And who is Dawud?

16 A Donald Nero.

17 Q Looking at the number underneath Dawud, is that the?
18 D-A-W-U-D ?

19 A Yes.

20 Q What is 011592, do you know?

21 A The international call to call countries.

22 Q So 011 is an international code. What about 592?

23 A The country code for Guyana.

24 Q For Guyana?

25 A Yes.

1 Q Then do you see any other names that you recognize
2 towards the bottom of the page that relates to this case?

3 A Yes.

4 Q Who do you see?

5 A Annas.

6 Q Who is Annas, remind the jury?

7 A He's a government confidential informant, Steven Francis.

8 Q And what about at the very bottom of the page?

9 A It says Rutherford Bilal.

10 Q Can you remind the jury who Rutherford Bilal is?

11 A One of the subjects of this investigation, Bilal
12 Rutherford.

13 Q Is it fair to say that you mentioned Dawud, Donald Nero,
14 is in Government Exhibit 4 here?

15 A Yes.

16 Q And Rutherford, is that the individual next to him,
17 Government Exhibit 5?

18 A Yes.

19 Q I want to direct your attention then to the pages marked
20 from December 19th through December 21st, again of Government
21 Exhibit 193.

22 THE COURT: What year, please?

23 MR. MILLER: The book --

24 Q Is it fair to say, sir, it says December 2005 at the top
25 there?

1 A Yes.

2 Q Do you see any names on the entry from Wednesday,
3 December 21, 2005 that relate to the case?

4 A Yes.

5 Q Whose name do you see?

6 A Dawud.

7 Q Do you recognize the phone numbers?

8 A Yes. Donald Nero's phone number.

9 Q I want to direct your attention to the next page,
10 Thursday December 22, 2005.

11 Is it fair to say while this is an appointment book
12 it appears to be being used as an address book?

13 A Yes.

14 Q Directing your attention then to the entry on
15 December 22, 2005. Do you recognize any names there?

16 A Yes.

17 Q Whose name do you recognize?

18 A Abdul Kadir.

19 Q What about the address, do you recognize that?

20 A Yes.

21 Q Whose address is that?

22 A Abdul Kadir's address in Guyana.

23 Q I want to direct your attention now to the page from
24 January of 2006. We're still on Government Exhibit 193.

25 A Yes.

1 Q The page that relates to Thursday, January 5, 2006.

2 Do you recognize that name?

3 A Yes.

4 Q Whose name is that at the top?

5 A Kareem Abdul Wahib.

6 Q Who is Kareem Abdul Wahib?

7 A He's the person that Mr. DeFreitas introduced the JFK
8 plot to who then brought Mr. DeFreitas and Mr. Francis to
9 Abdul Kadir.

10 Q Then directing your attention to, still in Government
11 Exhibit 193, to May 23, 2006. The entry under that date. Do
12 you see a name you recognize?

13 A Yes. Abdul Wahib.

14 Q Is that the same person your just described?

15 A Yes.

16 Q I want to direct your attention to Government
17 Exhibit 194. I want to remind you, we have been going on for
18 a little bit -- where are these documents from?

19 A From the backpack that Mr. DeFreitas had when he was
20 arrested on June 1, 2007.

21 Q Directing your attention to Government Exhibit 194. Do
22 you recognize that name?

23 A Yes.

24 Q Whose name is that?

25 A That is Kareem Ibrahim.

1 Q And is that the same individual that has been identified
2 previously in Government Exhibit 6?

3 A Yes.

4 Q And with respect to Government Exhibit 195. Do you
5 recognize that piece of paper?

6 A Yes.

7 Q And whose name is on there in the top right-hand corner?

8 A Again, Kareem Ibrahim.

9 Q Do you recognize the address?

10 A Yes.

11 Q Whose address is that?

12 A Kareem Ibrahim's address in Trinidad.

13 Q Directing your attention to Government Exhibit 196 and
14 197. Do you see any names on those documents that you
15 recognize?

