

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

3 UNITED STATES OF AMERICA

4 v. S(7) 98 Cr. 1023

5 USAMA BIN LADEN, et al.,

6 Defendants.

7 -----x

8  
 9 New York, N.Y.  
 May 3, 2001  
 10 10:00 a.m.

11

12 Before:

13 HON. LEONARD B. SAND,

14 District Judge

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1 (Trial resumes; jury not present)

2 THE COURT: Let's bring in the jury.

3 MR. COHN: Your Honor, the corrected Count Five on  
4 the verdict sheet is satisfactory.

5 (Jury present)

6 THE COURT: Good morning.

7 THE JURY: Good morning.

8 THE COURT: Mr. Karas, you may continue.

9 MR. KARAS: Thank you, your Honor.  
10 Good morning, again, ladies and gentlemen.

11 THE JURY: Good morning.

12 MR. KARAS: We left off just about to start Count  
13 290. By the way, yesterday we were talking about the counts  
14 dealing with Bin Laden referred to as Hajj. In addition to  
15 the exhibits we went through yesterday, the witness Kherchtou  
16 was asked on a couple of occasions about some of the aliases  
17 used for Usama Bin Laden and Hajj was one of the aliases he  
18 listed. You will see that in Government Exhibit 4-1.

19 Now, this Count 290 deals with the goals of al Qaeda  
20 and when it was that Bin Laden and when it was that El Hage  
21 knew about Bin Laden publicly declaring war on America.

22 Specification A deals with the question of what  
23 happened with al Qaeda after the Russians left. The  
24 underlying answer is, "I don't know."

25 Specification B, you see a series of questions listed

1     there. The last question in the specification:

2     "Q. Had you ever heard Usama Bin Laden state that the  
3     American forces should be attacked prior to seeing it on CNN  
4     television?

5     "A. No. Never.

6     "Q. Are you positive?" is Specification C.

7             And then, D: "You are stating that, under oath,  
8     under the penalties of perjury, that prior to hearing it on  
9     CNN, you had not heard Usama Bin Laden declare that America  
10    should be attacked?

11    "A. Yes. Never heard that before."

12             And the last specification is:

13    "Q. You have heard Bin Laden say at least as late as the CNN  
14    interview that the United States was the enemy of Islam,  
15    correct?

16    "A. Yes."

17             And the question that you see the underlying answer:

18    "Q. And you have heard him say that before, have you not?

19    "A. No. That's the first time I've heard him."

20             So here you have a series of answers that Wadih El  
21    Hage is giving in September 1997 that until the CNN interview,  
22    he was unaware of what happened with al Qaeda and when it was  
23    that Bin Laden had said that the American forces should be  
24    attacked.

25             And you see on the screen some of the evidence that

1 establishes how it is that you know that those answers are  
2 false. The witness Jamal Al-Fadl told you about the meetings  
3 that took place in the guesthouse, the private guesthouse in  
4 Khartoum, Sudan, where some of the people in the inner circle  
5 in al Qaeda and only the people in the inner circle in al  
6 Qaeda were invited. And he told you that the defendant Wadih  
7 El Hage was one of the people who attended those meetings.

8           It was during that meeting that Usama Bin Laden would  
9 talk about how the American forces in Saudi Arabia should be  
10 attacked as far back as when al Qaeda first moved to the  
11 Sudan, which Jamal Al-Fadl put in the time period 1991 to  
12 1992.

13           You know from the witness Kherchtou that as far back  
14 as 1992 that al Qaeda was talking about the need to attack the  
15 American forces, again a time when you know from the evidence  
16 that El Hage was in Sudan and El Hage was dispatched from  
17 Sudan to Kenya on behalf of al Qaeda.

18           Now, Government Exhibit 1600A-T is simply the  
19 declaration, the August 1996 declaration of Bin Laden to  
20 declare war, to declare Jihad against the United States. And  
21 then what you know from Government Exhibit 310-74A-T is that  
22 El Hage -- and this is among the many documents we have gone  
23 through -- El Hage visited Bin Laden in February of 1997 in  
24 Afghanistan in the headquarters of al Qaeda, just months after  
25 the August 1996 declaration.

1           Now, put into context what we talked about the past  
2 two days, which is that al Qaeda is a particularly secretive  
3 organization, that it is particularly concerned about  
4 protecting the identity of its members, making sure that only  
5 the people who are included in the inner circle attend the  
6 meetings, and here you have Wadih El Hage, an American  
7 citizen, going to see Usama Bin Laden, the leader of this  
8 particularly secretive organization, at the headquarters of al  
9 Qaeda, where Bin Laden is happy to invite journalists from  
10 halfway around the world to say, the minute they walk into his  
11 cave, I have declared war on America.

12           And you saw the CNN interview and you have seen the  
13 transcript that took place just a month after El Hage was  
14 there, and then you saw the video and we went through the  
15 transcript of the interview with ABC News and John Miller.  
16 And so here is Bin Laden meeting with Peter Arnett in 1997 and  
17 he's meeting with John Miller in 1998, and in walks an  
18 American citizen, in the middle of the headquarters of al  
19 Qaeda, and common sense tells you, ladies and gentlemen, that  
20 El Hage and Bin Laden are not talking about the gem business  
21 and they're not just talking about the tribes in Ethiopia and  
22 Somalia, they are going to talk about al Qaeda business. And  
23 one of the things that you know that El Hage brings back with  
24 him is the new policy.

25           And consider this. This is at a time where Bin Laden

1 has made public to the world his declaration to kill  
2 Americans, and in walks to that cave an American citizen, and  
3 the only other American citizen who is going to get out of  
4 that cave alive is a journalist. And while Wadih El Hage had  
5 a card where he claimed to be an investigative reporter,  
6 Government Exhibit 651, that's not the reason that he got out  
7 of there alive, that's not the reason that he got the meeting  
8 with Usama Bin Laden.

9           The reason that he got the meeting with Usama Bin  
10 Laden and the reason he got another meeting with Usama Bin  
11 Laden in August of 1997 is because he's part of the inner  
12 circle. He was in charge of the payroll. He helped to take  
13 care of purchasing the plane. He tried to remove Stinger  
14 weapons. He transported people down to Kenya when the group  
15 was attacking Americans in Somalia. He took over the  
16 leadership of the cell in Nairobi and he was brought into the  
17 inner sanctum in Afghanistan, just months after the public  
18 declaration of Jihad, and then he comes to the Grand Jury and  
19 he says, I don't know, I didn't know that.

20           Ladies and gentlemen, your common sense and all of  
21 the other evidence that we've gone through, the documentary  
22 evidence, the evidence that shows that he's part of the inner  
23 circle, the evidence that shows that he delivers the top  
24 secret policy of Bin Laden, tells you beyond a reasonable  
25 doubt that El Hage knew well before he went to the Grand Jury,

1 he knew well before the CNN interview was publicly aired that  
2 Bin Laden had declared war against the Americans. That's  
3 Count 290.

4 Now, Counts 289 and 299 deal with the subject of Abu  
5 Ubaidah al Banshiri. 289 is from the testimony in 1997. The  
6 question is Specification A:

7 "Q. Now when was the last time you saw Abu Ubaidah al  
8 Banshiri?

9 "A. In Sudan before I left.

10 "Q. 1994 before you left?

11 "A. Yes.

12 "Q. Do you know where he is today?

13 "A. Either in Sudan or in Afghanistan."

14 Remember, this is in September 1997, a year and a  
15 half after the ferry accident in Lake Victoria.

16 Specification B:

17 "Q. Did anyone tell you that Abu Ubaidah had drowned in a  
18 ferry accident?

19 "A. No."

20 Specification C:

21 "Q. And were you sent -- were you not sent to that lake to  
22 try to find Abu Ubaidah al Banshiri?

23 "A. No, I went looking for Adel Habib."

24 The question under Specification D:

25 "Q. My question was, did you ever discuss with him, Harun,



1 whether or not al Banshiri drowned in Lake Victoria?

2 "A. No."

3 And then you have Count 299. Let me put this first  
4 board down here. There are many specifications in Count 299.  
5 We won't go through all of them, but one of the questions you  
6 see, Specification A:

7 "Q. Do you know of any other Jalal's besides the fellow in  
8 Louisiana?

9 "A. No."

10 And then on specification C:

11 "Q. Did you know any members of al Qaeda who lived in either  
12 Kenya or Tanzania?

13 "A. No. Tanzania."

14 Specification D:

15 "Q. Did you know any members of al Qaeda who have visited  
16 Kenya or Tanzania?

17 "A. No."

18 And then you see Specification E is a specific  
19 reference to Abu Ubaidah al Banshiri and whether or not he was  
20 a person who worked for Bin Laden and, "Did he ever visit  
21 Nairobi or Kenya -- I'm sorry, Kenya or Tanzania?

22 "A. I don't think so."

23 Specification F:

24 "Q. Does Adel Habib have another name?

25 "A. Not that I know of."

1                   Specification G:

2    "Q.   Isn't Adel Habib known as Abu Ubaidah al Banshiri?

3    "A.   Not that I know of."

4                   Specification H:

5    "Q.   And didn't he come to Kenya in secret in 1994, Abu  
6    Ubaidah al Banshiri?

7                   "I don't know anything about that," is the answer.

8    And then again the reference to Jalal, whether Abu Ubaidah is  
9    known as Jalal.

10   "Q.   Okay.   You're on the document.   Who is Jalal Fuad?

11   "A.   I don't know.

12   "Q.   Is Jalal Fuad another name for Abu Ubaidah al Banshiri?

13   "A.   I don't know."

14                   Specification M:

15   "Q.   And is your testimony under oath to this Grand Jury that  
16   you were never told that the person that drowned was Abu  
17   Ubaidah al Banshiri?

18   "A.   Never."

19                   Specification N:

20   "Q.   And you were never told that the person that drowned was  
21   also known as Jalal?

22   "A.   Never."

23                   So the focus of these questions in the two years is  
24   on Abu Ubaidah al Banshiri, who you know from other testimony  
25   is, was at the time, the military commander and one of the

1 founders of al Qaeda. He was somebody that Kherchtou told you  
2 went by the name Jalal.

3 And the question asks also about whether or not Wadih  
4 El Hage knew of other people who were al Qaeda members who  
5 lived in Kenya or Tanzania. One of the people that the  
6 evidence shows that Wadih El Hage knew and knew who to be a  
7 member of al Qaeda who lived in Kenya and Tanzania is Abu  
8 Ubaidah al Banshiri, and of course there is Harun and others  
9 who were in Kenya at the time.

10 Now, what is the evidence? And you see on the screen  
11 a listing of some of the testimony and the documents, and  
12 we'll go through some of these now, that establish that those  
13 answers were not true.

14 The witness Kherchtou. The witness Kherchtou told  
15 you several things about the relationship between Wadih El  
16 Hage and Abu Ubaidah. First, he told you that he saw Abu  
17 Ubaidah al Banshiri meet with Wadih El Hage several times in  
18 Kenya.

19 The second thing he told you, testimony that's very  
20 important to this count, is he told you that he remembered  
21 that when Wadih El Hage was describing how Abu Ubaidah had  
22 drowned and how he knew about it, that he cried. This was  
23 somebody that Wadih El Hage was close to, and in fact,  
24 Kherchtou told you that Abu Ubaidah al Banshiri was somebody  
25 that many people in al Qaeda liked. He was one of the

1 commanders, he was one of the leaders. So the evidence from  
2 the witness Kherchtou plainly establishes that Wadih El Hage  
3 knew Abu Ubaidah and knew him well and was fond of him.

4 Now, from a completely different witness, Ashif Juma,  
5 who was the brother-in-law of Abu Ubaidah al Banshiri --  
6 remember Abu Ubaidah Al Banshiri had the secret life and,  
7 Kherchtou described, married the second wife in Kenya who was  
8 Ashif Juma's sister. And Ashif Juma establishes for you that  
9 a number of these specifications have been established, that a  
10 number of these answers that El Hage gave were lies. Among  
11 other things, Ashif told you that Ashif knew the person he  
12 identified in the photograph as Abu Ubaidah al Banshiri as  
13 Jalal and that Wadih El Hage called him Jalal.

14 And we'll go through some of the documents, some of  
15 the promissory notes that were assigned between Ashif Juma and  
16 Wadih El Hage where not only is Jalal mention, but Jalal Fuad.  
17 And you may remember that Ashif Juma told you that in the  
18 aftermath of the ferry accident, that first Harun came down  
19 and he identified him in that video that you saw, but that  
20 later, on Wadih El Hage came to talk to him and that Wadih El  
21 Hage specifically asked Ashif what he knew about Jalal.

22 And not only does that establish that the answers  
23 regarding Jalal aren't true, but it goes back to what we  
24 talked about earlier -- what it was that El Hage was doing  
25 there: To investigate the ferry accident and Abu Ubaidah's

1 drowning in the ferry accident.

2           One of the things that El Hage and Harun were trying  
3 to ascertain is what it is that other people might have known  
4 about Abu Ubaidah. Again, al Qaeda protecting the identity of  
5 its members, making sure that al Qaeda secrets are kept with  
6 al Qaeda people, and that nothing Abu Ubaidah al Banshiri was  
7 doing was discovered by other people, including his own  
8 brother-in-law, Ashif Juma.

9           Now, if you take a look at the Grand Jury testimony  
10 for a moment, Government Exhibit 420A, and if we go to page  
11 48, this is the Grand Jury testimony -- you see at the top  
12 there, September 16, 1998. So this is the second trip to the  
13 Grand Jury. And now the questioning begins down at the bottom  
14 of page 48:

15 "Q. Did you see that person Harun Fazhl when you went to the  
16 scene of the ferry sinking?

17 "A. Yes, he was there."

18           And this next page, page 49, the question was asked:

19 "Q. what was Harun Fazhl doing there?

20 "A. He was searching for the same thing.

21 "Q. And what were you and Harun Fazhl searching for?

22 "A. One of our colleagues in the Help Africa People Agency.

23 "Q. And can you tell the Grand Jury the name of the colleague  
24 at the Help Africa People Relief Agency that you were looking  
25 for?

1 "A. What was his name? I can't recall the name right now."

2 And the next question gets interrupted. The  
3 questions begins: "How much time" -- and the answer is: "You  
4 probably have it."

5 Now, Wadih El Hage -- and you can take a look at  
6 Grand Jury Exhibit 400, which is the transcript from the Grand  
7 Jury testimony from 1997 -- was asked questions about the  
8 investigation of the ferry sinking and he's getting asked  
9 questions about the ferry sinking again in 1998. And one of  
10 the things that he's doing here is he's trying to remember  
11 what name he used for the person he is going to claim he was  
12 there to investigate.

13 Because the story that El Hage gives is that he was  
14 there to look for Adel Habib, which we'll see in a moment is  
15 one of the names that Abu Ubaidah al Banshiri went by. So  
16 that's going to be how it is that he's going to explain his  
17 presence there, but he can't remember in 1998 what it was he  
18 said in 1997.

19 It was Mark Twain who said that, "If you tell the  
20 truth, you don't have to remember anything." The easiest  
21 thing to do is to tell the truth, but El Hage didn't do that  
22 in 1997. So now he's trying to reconstruct what it was that  
23 he said, something that you will see him get tripped up on  
24 when we talk about some of the other counts.

25 So how do you know that Wadih El Hage was there to

1 investigate the drowning of Abu Ubaidah, the person also known  
2 as Jalal and the person also known as Adel Habib?

3 Adel Habib, there is the report that he and Harun  
4 prepared, Government Exhibit 359, and we talked about this  
5 briefly. This document here was found in Ali Mohamed's house  
6 in California, and Ashif Juma read it right there on the  
7 witness stand in front of you, the translation of it. And he  
8 told you that he doesn't write Arabic, he doesn't read Arabic,  
9 he doesn't speak Arabic, but he read through the translation,  
10 359-T, and he said it was an accurate report.

11 And one of the things that you see on the second page  
12 of the report is that there are references to what Ashif, who  
13 is referred to as Asaf here in the report, told the people who  
14 who prepared this report, who conducted the investigation.  
15 And what you see is a description there, hours before the  
16 accident, "Asaf, who was with him," referring to Abu Ubaidah,  
17 "told us that they had awakened at 5:30 a.m. so they could  
18 pray dawn prayer and they left the first class compartment."

19 The people who prepared this report -- there was more  
20 than one person, and I submit to you what the evidence shows  
21 is the two people who prepared the report were Harun, who  
22 Ashif told you was there, and Wadih El Hage, who Ashif told  
23 you was there, albeit he came later. So they are the ones who  
24 prepared the report, and they sent the report out to other  
25 people who are affiliated with al Qaeda, including Ali

1 Mohamed, the person who did the surveillance training and  
2 other things for al Qaeda. The report ends up all the way out  
3 in California.

4 Government Exhibit 606. This is a newspaper article  
5 that is found in the files of El Hage in the MIRA office.  
6 Now, I have made reference to two searches that took place in  
7 Kenya in connection with El Hage. In August of 1997, Agent  
8 Coleman from the FBI told you about the search he did of El  
9 Hage's house, and then in August of 1998, Agent Barry Bush  
10 from the FBI told you about the search that was done in the  
11 MIRA office also in Nairobi.

12 Now, you may remember when we went through the Harun  
13 report to the high and wise command that one of the things he  
14 said is that they were going to move Abu Sabbur's files. They  
15 didn't want to burn them because he wasn't around to give them  
16 permission, and where they moved the files to was the MIRA  
17 office, where they are found a year later by the FBI after the  
18 embassy bombings.

19 And one of the things that you find here is  
20 Government Exhibit 606, which is a newspaper article  
21 discussing the lake disaster, and then there you see written  
22 in ink, Fazhul Abdallah, and that's -- it says Comoros and  
23 Fazhul Abdallah, Harun's name. You know he's from the  
24 Comoros. We went through some of the items that were found in  
25 his home in the Comoros yesterday, including passports and



1     whatnot for the defendant Al-'Owhali and Azzam.

2             Government Exhibit 607 is another newspaper article  
3     that discusses the ferry accident, and on the page there you  
4     see handwriting that talks about the door, which if you look  
5     at the firsthand writing there on the upper left, "the door  
6     which Papo," "the door which Papo used" or -- you can't really  
7     read that, but Papo, remember Ashif told you, was his  
8     nickname.

9             Then if you look at the writing on the far right  
10    there, you see "which Papo/Jalal was in," could be "room" or  
11    "cabin" or something, "which Papo/Jalal was in." And you  
12    remember Ashif told you that he was in the same cabin as  
13    Jalal, Abu Ubaidah. And here you have this handwritten, these  
14    handwritten notes on a newspaper article in El Hage's house  
15    and Ashif Juma told you that that wasn't his handwriting, that  
16    he didn't write that. Again, these are newspapers found in El  
17    Hage's files.

18            Government Exhibit 603 independently establishes that  
19    some of the specifications have been proven, that El Hage lied  
20    about his answers in connection with Abu Ubaidah, because  
21    remember one of the answers is he didn't know Abu Ubaidah by  
22    the name Jalal, the only Jalal he knew lived in Louisiana.  
23    And here you see a document that Ashif Juma told you about.

24            You see down there one of the witnesses is Wadih El  
25    Hage and you see the signature, and this is basically a

1 promissory note that talks about the loan of money. And  
2 remember there was some discussion about a business that Ashif  
3 Juma and Abu Ubaidah were in before Abu Ubaidah died and El  
4 Hage came to him to talk about the business, and here the  
5 document says, "I, Ashif Mohamed Juma, have borrowed an amount  
6 of 9 million Tanzanian shillings from Mohamed Karama through  
7 Jalal Fuad."

8           And Ashif Juma knew told you that that was Abu  
9 Ubaidah. And Wadih El Hage was there, signing the document,  
10 referencing Abu Ubaidah using the name Jalal Fuad. So when  
11 Wadih El Hage says he doesn't know Abu Ubaidah by the Jalal  
12 Fuad, he's lying.

13           Government Exhibit 600. Government Exhibit 600 is a  
14 another document signed again, you see down there, Wadih El  
15 Hage to Brother Ashif and it is talking again about the loan  
16 and it's talking about Mohamed Karama. And again this is all  
17 part of the transaction and some of the other business  
18 dealings that Ashif Juma told you that he had with Jalal, Abu  
19 Ubaidah.

20           Now, Government Exhibit 605A, this is one of the many  
21 documents found in El Hage's files at the MIRA office, one of  
22 the files that Harun had moved when they had the security  
23 scare in August 1997. And there you see the passport for  
24 somebody named Adel Habid. You see on the left side of the  
25 page there Habib, and then Adel. There it is. And on the

1 right-hand side is a picture.

2 And you will have a chance to look at all these  
3 exhibits, but you can compare the picture with, among others,  
4 Government Exhibit either 103, one of the pictures contained  
5 in Government Exhibit 4, and you'll see precisely the story  
6 that Wadih El Hage gives.

7 He says that he was there looking for Adel Habib and  
8 he's asked specifically whether or not there's any of other  
9 names for Abu Ubaidah al Banshiri and he falsely says no. And  
10 there's no question that El Hage knows exactly what the  
11 question is asking because he's talking about the ferry  
12 accident, he's talking about Adel Habib.

