

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, 15-CR-268 (BMC)

4 Plaintiff, United States Courthouse

5 -against- Brooklyn, New York

6 September 25, 2017

7 9:30 p.m.

8 MUHANAD MAHMOUD AL FAREKH,

9 Defendant.

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11 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
12 BEFORE THE HONORABLE BRIAN M. COGAN
13 UNITED STATES DISTRICT JUDGE
14 BEFORE A JURY

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20 Proceedings recorded by mechanical stenography. Transcript
21 produced by computer-aided transcription.

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1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Good morning. Have a seat, please.

4 Okay. I have the letters on the defendant's motion
5 in limine, and the government's response.

6 Anything further from the defense?

7 MR. RUHNKE: Your Honor, I just received the
8 government's response, read it on the phone, and now I have a
9 hard copy of it.

10 When the Government discusses the disclosures that's
11 made in discovery, including its disclosure of September 11,
12 2017, which was where we had asked the Government to specify
13 what it is that these witnesses are going to testify about,
14 and they limited Mr. Kohlmann to a finite number of four or
15 five different lectures. Okay.

16 And we started this off on the idea that the
17 Government could go to the website that Mr. Al Farekh had
18 recommended that his father visit or recommended that
19 Ibrahim's brother visit. Without any connection to which
20 lectures we were talking about, with the exception of one
21 which is called "The Hereafter," and it is specified in the
22 email. "The Hereafter" is an eight- or nine-part lecture that
23 runs 22 hours. And there is, I suppose, some circumstantial
24 evidence that Mr. Al Farekh read some or part of it, because
25 he wouldn't have recommended it otherwise.

1 But there are numerous lectures and the numbers
2 continue to grow as the trial has progressed. And I can point
3 out that September 11 was 14 days ago, on the literal eve of
4 trial, the Government told us what they were going to do.

5 When they disclosed 3500 material on September 5, we
6 got literally tens of thousands of pages of *Jencks* material
7 overall, and at least 190 *Jencks* exhibits related to
8 Mr. Kohlmann, individually, as a witness.

9 Now the Government has given us, and I appreciate
10 it, the exhibit on Friday afternoon listing the lectures that
11 Mr. Kohlmann is actually going to testify about. But there
12 are no ties between most of those lectures and Mr. Al Farekh.

13 I cited the series of cases that relied upon by
14 Judge Garaufis in the Pugh, or Pugh, case -- I don't know how
15 you pronounce it, P-U-G-H. And those cases all depend upon a
16 showing that the defendant had actual access to and possession
17 of what I would call generically jihadist material. And in
18 this situation, we don't have that kind of connection.

19 When the Government, at page 2 of its reply, starts
20 talking about various emails. It's notable that some of the
21 email chains do not include Mr. Al Farekh, and the fact that
22 one of the coconspirators emailed him a lecture called "It's a
23 War on Islam," doesn't mean he ever downloaded it, looked at
24 it. There's no evidence that he downloaded it, or looked at
25 it. So we object to anything the Government seeks to offer

1 that is not tied directly to the defendant in the sense that
2 it's something that he possessed or specifically referenced.

3 The fact that he was aware of a single website, does
4 not give the Government carte blanche to say, therefore, he
5 must be aware of everything on the website. Nor does it give
6 the Government, I would suggest, respectfully, the entitlement
7 to go broader and go into other websites, not directly tied to
8 Mr. Al Farekh's knowledge.

9 And then there's simply the relevance. What
10 difference does it make that he looked at the jihadist
11 materials, if in fact, he did? But you can pull the argument
12 one step further back which is, what difference does it make
13 that he was aware of websites that displayed jihadist
14 literature? And there's no evidence of him actually visiting
15 that website or downloading that video.

16 So we suggest that either on a straight relevance or
17 a 403 basis, without some nexus to this defendant, the
18 Government should be sharply limited in what it intends to
19 present from Mr. Kohlmann, if anything, at all, since our core
20 argument is that it's not relevant to any fact of consequence
21 to the litigation, which is the classic test of relevance. So
22 that's our argument in a nutshell, Your Honor.