16 A Yes.

17 Q What names?

18 A Dawud.

19 Q And what about the phone number, do you recognize that?

20 A Yes.

21 Q Whose phone number is that?

22 A Donald Nero's phone number.

23 Q I'd like to direct your attention forward a week to June
24 8, 2007. Were you working that day?

25 A Yes.

1 Q Where were you?

2 A Trinidad, Port of Spain, Trinidad.

3 Q What were you doing in Port of Spain, Trinidad?

4 A Continuing the investigation into the plot at
5 JFK Airport.

6 Q Were you meeting with anyone down there?

7 A Meeting with the Trinidad police force.

8 Q Did the Trinidad police force provide you with any
9 evidence that day?

10 A Yes.

11 Q And do you remember who from the Trinidad police force
12 provided you with evidence?

13 A Arthur Barrington.

14 Q Was one of the items that you received an electronic
15 storage device, a thumb drive?

16 A Yes.

17 MR. MILLER: May I approach, your Honor?

18 THE COURT: Yes.

19 Q I'm now showing you Government Exhibit 131. (Handing.)

20 A Yes.

21 Q Do you recognize that?

22 A Yes.

23 THE COURT: This is for identification?

24 MR. MILLER: Just for identification, your Honor.

25 Q Do you recognize that?

1 A Yes.

2 Q What is that?

3 A This is the thumb drive that was taken from Abdul Kadir's
4 carry-on bag when he was arrested in Trinidad.

5 Q It came from Abdul Kadir's carry-on bag and was given to
6 you by Arthur Barrington?

7 A Yes.

8 Q Did you arrange for something to be done with this?

9 A Yes. We arranged for it to be shipped back to the United
10 States.

11 Q I'm now going to show you what have already been admitted
12 into evidence by stipulation as Government Exhibits 150
13 through 165 -- or I'm going to show you some of them. Let's
14 direct your attention to 161.

15 THE COURT: Are you moving 131 in evidence or no?

16 MR. MILLER: No, your Honor.

17 THE COURT: All right.

18 Q I'm going to direct your attention to Government
19 Exhibit 150. Do you recognize Government Exhibit 150?

20 A Yes.

21 Q What is it?

22 A It's a receipt for a plane ticket for Abdul Kadir.

23 Q From where to where?

24 A From Port of Spain to Caracas.

25 Q On what date?

1 A On June 1, 2007.

2 Q There is also a return trip?

3 A Yes.

4 Q Directing your attention to Government Exhibit 153. Do
5 you recognize that document?

6 A Yes.

7 Q What is that?

8 A A receipt for a plane ticket for Mr. Abdul Kadir from
9 Guyana to Trinidad.

10 Q What date, sir?

11 A May 31, 2007.

12 Q The day before the flight to Caracas that we saw a moment
13 ago?

14 A Yes.

15 Q I want to direct your attention to Government
16 Exhibit 161.

17 A Yes.

18 Q Do you recognize this item?

19 A Yes.

20 Q What is this?

21 A It's a personal diary that was taken from Mr. Kadir's
22 carry-on bag when he was arrested.

23 Q Directing your attention to the first page with writing
24 on it. Whose name is written there?

25 A Abdul Kadir.

1 Q What does it say above that at the top line?

2 A 2007 Sunshine Pocket Planner.

3 Q I want to direct your attention forward to May of 2007.

4 THE COURT: I'm sorry, May --

5 MR. MILLER: May, 2007.

6 Q In particular, to May 20, 2007.

7 A All right.

8 Q Can you read that?

9 A Yes. An abbreviation for brothers, BRS. Left for T and
10 T, which is abbreviation for Trinidad Tobago.

11 Q Did anything happen relating to the plot to attack on
12 JFK Airport on that date, May 20th, 2007?

13 A Yes.

14 Q What happened?

15 A That was the day that Russell DeFreitas traveled to
16 Trinidad to present the plot to Abu Bakr.

17 Q One more question about May. Directing your attention to
18 May 31st. Can you read that entry again. We're still talking
19 about Government Exhibit 161.

20 A On the top it says PP, abbreviation for passport, visa
21 ticket stub.

22 Q What is at the bottom?

23 A Left Guyana for T and T, again, Trinidad Tobago,
24 7:25 p.m.

25 Q Directing your attention to Government Exhibit 163. Was

1 this also an item given to you by Arthur Barrington?