13 And there's the passport. And that is the way he's  
14 going to deflect the answer, that's the way he is going to  
15 lie in giving the answers. Adel Habib is Jalal, Abu Habib is  
16 Abu Ubaidah al Banshiri. Abu Ubaidah al Banshiri was the  
17 military commander of al Qaeda, which is why El Hage is going  
18 to lie to the American Grand Jury, because that is part of  
19 what we talked about before. He's going to lie to protect the  
20 al Qaeda conspiracy, to protect the al Qaeda people who are  
21 being investigated by the American government. That is Counts  
22 289 and 299.

23 Next up is Count 288, and this count deals with  
24 Khalid al Fawwaz. Government Exhibit 109 and also one of the  
25 pages from Government Exhibit 4, Khalid al Fawwaz goes by the

1 name also Abu Omar al Sebai and Hamad. He's somebody we  
2 talked a great deal about -- the person who preceded El Hage  
3 helping to run the al Qaeda cell in Nairobi and the person who  
4 was arrested and then, to take the heat away from the group,  
5 moved to London. And the question is, Specification A:

6 "Q. Do you know Khalid al Fawwaz?

7 "A. Yes.

8 "Q. Is he in London?

9 "A. Yes.

10 "Q. Does he work for Usama Bin Laden?

11 "A. Yes.

12 "Q. How long do you know Khalid al Fawwaz?

13 "A. Since '95 when I visited London."

14 Then specification B:

15 "Q. When in 1995 did you visit London?

16 "A. December '95.

17 "Q. Did you meet Khalid al Fawwaz at that time?

18 "A. Yes, I stayed one night at his place.

19 "Q. Is that the first time you met Khalid al Fawwaz?

20 "A. Yes."

21 Very clearly spelling out the questions when it was  
22 the first time that Wadih El Hage met Khalid al Fawwaz, 1995,  
23 and in fact, December 1995, and Wadih El Hage says to the  
24 question: "Is that the first time you met Khalid al Fawwaz?"  
25 Answer: "Yes," and that's what he claims he said at al

1 Fawwaz's house in London.

2           How do you know that those two underlying answers are  
3 false? First, Wadih El Hage is asked about Khalid al Fawwaz  
4 in 1998. Remember what I talked about earlier, what Mark  
5 Twain said. And Abraham Lincoln added that, "No man has a  
6 good enough memory to successfully lie." I'm paraphrasing  
7 there. Again, the simplest thing to do is to tell the truth.

8           In 1998, when Wadih El Hage is asked about Khalid al  
9 Fawwaz, he talks about meeting him in Nairobi before 1995. We  
10 go to Government Exhibit 420A, and you see now, again at the  
11 top, 9/16/98 -- this is about a year later -- and the first  
12 question that's asked there:

13 "Q. Where does Khalid al Fawwaz live?

14 "A. He was in England last time.

15 "Q. Did Khalid al Fawwaz work for Usama Bin Laden?

16 "A. Yes.

17 "Q. And did he ever visit -- did Khalid al Fawwaz ever visit  
18 Kenya or Tanzania?

19 "A. Yes. That's where I met him.

20 "Q. Where did you meet him?

21 "A. At the hotel.

22 "Q. Which hotel?

23 "A. Meridian.

24 "Q. In Nairobi?

25 "A. Yes."

1                   And then the next question:

2   "Q.   And why did you go meet Khalid al Fawwaz?

3   "A.   Excuse me?

4   "Q.   Why did you meet Khalfan al Fawwaz at the Meridian Hotel?

5   "A.   When did I meet him?

6   "Q.   Yes.

7   "A.   I met him when he was a businessman. I just arrived over  
8   there when I went to open my relief agency, I met him in the  
9   hotel there. He was businessman over there.

10   "Q.   Did you engage in business dealings with Khalid al  
11   Fawwaz?

12   "A.   No. He just helped me around to register the  
13   organization.

14   "Q.   And was he living in Kenya at the time?

15   "A.   Yes.

16   "Q.   What was he doing in Kenya?

17   "A.   I really don't know what he do, but he was a businessman  
18   there.

19   "Q.   What business was he in?

20   "A.   I really don't know."

21                   And then there's a discussion about the car business.

22                   Now, you know that El Hage got to Nairobi in 1994.

23   Among other reasons you know that is Kherchtou told you that.

24   And what Kherchtou told you was that El Hage got there to

25   replace al Fawwaz, which is why El Hage doesn't want to admit

1 in 1997 that he meets al Fawwaz until 1995, because he doesn't  
2 want to make the connection between al Fawwaz, El Hage and the  
3 al Qaeda cell in East Africa.

4 So the story that gets told in 1997 is the first time  
5 I met Khalid al Fawwaz was in 1995. But in 1998, El Hage  
6 doesn't remember that that was the story he gave there a year  
7 earlier. So the 1998 testimony. And we'll explain how else  
8 it is you know that al Fawwaz was in Nairobi, like El Hage  
9 said, in 1998 proves Count 288 beyond a reasonable doubt.

10 We looked at some of these, and we won't go through  
11 all of them now. We'll take a look at just a couple of them,  
12 but the witness Kherchtou talked to you about how al Fawwaz  
13 had a business called Asthma that was named after his  
14 daughter, and we saw some of the documents for Asthma Ltd. In  
15 fact, one of the documents we looked at was the articles of  
16 incorporation that had been prepared by that lawyer Chaudhri  
17 that they had used to get Fawwaz out of jail and two of the  
18 members of the board were Jalal Fuad, Abu Ubaidah al Banshiri,  
19 and Khalid al Fawwaz.

20 And there were other Asthma documents, and these were  
21 all documents that were found in Wadih El Hage's files in the  
22 MIRA office, again to say the El Hage just coincidentally  
23 showed up and happened to be in the same city. If that were  
24 true, then what is Wadih El Hage doing with all of Khalid al  
25 Fawwaz's files, all of the Asthma files and the telephone

1 records and the mobile phone records we talked about earlier  
2 that were in the El Hage's files in Nairobi in 1998?

3           So you have Government Exhibit 626 with some of the  
4 Asthma documents we looked at earlier. You see 629 has the  
5 stamp for Asthma. You got 637, the business certificate.  
6 There's the letterhead for Asthma. There's Khalid al Fawwaz's  
7 tax identification card.

8           And why don't we take a look, actually, at Government  
9 Exhibit 643. What you see here is a transfer deed. Again,  
10 you see -- if we could just focus on the top half. You see  
11 the name of the company Asthma Ltd., transfer from Khalid  
12 Abdel Rahman Hamal al Fawwaz and transfer to Jalal Fuad, El  
13 Meljid Abdeldaim.

14           There you have Khalid al Fawwaz transferring the  
15 business. He's leaving, right, because he's arrested. He  
16 wants to take the heat off the group so Fawwaz transfers one  
17 of the front organizations, one of the companies, Asthma, to  
18 Abu Ubaidah al Banshiri, the military commander, all of which  
19 corroborates what Kherchtou told you about the relationship of  
20 the al Qaeda people in Nairobi, the relationship that Wadih El  
21 Hage is lying about here in Count 288.

22           The other thing you know about the El Hage/Fawwaz  
23 relationship was El Hage wanted to keep it secret. If we take  
24 a look for a moment at Government Exhibit 305, this is one of  
25 the planners, the daily planners that was found in El Hage's



1 house in 1997. And you see a reference there, the second from  
2 the bottom, Ghazi M. Omar. Remember one of the names he uses  
3 is Abu Omar. It doesn't say Khalid al Fawwaz. Ghazi M. Omar,  
4 and the address he lists is 94 Dewsbury Road, Arlington,  
5 Texas.

6 And we know from Scotland Yard that they searched al  
7 Fawwaz's home, 94 Dewsbury Road, London, England. But El Hage  
8 does not put the real name Khalid al Fawwaz down there, and he  
9 puts 94 Dewsbury Road in Arlington, Texas not London, England.

10 We talked about this yesterday. Some of the evidence  
11 of the existence of the conspiracy and membership in the  
12 conspiracy, part of it is maintaining the secrecy, whether  
13 it's through codes in communication, codes in letters. And  
14 here you see evidence of the code even in the address book in  
15 case somebody comes along, looks at the address book, they may  
16 not be able to figure out what that means.

17 Count 287 and Count 293 are the companion counts that  
18 deal with the subject of Ali Mohamed. 287 relates to the  
19 Grand Jury testimony in 1997, and it begins by saying, "What I  
20 am going to ask you to do is to look through a book," and it's  
21 pictures, pictures in the book, and the photograph number 34  
22 is presented.

23 Government Exhibit 403R is number 34. It's a picture  
24 of Ali Mohamed, and El Hage says he doesn't recognize the  
25 person depicted in photograph number 34. Then the question:

1 "Q. In 1997, do you know any people working for Bin Laden in  
2 California?

3 "A. No."

4 In Specification C:

5 "Q. Have you --

6 "A. I don't know who was working for Bin Laden except the  
7 ones I met in Sudan.

8 "Q. Who is Norman?

9 "A. I don't know."

10 Specification D.

11 "Q. Do you keep in touch with anyone in California?

12 "A. I have my sister there.

13 "Q. Anyone other than your sister?

14 "A. Through the years back, few years, Sayid al Sharif, he  
15 was in California. I can't recall anyone else."

16 So those are the four specifications for 1998. In  
17 1997 -- excuse me, that's 1997. Count 287 is 1997 and Count  
18 293 relates to testimony in 1998. And again the photograph is  
19 shown, picture number 34:

20 "Q. Do you recognize that person?

21 "A. No, I don't know."

22 Specification B:

23 "Q. After seeing the person depicted in Grand Jury 65," which  
24 is another version of this photograph and we can go through  
25 that, "did you ever see him again?

1 "A. I don't recall.

2 "Q. Did you ever see him in Afghanistan?

3 "A. I don't recall.

4 "Q. Did you ever see him in Kenya or Tanzania?

5 "A. I don't recall that."

6 And then Specification D.

7 "Q. Do you know the name, sir, Ali," and then spelled out,

8 "Mohamed, Ali Mohamed?

9 "I'll write that on Grand Jury 66, Ali Mohamed  
10 spelled out. Do you recall that name?

11 "A. I can't recall."

12 And then Specification E:

13 "Q. Sir, isn't it a fact that the person depicted in Grand  
14 Jury Exhibit 65 is Ali Mohamed, yes or no?

15 "A. I don't know."

16 Now, how do you know that El Hage is lying there?  
17 The answer comes in many forms. The witness Kherchtou told  
18 you that Ali Mohamed came -- remember he described two visits  
19 that Ali Mohamed made to Nairobi? The first was when he had  
20 the photo equipment, which is before El Hage gets to Nairobi.

21 The second is later on in 1994 when he says Ali  
22 Mohamed comes and they actually go and they stay at El Hage's  
23 house, that back section of the house, that detached section,  
24 and they talked about some stuff.

25 And there was even a separate conversation that

1 Kherchtou had without Wadih El Hage where they talk about a  
2 surveillance mission to Senegal and he described how Ali  
3 Mohamed got a telephone call on the mobile phone and there was  
4 some issues in America and he had to go back. And we'll go  
5 through some of the telephone records that show calls from  
6 California where Ali Mohamed gives back to the El Hage  
7 telephone.

8 And then Kherchtou also told you, and we've talked  
9 about this a couple of times, that instance where Abu Hafs  
10 wanted to travel and he didn't want Ali Mohamed to know his  
11 alias. He trusted Kherchtou and the defendant El Hage.

12 Now, again, the coded references in the address book  
13 are very telling, ladies and gentlemen. If we go to  
14 Government Exhibit 304, this is the pop-up phone book, you see  
15 a reference at the top there to Linda Haid, 4082441209.  
16 You're going to see other references to the same phone number  
17 and we're going to see references to common addresses.

18 Then in the same address book there is a reference to  
19 a Norman. You see in the far right there 2441209. The  
20 2441209, according to the address book, belongs to a Norman  
21 and a Linda Haid.

22 Then you have Government Exhibit 305. If you look on  
23 the left, it's being highlighted for you, Ali M. & Associates.  
24 720 Harvard #2, Santa Clara, CA, 95051.

25 Next if we go to same exhibit, Government Exhibit

1 305, now we see at that Harvard address a reference to Norman,  
2 720 Harvard, and there's a different phone number listed there  
3 9163381699.

4 We'll talk about the phone records for those two  
5 numbers that are given. They are in evidence and you're going  
6 to see that the address 720 Harvard is going to appear in  
7 connection with one of those records.

8 Next if we go Government Exhibit 317, this is a  
9 little book, notebook. There you see Haid, Abdi. Remember  
10 earlier the reference first reference we saw was Linda Haid.  
11 Now we've got Haid, Abdi. We see that 916 number, 9163381699.  
12 We got Norman, we got Ali M. & Associates, Linda Haid and  
13 Haid, Abdi all revolving around these two California numbers  
14 and that address 720 Harvard.

15 Then we have Government Exhibit 636A, and this is now  
16 a document that's found in the files, the El Hage files at the  
17 MIRA office at the 1998 search. You see scratched out there  
18 at the bottom Haid, H-A-I-D, again 4082441209.

19 Government Exhibit 636B, there you see Haid and you  
20 see -- looks like in parentheses "gems," 4082441209. Now,  
21 just for your own notes, Government Exhibit 364A are the  
22 telephone records for the number 4082441209. The subscriber  
23 is Linda Sanchez. You remember Linda Haid is the first  
24 reference in the address book, and the address there is 720  
25 Harvard. There's another reference to a Norman in Government

1 Exhibit 636B. We're back to the 408 number. 408-244-1209.

2 The other records, the 916 records, they're in as  
3 Government Exhibit 365A. And then Government Exhibit 636C,  
4 another notebook found in El Hage's files at the MIRA office,  
5 and the reference there you will see is to Haid, Abdi,  
6 4082441209.

7 Now, remember the FBI conducted a search of Ali  
8 Mohamed's house in California and Government Exhibit 357 is  
9 his address book, and you see -- we'll show you a translation  
10 of the Arabic that's written up top there, but you see the El  
11 Hage number, 254, which is the country today for Kenya, 2, and  
12 then 820067. 820067, there are records in evidence that show  
13 that that's the phone for El Hage in Nairobi. And you may  
14 remember that's the same El Hage number in Kenya that's called  
15 by the satellite phone that we've talked very much about. And  
16 there is the translation. You see "Wadieh."

17 Then there's Government Exhibit 359 we already looked  
18 at. That's the drowning report that's found. So El Hage is  
19 sending the drowning report to Ali Mohamed, the person he is  
20 claiming he does not know in California.

21 And then Government Exhibit 358 is the food and  
22 beverage industry letter. Remember that's the letter from  
23 Ihab Ali with the reference to Usama and the coded reference  
24 to the FBI, where Ihab Ali is saying to Ali Mohamed, "I spoke  
25 to Wadih El Hage. He was searched by the FBI." So it's

1 really part of almost a triangle there that's described in  
2 that letter.

3           The other thing is Government Exhibit 368 is  
4 additional telephone records that show telephone calls between  
5 Ali Mohamed's phone in California and the 820067 number that  
6 belongs to El Hage. That's just the first page of the  
7 records.

8           If we take a look for a minute at Government Exhibit  
9 364C, what that is is a summary chart from Ali Mohamed's  
10 phone, one of the phones he had in California. And you see,  
11 this is -- we talked about this before. This is as far back  
12 as 1994. This is when Ali Mohamed had the issues back in  
13 America where he had to leave Nairobi, he went back to the  
14 United States and he was dealing with Harlan Bell, the FBI  
15 agent, and Andrew McCarthy, the prosecutor.

16           And you see that the number that he is calling in  
17 1994 when he is dealing with the American authorities is the  
18 mobile phone number that El Hage used, the mobile phone number  
19 that, for example, the records showed calls to that number  
20 listed for Taysir and the mobile phone that was used to call  
21 the satellite phone right before El Hage went to see Bin Laden  
22 in 1997.

23           Of course, again, even though it's not necessary to  
24 consider in terms of the perjury Count, in terms of the  
25 conspiracy, you see El Hage once again lying to protect those

1 who are affiliated with al Qaeda, those who have had some  
2 activity, who have done things on behalf of al Qaeda and  
3 independently have done these as part of this conspiracy.

4 Count 295, and now the topic is Ihab Ali Nawawi, and  
5 this relates to testimony given in 1998. The first  
6 specification is:

7 "Q. And where was Nawawi living?

8 "A. I think Sudan.

9 "Q. Did you ever call him anyplace other than in the Sudan?

10 "A. No."

11 Specification B:

12 "Q. Did you ever hear of Nawawi living in the United States?

13 "A. No."

14 C:

15 "Q. Did you ever hear of Nawawi traveling to the United  
16 States?

17 "A. No."

18 And then Specification D:

19 "Q. If you look in the Arabic, does this letter not say,  
20 'Finally, Brother Nawawi had sent me a fax and he sends you  
21 his regards. His old fax number has been changed. His new  
22 fax number is 407658631.' And before you answer the next  
23 question, I'll tell you the area code 407 is located in  
24 Florida.

25 "Now can you tell this Grand Jury how it is that if



1 you do not know who that is, if you do not know anyone in  
2 Florida, why is it that here Harun is writing you that brother  
3 Nawawi sends you, Wadih El Hage, his regards and tells you his  
4 change in phone number?

5 "A. I have no idea."

6 Specification E:

7 "Q. Brother Nawawi would not be a friend of Usama Bin Laden,  
8 would he?

9 "A. I wouldn't know."

10 And Specification F:

11 "Q. Let me ask you, and we'll finish before lunch before we  
12 go through this letter. Then Grand Jury Exhibit 42, 'Dear  
13 Mr. Nawawi,' would that be to a person who lives in Florida  
14 who is a friend of Usama Bin Laden?

15 "A. You're asking me?

16 "Q. Yes.

17 "A. I don't know."

18 In terms of Nawawi, Ihab Ali, remember the testimony  
19 of Essam al Ridi? He was the person who El Hage brought in to  
20 buy the plane in Texas and flew and then Essam al Ridi was the  
21 person who was going to later on try to sell that plane in  
22 Egypt. And El Hage sent Essam al Ridi to Sudan and said that  
23 there will be a pilot there.

24 Now, there's some question as to whether or not  
25 Nawawi was the name that was mentioned, but what you know from

1     Essam al Ridi is that the co-pilot who showed up to meet Essam  
2     al Ridi was Nawawi, and you remember that was the person who  
3     was with Essam al Ridi when he crashed the plane.

4             Kherchtou told you that Nawawi was one of the people,  
5     one of the al Qaeda people who first met him when he got to  
6     Nairobi in 1993, and Kherchtou also gives you all the aliases,  
7     Ihab Ali is the name, and Nawawi, Abu Suliman, Josef Kenana  
8     and Abu Jaffar al Tayar are the aliases. This is from  
9     Government Exhibit 4.

10            Government Exhibit 304, again the pop-up phone book,  
11     and there's a reference there, Ihab Ali, 4073636981. That's  
12     in Florida. So as to the specifications where Wadih El Hage  
13     is denying this person Nawawi being in the United States, in  
14     his own address book he has the reference to Florida.

15            Government Exhibit 305, the daily planner. If there  
16     is any doubt that we're talking about Florida, Ihab M. Ali,  
17     4627, then you see down there the address and then Orlando,  
18     Florida.

19            Also, in the same daily planner, Government Exhibit  
20     305, is a reference to Nawawi. And like Khalid al Fawwaz  
21     where 94 Dewsbury Road becomes Arlington, Texas, here it is  
22     P.O. Box 11343, Kubar, Kubar, Saudi, and then you are going to  
23     see the same P.O. box show up in Government Exhibit 305,  
24     Dayton, Texas.

25            Government Exhibit 602, one of the documents found in

1 El Hage's files at the MIRA office has a reference -- this is  
2 one of the notebooks to Joseph Kenana, one of the aliases  
3 Kherchtou gave you for Ihab Ali, and he's got Joseph Kenana  
4 listed in Norman, Oklahoma. And you know from Government  
5 Exhibit 152, which is a stipulation, that there are flight  
6 school records which show that Ihab Ali was in Norman,  
7 Oklahoma.

8           Government Exhibit 451C is a summary chart that  
9 discusses the phone records taken from the telephone number  
10 that El Hage listed in his address book. See there at the top  
11 4073636981, and it shows multiple calls in as far back as  
12 April 1996 -- and this is just on the first page alone -- up  
13 to February 1997 to the 820067 number in Nairobi, the number  
14 that belongs to El Hage at Fedha Estates, the number that's in  
15 contact with the satellite phone, the number that's in contact  
16 with others in this conspiracy.

17           Then Government Exhibit 658C is another summary chart  
18 that reflects calls from the 820067 number to Ihab Ali's phone  
19 in Florida. So you see from these two summary charts lots of  
20 telephone calls from Ihab Ali in Florida, the person that El  
21 Hage has denied to the Grand Jury lives in Florida, back and  
22 forth.