23 THE COURT: Anything further from the Government?

24 MS. KOMATIREDDY: My comments are submitted, Your
25 Honor. I think most of counsel's arguments are addressed in

1 our written submission. I will note that with regard to the
2 September 11th supplemental disclosure for Mr. Kohlmann, the
3 Government identified eight categories of testimony that we
4 expected Mr. Kohlmann to testify about. We remain loyal to
5 those eight categories. One of the categories is al-Awlaki
6 lectures. We did not limit the lectures to four. We didn't
7 name a few in order to assist counsel in -- to name a few, but
8 it is the category as a whole, so I don't think that this
9 limits us in any way.

10 And as I mentioned previously, we provided 3500
11 material of Mr. Kohlmann, that includes his prior summaries of
12 his lectures. That material was provided in a digital format.
13 The defense can search just like we can search it. And so --
14 and we can simply search for the names of the lectures. It's
15 not unwieldy.

16 With respect to relevance, we address this in our
17 brief, but we believe it is relevant both to the defendant's
18 state of mind and to the coconspirators' states of mind.

19 We have no objection, if the Court feels that a
20 limiting instruction is in order with respect the, "It's a War
21 Against Islam" link that their -- but other than that --

22 THE COURT: What limiting instruction would that be?

23 MS. KOMATIREDDY: A limiting instruction to the
24 effect of this email is sent from Ferid Imam, alleged to be a
25 coconspirator. Of course defense counsel is free to argue

1 that the defendant never clicked on that link and the limiting
2 instruction could be that it is to be -- that it be viewed as
3 evidence -- to be offered as evidence of the coconspirators'
4 state of mind, and that the defendant was put on notice of it;
5 but that we're not suggesting -- we don't -- we are not
6 presenting evidence that he clicked on it.

7 THE COURT: All right.

8 I am inclined to allow the evidence. I say
9 "inclined," because I'm going to have to hear how it comes out
10 before I make a final decision.

11 First of all, on the alleged late notice, I don't
12 think there was late notice. I think the defendant had all of
13 the material. The fact that the Government did its culling
14 more recently than it turned over all the material, does not
15 make it harder for the Government. The defense could have
16 done culling as well in either anticipated or used things that
17 it's found.

18 Second, I believe that there is enough of a link to
19 the key issue in this case, which is whether the defendant and
20 his coconspirators had a state of mind to engage in jihad.
21 That's the big issue in this case, and I think these videos
22 are plainly relevant.

23 In terms of what I think is the biggest issue, that
24 is, the tie to the defendant and the coconspirators, I think
25 there is enough for the parties to fairly argue their

1 positions about whether the defendant should be considered as
2 having reviewed these materials or not. I tend to let the
3 parties try their cases and here, you know, if Imam had sent a
4 book to the defendant and said, Read this, I don't think there
5 would be much question that the Government was entitled to
6 argue that the mere sending of that link between alleged
7 coconspirators is enough to show that it was something
8 indicative of the defendant's state of mind.

9 The fact that it's a link and not a hardcover book,
10 I don't think makes any different at all. There's certainly
11 no evidence of the defendant ever rejecting such overtures
12 from his coconspirators.

13 And so to the "Lee's Life of Lies," the Government
14 will correct me if I'm wrong, but I thought I saw that on the
15 computer screen. Right? Didn't I?

16 MS. KOMATIREDDY: Your Honor, you saw the first 20
17 seconds --

18 THE COURT: Right.

19 MS. KOMATIREDDY: -- the defendant watching the
20 first 20 seconds.

21 THE COURT: And he was exhorting his comrades to
22 coming over.

23 Now, I understand that that had a different target
24 audience, that piece of propaganda; but its goal was,
25 essentially, the same as the other websites that I assume

1 Mr. Kohlmann is going to testify about. Now, I don't think we
2 can loose site of the fact here, that as we all know --
3 although it doesn't matter what we know -- it matters what the
4 evidence shows. Mr. al-Awlaki was not famous for gardening
5 videos. He was famous for jihadist videos. That's why this
6 country killed him with a drone.