2 A Yes.

3 Q Where did all these items come from?

4 A From the carry-on bag that Abdul Kadir had when he was
5 arrested on June 1st, 2007.

6 Q And do you recognize the account number and the Swift
7 number there?

8 A Yes.

9 Q What are they?

10 A Those are the account number and Swift number related to
11 the mosque account that Mr. Kadir had.

12 Q The bank account?

13 A Yes.

14 Q Directing your attention to Government Exhibit 164. Do
15 you recognize that name and phone number?

16 A Yes.

17 Q Is this still a document that came from the carry-on bag
18 of Mr. Kadir on June 1, 2007 when he was arrested?

19 A Yes.

20 Q Whose name and phone number is that?

21 A Annas, Steven Francis.

22 Q Directing your attention to Government Exhibit 165. Do
23 you recognize that document?

24 A Yes.

25 Q Is that a document that was given to you by Arthur

1 Barrington that was taken from Mr. Kadir's carry-on bag?

2 A Yes.

3 Q Directing your attention to the top. Is it fair to say
4 that there's a bunch of references to airlines, Liat and
5 Aeropostal?

6 A Yes.

7 Q Looking at the bottom. Is there a series of bullets
8 under Imam?

9 A Yes.

10 Q What are those?

11 A Taqwa, Imam. Jihad, Islam.

12 Q On the back, do you know GIIC -- the back of Government
13 Exhibit -- GIIC, do you know what stands for?

14 A Yes.

15 Q What?

16 A Guyana Islamic Information Center.

17 Q Is that associated with Mr. Kadir?

18 A Yes.

19 Q Did there come a time also where you came into possession
20 of Iranian currency that Mr. Kadir had been in possession of?

21 A Yes.

22 Q Is that Government Exhibit 167?

23 A Yes.

24 Q I want to direct your attention forward two days to
25 June 10, 2007.

1 Were you working that day?

2 A Yes.

3 Q Where were you?

4 A Georgetown, Guyana.

5 Q And this may become clear at the end of trial, but where
6 is Georgetown, Guyana, in what continent?

7 A South America.

8 Q What part of South America?

9 A Northern South America.

10 Q Is Trinidad just off the coast?

11 A Yes.

12 Q What were doing in Guyana?

13 A I was conducting an investigation into the JFK plot.

14 (Continued next page)

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1 CONTINUED DIRECT EXAMINATION

2 BY MR. MILLER:

3 Q You traveled to Guyana a few times in connection with
4 this case?

5 A Yes.

6 Q When you traveled to Guyana, did many of the flights
7 connect through Port of Spain Trinidad?

8 A Yes.

9 Q You said you had your meeting with members of the
10 Guyanese police force?

11 A I was.

12 Q What were you doing that for?

13 A To collect further evidence, trying to get witnesses.

14 THE COURT: I'm sorry?

15 MR. MILLER: Yes, your Honor.

16 Q June 10th, 2007?

17 A Yes.

18 Q I'll direct your attention to Government Exhibit 270 for
19 identification. Do you recognize that document?

20 A Yes.

21 Q Before I ask you what it is, did you come into possession
22 of that exact document that day, June 10th, 2007, from the
23 Guyana police force?

24 A Yes.

25 MR. MILLER: Offer 270.

1 THE COURT: Any objection?

2 MR. KAMDANG: No.

3 MR. NKRUMAH: No.

4 THE COURT: It's in evidence.

5 (So marked.)

6 MR. MILLER: I would like to publish it.

7 Q What's Government Exhibit 270?

8 A Itinerary for flight for Eversely Compton.

9 Q In your mind, who is Eversely Compton?

10 A Abdel Nur.

11 Q Is that his name that he was born with and Abdel Nur is
12 his Muslim name?

13 A Yes.

14 Q Is that the person who has been identified previously at
15 this trial as Government Exhibit 3?

16 A Yes.

17 Q You mentioned -- remind me, what is this?

18 A The itinerary for a flight.

19 Q According to Government Exhibit 270, did Compton Eversely
20 or Abdel Nur obtain a flight, a ticket in late January, 2007
21 returning early February?