23           But aside from telephone, they communicate in  
24 writing. Government Exhibit 437A, and that's -- you can see  
25 part of it is in English. We'll just read the English part.

1 You see July 16 written there. There's "please confirm" in  
2 the middle. There's "coffee" and the ampersand, "tea," and  
3 then down at the bottom it says "answering machine" and then  
4 you see the rest in Arabic.

5 We'll take a look at the translation, 437B. "Dear  
6 Abu Suleiman: We have received your last fax but I am unsure  
7 whether you are still at the same fax number and address  
8 because I want to send you the stuff. Please confirm.

9 "The ticket: They gave us back \$75. What would you  
10 like me to do with it? Should I send you a book on  
11 manufacturing tea and coffee?" That's written in English. We  
12 looked at that. "Peace be upon you," and it's signed by  
13 Wadih. And this is one of the documents that's found in the  
14 El Hage files in the MIRA office.

15 Now, one of the things that's referenced in there, as  
16 you see, is El Hage wants to make sure that Ihab is at the  
17 same fax number. If you take a look at Government Exhibit  
18 632D, and remember this is sent in July, if you take a look  
19 down there at the translation, you see the Arabic at the top.

20 This is in March, and Abu Suleiman, one of the  
21 aliases for Ihab Ali, sends to Harun, who you know is working  
22 with El Hage at the time in 1997, and he says, "The fax number  
23 which I have will change into the following number,  
24 4076586371. With Allah is success. Abu Suleiman."

25 So the reference that El Hage makes in the July

1 letter to being confused or just wanting to make sure he's got  
2 the right fax number comes from the letter that Ihab Ali, Abu  
3 Suleiman, Nawawi, sent to El Hage's deputy saying "my fax  
4 number has changed." So it shows you that El Hage and Harun  
5 together are communicating with Abu Suleiman, Ihab Ali,  
6 Nawawi, all the same person.

7 And if we take a look at a moment at 435B, the bottom  
8 of the second page, what you see is -- and we'll take a look  
9 at this. This is a communication from Harun to El Hage:

10 "Finally, Brother Nawawi had sent me a fax and he  
11 sends I his regards. His old fax number had been changed.  
12 His new fax number is 407-658-663716789. He is doing well and  
13 in good health. I have advice you to praise God openly and in  
14 sanctuary." If we take a look at the next page we can see who  
15 it is from: "Harun, March 13, '97." And if we take a look at  
16 first page, we'll see who it is to: "Dear brother Wadih."

17 So the reference that is in the Specification D  
18 "Finally, Brother Nawawi had sent me the fax," that is from  
19 435B, which is a translation of 4535A. So if you follow the  
20 chronology, you see in March, Ihab Ali changes his number.  
21 Harun advises El Hage of that, and in July El Hage writes  
22 Nawawi, Abu Suleiman, and says, "I just want to make sure I've  
23 got the right fax number," and that's the coffee and tea  
24 letter.

25 Government Exhibit 615A we'll look at first. We'll

1 talk about this document again later. This is written in  
2 English, and we looked at this yesterday, where Ihab Ali is  
3 writing and he says, "I do have some questions" -- at the top  
4 there, if we could focus on the first third or so. "Remember,  
5 in reply to the DR's request, please inform," and there's this  
6 request that had come.

7 This was soon after El Hage got back from seeing Bin  
8 Laden in February 1997. This document has El Hage's  
9 fingerprints on it, as testified to by the FBI fingerprint  
10 specialist, Mitchell Hollars.

11 Government Exhibit 439A. First we'll just take a  
12 look at the Arabic original and we'll take a look at the  
13 translation.

14 This is from Abu Suleiman and it's written to "Dear  
15 Brothers." This is sent in June, and if you take a look, we  
16 don't necessarily have to go through this now, but Government  
17 Exhibit 451C is the summary chart of the telephone records  
18 from Ihab Ali's phone in Florida. And the telephone records  
19 show the fax going from, I think it's June 20 to June 28,  
20 1997.

21 And if you look at the original, what you can do, you  
22 will see the fax header at the top that lines up with when  
23 this was sent. If we go back to the translation for a minute,  
24 439B, if we could focus on the text, you will see references  
25 to some things that El Hage and Abu Suleiman have talked about

1 before:

2 "Did you receive my last letter which you sent you  
3 from Egypt? How is Tasir doing and his older brother, his  
4 older big brother? I want to know how his older brother is  
5 doing because the enemies here want to grab him just like what  
6 they did to the others in the East. Please tell him to be  
7 cautious and you must be cautious.

8 "Wadih, I am still waiting on you to give me an  
9 answer for what I had requested from you, the ticket, etc."  
10 And you can see some of that's in English. "Also, send me the  
11 Time Magazine which I left with you. I need to repeat that.  
12 You tell my brother Taysir to be cautious and peace be upon  
13 you," etc.

14 This letter tells you a number of things. Again  
15 there's the reference to Taysir, which we talked about  
16 yesterday, and of course, Bin Laden being the older big  
17 brother. And then there's the reference to the ticket, and  
18 there was a reference to the ticket in El Hage's letter in  
19 July where there was a reference to the \$75.

20 So you see the continuity of the communications  
21 between Abu Sulieman, the al Qaeda member that El Hage is  
22 lying to the Grand Jury about, and he's also telling El Hage  
23 to be careful to tell Taysir, Abu Hafs, and Bin Laden to be  
24 careful in June 1997, when you know from the Harun report that  
25 the group is very concerned about what it is that America is

1     doing to Bin Laden.

2             And you may also remember that Harun/Abu Khadija  
3     telephone conversation we went through in detail, where at the  
4     very end of the conversation where they say "we're going to  
5     call the matter the lame," at the end of the conversation they  
6     talk about Nawawi's place, America; "Isn't Nawawi's place  
7     America?" That's Nawawi. You see it all come together.

8             Government Exhibit 611 also has Wadih El Hage's  
9     fingerprints on it. This is a letter, and we see at the top  
10    there, "Dear Mr. Nawawi." And this is the one where, if we go  
11    to the next part of it -- we looked at this yesterday  
12    briefly -- "Taysir and his friends are still hiking. They're  
13    enjoying their curry meal." And you see down there at the  
14    bottom the signature Norman. So a letter with El Hage's  
15    fingerprints has got "Norman" written at the bottom. And  
16    we'll talk about that a little bit later.

17            Then, of course, the other document, the other piece  
18    of correspondence you know that connects Ihab Ali to Wadih El  
19    Hage is the food and beverage industry letter that's found in  
20    Wadih El Hage's house.

21            Government Exhibit 455, which came into evidence this  
22    week, is the birth certificate, the birth registration in  
23    Nairobi for Ihab Ali's son, Suleiman. Thus, the name Abu  
24    Suleiman. And the post office box that is listed for young  
25    Suleiman is P.O. Box 7239, which is El Hage's P.O. box. They



1 know each other. They communicate with each other. They  
2 communicate with each other about Bin Laden business, and El  
3 Hage denied all of that to the Grand Jury.

4 Count 296, this relates specifically to what you know  
5 as Government Exhibit 611. It was Grand Jury Exhibit 42, and  
6 El Hage is asked, you can see in Specification A, if he  
7 recognizes it. The answer is no. Then you see the reference  
8 there in Specification B, "Taysir and his friends are still  
9 hiking and they enjoy it very much." The question:

10 "Q. Is Taysir a reference to Abu Hafs el Masry, one of the  
11 military commanders, yes or no?

12 "A. I don't know."

13 And then the Specification C:

14 "Q. When it says 'they called me yesterday from a place where  
15 they are having a curry meal' referencing Abu Hafs?

16 "A. I don't know."

17 Specification D:

18 "Q. Continuing on. 'The fishing business is all right.'

19 "Do you know who was in the fishing business in  
20 Kenya? Anyone in the fishing business?

21 "A. Yeah, I know some Kenyan people in the fishing business."

22 And the question continues on the next page there:

23 "Q. What are the names of the people in the fishing business?

24 "A. I can't recall any right now."

25 And then:

1 "Q. Was one of the people in the fishing business the person  
2 depicted in Grand Jury Exhibit 5 of today's date?

3 "A. I don't know."

4 And specification F:

5 "Q. You have never seen this letter before?

6 "A. No.

7 "Q. You did not write this letter?

8 "A. No.

9 "Q. And the letter which is in a plastic bag covering has  
10 never been touched by you as far as you remember, correct?

11 "A. Correct.

12 "Q. Okay. You have no reason to believe your fingerprints  
13 would be on this letter?

14 "A. I don't think so. No."

15 Well, Mitchell Hollars found that the fingerprints  
16 were on the letter. If we take a look at Government Exhibit  
17 659, right there at the top, Government Exhibit 611, and you  
18 see -- and remember he testified about what the I.D. fingers  
19 were, 3 and 4. Number 1 starts from the right thumb and goes  
20 across. Number 6 is the left thumb and goes to the pinkie.

21 So two fingerprints belonging to Wadih El Hage on a  
22 letter found in his files at the MIRA office, a letter that he  
23 denied to the Grand Jury that he knew anything about.

24 The other thing is this letter has a reference -- if  
25 we go back to 611 for a minute and down towards the bottom, if

1 we can get the photograph of it -- down towards the bottom,  
2 the last sentence, "Please pass our regards to Mr. Jeff."  
3 Mr. Osborne, the handwriting person that testified on behalf  
4 of El Hage, was asked to look at "pass" with the known  
5 exemplar "pass" and said that they looked similar. And again  
6 the letter is signed by Norman, and we'll talk about that in a  
7 minute.

8 Remember, by the way, the Norman references also in  
9 the address book.

10 Next Count 298 with regard to Norman. Specification

11 A:

12 "Q. Let me ask you another name. Norman. Do you know who  
13 Norman is? I'll write it out. N-O-R-M-A-N.

14 "A. No.

15 "Q. Have you ever been called Norman?

16 "A. No."

17 That's Specification B.

18 Specification C:

19 "Q. Let me write out one more name. Wa'da Norman," and then  
20 spelling out. "Who was that?

21 "A. I don't know."

22 Specification D:

23 "Q. Who is Wa'da Norman?

24 "A. I don't know."

25 Specification E:

1 "Q. Is it you?

2 "A. No. No."

3 Specification F:

4 "Q. Have you ever written any letters and signed them with  
5 the name Norman at the bottom?

6 "A. No. Never."

7 There you see on the screen the exhibits that relate  
8 to proving that those answers are false. Government Exhibit  
9 611 is the one we just looked at. It's a letter found in El  
10 Hage's files, has El Hage's fingerprints on it. The  
11 handwriting expert that El Hage called said that the word  
12 "pass" looked similar to the known exemplar from El Hage's  
13 handwriting.

14 Government Exhibit 610, a different document found in  
15 El Hage's files at MIRA, if we take a look at that. This is  
16 an envelope, and you see, by the way, you see it's from  
17 California, which is where Ali Mohamed is living. And then  
18 you see Mr. Wa'da Norman. Then we see the P.O. Box, 72239.  
19 Same P.O. Box that Ihab Ali said Suleiman's son is registered  
20 to in Kenya. You see Kenya at the bottom.

21 Then we looked at the entries in the address book in  
22 the daily planner, Government Exhibit 304, and 305.

23 Count 301, first specification:

24 "Q. Do you know of anyone that you have spoken to in the  
25 1990s that you call Abu Suleiman?

1 "A. No, I don't."

2 (Continued on next page)

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1           Specification B now in this letter written to Abu  
2 Suliman, apparently lie.

3           Do you know who Abu Suliman is?

4           Answer: No.

5           Specification C, moving on to another exhibit,  
6 Government Exhibit 38T is a transcript.

7           Do you recognize that document?

8    "A. No.

9           Specification D.

10          Do you recognize the handwriting on that document?

11   "A. Yes.

12   "Q. What do you recognize about the handwriting?

13   "A. It's very close to mine.

14   "Q. Very close to yours?

15   "A. Right.

16   "Q. But your testimony is that it is not your handwriting?

17   "A. That's not my handwriting.

18          The specification E.

19          And you'll agree with me it's written at the bottom  
20 and signed Wadih?

21   "A. Yes, it's written.

22          And then you see a question that goes on.

23          And it's signed the way you sign your name?

24   "A. No, that's not my signature.

25   "Q. Does it look like your signature?

1 "A. Well, I signed my first and last names always.

2 "Q. Does the first name Wadih, is it signed the way you sign  
3 your first name Wadih?

4 "A. It's very close.

5 "Q. Very close. But you did not write this document?

6 "A. I did not write this document.

7 Specification F.

8 Or to be clear, you didn't write the document of  
9 which this is a copy of?

10 "A. Right.

11 Specification G. And it says, Dear Abu Suliman at  
12 the top. Do you know who Abu Suliman is?

13 "A. No.

14 This is the coffee and tea letter that we talked  
15 about, July 1997. And we can go ahead and display the  
16 original that has the Arabic on it and the copy of the  
17 original.

18 There is the ampersand between coffee and tea in  
19 which there was testimony again from the handwriting expert  
20 and the known exemplar, and you may remember the testimony of  
21 Mohamed Ali Odeh, the gem dealer. And there were a number of  
22 documents that he said had El Hage's handwriting on them, when  
23 Mr. Schmidt was doing his direct examination. And then on  
24 cross-examination Mr. Fitzgerald shows him this letter which  
25 is Government Exhibit 437A, Grand Jury Exhibit 38, which is

1     what's referred to in count 301.

2             And he was asked, the person who identified himself  
3     as the friend of Wadih El Hage and who identified other  
4     documents as being El Hage's handwriting, he holds it up and  
5     he said definitely, Wadih, and his signature is on top, too.

6             So the same person who identified other El Hage  
7     documents, identified this document that El Hage said looked  
8     like his handwriting, but wasn't, as being El Hage's  
9     handwriting.

10            And we know from the context because we talked about  
11    the tickets and the \$75 and the other letters were Ihab Ali's  
12    writing back saying, what's up with the tickets. This is a  
13    letter that went from Wadih El Hage to Ihab Ali, the al Qaeda  
14    member. The other thing El Hage said under oath to the grand  
15    jury is that, that's not my signature. Well, I signed my  
16    first and last names always.

17            But take a look at defense exhibits. I'll give you  
18    listing of some of them and we'll look at the M series, M7X,  
19    8, M7X11, 10, 12, M7X16, 23, 32, 33, 39, and the J series  
20    exhibits you can look at 93, J95, J108, 120, 122, 124, all  
21    signed Wadih, not Wadih El Hage.

22            Count 302, another document and in particular this  
23    relates to Government Exhibit 615A, specification talks about  
24    the Grand Jury Exhibit, consists of two pages in a plastic  
25    envelope and it's and original fax, and El Hage is asked to



1 read it to himself and, take whatever time you need to decide  
2 whether this is something that you've seen before.

3 Do you recognize the document?

4 "A. No.

5 Specification B goes through identification on the  
6 document. If you look at the top of the document, I'll tell  
7 you something that may help refresh your recollection was at  
8 the time and date stamp on the fax indicates it was sent in  
9 February of 1997. I don't know if you can read that, but  
10 maybe it helps you. It says February 26, 1997 page 1 and page  
11 2, and advise you that the full information of which to decide  
12 whether you recognize this document it was found with the  
13 other documents bearing your name and with the phone bills you  
14 described to be in your files.

15 Does that help you recognize whether or not you have  
16 seen Government Exhibit 69 page 1 or page 2 before?

17 "A. I don't recall seeing this.

18 Specification C: Do you know who wrote it?

19 "A. It says Abu Suliman.

20 And then the specifications underlying: Do you know  
21 Abu Suliman?

22 "A. No.

23 Specification D. Do you know who this letter was  
24 written to?

25 And then there El Hage is shown another document.

1           Wadih, I'm still waiting for you to give me an answer  
2   from what I have requested from you the ticket, et cetera, et  
3   cetera.

4           And then also Grand Jury Exhibit 69, last thing, did  
5   you ever get the refund for the ticket sent you. It's been  
6   seven months.

7           And then the question: I ask you whether or not  
8   Grand Jury Exhibit 69 is a letter written to you from Abu  
9   Suliman?

10   "A. I said no.

11           And the last specification: You're sure? You're  
12   under oath?

13   "A. Yes.

14           Take a look at Government Exhibit 615A. This is a  
15   copy of the document, and this is not a document that is  
16   addressed to anybody in particular, but if you go through the  
17   document, we've gone through this a little bit before, the fax  
18   header at the top, if you take a look at that, February 26, 97  
19   12:16 a.m.

20           If you go to Government Exhibit 451C which is the  
21   summary chart of the telephone calls from Ihab Ali's phone in  
22   Florida, go to February 26th you'll see call 12:20 a.m. a  
23   couple of minutes off, and then you see the call to El Hage's  
24   phone in Nairobi, Kenya.

25           The document, if we go back to the second page of it,

1 is signed Abu Suliman. We can show you the translation of  
2 that. You see down there at the bottom in Arabic. We'll pull  
3 that up later.

4 But when you go back to the document what we'll see  
5 is that there is a reference to, in the letter itself you will  
6 see references to the address of sons Abdallah. You remember  
7 El Hage goes by, among other names, Abu Abdallah.

8 There is requests for the refund for the ticket. We  
9 know from Government Exhibit 437A is one of the things that El  
10 Hage and Suliman were talking about and the other thing is the  
11 letter asks that the recipient give greetings to Harun and to  
12 other people, but it never mentions that the recipient pass  
13 greetings to El Hage, so it mentions the recipient's children  
14 including Abdallah. It asks for greetings to be send on to  
15 Harun and some others, but not to El Hage.

16 It's sent to El Hage's fax number in Nairobi and it  
17 has El Hage's fingerprints on it, so when he says he doesn't  
18 know the document, doesn't recognize the document, the  
19 fingerprints disprove that testimony.

20 Count 294. This is three specifications.

21 First. Do you know any people living in America who  
22 are contacting Usama Bin Laden?

23 "A. No.

24 Specification B. Has anyone in America ever  
25 contacted you on behalf of Usama Bin Laden?

1 "A. No.

2 The underlying specification: Do you know any  
3 contacts of Usama Bin Laden living in Florida?

4 "A. No.

5 Do you know of any contacts -- this is specification  
6 C -- do you know of any contacts of Usama Bin Laden living in  
7 California?

8 "A. No.

9 Well, you know just from the food and beverage  
10 industry letter which is from Ihab Ali who lives in Florida to  
11 Ali Muhammad who lives in California, where he's making  
12 reference to Usama, this is the same person who wrote El Hage  
13 saying, tell Hasir, his older brother, to be careful. Ihab  
14 Ali living in Florida, that all three of these specifications  
15 are proved to be false.

16 You know from all of the other correspondence that  
17 we've gone through, Government Exhibits 611, 437, 439, and  
18 615, that there is communication between El Hage and Ihab Ali  
19 in Florida, and you know that from the telephone records we  
20 reviewed, that they are in contact with each other and he  
21 knows that they are contacts of Usama Bin Laden, just from the  
22 context of the letters.

23 Ali Muhammad, you know he's the person who receives  
24 the investigation report of Abu Ubaida al Ban Shiri, and he is  
25 the person -- there is also telephone records that show

1 contact between -- he's the person who is in El Hage house.

2 He's the person who was working with Kherchtou at the time.

3 The last count, ladies and gentlemen. 297. This is  
4 in 1998. It's about six weeks after the embassy bombing and  
5 here the topic is whether or not El Hage knows defendant Odeh.

6 Specification A. There you see a reference to Grand  
7 Jury Exhibit 5, a photograph.

8 The answer is: I've seen this picture on TV.

9 The last question in the specification: Have you  
10 ever seen this person in person?

11 "A. No, I've never seen him in person.

12 Then the next specification: Who is Mohammed Odeh?

13 "A. I don't know.

14 Specification C: Do you recognize Grand Jury Exhibit  
15 35 as Mohammed Odeh?

16 "A. I've never seen this picture, this person before.

17 Specification D: Is it your testimony to this grand  
18 jury under oath that you've never met this person depicted in  
19 Grand Jury Exhibit 35 in your entire life?

20 "A. I don't recall meeting him at all.

21 Specification E. As you sit here today you're  
22 telling this grand jury you have no recollection of the person  
23 depicted in Grand Jury Exhibit 5?

24 "A. Yes, sir, I don't.

25 Specification F: You have no recollection?

1 "A. Right.

2           Specification G: Were you aware that Mohammed Odeh  
3 had a boat in Mombasa, Kenya?

4 "A. I don't know Mohammed Odeh.

5           The witness Kherchtou told you that Wadih El Hage and  
6 Odeh, who Kherchtou new as Marwan knew each other and there  
7 was discussion of the fishing business.

8           We take a look at Government Exhibit 503. This is  
9 one of the documents that came in by way of stipulation, and  
10 you see it's a document dealing with the Jordanian passport of  
11 Mohammed Odeh and the PO box that Odeh lists there, POPO box  
12 72239, same PO box you saw listed on that envelope for Wadia  
13 Norman, the same PO box that Abu Suliman put down for his son,  
14 Suliman.