7 And so to say oh, you know, this could have been a
8 benign video. Well, I think it's not a frivolous argument.
9 The defendant can make that argument; but I also think when
10 people are accessing and watching al-Awlaki videos, as I
11 expect Mr. Kohlmann to explain, there's another inference that
12 can be drawn by that, that is less than benign.

13 Now, as far as the 403 issue, which I think is the
14 only really close issue. Like I say, I can't rule on it
15 definitively here, because I haven't seen what the
16 Government's going to show.

17 The description of what the Government's going to
18 show, it seems to me, to be rather benign, considering what
19 could have been selected to fairly portray what al-Awlaki was
20 demonstrating to people who were interested in hearing them.

21 But we're talking about screenshots? Is that right?

22 MS. KOMATIREDDY: Your Honor, we're talking about
23 the audio clips. I intend to show -- at this time, I intend
24 to is show a clip from "The Hereafter," which the defendant
25 specifically recommended to his family, and one or two clips

1 from the "Constants on the Jihad," which is known as the jihad
2 lecture, which Mr. Soufi testified, that all three had
3 listened to.

4 And then with respect to "Lee's Life of Lies," we
5 have excerpts of those that the defense has and we can, of
6 course, play them for the Court in advance, if that is what
7 the Court wants.

8 THE COURT: I would like to hear them before the
9 witness testifies about them. Is it possible we can do
10 testimony without that, and I can listen during a break?

11 MS. KOMATIREDDY: Yes, Your Honor.

12 THE COURT: All right. Let's do that.

13 That is as far as I can go with it right now; but,
14 as I say, I am inclined to let the Government present its
15 case. I think there is a specific tie between these media and
16 the defendant or his coconspirator, and it's up to the parties
17 to argue what inferences should be drawn from them.

18 It does not sound to me like it's unduly
19 prejudicial, but I will listen and make that determination
20 before the videos are shown to the jury.

21 All right. Now, can we have the jury?

22 Let's have them.

23 (Jury enters the courtroom.)

24 THE COURT: All right. Everyone be seated.

25 Good morning, ladies and gentlemen.

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1 THE JURY: Good morning.

2 THE COURT: Had a nice weekend?

3 We will continue with the Government's case.

4 MS. KOMATIREDDY: The Government calls Evan
5 Kohlmann.

6 (Witness takes the witness stand.)

7 EVAN F. KOHLMANN, called as a witness, having been first duly
8 sworn, was examined and testified.

9 THE WITNESS: I do.

10 THE COURTROOM DEPUTY: Okay. Please state and spell
11 your name for the record.

12 THE WITNESS: My name is Evan F. Kohlmann. E-V-A-N,
13 K-O-H-L-M-A-N-N.

14 THE COURTROOM DEPUTY: You may be seated.

15 THE WITNESS: Thank you very much.

16 THE COURT: All right. You may inquire.

17 MS. KOMATIREDDY: Thank you, Judge.

18 DIRECT EXAMINATION

19 BY MS. KOMATIREDDY:

20 Q Mr. Kohlmann, where do you work?

21 A I work at Flashpoint.

22 Q And what kind of company is Flashpoint?

23 A Flashpoint specializes in gathering business risk
24 intelligence from online sources. In other words, we look at
25 the online communities for underground organizations such

1 terrorist groups, cyber criminal groups, fraud. And we
2 monitor those different underground networks and we collect
3 information that we disseminate then to our clients that's
4 relevant to them in terms of both physical threats as well as
5 virtual threats.

6 Q What is your title at Flashpoint?

7 A My title is chief innovation officer and cofounder.

8 Q When you say that Flashpoint tracks threats, how does it
9 track threats and collect intelligence?

10 A We use two different primary tools. Number one, we have
11 human analysts who sit in these various online communities in
12 the dark -- in the deep and the dark web -- excuse me, and
13 they personally observe and are eyewitness to whatever
14 discussions are taking place.