22 A Yes, he did.

23 Q Can you go through with the jury what flights that ticket
24 related to?

25 A Related to a flight from Georgetown to Port of Spain,

1 Trinidad.

2 Q That's the flight, outgoing flight?

3 A Yes.

4 Q What date is that?

5 A 28th of January, 2007.

6 Q Was there a return flight?

7 A Yes.

8 Q What date?

9 A February 5th, 2007.

10 Q What date was that ticket issued, the itinerary issued?

11 A 26th of January, 2007.

12 Q Was this during the plot to attack JFK Airport?

13 A Yes.

14 Q Where did you first see this document, Government
15 Exhibit 270?

16 A In Georgetown, Guyana on the 10th of June, 2007.

17 Q About four months after the return?

18 Q Prior to that date, prior to June 10th, 2007, did you
19 know that Abdel Nur had a plane ticket in late January from
20 Georgetown to Port of Spain returning about a week later?

21 A No.

22 Q Is it fair to say the FBI can't track all foreign plane
23 travel?

24 A Correct.

25 Q The U.S. Government, did it pay for this plane ticket?

1 A No.

2 Q What travel agency issued this plane ticket?

3 A Connections Travel.

4 Q Is there an address there?

5 A Sixth Avenue of the Republic, Georgetown.

6 Q That addresses, Sixth Avenue of the Republic, is it near
7 any location of relevance to this case?

8 A Yes.

9 Q What address?

10 A Across the street from the office of Bilal Rutherford.

11 Q The individual who you identified earlier?

12 A Yes.

13 MR. MILLER: Might we approach briefly?

14 THE COURT: Sure.

15 (Continued on next page.)

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1 (Side bar.)

2 MR. MILLER: I want to know for planning purposes
3 about when -- I probably have about a half hour more to go. I
4 don't know if you want me to break before then or try to
5 complete the direct.

6 THE COURT: Why don't we break here?

7 MR. MILLER: I could do up to 5:00 o'clock.

8 THE COURT: We brought them here so early in the
9 day, accomplished a lot today. Why don't we break here and
10 then pick it up again Monday, tell them to come in Monday at
11 9:30?

12 MR. MILLER: Very well.

13 THE COURT: You have to slow down.

14 MR. MILLER: Trying to move things along.

15 THE COURT: We're about three weeks ahead of
16 schedule. Just take it easy, for the reporter and me. I'm
17 taking notes.

18 MR. MILLER: There's one long area, a couple of
19 short areas.

20 MR. KAMDANG: Let's just break.

21 THE COURT: Do your two short areas.

22 (Continued on next page.)

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1 (Open court.)

2 THE COURT: We're not going to keep you here until
3 7:00 o'clock, members of the jury, just a little while longer.
4 You may continue.

5 Q Earlier you identified Government Exhibit 131 as a flash
6 drive or storage device that was taken from the carry-on bag
7 of Mr. Kadir at the time of his arrest; is that right?

8 A Yes.

9 Q You said that you arranged for it to be shipped back to
10 New York?

11 A Yes.

12 Q After it got back to New York, did you and other agents
13 look through the drive?

14 A Yes.

15 Q Did you identify any photographs?

16 A Yes.

17 Q What did you do -- withdrawn.

18 MR. MILLER: I'll approach, your Honor.

19 THE COURT: Yes.

20 Q Government Exhibit 132, 138 and 139 (handing), do you
21 recognize those photographs?

22 A Yes.

23 Q What are those? Are those photographs that came straight
24 from that electronic storage drive?

25 A Yes.

1 Q How do you know that?

2 A I printed them out.

3 Q From the drive?

4 A Yes.

5 MR. MILLER: Offer 132, 138, 139.

6 THE COURT: Any objection?

7 MR. KAMDANG: We request a jury instruction to be
8 published.

9 MR. NKRUMAH: Note my objection at this point.

10 THE COURT: They are in evidence as Government
11 Exhibits 132, 138 and 139.

12 MR. MILLER: May I publish?

13 THE COURT: Yes.

14 Q Directing your attention first to Government Exhibit 132,
15 are your initials on there, sir?

16 A Yes.

17 Q Is this photograph one of the photographs that you
18 printed off of the electronic storage drive seized from
19 Mr. Kadir's carry-on luggage?