15           If we take a look at Government Exhibit 510-3. By  
16 the way, these documents go back as far as 1994. This is a  
17 police log book and this relates to the lost passport and you  
18 see the number that you heard 424242, and then you see on the  
19 right Mohammed Sadek Odeh. Again, you see box 72239, el Hage  
20 PO box in Nairobi.

21           Government Exhibit 608, 608B. This is one of the  
22 documents that's found in El Hage's files in the MIRA office  
23 the files that Harun removed. And there you see, 1995. You  
24 go ahead and highlight that section Wadih Hajj in Nairobi.  
25 Consignee Mohammed Odeh. And then you can see some other

1 writing there at the bottom. You see the town it says MSA  
2 Mombasa.

3 Government Exhibit 614, also found in El Hage's files  
4 at the MIRA office. This is a document we looked briefly at  
5 for 1995 and Mohammed is one of the people you heard about  
6 from Kherchtou who is one of the people who is close to El  
7 Hage. And you see here an appointment: I hereby appoint  
8 Dr. Mohamed Odeh, and the ID number. Remember we looked at  
9 the ID application where Odeh, and Fadl had the same mother  
10 listed Miriam Omar, and if you take a look at that document I  
11 think it's 3507 or 3508, you see the ID number there matches.  
12 So there is an employment of to Odeh and it says, to be my  
13 agent handling the affairs of the boat Marwan. And you  
14 remember from Mr. Majita, he's the person who worked in the  
15 fishing industries down there in the coast of Kenya and he  
16 said that he remembered the name of Karama Mohammed.

17 Government Exhibit 720 is a calendar and address book  
18 for as we know by way of stipulation the brother-in-law of the  
19 defendant Odeh. And you see a listing there. It says January  
20 94, MOH apostrophe D Mohammed Sadek. Underneath that it said  
21 Wadia and then it lists the mobile phone number that you know  
22 is used by El Hage, 71202219, the same mobile phone number  
23 that called the satellite phone and the same mobile number  
24 that Ali Mohamed calls after he goes back to America in '94  
25 when he gets into some conversations with American law

1 enforcement officials.

2           Then you have the intercepted telephone  
3 conversations. Government Exhibit 213 A-T is one that we  
4 looked at. This is a conversation, we just want to display it  
5 briefly, that involves El Hage and Odeh. Right after El Hage  
6 gets back you see there February 21, 1997, right after El Hage  
7 gets back from his trip to see Bin Laden, the first trip in  
8 1997 and this is the one where among other things, Odeh tells  
9 El Hage that he's going to be, that somebody is coming to him  
10 and that's a reference to Mustafa Fadl, and there is a  
11 discussion there about the diskette.

12           The two of them are talking, as you expect them to do  
13 as being part of the same cell in East Africa.

14           Government Exhibit 211D-T. This is a conversation on  
15 February 7, 1997, and this is Harun talking to Odeh, Marwan as  
16 the person he knew him as, and we look at this conversation as  
17 well. This is where Harun is informing Odeh about the  
18 director and the big boss, referring to El Hage meeting with  
19 Bin Laden.

20           Government Exhibit 212A. This is going to be a  
21 reference to the new policy and we looked at that. And then  
22 the actual report, the top secret report, Government Exhibit  
23 310-74AT, makes references to Abdul Sabar El Hage coming back  
24 from this meeting with El Hage, Bin Laden and there is  
25 reference in there to what Khalid, Mr. Fadl is supposed to do



1 and how Harun and Mr. Fadl and Marwan and Suaib are going to  
2 go up to Somalia. Marwan and Suaib go by sea and Harun go by  
3 land.

4 As you can see from what's contained here in the  
5 specification, El Hage is not only being asked about a name.  
6 He's being shown a photograph of somebody, so he's being given  
7 the context in which to answer the question, the name and the  
8 photograph. And this is somebody that the documents and the  
9 telephone conversations and people like Kherchtou told you,  
10 you know that El Hage and Odeh know each other the same way  
11 that El Hage and Fadl know each other, that they're dealing  
12 with each other as part of the cell in East Africa and Harun  
13 and the others who are working together to implement the new  
14 policy, who are working together again in secret as part of  
15 the al Qaeda cell in East Africa.

16 So when given all this context, it's plain beyond a  
17 reasonable doubt, ladies and gentlemen, that El Hage knows who  
18 Odeh is and once again, he lies and he's lying to protect, and  
19 remember this is right after the embassy bombings, he's lying  
20 to protect al Qaeda from the American investigation.

21 If we could display for a moment Government Exhibit  
22 420D. This is towards, this is in the afternoon, testimony of  
23 El Hage in September 1998. Go ahead and highlight that.  
24 Toward the end.

25 "Q. You understand, sir, that the people involved in this are

1 being investigated for the bombing in Nairobi, correct?

2 "A. You just told me a while ago.

3 "Q. So you understand that if you lie about who it is that  
4 these letters were sent to, who it is who wrote them or  
5 whether or not you have seen them you will frustrate what the  
6 people in this room are trying to do, which is to try to  
7 determine who played a role in the bombings in the embassy in  
8 Nairobi and Tanzania, you understand that?

9 "A. I do.

10 "Q. Is there any answer you wish to change or amend in any  
11 way, shape or form?

12 "A. Well, I would say that apparently someone has been using  
13 my name just to get those, whether faxes or letters, to get  
14 them through to someone else.

15 Continuing on the next page.

16 "Q. So they've been using your name and --

17 "A. Yes.

18 "Q. -- mimicking your handwriting, trying to copy your  
19 handwriting?

20 "A. It seems like it.

21 "Q. And they've been writing letters to you and from you, is  
22 that your opinion?

23 "A. Yes. I was traveling most of the time, was out of my  
24 office most of the time out of Nairobi.

25 "Q. So someone seems to be using your name and your

1 handwriting to write letters to you and from you, is that your  
2 testimony?

3 "A. That's what I would from seeing all these letters.

4 "Q. Take your time and tell the grand jury why you think  
5 people do that?

6 "A. I have no idea.

7           Six weeks after the embassy bombings, a year and  
8 change after Bin Laden has given his interview with CNN, less  
9 than the year after the ABC News interview, two years after  
10 the '96 public declaration of jihad, year and a half after  
11 meeting Bin Laden and Atef, this is the best Wadih El Hage  
12 could come up with.

13           Ladies and gentlemen, we have finished our review of  
14 the evidence, and what I leave you with is this thought. That  
15 our system of justice is premised on the irrefutable notion  
16 that people can be held accountable for their actions because  
17 all individuals have the capacity to choose. All individuals  
18 can use their faculties of reason to choose among the options  
19 that they have before them, and that principle applies with  
20 special force in this case.

21           The evidence shows you beyond a reasonable doubt that  
22 the defendants chose, they chose to pursue the criminal  
23 conduct that is charged in this case, and they were not forced  
24 into carrying out these deplorable acts by blind allegiance to  
25 any oath or forced adherence to any religious principles.

1           Indeed, as Mr. Butler told you in his opening  
2 statement, no religion is on trial in this case, only  
3 individual defendants.

4           Now, if somebody, one of the defense counsel said in  
5 the opening statements this case is a rare opportunity to  
6 demonstrate to the world that we can abide by our principles  
7 of justice in a case of this magnitude.

8           I submit to you that that is absolutely right and we  
9 have done just that. While the defendants hated, targeted and  
10 killed people, and killed people merely because of their  
11 nationality or their religion, the government has responded by  
12 presenting you with evidence of what these individual  
13 defendants did that make them guilty.

14           The government has responded by meeting its burden, a  
15 burden the government welcomes in this case, of establishing  
16 the guilt of these defendants beyond a reasonable doubt.

17           And now that the government has met that burden, it  
18 is time that the defendants be held accountable for what they  
19 have done.

20           When you consider all of the evidence, when you  
21 review all of the evidence in total, you will see that the  
22 government has met its burden and that the defendants are  
23 guilty beyond a reasonable doubt, and that the only verdict in  
24 this case is guilty, guilty because that is the verdict that  
25 the evidence and the truth dictates, and guilty because that

1 is the verdict that justice is so painfully crying out for in  
2 this case.

3 Thank you very much.

4 THE COURT: Thank you, Mr. Karas. We'll take our  
5 mid-morning recess.

6 (Recess)

7 (In open court; jury present)

8 THE COURT: All right, let's be seated. Ladies and  
9 gentlemen, the next order of business is closing argument on  
10 behalf of the defendant El Hage. Mr. Schmidt.

11 MR. SCHMIDT: Good morning, ladies and gentlemen.  
12 This case took much less time than we all thought. One of the  
13 reasons that it took much less time is that there were many  
14 issues that were not in dispute, and there was an effort by  
15 all parties to stipulate, agree to what issues were not in  
16 dispute and put them forward in a manner that allowed this  
17 case to move forward.

18 There is also one thing that the El Hage team, Mr. El  
19 Hage agreed with, that the government began in its opening  
20 statement, and that we are here because of the bombings of the  
21 embassy in Kenya and Tanzania. We disagree with the  
22 government that we are here because of any action or intent or  
23 purpose of Mr. El Hage to belong, to knowingly, willingly  
24 purposely join a conspiracy to kill Americans.

25 We are not here to make a determination as to the

1 historical understanding of jihad. We are not here to make a  
2 determination of the historical background of Usama Bin Laden.

3 I am here to explain to you that while the government  
4 has put in paper upon paper, witness upon witness, that not a  
5 single piece of evidence points to Mr. El Hage ever agreeing  
6 to join in a conspiracy to kill Americans, to destroy American  
7 property or to maim or injure those same people.

8 We are not here to determine what Muslim principles  
9 that Mr. El Hage follows and millions of other Muslims in the  
10 world follow. We are here to determine, whether guided by his  
11 principles, the government proved that he took his principles  
12 and knowingly, willingly and purposely joined not in jihad in  
13 Afghanistan, not in business or other Muslim good deeds in the  
14 Sudan, not in association with people who a year after his  
15 return to the United States may have participated in the  
16 bombings in Nairobi and Tanzania, but whether he, as the  
17 government said, with personal responsibility, did what he did  
18 knowingly, willingly for the purpose of killing Americans.

19 And before I start talking about the evidence or  
20 perhaps the lack of evidence, I need to remind you that we are  
21 talking about personal decision, personal responsibility, not  
22 association. While his Honor will instruct you as to the law  
23 of conspiracy and that people can be responsible for other  
24 acts, or in joining a conspiracy, a separate crime in itself,  
25 without actually completing its purpose, the person must have

1    been proven beyond a reasonable doubt not to have associated,  
2    not to have thought about it, not to have agreed or disagreed  
3    or argued with people, not have helped them during a period of  
4    time when they were doing nothing; not lied about it, not was  
5    uncooperative or cooperative, but actually came to the  
6    conclusion, to the belief, to the intent, to the purpose that,  
7    I want to kill Americans. That's how far the proof must go.

8           Any other web that is weaved by the government is  
9    simply insufficient, and when they try to weave a web with no  
10   direct evidence but circumstantial evidence, they must do it  
11   convincingly, beyond a reasonable doubt.

12           And counsel for the government has shown you exhibit  
13   after exhibit and then said that means, that's obvious. It's  
14   not. And its your job to look at what they put forward to  
15   you, to break it down, to understand what it really means, to  
16   understand your obligation as a juror on this somewhat  
17   momentous case and to understand the significance of someone  
18   who is an American with an American family to actually reach a  
19   conscious, purposeful decision to kill Americans.

20           The government has presented, they called a  
21   conspiracy, a worldwide conspiracy to kill Americans. They  
22   have said to you that this conspiracy began in 1989; that it  
23   lasted at least until the bombing of the embassies and the  
24   arrests of the people here before you. They have presented  
25   testimony and documents to show that the two events that they,

1 the events that they claim involve the killing of Americans  
2 was in Somalia in 1993 and in Nairobi and Tanzania in 1998.

3 But we do not dispute the conduct in Tanzania and  
4 Nairobi in 1998 involved the killing of Americans. The  
5 government does not dispute that Wadih El Hage or Wadia El  
6 Hage was not involved in that. And while to be guilty of a  
7 conspiracy you need not accomplish the goals, obviously  
8 achieving the goals of the conspiracy is perhaps the best  
9 evidence of the existence of a conspiracy. And for whatever  
10 the actual conspiracy that existed in 1998, the goal of  
11 blowing up the embassies that was achieved, but up to 1998 the  
12 only evidence that the government has is the secrecy of this  
13 organization that they claim to be an organization formed and  
14 ultimately conspiring since 1989 to kill Americans is some  
15 events in Somalia, period.

16 They talk about a conspiracy of words. Well, if it's  
17 proven that there is a conspiracy of words with an overt act,  
18 and somebody is proven beyond a reasonable doubt that they  
19 joined that, even if it might not have been successful, only  
20 partially successful, that they say, that's what I want to do.  
21 To achieve my goals I need to kill Americans anywhere, any  
22 time, any place, and if they prove that beyond a reasonable  
23 doubt, they don't have to prove a single killing. But they  
24 must prove that beyond a reasonable doubt.

25 And when you have a conspiracy that lasts that long



1 and the only event that the government can point to and point  
2 to with a very blurry picture of what actually happened is  
3 Somalia, where the proof before you is negligible or less, and  
4 is based on the words of what the government says are  
5 terrorists, terrible people, Harun, Fazhul, and Usama Bin  
6 Laden, bragging about something or trying to take credit,  
7 because you remember in the word terrorist, the purpose of  
8 terrorism is terror, and that means you have to make people  
9 think that you're doing something. Not telling them doesn't  
10 achieve the goal.

11 If you want them out of Saudi, Arabia but you didn't  
12 say anything, or do anything about it, how can you put terror  
13 into the hearts of anybody to get them out? So the only which  
14 to prove terrorism is to prove that somebody wants to  
15 terrorize. And while the tragedy that we all share in 1998 is  
16 a good example of terrorism, there isn't another example of  
17 terrorism, except for a 1996 and a 1997 statement saying that,  
18 oh, we're responsible for Somalia, three, four years later.  
19 That's not terrorism. That's not part and proof of a  
20 conspiracy to kill Americans. And, more importantly, it's not  
21 related to any conduct or belief of Wadiah El Hage.

22 Now, during my summation, my closing argument to you  
23 I will refer to things that happened. The fact that I refer  
24 to those things does not mean that there is any evidence that  
25 Wadiah El Hage did anything related to it. The fact that I

1 defend or challenge a government position doesn't mean that  
2 Wadih El Hage is saying that he's involved, but he didn't have  
3 the intent. It doesn't mean that Wadih El Hage had any clue  
4 what was happening in Somalia in 1993 for me to argue that the  
5 government hasn't proven involvement, a conspiracy concerning  
6 Somalia.

7           It is my purpose to show you that the government has  
8 taken dots that don't have numbers and connected to the  
9 picture that they want to connect it, and that picture is a  
10 picture that perhaps the dots allow you to make, but we're not  
11 connecting dots here. We're making a determination that the  
12 government has proven the guilt of Wadih El Hage, an American  
13 naturalized American citizen, educated in college in the  
14 United States, with what is clearly, as you heard, an American  
15 family; that he made an intentional, knowing and purposeful  
16 decision to join a conspiracy to kill Americans.

17           The government has said many times that a certain  
18 piece of evidence or testimony helps prove Wadih El Hage  
19 joined this conspiracy to kill Americans, and I will repeat  
20 that many times in summation, it's a conspiracy to kill  
21 Americans. It's not a conspiracy of jihad. It's not a  
22 conspiracy to help Muslims in Tajikistan. It's a conspiracy  
23 to kill Americans.

24           They certainly proved to your satisfaction, and we  
25 will not contest that, that it appears that people that Wadih

1 El Hage knew had names in their phone book even under  
2 different names, have associated with, perhaps knew for 15  
3 years going back to Afghanistan, participated in a conspiracy  
4 to murder Americans. And, yes, Harun worked for Wadih El Hage  
5 and the government proved that. They proved that in my  
6 opening statement, they proved that when Wadih El Hage  
7 testified in the grand jury, because he testified about Harun,  
8 and the other people that he knew, the government contests  
9 basically is that he lied when he talked about when he last  
10 talk to some of these people.

11           There is lots of evidence of his association. It is  
12 clear, Wadih El Hage keeps his life in his notebook, in his  
13 note pads, in his papers, in his computers. They were seized.  
14 Let's look at what the government has presented to you because  
15 they claim that there was proof, not of association, but of  
16 intentional, purposeful, knowing joining in a conspiracy to  
17 kill Americans.

18           Is it in the tape recording conversations? Tape  
19 recorded conversations of 15 months, they proved some coded  
20 conversations, conversations about topics of perhaps a fake  
21 visa, but have they proven anything from 15 months of  
22 telephone conversations that there was any criminal intent to  
23 kill Americans?

24           Was there a mention of the United States or Americans  
25 in any of those conversations except for perhaps one after the

1 search of Mr. El Hage's apartment by Americans?

2           There is nothing in the 15 months of interception of  
3 facsimiles and telephone calls. What about in the documents  
4 that were seized in his home, all his telephone books? Did  
5 they prove that Mr. El Hage has met these people or obtained  
6 their telephone number? Yes. Is there any evidence in there  
7 that Wadih El Hage has intended to kill Americans? No.

8           Let's look at the computer. There is a very  
9 interesting file in the computer written by Harun, when Mr. El  
10 Hage was away in Pakistan, and taken from his home before he  
11 got back from Pakistan. Clearly Harun has some idea what's  
12 going on. Other than that, is there anything written, hidden  
13 or otherwise, in his computer that says anything about any  
14 intent, purpose to kill Americans?

15           Is there anything that's even anti-American in there?  
16 He was stopped at the airport when he arrived and searched.  
17 There was nothing there. His family was stopped at the  
18 airport when they came into the United States.

19           We know from those documents accumulated that Wadih  
20 El Hage kept everybody's card, kept everybody's number, knew  
21 members of parliament, knew police officers, wrote letters to  
22 the president of Kenya, wrote letters to the Commissioner of  
23 Police, wrote letters to the Internal Revenue Service. Now  
24 that's a good place to send a letter to if you want to  
25 maintain your secrecy; wrote letters to his friends and

1 associates about every single commodity that he can possibly  
2 make a dime with; had conversations and wrote about visas,  
3 both as testified by Mohammed Ali about helping possible  
4 business partners from Hong Kong.

5           There is testimony that Harun produced a beautiful  
6 copy of a Kenyan visa. There is evidence that there was  
7 communication concerning documents for somebody who was in  
8 Baku to leave Baku. There was testimony by Hussaine Kherchtou  
9 that he before he was affiliated with al Qaeda, used a phony  
10 passport to come to Italy.

11           We have heard corruption in Kenya. Please, let's  
12 stop for a moment. While this is a trial in the Southern  
13 District of New York, downtown Manhattan, in the wealthiest  
14 country in the world, perhaps the most sophisticated country  
15 in the world, though I'm sure the French would disagree with  
16 that, we are talking about life, business, association in  
17 another world, and there is a name for that other world. It's  
18 called the Third World, the developing world.

19           And there is a reason why the Third World is  
20 distinguished from the United States and the first world. It  
21 doesn't run the same way.

22           While passport fraud, illegal entry into the United  
23 States is looked upon a certain way here, in most of the world  
24 many people, legitimate business people who want to come in  
25 and do a deal, can wait six months to try to get their visa

1 and have to pay off somebody who wasn't satisfied. And we  
2 heard Mohamed Ali talk about that in one of the tapes, where  
3 they're waiting to get his own visa. He's having a problem.  
4 They want a certain amount of money which is the appropriate  
5 amount of money. Now, they want more money.

6 Please, while it is a tragedy what happened in 1998,  
7 when you look into this case, when you work your way backwards  
8 or we start in Afghanistan and work our way forward, remember  
9 it is not the United States of America. Things work  
10 differently. And in some places things don't work at all.

11 We did find a document in the computer that was  
12 secret and from Harun. Does that have any evidence that Wadih  
13 El Hage was conspiring to kill Americans? What it does do is  
14 show that Harun is indeed a very nervous individual, maybe has  
15 a conscience that's not totally clear, but we've seen the  
16 documents that has come out of Mercy International and while  
17 they prove association, and maybe a false visa or passport,  
18 they don't show intent to kill Americans. Nothing in there  
19 shows intent to kill Americans.

20 The one curious thing, and though I digress, is that  
21 that report makes it clear of the earliest point that anyone  
22 in Nairobi learned that Usama Bin Laden decided to make  
23 America his enemy was after the CNN interview came out and  
24 it's stipulated that the CNN interview came out in May of  
25 1997, because Harun said he learned it through the media. He

1 did not learn it from a delivery of a document, from a fax,  
2 from a telephone call, from Wadih El Hage. He learned it  
3 through the media.

4 So we are really talking about May, 1997 to July 1997  
5 where it is possible that Wadih El Hage understood that Bin  
6 Laden has moved his position as to Saudi, Arabia and I'll go  
7 into that later. But that's the time frame that we're talking  
8 about America, not before.

9 Wadih El Hage is said to be involved in this secret  
10 conspiracy to kill Americans with this secret group holding  
11 this secret to himself, and how many times you heard the  
12 government associate jihad with murder. They have said it  
13 maybe a half a dozen times here before you. And I will  
14 discuss jihad with you. But, Americans, you, them, those  
15 people, think of jihad in warlike terms and perhaps most of us  
16 only think of it perhaps of like in Afghanistan. That is the  
17 obvious perception. That is the perception that Wadih El Hage  
18 understands that Americans don't necessarily understand  
19 Muslims.

20 And this secret person, this person keeping the  
21 secrets of killing Americans in jihad in a conspiracy goes  
22 into the grand jury, and what does he say in the grand jury?

23 Do you believe in jihad?

24 "A. Yes.

25 And you believe in fighting the people that were

1     perceived as the enemies of Islam, correct?

2                 The enemies, yes.

3                 And in Afghanistan the Soviet Union was the enemy of  
4     Islam?

5     "A.   Yes.

6                 And you would fight against the enemies of Islam  
7     against anything else, correct?

8                 Yes.

9                 (Continued on next page)

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1           MR. SCHMIDT: (Continuing) And if someone told you  
2   that the United States was the enemy of Islam, would you fight  
3   the United States? Excuse me. And if someone told you that  
4   the United States was the enemy of Islam, you would fight the  
5   United States, correct? Yes. If it's proven.

6           Was it proven? No. It has not been proven that the  
7   United States is the enemy of Islam.

8           You tell me how this person who was harboring his  
9   secret conspiracy to kill Americans for all these years, who  
10   is talking in code, who is protecting himself and his  
11   conspiracy says, yes, that he would fight America, when all he  
12   has to do is say, no, and he has no fear. But he gives the  
13   answer yes. But as a good Muslim, that has to be proven. Not  
14   because a man says so, and we'll talk about Jihad soon, but it  
15   has to be proven in his heart.

16           And while he disagrees with American policies in the  
17   Middle East, he signed a bayat with America. He is a citizen.  
18   He has chosen to be a citizen for a very, very selfish reason:  
19   It's the best place for your children and your family. It's  
20   the safest place for yourself, your family and your children.

21           But he does not shy away from telling the prosecutors  
22   of his beliefs. And if you look in the Grand Jury, he is not  
23   even questioned about anti-American activity. There is  
24   nothing in the Grand Jury, notwithstanding the government's  
25   claims that he is lying to protect al Qaeda, to do some

1     terrible wrong later on. There is nothing in there that shows  
2     that he, personally -- the government said it's personal  
3     responsibility -- that he personally joined the conspiracy,  
4     any conspiracy, to kill Americans.

5             He was interviewed by Agent Miranda. Was there  
6     anything in that conversation that showed that he was  
7     participating in a conspiracy to kill Americans? No. And  
8     I'll go into that, also.

9             He was open and honest about his beliefs of American  
10    foreign policy and its failures. Immediately after the  
11    bombing, immediately after Usama Bin Laden was suspected of  
12    committing the acts, did he try to avoid talking about issues  
13    that could get him into trouble?

14            If one had a guilty heart and a guilty conscience,  
15    would that person join in that conversation to say, look, I  
16    disagree with a lot of the United States is doing, or would  
17    they avoid that at any cost if the person had a guilty heart  
18    and a guilty conscience?

19            Now we have the two witnesses from al Qaeda. One,  
20    Jamal Al-Fadl. I have a lot to say about Jamal Al-Fadl. But  
21    notwithstanding the kind of person that Jamal Al-Fadl is, he  
22    didn't say anything that proved to you that Wadih El Hage  
23    joined a conspiracy to kill Americans.

24            Now, we have this man Kherchtou. He's also  
25    cooperating with the American government. He faces life

1 imprisonment for his conspiracy, his conduct. He also was in  
2 jail in Nairobi and talked to this agent from someplace else  
3 for days and days. He also has every reason to make Wadih El  
4 Hage's role or conversations with him to look worse, not  
5 better. Did he say anything that shows that Wadih El Hage  
6 agreed, intended to kill Americans? No, he did not.

7           None of the other witnesses Ismail al Ridi, the  
8 pilot, the Juma brothers, the other agents give any evidence  
9 at all that Wadih El Hage conspired, agreed, knowingly and  
10 willfully, to join a conspiracy to kill Americans. And there  
11 is one reason why, with all of the evidence and all of the  
12 people who have come before you, that you haven't heard  
13 anything and that is there is nothing to prove Wadih El Hage  
14 agreed to kill Americans.

15           Before I go into the historical background to try to  
16 help understand how Wadih El Hage could work in the Sudan,  
17 could work in Nairobi, could keep in contact with people who  
18 some, you heard, end up killing Americans, I want to respond  
19 to one thing that the government said.

20           They said Wadih El Hage made a choice when he came to  
21 the United States to side with Usama Bin Laden and al Qaeda  
22 instead of siding with his country of citizenship. That was a  
23 statement that was inaccurate, that was a statement that was  
24 unfair and that was a statement that was unAmerican.

25           If you recall, in September of 1997 he stayed in

1 contact with the American agents. He received a phone call  
2 from Mohamed Atef, also known as Abu Hafs, which his wife took  
3 a message that he called. Did you hear a return phone call?  
4 Did you hear any evidence that he contacted Abu Hafs either to  
5 tell him what he's going to do or what happened? No. What he  
6 did was come to the United States and have a conversation with  
7 a couple of his best friends and no one elsewhere he was  
8 going.

9 He did not choose to go to Pakistan or Afghanistan.  
10 He chose to come to the United States. And while I'll deal  
11 with the issues concerning the perjury issues later, he chose  
12 to raise his family, he chose to tell the government when he  
13 was coming. He chose to come to the United States. He made  
14 his choice: The United States.

15 The government knew where he was going. The  
16 government was waiting for him. He stayed in the United  
17 States for an additional ten months before he was arrested.  
18 He worked. He paid his taxes. He cared for his children. Is  
19 there anything else that an American must do to prove that he  
20 chose the United States?

21 And the government claimed that his choice helped, he  
22 was partly responsible for the deaths of all those people  
23 because he didn't help them. He prevented the investigation.  
24 Now, what didn't the government have from Mr. El Hage? They  
25 had 15 months of telephone calls and facsimiles. They had his

1 address book with everybody he ever knew, and as I think it  
2 was Agent Coleman said, they investigated that.

3           They knew his material was in Mercy International,  
4 his "files." And Mercy International is a registered,  
5 non-governmental organization that was functioning, and while  
6 it moved its offices, the government was unable to find it or  
7 made no effort to find it because after the bombing they found  
8 it immediately.

9           And where was Harun? They made no effort. They  
10 found his home in the Comoros Islands immediately thereafter.  
11 They had the security report. Wadih El Hage did not know  
12 about the security report. The government had the security  
13 report. They had his computer. They knew exactly where he  
14 went, what he did, who he talked to.

15           He did not, he was not responsible for the deaths of  
16 those people in Tanzania and Nairobi, and it is unfair, it is  
17 the wrong and it is unAmerican to say so.

18           And the government claims that Wadih El Hage is the  
19 facilitator that caused the death of these people or was a  
20 facilitator in a conspiracy to kill Americans. One, it's not  
21 the law. He's not charged with being a facilitator. He's  
22 charged with being a conspirator. He's charged with sharing  
23 the same purpose of killing Americans. Not of helping people  
24 who may have different goals than he has, but of sharing those  
25 goals. He must be proven to be a conspirator and not a

1 facilitator.

2           Perhaps the first question that needs to be answered  
3 is, how could he have picked such bad company? I saw a smile,  
4 and probably it's something that probably mothers probably  
5 understand the best. Bad company in August of 1998 was not  
6 necessarily bad company in 1983, in 1986, in 1989, in 1992, in  
7 1995 and in 1997. It is unfair to look back, look at what  
8 these people did in 1998 and say, how could he hang around  
9 with such bad people?

10           You must start at the beginning. In 1983, Wadih El  
11 Hage was one of the first Americans, first non-Afghanis to go  
12 to Afghanistan to help the Afghanis fight against the  
13 Russians. In the United States, he was praised. We all hated  
14 the Russians.

15           If you hung around with a Russian diplomat in 1983,  
16 you were told that you were in bad company. If you hung  
17 around with a Russian diplomat in 1998, you're not in bad  
18 company. Keep that perspective in mind.

19           Wadih El Hage shared a philosophy of his religion  
20 with hundreds of millions of other people. It was unanimous  
21 that it was the right thing to do in the Muslim world to help  
22 the Muslims in Afghanistan fight the Russians. If you  
23 couldn't fight yourself because you weren't physically able to  
24 help the refugees, or later as a reporter to report back to  
25 people to let them know what was going on.

1           It was a good thing in the United States. We liked  
2 those people. Maybe you can remember that. We hated those  
3 Russians. We wanted to kill the Russians. Though we weren't  
4 in a conspiracy to kill Russians, but that's what our feelings  
5 were. And Wadih El Hage went back three times in the  
6 meantime, getting married, raising his family, getting his  
7 degree to help the Afghanis.

8           And just like anybody who shares a seminal, an  
9 important experience in that life, you make certain bonds that  
10 will never go away, that no matter what the other person does  
11 or says, he is your brother. Sometimes you don't take them  
12 seriously, sometimes you try to change them, but you make a  
13 bond that you share with that person for your whole life that  
14 is harder to break than a normal friendship.

15           In 1989, I believe it was, the Arab mujahadeen  
16 actually got the Russians to leave Afghanistan. Probably  
17 nobody thought it could be done, but it was. And the leaders  
18 of the mujahadeen ranging from the former Afghani warlords,  
19 the generals that had their own militia, and what's now called  
20 the Afghan Arabs or Arab mujahadeen, continued the fight  
21 because the Russians left the puppet ruler, who was a  
22 communist, and that lasted for another two years. And I  
23 believe the stipulation that was read to you a long time ago  
24 says that that puppet was overthrown I believe it was  
25 September 1991.

1           And then, with the support of the Muslim community,  
2   the different groups formed a coalition government. As those  
3   things occur, it didn't hold. But Wadih El Hage went back  
4   home. He wasn't a warrior. He believed in Jihad. He  
5   believed in helping Muslims who needed help. He believed in  
6   the "struggle," that is, Jihad, that is both personal within  
7   one's self and is to help other Muslims.

8           And he went back and he tried to help his family who  
9   belonged to his community and he kept in contact with his  
10   fellow brothers who were in Afghanistan because, as you know,  
11   that was indeed an incredible event for them.

12           You heard from Mr. Al Ridi who met Mr. El Hage back  
13   in the mid 80s that he thought it was important, but he did  
14   not think Usama Bin Laden should have been running an army  
15   because he was not capable. And he told that to his face.  
16   And Mr. Bin Laden didn't take offense. He still offered him a  
17   job later on, but Mr. Al Ridi did not want to work for Mr. Bin  
18   Laden because he had disagreements not in philosophy but in  
19   practice -- that Mr. Bin Laden was not a good general. But  
20   Mr. Al Ridi continued to help the mujahadeen, continued to  
21   help the Afghanis until the end of the Afghan war. You heard  
22   from Mr. Al-Fadl, who said that he tried to help. You heard  
23   from Mr. Kherchtou, who also fought. At that time I think he  
24   was fighting the puppet Communists.

25           These are volunteers who have fought for what they



1 believe in, in a war that has been, to some extent, our  
2 American history. Do not begrudge them for fighting. Do not  
3 begrudge them for receiving training. Because you did see a  
4 book from Mr. Harun's mother's home that was seized that  
5 talked about mines, that talked about other explosives, and we  
6 heard about that from an agent who seized it, the agent who  
7 had military training and understood what those were from his  
8 military training. And at least Harun's book was clearly a  
9 handwritten book that came from the lectures that he went to  
10 in military school in Afghanistan.

11 Now, as we know, war ends in one place. It doesn't  
12 mean it doesn't continue somewhere else. Mr. El Hage was not  
13 infatuated with war. He went home to his family in Texas. He  
14 still believed in Jihad then. He believes in Jihad now. But  
15 he was not a person who felt he needed to participate in war  
16 to prove himself to be a good Muslim.

17 As Mr. Kherchtou explained to you, he lost many  
18 friends in wars in Chechnya, Syria, Bosnia, Tajikistan, I  
19 think Casmir, people who felt that it was necessary to keep on  
20 in war. Mr. Kherchtou joined al Qaeda about the time that  
21 Mr. El Hage went to the Sudan.

22 Mr. Kherchtou joined al Qaeda and said to us that the  
23 places that he thought that he would be fighting would be  
24 Afghanistan, Bosnia, Chechnya, Tajikistan. That was his  
25 understanding when he joined.

1           Wadih El Hage, in the United States, gets invited to  
2 the Sudan to work, to do business, because Usama Bin Laden  
3 left Afghanistan because not only was his job finished and he  
4 went back to Saudi Arabia, but because the warlords were again  
5 warring amongst each other. They were killing each other,  
6 Muslims killing each other.

7           And if you refer to what is called a Taliban report,  
8 that I'll talk about at a later time, you see that Mr. Bin  
9 Laden was -- and all the people who supported Mr. Bin Laden  
10 and not just Bin Laden, the movement, the movement to help the  
11 Muslims in Afghanistan, were crushed because they felt  
12 terrible. They threw out the Russians and they ended up with  
13 outlaws who were corrupted, who were raping, pillaging. And  
14 they felt terrible.

15           So they left Afghanistan and went to Pakistan. And  
16 you heard Mr. Kherchtou and Mr. Al-Fadl, who I will discuss,  
17 say that they were in Pakistan because Afghanistan no longer  
18 welcomed the mujahadeen, the Afghans, because they didn't feel  
19 that the warlords should be splitting the booty and  
20 mistreating their own people. They felt that there should be  
21 a good Muslim society there, a society that maybe you do not  
22 want to live in, and that is your right to live in there -- a  
23 society that we don't want to live in, but a society that many  
24 Muslims want to live in. And certainly no one wants to live  
25 in a society of warlords fighting and killing people who are

1 unprotected for their own gain.

2 Now that takes us to -- go back one second.

3 So many people who fought in Afghanistan for a  
4 righteous cause left and went back to where they were from.  
5 People like Mr. El Hage went to the United States. Many were  
6 from Saudi Arabia, Egypt and other countries in the Middle  
7 East.

8 And what they found was that because of their belief  
9 in Jihad, because of their belief in justice, countries that  
10 had no opposition, countries that the ruler was it and you  
11 can't disagree, couldn't voice their opinions like they could  
12 in Afghanistan.

13 And we have learned through Mr. Al Ridi,  
14 Mr. Kherchtou and, to some extent, Mr. Al-Fadl that Egyptian  
15 young men who went to Afghanistan to fight the Russians -- at  
16 that time our enemies -- were trained, many who lost their  
17 lives or lost limbs or otherwise injured, came back to their  
18 home country, Egypt, and were made outlaws. Because as Mr. Al  
19 Ridi, Mr. Al-Fadl and Mr. Kherchtou told you, Egypt not only  
20 persecuted, arrested, tortured and killed Afghan mujahadeen,  
21 people who didn't commit a crime when they went over there but  
22 was made a crime when they came back.

23 And many of the people that you have heard about have  
24 "el Masry" at the end of their name, meaning Egyptian. And  
25 many of the people that you heard who espouse retaliation have

1 "el Masry" at the end, of Egyptian, because of what happened  
2 to them and their country.

3           So these people had a choice: they can go home and  
4 be imprisoned and tortured. They couldn't stay in  
5 Afghanistan, so they went to Pakistan and they stayed with  
6 some of the people who were there, including Usama Bin Laden,  
7 who believed in the word "jihad," a word that the government  
8 wants to strike fear into your heart with the use of that  
9 word. But I'll discuss that and they misuse that word.

10           So when we talk about secrecy and we talk about codes  
11 and we talk about fear of authorities and keeping things  
12 hidden, and especially with the incredible simplistic codes  
13 that the government has put in front of you, the food and  
14 beverage industry. Not only that, what the FBI darkened.

15           "Honey, give Abdallah the green paper, not the red  
16 paper." She calls back, "You mean the American money?"

17           "Dial this number. 93746. Okay, and I'll tell you  
18 some other numbers and then you put them together."

19           Now, this is the code of a secret organization that's  
20 going to fool the Americans, who are so sophisticated, but  
21 this is code that they use, or is this simply an attempt at  
22 that time, maybe not in '97 and '98, but at that time to  
23 protect themselves against the Egyptians, the Saudis, the  
24 Kenyans, if you are in Kenya, and perhaps the Americans who  
25 turn over dissidents to Saudis and Egyptians?

1           Does that mean you are planning on killing Americans  
2 because you don't want to talk on the telephone about money?  
3 "Use green or red paper," does that have any significance at  
4 all to killing Americans?

5           The one thing that we have seen from the statements  
6 of Wadih El Hage concerning this word that the government  
7 wants to make you fear is he is honest about it. And the  
8 government is right. Mr. Al-Fadl was told don't look Islamic,  
9 look secular, because otherwise you're in trouble in Egypt.

10          Perhaps that best tells you that we're in a different  
11 world than where we live in now. While people who don't look  
12 secular in our country, be they Muslim, Jewish, Christian, we  
13 look at them on the street when they go by, we note that they  
14 look different, would we even think of saying that's a reason  
15 to put someone in jail and torture them, to follow them  
16 around, to wiretap their phones? No, we wouldn't. And Wadih  
17 El Hage understood that and that's why he chose America.

18          But don't forget for one moment that Egypt, Africa,  
19 the Middle East is not America, and conduct that looks  
20 suspicious, that is suspicious, does not have the same purpose  
21 there that it might have in the United States. Conduct that  
22 we may think is suspicious here and would call our attention  
23 to that must be something criminal that they're hiding is not  
24 the same thing in Egypt, in Kenya, in Saudi Arabia than it is  
25 here.

1           And you cannot put the same meaning on those words  
2   and those acts as the government has here in the United  
3   States. It's wrong. It's incorrect. It is different. And  
4   when the government says that this secrecy means they're  
5   trying to kill Americans, they are making a leap without the  
6   dots. Just keep that in mind when you review the evidence and  
7   you think about what the government has said.

8           Because you know what they have put in front of you.  
9   They have put in front of you as to Wadih El Hage that he acts  
10   suspiciously, and because in 1998 there was a bombing by  
11   people he knew and acted suspiciously with, he had to have  
12   known, he had to have agreed, he had to have set it up and he  
13   had to be part of a conspiracy to kill Americans. And I say  
14   to you that that is not proven by what they said.

15           Your Honor, now would be a good time to break.

16           THE COURT: You want to break now? We'll recess and  
17   we'll resume at 2:15.

18           (Luncheon recess)

19

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

2                                   2:15 p.m.

3                   (In open court; jury not present)

4                   THE COURT: Anybody have any idea if there is and  
5 Al-owahli penalty phrase how long the government's  
6 presentation will take? I won't hold you to it.

7                   MR. FITZGERALD: I'd like to talk to Mr. Garcia and  
8 report back to the Court tomorrow.

9                   THE COURT: All right. Just for purposes of  
10 planning.

11                  MR. FITZGERALD: My guess is in the ballpark like a  
12 week.

13                  (Pause)

14                  THE COURT: If we went to the second stage when that  
15 would begin, to start it on a Monday. In other words, if we  
16 got a jury verdict in the middle of the week, we would go over  
17 until Monday. If the jury verdict came on a Friday, then we'd  
18 talk about a slight delay, but I wasn't thinking of any longer  
19 hiatus.

20                  MR. COHN: We can discuss that at a more opportune  
21 time?

22                  THE COURT: I was just responding --

23                  MR. COHN: I understand, Judge.

24

25

1           (Jury present)

2           THE COURT: Good afternoon. Mr. Schmidt, you may  
3 continue.

4           MR. SCHMIDT: Good afternoon, ladies and gentlemen.

5           In 1992 as Mr. El Hage testified in the grand jury,  
6 he was invited by Medani el Tayeb to come work for Mr. Bin  
7 Laden. At that point Mr. Bin Laden was having his troubles  
8 with the Saudi government, was not happy about the American  
9 presence in Saudi Arabia, and was moving to Sudan to start  
10 businesses in the Sudan.

11           Mr. El Hage left Afghanistan in 1990 and clearly was  
12 not following the events of al Qaeda and Usama Bin Laden  
13 substantially, and was offered a job at about a thousand  
14 dollars a month in the Sudan, which in the Sudan in 1992 was a  
15 very substantial amount of money, and was having trouble  
16 working and earning a living in the United States, so he  
17 checked it out, accepted it, and move his family over.

18           Now, this was in keeping with Mr. El Hage's beliefs.  
19 The Sudan was at that time starting to develop an  
20 Islamic-based society and Sudan had its problems. It had its  
21 problems with the United States. It had its problems with  
22 rebels in the south. It was certainly not a place that many  
23 of us would choose to live in, but he chose to, because he  
24 perceived a position of some authority as a purchasing  
25 director, and was going to travel around and he admitted that



1 one of the reasons he was hired is he had an American  
2 passport, and for people living in the Sudan having an  
3 American passport was a great advantage to travel to do  
4 business deals.