20 A Yes.

21 Q Who is this individual in Government Exhibit 132?

22 A The defendant, Abdul Kadir.

23 Q I want to direct your attention now to
24 Government Exhibit 138. Are those your initials on the
25 exhibit sticker?

1 A Yes.

2 Q Is this a separate photograph, sir?

3 A Yes, it is.

4 Q Who is the individual here in Government Exhibit 138?

5 A Again, the defendant Abdul Kadir.

6 Q I'll direct your attention now to Government Exhibit 139.

7 Are your initials there in the corner?

8 A Yes.

9 Q This is the third photograph you printed off the
10 electronic storage device, Government Exhibit 131?

11 A Yes.

12 Q This is a separate photograph?

13 A Yes.

14 Q Who is the individual here in Government Exhibit 139?

15 A The defendant Abdul Kadir.

16 MR. MILLER: The rest will take a while. It might
17 be a good time to break.

18 THE COURT: Ladies and gentlemen, some of these
19 photographs that were marked as Government Exhibits 132, 138
20 and 139 were introduced during the testimony of this witness
21 who is before you depicting defendant Abdul Kadir with a
22 number of firearms.

23 Mr. Kadir is not charged with committing any crime
24 involving firearms. He is on trial only for the acts alleged
25 in the indictment. You may not consider this evidence as

1 substitute or proof that Mr. Kadir committed the crimes
2 charged by the government. You may not consider this evidence
3 as proof Mr. Kadir has a bad character or propensity to commit
4 the crimes charged by the government. This evidence may be
5 considered by you only to the extent it bears upon
6 Defendant Kadir's knowledge, intent or motive to commit the
7 acts charged in the indictment. Furthermore, this evidence
8 may be considered by you only against Defendant Kadir and may
9 not in any respect enter into your deliberations as to
10 Defendant Defreitas.

11 I will give you more detailed instructions at the
12 end of the case with respect to the elements of the charged
13 crimes and how to assess the evidence presented at trial.

14 We are here now Thursday. You know tomorrow is
15 Friday. You don't have to come in tomorrow. Whatever you do,
16 I'm not going to tell on you as long as it's all legal.

17 Remember to rest up. Don't go out partying Sunday,
18 go to bed late. We've got a long day ahead on Monday. We're
19 continuing on Monday. You can come at the regular time, 9:30.

20 Remember, you already know the drill not to form or
21 draw any conclusions at all about the evidence in this case.
22 You may not discuss this case with anyone, not family members,
23 yourself, coworkers, anyone at all. Don't look at, listen to
24 or read over any kind of media anything that might be reported
25 about this case or do any kind of research connected with this

1 case over any kind of media whatsoever. Remember just to keep
2 an open mind, not to form or draw any conclusions about the
3 case.

4 Stay well. We will see you Monday at 9:30. Enjoy
5 your weekend.

6 (Jury leaves courtroom.)

7 THE COURT: You may step down, Mr. Addonizio.
8 Is there anything anybody wants to raise?

9 MR. KAMDANG: The government is probably going to
10 rest, probably around lunch on Monday?

11 MR. MILLER: Quicker than that. If we start --

12 THE COURT: It depends on redirect.

13 MR. MILLER: Good point. That's fair. You're
14 right.

15 THE COURT: The cross and redirect, so on.

16 MR. MILLER: I believe that's correct. I hadn't
17 thought about that. It probably would be lunch.

18 MR. KAMDANG: A charge conference, start thinking
19 when to schedule that.

20 THE COURT: Is there still going to be a defense
21 case?

22 MR. KAMDANG: Yes, our witnesses will be relatively
23 short.

24 MS. WHALEN: Our case at this point looks like it
25 will be just Detective Napoli. Again, I don't think he will

1 be lengthy.

2 MR. JONES: They asked us to make him available
3 Monday. He will be here the first thing Monday morning. He
4 will be here, ready to go.

5 THE COURT: I did see the request by the defense
6 for access to Detective Napoli, if he's amenable to meeting
7 the defense.

8 MR. JONES: I don't believe it's been communicated
9 to Detective Napoli. We've been busy. We will convey it to
10 the detective and then he will decide. We'll convey his
11 decision. I will say one of the requests to review the 302s,
12 he's been doing that, has been engaged in that. We assumed
13 this would be an issue. We asked him to do that so it won't
14 be something he has to review further to that extent.

15 THE COURT: The only reason why I address that,
16 obviously to the extent that might be scheduled -- I don't
17 know what counsel has planned to do tomorrow or over the
18 weekend, but to the extent that could be accomplished at some
19 point before Monday, just so that we don't have lag time.
20 Obviously there are motions at the end of the government's
21 case, so on, but just to kind of prepare. I am sure counsel
22 would like that opportunity.

23 MS. WHALEN: Detective Napoli is free to do as he
24 wishes. My main concern was he was going to come in cold, not
25 having seen the 302s for three years; that it was going to be

1 terrible.

2 MS. MESSINA: In terms of Napoli, we would be
3 asking him questions about Mr. Kadir. How would you like it
4 to statistically work? They'll do their direct of
5 Mr. Napoli --

6 THE COURT: It's the defense case. It would be the
7 reverse. I'll let Kadir's counsel -- however you want to
8 break it up and then the government.

9 MS. MESSINA: I may inquire beyond the scope of
10 what they've inquired of their client to Mr. Napoli, if the
11 court permits me to do that.

12 THE COURT: As long as it's relevant, it relates to
13 your client, it's not repetitive of what is being asked by
14 Ms. Whalen. Obviously she will do the questioning?

15 MS. WHALEN: Yes.

16 THE COURT: As long as it's a proper question, I
17 don't see any reason to foreclose it.

18 What's going on with respect to Defendant Kadir at
19 this point, so we know for scheduling purposes?

20 MR. NKRUMAH: We plan on putting on a case which
21 includes Mr. Kadir testifying, your Honor.

22 THE COURT: I would guess we'll start the defense
23 case Monday. It will likely continue into Tuesday. Assuming
24 there's no government rebuttal case, I would say the parties
25 should probably prepare for a charge conference Wednesday,

1 perhaps Wednesday or late Tuesday. I know the government is
2 going to submit responses to the defense charge. I've asked
3 the defendants to provide any supplemental charges that you
4 may have thought of, given the testimony in the case. I would
5 like to get all of that by 5:00 o'clock tomorrow so that I can
6 have a chance to work on it.

7 My practice is in preparation for the charge
8 conference, I will take a look at all the submissions. I will
9 incorporate what I like from either side or both sides'
10 submissions, post that prior to the charge conference. I will
11 do my utmost to try to provide that at least the night before
12 the charge conference. This way, you'll have a chance to look
13 at it. That should make the conference go more smoothly.
14 Generally, I'll take it sort of piece by piece, start with the
15 government, see what objections there are. If the defense has
16 objections before that, we'll address those and we'll go that
17 way.

18 It looks possible this may go to the jury on
19 Thursday. As I said, if deliberations go beyond that, then
20 I'll bring them in Friday for deliberations.

21 At this point, any thoughts about how long
22 summations are going to be? See how highly I think about your
23 abilities? I'm asking you these questions and the government
24 hasn't even rested. You don't have to answer that today.
25 Give me some ideas when you think about it over the weekend.

1 MR. JONES: Maybe about two hours.

2 THE COURT: Who is going to do rebuttal?

3 MR. MILLER: I am, your Honor.

4 THE COURT: Anything further?

5 MR. JONES: Maybe I'm forgetting. Wasn't there a
6 juror issue next week? We may have a half-day.

7 THE COURT: You're right. We are going to do the
8 same thing for Tuesday where we started earlier. I gave them
9 a longer break. Then we ended at 2:30. Thank you for
10 reminding me. We need Ms. Berger on an unrelated case on a
11 violation of supervised release.

12 Anything else?

13 MR. KAMDANG: No, Judge.

14 (Whereupon this matter concluded for this date.)
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1 I N D E X

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3 W I T N E S S E S :

4 3646

5 M A T T H E W L E V I T T

6 CROSS-EXAMINATION 3646

7 CROSS-EXAMINATION 3663

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9 3676

10 STEVEN FRANCIS

11 REDIRECT EXAMINATION 3676

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