5 Now, the government has alleged that there is already  
6 a criminal conspiracy to kill Americans, which is based, and I  
7 guess I shouldn't use that word al Qaeda, since that means the  
8 base, but it forms around al Qaeda even for three years by the  
9 time Mr. El Hage goes to the Sudan.

10 There is no evidence that Mr. El Hage participated in  
11 any way in any activities that affected the United States  
12 except for commercial activities at that time or took bayat or  
13 anything of that nature. But we then have Mr. al-Fadal Jamal  
14 al-Fadl, the government's main al Qaeda witness, the person  
15 that the government is asking you to accept as a credible,  
16 honest, trustworthy witness to explain what al Qaeda and the  
17 surroundings, and what was occurring is really about. And I  
18 submit to you that Mr. Al Fadl's testimony isn't worth a whit.  
19 And I am going to go and give you examples of it.

20 But one of the things that I bored you with a couple  
21 of weeks ago was some of the books that were received at Mercy  
22 that are clearly Mr. El Hage's accounts, notes, thing to do,  
23 his life that he writes in when he was working for Bin Laden  
24 1992 and 1993 and early 1994.

25 I have one of them here. These are one of the

1 exhibits. This is WEHX--M-7 star-38T. And, obviously, those  
2 numbers mostly follow the bates numbers that the government  
3 put on when they were seized in Mercy. Now, as I showed you  
4 ad nauseum, and you will be able to see again by yourself as  
5 much as you want to, this supports what Mr. El Hage had been,  
6 this sets forth what Mr. El Hage had been doing in the Sudan.  
7 The government chose not the best diary of his thoughts, his  
8 deeds, his activities, his concerns, his travels into  
9 evidence. They did not. We put them in. That's fine. They  
10 don't have to put in evidence, that shows Mr. El Hage is doing  
11 everything legitimate. We brought it in to show you that.

12           Now, besides going through to show you that he was  
13 traveling substantially already in 1992, because he arrived  
14 apparently in time to do traveling in October of 1992, or  
15 August even, so he probably arrived a little bit before that,  
16 and probably did stay for a couple of weeks before he went  
17 home and brought his family in the bachelor quarters, but then  
18 was with his family.

19           He, as you can see there, his job was to purchase  
20 items for Mr. Bin Laden's ongoing businesses, many of them  
21 related to farming activities, some related to others, find  
22 out what businesses could be made to work in the Sudan, whole  
23 factories bought and set up, dealerships obtained. You can  
24 take a looked at those diaries give you his whole life and  
25 understand how much work he had to do.

1           Now, as the government says the fact that he's  
2   working in a legitimate business doesn't mean that al Qaeda is  
3   not involved in some nefarious deed. However, my concern to  
4   show you is what Mr. El Hage is doing, he doesn't have time.  
5   He has his work.

6           Now, the first thing that the government says that  
7   this criminal conspiracy to kill Americans was involved in  
8   that was really directed toward the Americans, was Somalia.  
9   While there is an incredible lack of evidence on Somalia, and  
10   of course as his Honor will instruct you, the burden of proof  
11   of every charge on every count on every element is on the  
12   government beyond a reasonable doubt, we have the government  
13   drawing Mr. El Hage into Somalia by trying to help bring  
14   Stinger missiles from Afghanistan to Sudan, as the government  
15   says, to kill Americans.

16           Now, we know from the testimony of the activity of  
17   the Americans in 1993 at a later period, Mr. El Hage blessed  
18   with a terrible memory and a need to write down everything,  
19   will show you when the Stinger missiles issues first came up  
20   with the help of his own notes, and the testimony of Essam al  
21   Ridi the pilot who purchased the plane from Mr. Bin Laden.

22           The first thing we're going to show you is in the  
23   exhibit that I said, page 83, on page 83 when it's right side  
24   up, near the bottom, excuse me, in the middle, you can see  
25   where it talk about a, you see in the top where he talks about

1 Abu Tareq, talking about training you can see it talking about  
2 an airplane to be purchased, Jetstar Lockheed, the miles and  
3 hours that it can go, the price, and everything about it.

4           So we know that this at least is the latest time the  
5 discussions of buying an airplane occurred. If we move back  
6 now two pages to 81, we will see the date two pages earlier is  
7 August 23, 1992. If we go to the next page where that has the  
8 date, we see that it's August 6, 1992. So while we can't  
9 specify the exact date of this conversation, it is clear that  
10 it is in August of 1992. So we can get ready with Mr. al  
11 Ridi's testimony at 562.

12           Now, what we do know by stipulation is that the  
13 Americans supported the Mujahadeen in Afghanistan and in the  
14 stipulation that was read to you and is available again for  
15 you, the United States provided, starting in 1987, Stinger  
16 antiaircraft missiles, and as most people know, these are very  
17 valuable, because they really do work and they really can shot  
18 down planes easily.

19           Now, after the middle of 1991, when the warlords took  
20 over, and then later on when they started the next year  
21 breaking apart and fighting, and Bin Laden was moving out, he  
22 had a choice. He can leave his weaponry, including the  
23 Stinger missiles, in Afghanistan for the warlords to use  
24 against each other and to use against fellow Muslims, or he  
25 can take it out. He can take it with him where he is.

1           Now, in August of 1992, there were no Americans in  
2   Somalia. Somalia was chaos. Somalia was other warlords  
3   killing each other. We look at the testimony of Mr. al Ridi  
4   starting on page 562 and the rest of it, you can see that  
5   there is a discussion of what kind of plane they want, because  
6   it has to cover a certain amount of miles, which is two  
7   thousand miles, because they have certain goods they want to  
8   ship from Peshawar, which is just over the border in Pakistan,  
9   to Khartoum, and these are early discussions. And in the next  
10  page he freely tells Mr. al Ridi what the most significant  
11  goods are, which are the Stinger missiles.

12           And Mr. al Ridi basically explains the legal way to  
13  bring the missiles over, discusses the kind of airplane they  
14  have to get, and ultimately arrives in the very early part of  
15  1993 with and airplane.

16           Now, while Mr. al Ridi doesn't know exactly when the  
17  airplane was purchased, he knows that he was in Khartoum in  
18  early 1993. And if you look at the transcript you're talking  
19  what kind of modifications had to be made on the plane prior  
20  to being brought to Khartoum. There was a lot of work to be  
21  done.

22           The Stinger missile issue, which of course there has  
23  been no testimony whatsoever that there were ever any Stinger  
24  missiles in Somalia, Stinger missiles were ever used against  
25  the Americans, you have Mr. Al Fadl trying to show that the

1 Stinger missiles are somehow related to Somalia. You have the  
2 government saying that the Stinger missiles are the link  
3 between Mr. Wadih El Hage and the conspiracy to kill Americans  
4 in Somalia.

5           What they don't tell you is that the Stinger missiles  
6 and Mr. El Hage's job were simply to help get the airplane and  
7 as you can see, if you want to in the testimony, the rest of  
8 the testimony of Mr. al Ridi, is that once the deal went  
9 through, Mr. El Hage was done with it.

10           He got the plane. He was told the reason, the  
11 distance had to travel. He did his job as an employee of the  
12 companies of Mr. Bin Laden and that was it. As it turns out  
13 of course there were no Stinger missiles transferred and no  
14 Stinger missiles at all in Somalia, and it really has nothing  
15 to do with Somalia. And the government is again trying to  
16 connect, make you draw a line when there is not even a single  
17 dot present to draw the line.

18           If you take a look at issue of Somalia -- you can  
19 take that off now -- you have Somalia revolving around Mr. Al  
20 Fadl telling you what other people said, taking credit for  
21 everything. You have Mr. Kherchtou telling you about Harun's  
22 adventures in Mogadishu with his friend Abu Mohammed. You  
23 have Harun's letter taking credit, and you have Mr. Bin  
24 Laden's statements about the Mujahadeen doing everything in  
25 Mogadishu.

1           What you don't have is a single piece of evidence,  
2 other than the testimony of people that the government calls  
3 terrorists, whose job is to evoke terror, taking credit for  
4 Somalia. You don't have any proof whatsoever. What you do  
5 have is a time frame problem on the part of the government.

6           Mr. Kherchtou, whose sole information of what  
7 happened in Somalia in general relies on other people, and  
8 specifically as to Mogadishu, relies on Mr. Harun, Abu  
9 Mohammed, tells you basically that he arrives in October in  
10 Nairobi. He tells you that he goes to Sudan, comes back in --  
11 comes back after a month, so now we're talking about end of  
12 November or so.

13           What he's known previously about Somalia is while he  
14 was in Pakistan, while he learned that Somalis were facing a  
15 Civil War, starving, getting killed by warlords, that Usama  
16 Bin Laden sends some of his supporters in the end of 1991, the  
17 beginning of 1992, to help train Somalis to defend themselves.

18           We've had Prof. Samatar explain to us the areas that  
19 were discussed by Mr. Kherchtou were the Gedo region in  
20 southwest Somalia by Ethiopia, and the Kenyan border; the  
21 Ogadon, I believe, that was in central Somalia on both sides  
22 of the Somali-Ethiopian border, northern Somalia, where there  
23 were groups of Islamists who were trying to fight and protect  
24 their people against the warlords. In fact, if you remember  
25 Ahmad Tawhil who was a supporter of Al Ittihad in the Gedo

1 region requested help. He requested help to defend against  
2 Aideed, the major warlord who was not only fighting the  
3 Americans in Mogadishu, but was fighting his own people  
4 everywhere else first.

5           As Prof. Samatar told you that it was the general  
6 population caught in the middle between Aideed and Barre who  
7 were fighting. This was occurring between 1990 and 1992.  
8 There are famines and wars within Somalia, and that these  
9 warlords had access to all of the military hardware of the  
10 Somali Army, RPGs, mortars, tanks, all weaponry.

11           And he told you that the Somali Army prior to the  
12 Civil War was perhaps the second largest in Africa after South  
13 Africa. And the people who were suffering were the people who  
14 were unaligned with these warlords, and one of this group, an  
15 Islamic group, that was looking to set up Islamic law in the  
16 Gedo region Al Ittihad, and this was a group that was welcomed  
17 because the people would take anybody to protect them, they  
18 wanted law and order. They didn't want warlords and their  
19 order.

20           The people who needed training weren't the warlords'  
21 militias, weren't Aideed's militia that ended up in Mogadishu,  
22 al Maki, the other leader in Mogadishu, I think Prof. Samatar  
23 mentioned Omar Jes and other people. The people who had  
24 disputes with Americans, they didn't need training. The  
25 people who needed training were the people who needed training



1 to protect themselves from the warlords, and the Ethiopians  
2 who invaded later on. The warlords had an Army.

3 Now, we have clear testimony from Mr. Kherchtou and  
4 others concerning the location of training. Mr. Al Fadl talks  
5 about one incident of training that concerned Abu Hafs, and he  
6 said it was in Mogadishu.

7 If you can find Prof. Samatar about Afar. Mr. Al  
8 Fadl, the person who the government is relying on testified  
9 that in Mogadishu Abu Hafs went there -- I think it was him  
10 who testified -- dressed as some merchant or something, and  
11 got into trouble and had to be rescued in a Cessna plane by  
12 the Afar.

13 Now, this is the reliable al Fadl. Prof. Samatar  
14 explained to us who the Afar people are, and where they're  
15 located. What he told you was he is from, Prof. Samatar from  
16 Djibouti. Djibouti is up in the northwest corner that adjoins  
17 Somalia that has Somali people, but that was a French place  
18 first, and the Afar people are the people from Djibouti and  
19 Ethiopia-Somalia, that corner right over there, and that there  
20 are no Afar groups in Mogadishu. Al Fadl gets it wrong. He  
21 gets it wrong. He's probably talking about the northeast, but  
22 he simply is an unreliable source of any information.

23 We have the kid, Harun, who comes back in 1994 and  
24 says, talk about his adventures. We have another individual,  
25 and the first time that Mr. Kherchtou testified who was in

1 Somalia in the Ogaden region earlier on, I think he was  
2 talking about Abu Mohammed and was in Mogadishu later after  
3 he, Kherchtou, arrived in the end of 1993. And the second  
4 time after he signed his papers and came back, sometime maybe  
5 November or December, 1993. And so this person came and went  
6 to Mogadishu in 1994, and told you of his adventures.

7           We have no evidence that there were any adventures  
8 against the Americans other than the word of Harun, the person  
9 that Mr. Kherchtou, even back then, in 1994, called a kid, who  
10 exaggerated. That's the evidence that they rely on.

11           And as I will talk about, -- talk about that now.  
12 Mr. Kherchtou was in Afghan -- excuse me -- was in Pakistan.  
13 He was in Sudan for a while, and then he was back in Nairobi,  
14 and he was with some of the people who went to Somalia, and  
15 other than his testimony about Harun and Abu Mohammed, they  
16 all went to the areas in the Ogaden and the Gedo region, and  
17 Mr. Kherchtou says to you, he didn't hear of any fatwa issued  
18 against the Americans in Somalia.

19           Here is a person who is helping out the people going  
20 to Somalia. He is a person who is talking about, is getting  
21 told about Harun's exploits in Somalia. Here is a person who  
22 is in Pakistan and hears and knows of people who are going,  
23 before the Americans, after the Americans are there into  
24 Somalia, doesn't hear a word of a fatwa. The fatwa against  
25 America in Somalia is based solely on the testimony of al

1   Fadl, and we will deal with al Fadl. Al Fadl provides the  
2   testimony of his version as accepted by the government, of Al  
3   Qaeda and their goal. Kherchtou contradicts him in most  
4   cases.

5           What we have is only the claim of al Fadl of a fatwa  
6   and Harun, and an ambiguous statement three years later by  
7   Mr. Usama Bin Laden that there was anything to do with killing  
8   Americans in Somalia.

9           Importantly, the incredible lack of proof of the  
10   number of people who went anywhere that Americans were  
11   located, basically Harun and Abu Mohammed, would make it very  
12   unlikely that any activity was anything but sporadic; that  
13   this was part of a plan that everybody who worked for Bin  
14   Laden, everybody who is alleged to have been an al Qaeda  
15   member, would have joined in.

16           No question that the al Qaeda people in the Gedo  
17   region and the Ogaden region and the north who are working  
18   with Al Ittihad and other Islamic groups did not want to see  
19   American troops or UN troops come and try to enforce western  
20   values on them, and, fortunately, we have heard nothing about  
21   any confrontation between any Islamic group in the Gedo  
22   region, the Ogaden, and the north with American or UN troops.  
23   There is a complete lack of real evidence concerning that.

24           And we know shortly thereafter in 1994, there were no  
25   Americans any more in there. But there remained Al Ittihad

1 and other Islamists still trying to recover from the havoc  
2 wreaked upon them by the warlords, still asking for help,  
3 still getting attack from Ethiopia, and from other warlords,  
4 and needing help that Mercy International and other groups  
5 helped out, including Help Africa People in the later years.

6           We know that in the later years there were no  
7 Americans. We know that all activity that went towards  
8 Somalia before the Americans were there, after the Americans  
9 left, could not have possibly been directed to the Americans.  
10 For Wadih El Hage's stay in Nairobi there were no Americans in  
11 Somalia. Any contact that Wadih El Hage had with Somalia be  
12 it to try to help Africa People, Al Ittihad, Ahmad Tawhil or  
13 anybody else, has to do with Somalis and not Americans.

14           Now, I want to talk a little bit about the perjury  
15 charges now. There are a lot of perjury charges. And you've  
16 heard the government talk about them, and they've shown you  
17 letters, and you have seen clearly inaccurate statements by  
18 Mr. El Hage.

19           And it's going to be your responsibility to carefully  
20 review each and every one of them because inaccurate, mistaken  
21 answers are not perjury. There are a number of things that  
22 you need to consider. Some of them are clearly whether there  
23 was a simply a mistake, and some of the perjury counts are  
24 clearly resolved that way.

25           We have the testimony of Mr. El Hage in the first

1 grand jury when he met Mr. al Fadl was in London, and then in  
2 the second grand jury that he met him in Nairobi instead of in  
3 the year earlier. Now the government says that he forgot what  
4 he said, and they quote Mark Twain. Well, Mark Twain, we're  
5 talking about two lies, it's hard to get it straight when you  
6 tell two lies. But when you tell the truth and you realize  
7 it's the truth, it's not so difficult getting it straight.

8           And what Mr. El Hage told you in 1998 was the truth.  
9 So did he lie in 1997 and tell the truth in 1998? There is  
10 one very telling thing that would tell you that he told the  
11 truth in 1997, because the government says he was hiding and  
12 protecting al Qaeda. But in 1997, he told the government that  
13 Mr. Al Fadl worked for Bin Laden as his spokesman in London,  
14 England. If that's looking to protect al Qaeda, then perhaps  
15 the government is correct, but if it's tell him the truth  
16 about he was working for Bin Laden as his spokesman in England  
17 the difference between '97 and '98 is resolved by a simple  
18 error.

19           Now, that's one of the kind of issues that you have  
20 to consider. Now, there are other issues that are somewhat --  
21 that are legally required for you to follow and his Honor will  
22 instruct you, but some people call them technical, and I ask  
23 you to be a good juror that you have been and don't make any  
24 distinction between what you consider technical and  
25 nontechnical. Some people consider the burden of proof or the

1 presumption of innocence technical, and it is not.

2           The government has the responsibility to ask clear  
3 and precise questions, to get clear and precise answers. So  
4 when they ask questions that are ambiguous or imprecise, or  
5 compound, and those questions are hard to answer, or any part  
6 of it make it true, then it's not perjury.

7           If they, if the answer is literally true, but you  
8 know that it wasn't giving all the information, we're going  
9 to, well, then it's still not perjury. Now, these  
10 requirements are there because it's not easy to be a witness  
11 and testify. It's a difficult thing and nobody should be  
12 trapped into a false answer. It has to be clear for a  
13 purpose. The questions have to be material. They have to  
14 serve a purpose for the purpose of investigating something  
15 useful.

16           Asking questions about the drowning of Mr. al Ban  
17 Shiri in 1998, when the government knew that he drowned, had  
18 no purpose. Mr. El Hage says he went there. He says it was  
19 for a person called Adel Habib. He says he sent Harun there.  
20 All the information that was relevant and useful he gave.

21           If the government asked a question that is not -- and  
22 the answer does not effect, is not material then the  
23 government has failed in its proof.

24           But I also want to talk to you about Wadih El Hage  
25 and his events. Now, all of you I assume receive quite a

1   decent night's sleep tonight, last night, maybe not the best.  
2   But I don't think any of you flew on an airplane for 15 hours  
3   with six children through ten time zones, taken from his  
4   family, questioned for hours, spoken to for hours, sent back  
5   at midnight, awakened for his early prayer, spent time with  
6   his children and put into the grand jury.

7           Let's all think about the last time we went through,  
8   if any of you did, ten time zones, not with six children. And  
9   look at the answers, how many wrong answers that he had to  
10   correct, the difficulty had in his memory in 1997, and this is  
11   not a new phenomenon.

12           Do we know that Mr. El Hage doesn't have a  
13   particularly good memory, especially when he's disoriented  
14   from the flight, has arrived with his six children and his  
15   wife, back into the United States, and who hasn't been here  
16   for five years, probably has a home, maybe has a home in  
17   Texas, is starting all over again, has just, knows, clearly  
18   knows that many of the people that he's befriended for years,  
19   people like Abu Hafs, who he knows from 1983, are being  
20   targeted like him, who have fear, not necessarily of the US  
21   government, perhaps, but certainly has fear of their home  
22   countries.

23           So this disoriented person is put into the grand jury  
24   after very little sleep and asked lots of questions. He  
25   talked about the people he knows. He doesn't deny that. He

1 talked about other issues. He tries to remember things. He  
2 makes an awful lot of errors, which are, some which are  
3 corrected by the government, some which the government asks  
4 him to correct, and he does. Some that he doesn't.

5           What we know is you can look at each one of these  
6 books. You can look at ones that were put in at the end  
7 called V1, V2 and V3. You can see that this man writes down  
8 everything. He writes down everything because he's one of the  
9 people like maybe some of you, who if he doesn't write it  
10 down, he doesn't remember. If he doesn't look at it, he  
11 doesn't remember. The government had his documents, didn't  
12 show it to him, and now asks you to find him guilty of  
13 perjury.

14           Also, in 1998 testimony follows the same pattern. He  
15 drove from California with a stop in Arizona, and was served  
16 with a subpoena when he arrived. The government knew that,  
17 flew him over that day, talked to him that night, and put him  
18 in the grand jury.

19           Now, there is three of the counts in the grand jury  
20 that are very similar, two of which he gives an incorrect  
21 answer in 1997, and gives the correct answer in 1998. One he  
22 gives the correct answer in 1997, and the incorrect answer in  
23 1998. That one is whether Mr. Bin Laden is called the hajj.  
24 In 1997 he says, yes, he's heard him call the hajj. In 1998  
25 he doesn't remember.



1           Now, first, the hajj or hajji is used for lots of  
2 people. Now, there is no tremendous benefit for Mr. El Hage,  
3 who is also call the hajj, to say no, for somebody where it's  
4 a common name, where everybody who has traveled on the hajj  
5 can be called the hajj.

6           What it means is that though somebody is called the  
7 hajj is one of those questions where either answer is correct.  
8 Somebody is call the hajj, ten million, twenty million, thirty  
9 million Muslims could be called the hajj. Is it a name that  
10 somebody uses to truly identify somebody or sometimes used as  
11 a nickname? It's a question where either answer is correct.

12           There is a CNN report where the government says  
13 Mr. El Hage perjured himself because he didn't, because he  
14 said that he did not know that Usama Bin Laden targeted  
15 Americans until he saw, or attacked Americans until he saw CNN  
16 in the summer just after his return from Pakistan in 1997.

17           Well, what we do have is a few things. One, Mr.  
18 Kherchtou himself testified that he didn't know that Mr. Bin  
19 Laden was targeting Americans until sometime after 1996.  
20 Mr. Harun in the security report says that he saw on the media  
21 that Usama Bin Laden has now chosen to attack Americans  
22 because they're the policemen of the world.

23           Now that is a report that though it was filmed in  
24 February or March, did not come out until May at the earliest  
25 of 1997. The ABC report came out in June of 1997. Mr. Harun

1 says he didn't get it by letter, he didn't get it by Mr. El  
2 Hage, he didn't get it by telephone call. He learned of it on  
3 the TV somewhere. And the first time we hear about it and  
4 them learning about it is in the summer of 1997. And the  
5 reaction to Mr. El Hage on returning and hearing about it, is  
6 going back to the United States. The government did not prove  
7 that perjury count.

8           Mr. El Hage was unable to identify I think it was  
9 three photographs. One of the persons called Ali Mohamed, one  
10 of the persons that we now know as Mohammed Odeh, and he  
11 wasn't sure of a photograph of a person who had a beard who we  
12 now understand is Mr. al Ban Shiri.

13           Mr. El Hage has testified in the grand jury that he  
14 knows he could identify Usama Bin Laden if he saw him. He  
15 knows he could identify Abu Hafs if he saw him. He says he  
16 probably could recognize Mr. al Ban Shiri if he saw him. And  
17 the reason why he said he probably can is because he said that  
18 he only saw him about three or four times, and if he's in  
19 Islamic dress he is going to recognize Mr. al Ban Shiri in  
20 Islamic dress.

21           I ask now if we can show the two photographs. This  
22 is the man that Wadih El Hage identified as Adel Habib, the  
23 man that Mr. Kherchtou, before Mr. El Hage arrived, knew as  
24 both al Ban Shiri and Adel Habib.

25           Now if we can show the other photograph. This is a

1 photograph of the person that we know is Mr. al Ban Shiri.  
2 These are two very distinct looking people. Now, I understand  
3 having reviewed al Fadl's testimony, that Mr. Al Fadl said  
4 among the people that Mr. El Hage hung around with was Mr. al  
5 Ban Shiri. I'll explain again why further Mr. Al Fadl is just  
6 simply an unworthy source of information.

7 Now, we have had the testimony of the two al Qaeda  
8 members put on by the government, and we had the testimony of  
9 Sekander Juma. Each one of them was unable to make  
10 identifications of people because of the difference in the way  
11 they looked.

12 Mr. Kherchtou was shown a picture of Mr. El Hage, a  
13 person he lived with in a hotel for a month or so, a person he  
14 lived with in the room outside of his house, and obviously  
15 used the facilities in his house for many, many months, and he  
16 was shown a photograph of Mr. El Hage with a bigger beard like  
17 this (indicating), and he testified now you look at the  
18 photograph of Mr. El Hage that the government showed you with  
19 a beard.

20 Do you remember that?

21 "A. Yes.

22 "Q. And you remember that you had some difficulty saying for  
23 certain whether that was Mr. El Hage or not?

24 "A. No, I didn't recognize him. They gave me a bunch of  
25 pictures. I didn't recognize him and the second time I think

1 the second day I recognized him.

2 "Q. Now, many people when they are in the Sudan dressed and  
3 their facial hair was more in comportment with traditional  
4 Islamic look, is that correct?

5 "A. Not all of them but some of them, yes.

6 "Q. And sometimes it was difficult recognizing somebody who  
7 you saw with a full Islamic beard and maybe an Islamic outfit  
8 when you see them in western clothes and clean shave.

9 And he says: It is changes."

10 Mr. Al Fadl, the person that the government asks you  
11 to rely on, who is the third member of al Qaeda, remember,  
12 he's the third member that swore bayat, he knows everybody,  
13 oh, so, well.

14 And if you could put on 8988 of Mr. Al Fadl's  
15 testimony. Mr. Al Fadl failed to identify Abu Hafs picture,  
16 Mohamed Atef, the person who is either, supposedly number two  
17 or three in the Bin Laden organization, the person whose  
18 appearance hasn't changed, who looked the same. Mr. Al Fadl  
19 was unable to identify him. He not only was unable to  
20 identify him. He was even unable to say if he remembered if  
21 he gave a wrong name for him. He was not sure if he was also  
22 known as Mustafa Hamza which is clear that's not one of his  
23 names. And he didn't remember, if we can go down a little bit  
24 more:

25 Isn't it a fact that in October 1997 you were shown a

1 photograph of Mohammed Atef, also known to you as Abu Hafs --

2 Masry. And you were unable to identify the photograph?

3 "A. Yes.

4 "Q. That is because he looked different in the photograph

5 than he looked when you saw when in the Sudan and Pakistan, is

6 that correct?

7 "A. Yes, maybe the picture is not clear or like that.

8 "Q. In fact, lots of people's appearance are very different

9 when they have the Islamic beard and dress than when they

10 shave and wear western clothes; is that correct?

11 "A. Yes.

12 "Q. And sometimes it's very hard to know who that person is?

13 "A. Yes.

14 "Q. When they are photographed in different attire and

15 different facial hair?

16 "A. Right."

17 There was a stipulation entered into evidence that we

18 didn't read to you, it's WEHX S10, where the government agrees

19 that if called as a witness an agent of the United States

20 Federal Bureau of Investigation would testify that on November

21 14, 1998 Sekander Juma when showed a photograph of Wadih El

22 Hage failed to identify Mr. El Hage from the photograph.

23 Now, Mr. Juma, he might have been nervous. Mr.

24 Kherchtou has already been involved in cooperating with the

25 government. Mr. Al Fadl was cooperating with the government.

1 They were not on the witness stand. They didn't fly from  
2 Jetta. They didn't travel from California through Arizona.  
3 They were relaxed. And they had problems making an  
4 identification. The government asks you to put Mr. El Hage at  
5 a higher standard than they put their own people.

6 Mr. El Hage did not say he did not know the person.  
7 He said he did not know him as Abu Hafs -- excuse me -- as al  
8 Ban Shiri, and this goes back now to what I told you earlier  
9 about a different society, a different culture.

10 As you sit here now you're probably saying: He looks  
11 a little like him. How did he not know? Mr. Kherchtou said  
12 he cried. Mr. Kherchtou knew him as both names. Mr. El Hage  
13 knew him as Adel Habib. So if Mr. El Hage said to Mr.  
14 Kherchtou that Adel Habib died in a ferry accident, Mr.  
15 Kherchtou would know, would understand that also means al Ban  
16 Shiri, but that doesn't prove that Mr. El Hage did.

17 I ask you to put on page 467 -- excuse me -- of the  
18 expert, the Imam. Do you have that 4687 and 88. The Imam  
19 explains to you in that section that, in our religion it is  
20 better to let the guilty person go than punish an innocent, so  
21 if I make an assumption that I'm wrong along the line I was  
22 wrong and I shouldn't go spy on a person. He's talking about  
23 somebody maybe with a bottle of alcohol on him.

24 And he basically says, you don't confront somebody  
25 who you have a suspicion. It's just not our way. If that

1 person wants to keep his affairs to himself, he has a right to  
2 keep his affairs to himself.

3 (Continued on next page)

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1           MR. SCHMIDT: (Continuing) it is not the nature of  
2 Mr. El Hage to question somebody who is very helpful to him,  
3 helpful to his organization, Help Africa People. The  
4 government has failed to prove that Mr. El Hage lied under  
5 oath and committed perjury under that Count.

6           We also have another excellent example of the  
7 difficulty that Mr. El Hage has in remembering when he's under  
8 pressure. He was shown a letter, or read a letter. When he  
9 was in the Grand Jury -- could you put the English version on,  
10 please -- where he not only denied knowing what it's about, he  
11 denied writing it.

12           Now, some of you might have been amused by the  
13 picture of Mr. El Hage riding an ostrich. That had a very  
14 specific purpose. In July 14, 1997, he sent a fax to his  
15 brother-in-law and he wrote a little joke at the bottom about  
16 his nieces and nephews. And it wasn't just a regular visit.  
17 This was a visit after being in Nairobi for all those years  
18 with his nieces and nephews and they went to a game farm and  
19 he ended up riding an ostrich.

20           Now, this is something that we all would probably  
21 remember if we were riding an ostrich, and you see the picture  
22 of him on it. So this was an event not just a letter being  
23 written, not just a letter about a business deal and his niece  
24 and nephews, this is a letter that came at the time he was  
25 entertaining them, taking them to the game farm and for the,



1 obviously, for the first time in his life and the last time in  
2 his life he rode an ostrich.

3           And when asked the question by the government in the  
4 Grand Jury about what does that mean, he says, "I don't know  
5 anything about that letter." Even when the government  
6 insinuated that it had to do with al Qaeda people, he had no  
7 idea what that letter was. And it is his letter. He wrote it  
8 to his brother-in-law. It's obvious. And he didn't remember.  
9 It had nothing to do with anything and he didn't remember.

10           I don't know if any of you have ever taken the  
11 witness stand, been under pressure, been exhausted, been  
12 frightened, concerned, and how hard it is. There can be great  
13 difficulty in trying to come out with the answer remembered  
14 correctly. I ask you to examine that when you examine each of  
15 the perjury charges.

16           I ask you to review to see the questions, how clear  
17 they are, how difficult some of them are to answer. For  
18 example, as to, "So what happened to al Qaeda after  
19 Afghanistan?" a question that is really impossible to answer  
20 in that form, and as you are required to give him the benefit  
21 of the doubt, whether you believe that that question just  
22 simply can't be answered correctly.

23           And note on 285, which I jotted down yesterday when I  
24 was listening to the government's presentation and reading  
25 from a transcript, even in the government's version with Harun

1 as the source of information, it makes it clear that Wadih El  
2 Hage stayed at the Executive Guesthouse in Pakistan in  
3 Peshawar and did not travel into Afghanistan in July and  
4 August 1997. It made it very clear that he remained there,  
5 and I think it goes without saying that Mr. Bin Laden was not  
6 taking a cab from Afghanistan into Peshawar at that time to  
7 visit Mr. El Hage. So even under the government's version,  
8 Mr. El Hage did not go into Afghanistan.

9           The government also relies on the testimony  
10 concerning Ali Mohamed. There is no question that Mr. El Hage  
11 has Ali Mohamed's telephone number. We are not challenging  
12 that Ali Mohamed didn't stay with L'Houssaine Kherchtou back  
13 in 1994.

14           The government is putting Mr. El Hage to an  
15 extraordinary disadvantage to have him required to remember  
16 every person that he has his telephone book and every person  
17 he met even from three or four years ago and even for a short  
18 period of time.

19           Finally, because I think this deals with another  
20 issue very clearly, the government has charged him with lying  
21 about not knowing Mohamed Odeh, who is present in court here.  
22 They put a tape recorded conversation in of a person they  
23 called Marwan and Mr. El Hage, and the basis of the name  
24 Marwan on there is the testimony of Mr. Kherchtou; that he  
25 listened to the tape once and he believes it's Marwan. That

1 is it.

2           There is no Marwan mentioned there. The evidence  
3 rests on things found in Mercy International that says Karama  
4 and Ouda, O-U-D-A, or Wadih Hage and Odadeh. And while that  
5 is insufficient to prove that Mr. El Hage met the person or  
6 knew him by the name Mohamed Odeh, because that's what they  
7 are asking, he had to know him by Mohamed Odeh and he had to  
8 have met him and remembered that exact photograph.

9           What the government has done, not just that time but  
10 all through their summation, is called every document that  
11 they seized in Mercy International, except maybe the poem and  
12 the little piece of paper, Mr. El Hage's files. There is no  
13 question that many of the things in J Room was Mr. El Hage.  
14 Clearly they were his handwriting. Clearly they were his  
15 signature. Many of them was his name, addressed to him or  
16 from him. His books were in there. There is no question  
17 about it.

18           But many of them also were files that were not  
19 related to him, and as we know from the manner of the search  
20 and the manner of the notes taken by the agent, we have no  
21 clue as to which pile and which place in the room that some of  
22 these things came from. And if you remember the testimony,  
23 when Mr. El Hage was traveling, there was somebody staying  
24 with his family because he was away -- Mohamed Karama and his  
25 wife.

1           And whose files are there? Whose name is in Asthma?  
2   Whose name is on the documents referring to the shipping?  
3   What you have, there are some files of Mr. El Hage and some  
4   files of Mohamed Karama, who is present, who is living at  
5   Mr. El Hage's home when Harun took those files out, which  
6   brings us to the files themselves.

7           What do the files show? The files show contact. Not  
8   a single document there shows criminal activity, anywhere near  
9   a conspiracy to kill Americans. And the overall conspiracy,  
10   as I said to you before, comes from Mr. Al-Fadl.

11           And now it is time to talk about Mr. Al-Fadl.

12           Now might be actually a good time, your Honor.

13           THE COURT: Well, I didn't want to say "now may not  
14   be the exact time to talk about it" because we'll take our mid  
15   afternoon break.

16           (Recess)

17           (Jury not present)

18           MR. SCHMIDT: I know that the time frame we were  
19   talking about, but because of all the breaks, if we run to my  
20   four hours, which I now expect to be the maximum of my time,  
21   we're going to be running substantially late.

22           THE COURT: You are going to be running substantially  
23   late?

24           MR. SCHMIDT: Well, no, I expect to stay within my  
25   four hours.

1 THE COURT: Yes.

2 MR. SCHMIDT: However, because of the breaks, four  
3 hours is going to be sometime after 5:00, and I thought that I  
4 might be able to find a good place to stop and leave myself  
5 about 45 minutes for Monday morning.

6 THE COURT: How much time do you estimate you have  
7 used? You used an hour and 15 minutes this morning. You  
8 started at 2:15 and you went to 3, 3:30.

9 What do you want to do? You want to stop?

10 MR. SCHMIDT: I think if I find a good spot sometime  
11 around about 45 minutes or so, then I'll leave about 45  
12 minutes, or a little less, on Monday and this way I don't just  
13 get up and end.

14 THE COURT: All right.

15 MR. SCHMIDT: Thank you.

16 THE COURT: We'll talk about it Monday. I would  
17 appreciate it if you don't compel me to cut you off in front  
18 of the jury, because that's obviously something neither of us  
19 would like to do.

20 MR. SCHMIDT: I fully understand and I fully meant to  
21 stay within my estimate.

22 THE COURT: All right. Let's bring in the jury.

23 (Jury present)

24 THE COURT: Mr. Schmidt.

25 MR. SCHMIDT: Now, as I almost promised, I wanted to

1 make one correction. I did say concerning one of the Counts  
2 on the perjury, I think I said Al-Fadl. I meant al Fawwaz. I  
3 guess I have Al-Fadl on the brain and I apologize for that.  
4 That's Count 288. And I also mentioned that the ABC show was  
5 in June 1997, and it was in June 1998.

6 Now, as promised, I wish to discuss Al-Fadl, because  
7 the heart of the alleged conspiracy that supposedly entails al  
8 Qaeda and their aim to kill Americans is really based on  
9 Al-Fadl very much so.

10 While Mr. Kherchtou had some things to say, and I  
11 will discuss Mr. Kherchtou's testimony as well, it seems  
12 Mr. Al-Fadl laid the groundwork which the government has  
13 proposed to you is acceptable proof and I want to show you  
14 that Mr. Al-Fadl's testimony is unacceptable proof.

15 Some of the things are real simple and easy and  
16 almost things I wouldn't include except for it is so important  
17 for me to address you to make clear what Mr. Al-Fadl on the  
18 small things and the large things are simply not to be  
19 believed.

20 He makes a joke -- excuse me, he says he talked to  
21 Mr. El Hage about the bicycles, that, "Why did you go to  
22 Baku?" And Mr. El Hage says, "The bicycles." He said, "Ah,  
23 come on. I'm the third one who got into al Qaeda. You can  
24 tell me the truth." And Mr. El Hage just smiles.

25 Now, during one of the somewhat tedious portions of

1 the case, I showed you Mr. El Hage's book and in Mr. El Hage's  
2 books I read a number of pages, and a number of pages show not  
3 only the locations of manufacturers of where he can get  
4 bicycles from but also the cost, the shipping cost, what he's  
5 going to do in the Sudan, it is a real issue, it was a bogus  
6 issue for Mr. Al-Fadl.

7           Mr. Al-Fadl testified about chemical weapons, and I  
8 guess other than perhaps an atomic bomb, which he also  
9 testified to, chemical weapons put fear into the heart of all  
10 of us even though our own country has its supply of chemical  
11 weapons. We fear it, and rightfully so. And we certainly  
12 wouldn't want anybody to take chemicals weapons like they did  
13 in -- chemicals like they did in Tokyo and put it in the  
14 subway. It's a great fear, and rightfully so.

15           However, we finally got around to asking, almost by  
16 accident, on our recross-examination of Mr. Al-Fadl what he  
17 meant by chemical weapons. He ended up saying C5. C5, maybe  
18 you're not familiar, but C5 is a chemical weapon. It's an  
19 explosive, it's a dangerous explosive, but it's certainly not  
20 a chemical weapon in the nature of what one thinks of a  
21 chemical weapon. It was another statement by Mr. Al-Fadl that  
22 he throws out to make everything look worse and turns out it's  
23 not true.

24           Now, before I even get into the other examples, I do  
25 want to remind you of one thing: Even though I am telling you

1 about Al-Fadl and I'm saying he is totally unreliable as  
2 witness, if you review everything that he said, even then he  
3 still does not say that, or could say, or give any evidence  
4 that Mr. El Hage joined a conspiracy to kill Americans. At  
5 worse, what he testifies is that he should have known, Mr. El  
6 Hage should have known that others around really hated the  
7 United States. And that isn't enough, even if you accept  
8 every single word uttered from that man's mouth.

9           This is not an issue of not liking the United States.  
10 There's lots of people in the world who don't like the United  
11 States. Lots of people who love the United States. And the  
12 people who come home to the United States are the ones that  
13 love them. But it's not an issue, as Mr. Kherchtou very  
14 eloquently answered my question when I asked him, "Is there a  
15 difference of believing the United States is your enemy versus  
16 attacking the United States?" He said, "Yes. Complaining  
17 about something doesn't mean you're going to kill it." And I  
18 think we all realize that.

19           And the activity that Mr. El Hage had in the Sudan  
20 when he was in the Sudan -- and you can go through those  
21 books -- I would love to spend a day here with you going  
22 page-by-page and showing you every single business activity  
23 that he was struggling to start, to purchase, to get the best  
24 price for his boss. You have that opportunity. And you will  
25 see from those books that he had a very busy 1993.



1           And I bring up 1993 solely for the reason, again, to  
2   reiterate that whatever was happening in Somalia, no matter  
3   how I bring it up, Mr. El Hage was working like a dog trying  
4   to make money for Mr. Bin Laden. And no matter what  
5   Mr. Al-Fadl says that the business wasn't making money, the  
6   business was Jihad. If you had employees like Mr. Al-Fadl,  
7   then I guess you're right. But if you had employees like  
8   Mr. El Hage, who worked for a living, then you're wrong.

9           The government entered in photographs of many, many,  
10  many people who either Mr. Kherchtou or, to some extent,  
11  Mr. Al-Fadl says are members of al Qaeda. Now, one of the  
12  complaints or one of the things that the government may say  
13  is, hold it, yes, Mr. Kherchtou was al Qaeda, but he was not  
14  in the Sudan, so he really couldn't know about these fatwahs  
15  or these informations that was given out.

16           One of the good things about having more than one  
17  lawyer is that the other lawyer can be checking things out,  
18  and it turns out that all the photographic identifications  
19  that came in as exhibits, all the photographs that came in as  
20  exhibits in this case as al Qaeda, three came in with  
21  Mr. Al-Fadl and all the rest came in with Mr. Kherchtou.

22           And the three that came in with Mr. Al-Fadl were --  
23  excuse me, take it back. Four or five came in with  
24  Mr. Al-Fadl and I believe that they were all like Mr. Bin  
25  Laden and a couple of others, and I think they even brought in

1 Abu Hafs because he finally identified Abu Hafs from a certain  
2 picture. Everything else came from Mr. Kherchtou.

3 So if the government gets up and says, well,  
4 Mr. Kherchtou wouldn't have heard of it because he wasn't  
5 around the Sudan that much, I respectfully submit that the  
6 only person who was paying attention to anything going on was  
7 Mr. Kherchtou because Mr. Al-Fadl was doing his own thing and  
8 not paying attention to a lot what was going on and came here  
9 and told you things that he had no clue about.

10 The government got up and told you one of the major  
11 pieces of evidence that Mr. El Hage, Wadih El Hage, either was  
12 al Qaeda or certainly was involved with al Qaeda is that he  
13 was the al Qaeda payroll person for a while. I remember that.  
14 I remember the testimony back when Mr. Al-Fadl testified and I  
15 found the related testimony concerning Mr. Al-Fadl concerning  
16 payroll.

17 Direct examination for Mr. Al-Fadl on page 249:

18 "Q. In 1991 was al Qubashi the Sudani in that office?

19 "A. Yes.

20 "Q. Did there come a time when al Qubashi left that office?

21 "A. Yes.

22 "Q. Do you know exactly when that was?

23 "A. I think June 9, 1993.

24 "Q. When he left that office, who moved into that office?

25 "A. Sheikh Sayyid el Masry.

1           And where did he get that information from? He got  
2   it from Wadih El Hage. Now we're talking about getting that  
3   money from Sheik Sayyid el Masry on McNimr street sometime  
4   after June 3, 1993. He says, if you see lower down, how he  
5   did it. Then further down, "He trained and he -- did he train  
6   anybody?" This is two people, being Abu Quadashi and Wadih El  
7   Hage. He trained them both to do it, to give the money.

8           Next page. And there was a file. Of course he never  
9   identified anything of Mr. El Hage's file. Never identified  
10   any personal information from Mr. El Hage's file. Never even  
11   testified there existed an El Hage file.

12           Now, if you look down at page 66, this is from Mr. Al  
13   Ridi. And the dark lines are not the testimony, the dark  
14   lines are my summation to you that Mr. Al Ridi's testimony, I  
15   submit to you, is a lot more reliable than Mr. Al-Fadl's  
16   testimony. So please don't think that that's part of the  
17   transcript.

18   "Q. When did he fly the plane into the United States?

19   "A. The early part of 1993. Then he went to the office to  
20   get the accounting, to get the rest of his money.

21   "Q. Where did he go?

22   "A. He went to a nice area that was a residential area."

23           We know from the testimony that the residential area  
24   is the Riyadh area, the area where Mr. Bin Laden moved his  
25   offices from McNimr Street to the Riyadh area. I don't recall

1 the name because I didn't write it down, and the rest of the  
2 offices remained on McNimr Street.

3 "Q. And the offices there in the front, who was there?

4 "A. In the office in the front," next page, "was Wadih El  
5 Hage in a small desk."

6 If Wadih El Hage, in the beginning of 1993, is now in  
7 the Riyadh area, how is he the al Qaeda paymaster in McNimr  
8 Street? Well, he can't be. And your choice is to accept the  
9 testimony of Mr. Al Ridi as to going to see the office where  
10 Mr. El Hage was at or believe the testimony of Mr. Al-Fadl as  
11 to Mr. El Hage became the payroll master of al Qaeda.

12 I also ask you to reject the government's description  
13 of the role of Mr. El Hage as a gatekeeper. He testified in  
14 1997 in the Grand Jury. At that time he couldn't possibly  
15 know that Al-Fadl was cooperating. At that time the  
16 government says he lied many times. And what did he do? He  
17 said that he was a personal secretary for Mr. Bin Laden at the  
18 times he wasn't traveling.

19 Now, was that an answer to keep him out of trouble or  
20 was that just an honest answer? And what did he do? He made  
21 appointments. Did he know that there was appointments made by  
22 somebody else that was "secret"? Yes, he knew that because he  
23 didn't do them. But he placed himself there, and as his books  
24 show, he was there when he went traveling and he was traveling  
25 a lot. And as his books show, he made appointments for

1 Mr. Bin Laden.

2           Some of his appointments, for example, if I can -- he  
3 made appointments for the leader of the Islamic group in one  
4 of the countries of the former Soviet Union. He made  
5 appointments for other people who worked for Bin Laden. He  
6 tried to resolve difficulties. He tried to follow up on  
7 projects. He was involved in the business. He did not steal  
8 from the business. He was trying to make the business work,  
9 but he was not an al Qaeda paymaster.

10           Mr. Al-Fadl also testified in direct examination he  
11 identified Mr. El Hage, Abu Abdallah, Wadih El Hage, I know  
12 him, I work with him. And we don't contest that he knows him  
13 and he works for him -- that he worked with him. We know that  
14 he did. He basically took over his job. But like everything  
15 else, Mr. Al-Fadl doesn't tell it straight.

16           On page 957-958, if you recall the testimony that for  
17 a number of weeks Mr. Al-Fadl was interviewed at a Middle  
18 Eastern or an African country by representatives of the United  
19 States over a two-month period for a substantial period of  
20 time and then he went to Europe and he was interviewed by FBI  
21 after that, and I asked him when he first identified the  
22 person claimed to be Wadih El Hage in his interviews, and he  
23 says, I think it was in Europe. I was in Europe. That would  
24 mean that was a year later.

25           At that time he didn't remember, he doesn't remember

1 if he called him Abu Abdallah at that time. Though he gave  
2 hundreds of Abu names, he gave hundreds of other names, he  
3 simply didn't remember when he first talked about Mr. El Hage.

4 We also stipulated to his testimony because he didn't  
5 remember the description that he gave of this person. He said  
6 that this person was one of three people going to the American  
7 Embassy was the first time he mentioned it. It was Usama al  
8 Lubnani which was not Mr. El Hage. It was not -- I think it  
9 was al Ridi.

10 I believe it was another person who was an American  
11 citizen. It was a person that he called was Wadia. That's  
12 how he remembered his whole name, was Wadia. And he gave him  
13 a description of 45 years old, large chest, blond hair, who  
14 lived in the bachelor quarters. And while I don't have the  
15 stipulation right here, he didn't remember everything and we  
16 had to enter into a stipulation.

17 The next page. Please move it so up so we get the A.  
18 Next page.

19 Now, Wadia was an Lebanese individual, five-eight  
20 with a large chest, almost blondish hair, over 45 years old  
21 and young-looking. Well, Mr. El Hage has never been described  
22 as a blond or almost a blond. He's been described by  
23 Mr. Kherchtou as slim and in 19 -- at that day, he probably  
24 would be somewhere around 32, 33 years old.

25 More importantly, I asked him what his Abu name was.

1 He said Abu Ahmed. That was not correct. There's been no  
2 testimony anywhere, any time, anyplace that he is known as Abu  
3 Ahmed. And I asked him which arm of Mr. El Hage was  
4 withered, and he says, I don't remember. I asked him, well  
5 which hand does he write with? And he says, I don't know.

6 Mr. Kherchtou, if you recall, I asked him, he says --  
7 I asked him, physically, would you consider him a big person  
8 or a slim person? He said, answer: Well, he's a slim person.  
9 Were you aware of the birth defects on his arm? He said, Yes.  
10 Do you recall which hand he writes with? I think he's left  
11 handwriting. And the arm that he suffers from that was  
12 withered is his right hand, right arm? Right hand, yes.

13 Now, the importance of this is that it says something  
14 about the operation of Mr. Al-Fadl's mind. He knows so little  
15 of Mr. El Hage, though he worked at the same company on and  
16 off for about a year. And, yes, it was a few years after that  
17 he had the interviews, but what it says is that the government  
18 of the United States is talking to Mr. Al-Fadl about people  
19 that are from al Qaeda who are a threat to the United States  
20 who may be claimed to be terrorists, and Mr. El Hage doesn't  
21 even enter into his radar as a person who fits the Abu name,  
22 the person who fits anything to do with what the United States  
23 Government is looking for.

24 It is basically saying that, here are some of the  
25 people that you may be concerned about and one of them is not

1 Wadia El Hage. And if he presented it that way to you, then  
2 perhaps he would be presenting himself as a credible person.  
3 But he did not present himself that way. He presented to you  
4 on direct examination as if Mr. El Hage was his old buddy, and  
5 it was only on cross-examination when it became clear that it  
6 was not.

7 Presentation. Presentation is very important in this  
8 case because the government doesn't have the evidence to prove  
9 that Wadih El Hage ever agreed with anybody to kill Americans.  
10 So presentation, form, is attempting to try form over  
11 substance.

12 Form again, he's asked about a person named Fazhul.  
13 Did he ever know anybody named Fazhul? Oh, yes, there was  
14 somebody from the Comoros. How do you remember him? Well, I  
15 remember one time he needed -- we needed to get something  
16 translated to English. I couldn't do it so he translated it  
17 into English.

18 Now, we haven't heard any testimony from  
19 Mr. Kherchtou about Harun's speaking any English. What we  
20 have heard is not only that -- or the lack of testimony.  
21 We've heard about the real estate agent on page 2304 and 2313,  
22 and the real estate agent says, when they're talking about  
23 Harun renting a place in 1998, line 12, the first time they  
24 came to see the house:  
25 "Q. What language -- did you talk with her at all?



1 "A. I spoke English to the sister of Sikander.

2 "Q. Do you recall her name?

3 "A. No."

4 So obviously she spoke English to somebody. It was  
5 the sister of Sikander, even though Harun is around. And if  
6 you look at 2304, it says:

7 Did you see them again? They called about two, three  
8 days. Who called? I think it was Mr. Sikander because of the  
9 language. You had difficulty communicating with a -- Fazuhl  
10 could not, I could not understand him. Harun did not speak  
11 English.

12 That little comment about remembering Harun was for  
13 the government's benefit because Mr. Al-Fadl wanted to make  
14 himself important. It was then for your benefit, but it  
15 wasn't the truth.

16 What else did Mr. Al-Fadl tell us that wasn't  
17 believable? If you recall, I went through his testimony as to  
18 everything that he did for Bin Laden. I said to him, what  
19 other jobs did you do? And he told us. He went through every  
20 single job that he did, who he worked for. It was Mr. Tayyib.  
21 He went to, I think, someone else.

22 Then I said, after we got all of his possible jobs, I  
23 said, well, didn't you tell the government that you were chief  
24 of security for Mr. Bin Laden for a year? He said, oh, as a  
25 bodyguard. And eventually he conceded, he said as chief of

1 security, and that he said about, oh, when I took him down to  
2 this farm or that farm.

3           We know that he told the United States Government  
4 that he was chief of security because he wanted to impress  
5 upon them how useful he was. He traveled around the Middle  
6 East. He was not in danger from Mr. Bin Laden even though he  
7 stole from Mr. Bin Laden because, as Mr. Kherchtou said, you  
8 don't kill somebody for stealing money. He was in danger  
9 because he doubled-crossed his real employer and that was the  
10 National Islamic Front of Sudan.

11           After speaking to them on Mr. Bin Laden for years,  
12 after being dishonest to Mr. Bin Laden for years, he finally  
13 went back to work to his real boss and stole from them. And  
14 while Mr. Bin Laden and others came to the Sudan because it  
15 was trying to become a good Islamic country, it was clear that  
16 the National Islamic Front didn't do everything that the  
17 United States does. Again, it was a third world country. Its  
18 rules were different. They wanted him, at least he says, to  
19 assassinate the opposition leader, but he stole money instead.

20           He stole money and he fled, he fled not from Mr. Bin  
21 Laden but from the Islamic groups, because as he told you --  
22 excuse me, the National Islamic Front. He didn't want to stay  
23 in Syria because there was a lot of NIF people there. And he  
24 went around not to talk about Bin Laden, not to save the world  
25 from Bin Laden, he went around trying to get money to form an

1 opposition group. He wanted money. He went to different  
2 countries. He even thought of going to Israel to get money  
3 for opposition to the NIF.

4 He went to Saudi Arabia. The Saudis wanted him to  
5 come up with a plan to kill Bin Laden, and he did, but he  
6 didn't trust them. He didn't trust the Yemenis. He didn't  
7 trust the Egyptians. The Eritreans weren't going to help him  
8 very much. He didn't want to go to Syria. He decided that  
9 maybe Israel wasn't a good place to go and he was left with  
10 nowhere else to go.

11 And at that time it was not likely that the United  
12 States Government was going to help him open up an opposition  
13 office. He went selling information, information that he  
14 immediately knew what the United States Government wanted,  
15 information about Usama Bin Laden. Whether he had good  
16 information or not, he knew that the only way to get what he  
17 wanted, and that was out of there and money, was to tell the  
18 United States what they wanted.

19 One of the first things he said was he was chief of  
20 security. The other thing that he said was that he trained  
21 with Ramzi Yousef, the World Trade Center mastermind, bombing  
22 mastermind. And while he denied saying later on that he never  
23 met the man, we do have a stipulation -- you want to put that  
24 stipulation back on -- that the translator who worked for that  
25 agency translated it to the agent, who wrote it down, that he

1 had never actually seen World Trade Center bombing mastermind  
2 Ramzi Ahmed Yousef.

3 Now, this is not a one-line answer, a one-word answer  
4 which maybe is mistaken, this is what's written down; that he  
5 had never actually seen, which relates to the fact that he  
6 lied before. If you recall, he never told -- withdrawn. He  
7 is selling what he thinks the United States Government wants.

8 And then he didn't tell him about that he was a  
9 thief, he only told him that he was a thief at about the last  
10 day or the second to the last day when the government did a  
11 good fake on him, you know, saying that they knew information  
12 about him, which they apparently didn't know, and convinced  
13 him that they knew that information. So he fessed up because  
14 he was scared now that he was going to be left there.

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16 (Continued on next page)

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1           So he admitted being a thief when he felt he had no  
2 choice because he was backed into the corner. And what you  
3 have learned from Mr. Al Fadl is that he will talk and say  
4 things in any manner he wants to, unless he can't get away  
5 with it any longer.

6           The man that he says was at least at that time so  
7 dangerous, who's a threat to him, Usama Bin Laden, after  
8 being, lying to Medani al Tayeb and others through two audits,  
9 not one, but two audits, he finally admits after they had to  
10 spend months auditing his books, that, oh, it was a commission  
11 I kept. I thought it was a commission, because other people  
12 are paid more than me, and it was not fair. So I thought I  
13 can steal.

14           And Mr. Bin Laden said, look, I don't care about the  
15 money. We love you very much. And as he reports, you're the  
16 third person from al Qaeda. But you got to pay it back. And  
17 he pays Department a little bit back. Then he said to Mr. Bin  
18 Laden's face, I have no more money. I can't pay back any more  
19 money. And we know that and he admitted it, he had property.  
20 He had other valuables.

21           He lied to the face of Usama Bin Laden after taking  
22 an oath. Now, I'm not even worried about talking about a  
23 jihad oath. I'm just talking about an oath to your employer.  
24 He lied straight to his face. I submit to you that that's  
25 what he did here in court where he thought he could do it and

1 get away with it, because, remember, he is the only one who is  
2 in the Sudan in '92 and '93, at least he thought, who can  
3 testify about thing going on.

4           Unfortunately, we don't have the tape recordings of  
5 the sermons at the mosque or the speeches at the place where  
6 Mr. Bin Laden and others spoke, so he we can't absolutely  
7 contradict him on that. It's his word. He's saying it.

8           Fortunately, Mr. Kherchtou was arrested.  
9 Fortunately, Mr. Kherchtou came up here so you weren't left  
10 with just the impression of Mr. Al Fadl, and I'll go over and  
11 explain some of the things are very important differences with  
12 Mr. Kherchtou. For he lies when he can, if he thinks it's in  
13 his interests, and will not admit, unless he's cornered and has  
14 no choice, and when you finally give him a document that shows  
15 that, oh, you got him. He'll back off and say things like, I  
16 don't remember. But when you don't, he maintains his lies.

17           Now, this is the beauty of the American system.  
18 While the French may have more, may think they have more  
19 culture. They don't have the same system of justice. In  
20 France the defendant has to prove that he's innocent. In the  
21 United States, because people like al Fadl come on the stand  
22 and make accusations, the government has to prove their case  
23 and they have to prove it beyond a reasonable doubt.

24           And when they take a witness as Mr. Al Fadl, and they  
25 say to you, we take our witnesses as we find them. Oh, these

1 are bad guys, so we're only to get a bad guy, well, even  
2 people who used to be bad guys, you can tell when they're  
3 telling the truth or mostly the truth. You can tell when you  
4 have bad guys who just can't stop lying, who make things up.  
5 Mr. Al Fadl is one of those people.

6 Now, I want to make one more point before I think we  
7 break for the end of the day. One of the most significant  
8 issues that the government raised as to al Qaeda, no question  
9 about it, was the surveillance that took place in the early  
10 part of 1994. Mr. Kherchtou testified that he didn't know  
11 what they were surveilling. Fortunately, Mr. Kherchtou was  
12 the person in the apartment and not Mr. Al Fadl, because we  
13 probably would have gotten something different as an answer.

14 But he told you who the people were, that they had  
15 photographs, and was very clear that even though he was a  
16 trusted member of al Qaeda, and even though he just happened  
17 to be in that apartment and, therefore, they're using it he's  
18 a sort of an accidental accessory at that state, he was cut  
19 out from the work, because this was something extraordinarily  
20 secret, so that the people, the three people who were involved  
21 in it, we don't know what the targets were. The government  
22 says they were clearly American targets or Israeli targets.  
23 That's their guess. We don't know.

24 Is that sufficient proof? I submit it's not  
25 sufficient proof. It could have been other targets. Could

1 have been UN targets. Could have been French targets. Could  
2 have been all the targets. Don't know.

3 And the government wants you to accept an unknown as  
4 truth. Well, I submit that's not enough. What you have to  
5 consider is that this is not a case against Mr. Kherchtou.  
6 You're not deciding whether Mr. Kherchtou is guilty because he  
7 said he was guilty.

8 This is a charge against Mr. El Hage. You cannot put  
9 Mr. El Hage in the same position as Mr. Kherchtou was, because  
10 Mr. El Hage was not there. He did not know about it. There  
11 is no evidence he knew about it. It was a super secret --  
12 excuse me -- a super secret part of al Qaeda that did not  
13 reach fruition, or if it did reach fruition, it was five  
14 years, almost five years later.

15 Mr. Kherchtou knew that you don't talk about that.  
16 It was done. Three people knew about it, and maybe Bin Laden  
17 or maybe it was Abu al Riki, Ali Mohamed. Maybe it was a  
18 Egyptian Islamic jihad one, because as Mr. Kherchtou said, Ali  
19 Mohamed was not part of al Qaeda. We don't know.

20 But what we do know is Mr. Kherchtou lived with  
21 Mr. El Hage in a hotel room for a month or so. He lived with  
22 Mr. El Hage at his home for four, five, six months. He bought  
23 the dog together. He lived with his family. He had Ali  
24 Mohamed visit him, again concerning surveillance, again  
25 something super secret, again something not shared.



1           What we have is an extraordinary situation where  
2   Wadih El Hage is called a trusted member of al Qaeda by the  
3   government, and I agree with the first two words, a trusted.  
4   But you have somebody who knew Mr. Abu Hafs from 1983 who is  
5   well respected because he went to Afghanistan way before  
6   anybody else did; a person who lived with him for all that  
7   time, and we did not hear a single conversation out of the  
8   mouth of Hussain Kherchtou, the American cooperator from al  
9   Qaeda, who has everything to do to either tell the truth or  
10   even exaggerate somebody's role, and not a single solitary  
11   conversation of anything that had anything to do with criminal  
12   activity of the nature that the government is charging Mr. El  
13   Hage; not a single conversation that Mr. El Hage hated  
14   Americans; not a single conversation that Mr. El Hage wanted  
15   to kill Americans; not a single conversation that Mr. El Hage  
16   was anything other than what he appeared to be, a dedicated  
17   Muslim, a businessman, and someone, and as you recall I said  
18   this in my opening statement, he was willing to help Muslims  
19   in need.

20           And as Prof. Samatar described to you, there was no  
21   people more needy in 1994, 5, 6, and 7 than the Somali Muslims  
22   in Somalia. And everything that anyone has shown to be about  
23   Mr. El Hage about working with people from al Qaeda, has to do  
24   with either business or helping Somalis in Somalia when there  
25   are no Americans.

1           Mr. Kherchtou, it was extraordinary, a man that lived  
2   with him for six months or so, not a single solitary  
3   conversation.

4           Your Honor, I think this is a good time to break.

5           THE COURT: All right. We'll break now. Have a good  
6   weekend. Get a good rest.

7           (Jury not present)

8           THE COURT: Mr. Schmidt, how much time do you want  
9   Monday?

10          MR. SCHMIDT: 50 minutes.

11          THE COURT: 35 minutes and please, don't make me cut  
12   you off. Anything? We're adjourned then until Monday  
13   morning, 10 a.m.

14          (Adjourned to Monday, May 7, 2001, 10 a.m.)

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