15 These discussions are then noted and then, again, if
16 there's interesting content that's relevant to our clients, we
17 pass that on.

18 We also have automated mechanisms, sort of like a
19 digital vacuum cleaner, where we're able to suck up all the
20 communications that are taking place in these different
21 venues. So even if we don't have a human analyst sitting
22 there that's live watching this, we are able then to search
23 through these conversations later on, and the content as well,
24 and we're able to pull out bits and pieces that are relevant,
25 again, to our clients.

1 Q Where does all this information go?

2 A This information ends up in our -- in, essentially, our
3 corporate database. We have several large databases of both
4 content; i.e., magazines, videos, audio recordings, other
5 content as well as then conversations, and that that content
6 is then all searchable.

7 Q As part of your collection of threat intelligence, do you
8 track terrorist propaganda?

9 A Yes. My particular expertise is in monitoring and
10 gathering terrorist propaganda.

11 Q Where have you observed terrorist propaganda appear?

12 A I have observed in a variety of locations on the web,
13 starting at about 1998.

14 The primary mechanisms that I observe are, number
15 one, affixed dot com websites that are set up to distribute
16 media relating to terrorist organizations, or their
17 supporters; discussion forums, where people from these
18 organizations, as well as their supporters, sympathizers,
19 fundraisers, and others, go to discuss, chat, to share media,
20 et cetera, as well as other social media platforms that are
21 used by terrorist organizations to communicate including,
22 Twitter, Facebook, Telegram and others.

23 Q You said that you have observed this kind of terrorist
24 propaganda going back to 1998? When did you start archiving
25 that propaganda?

1 A In 1998, late 1998.

2 Q And how did you archive it?

3 A I was personally saving every single terrorist magazine,
4 every single communique, every single video recording, that
5 was posted in authenticated areas of the internet, where it
6 was known that this stuff was actually coming directly from
7 the group.

8 I also personally saved websites, as well as other
9 content, from individuals who are, again, supporters,
10 recruiters, financiers of these organizations.

11 Q In 1998, how many other people worked with you to create
12 this database?

13 A Initially, it was myself. And then I was working at a
14 think tank based in Washington DC, known as the investigative
15 project, where I was working with a team of other individuals
16 to collect this information.

17 Later in 2003, I left the investigative project and
18 I founded mine own consulting shop, where I was doing this
19 along with an Arabic translator and later a group of interns.

20 And then in 2010, it's expanded out to the company
21 we have now, which is Flashpoint.

22 Q You mentioned an Arabic translator. Do you speak any
23 Arabic?

24 A I speak a little bit, but I'm not fluent at all.

25 Q Do you employ Arabic translators currently?

1 A Yes. We have a number of individuals who are native
2 speakers of Arabic, Urdu, German, French, Spanish, Italian; a
3 variety of different -- Russian -- a variety of different
4 languages that come up frequently in terms of our analysis and
5 our data collection.

6 Q And what is their role and purpose in the creation and
7 understanding of this database?

8 A Sure. Their purpose is, number one, to assist in the
9 collection of materials; to assist in the vetting of those
10 materials; to determine credibility and authenticity; to
11 assist in the storing of those materials; and also in terms of
12 then doing analysis on those materials later on, on behalf of
13 our clients.

14 Q So going back to when you started this database in 1998,
15 is that the same database that you still have today?

16 A Yeah. All that data was essentially accumulated over
17 time. Each file we save is saved with a date; a source; a --
18 very specifically information about what the content is, so
19 later on we're easily able to go back and see, okay, that was
20 saved in 1999, on this date. This is where it came from.
21 This is who saved it. In other words, making it easy for us
22 to recover the data, and to determine how we got it, and why
23 it is that we believe it's relevant.

24 Q When you gather terrorist propaganda, what groups does
25 that include?

1 A We collect from a variety of groups. However, our
2 primary focus is on groups, including al-Qaeda; the Islamic
3 State; and both official and unofficial affiliates of
4 al-Qaeda. In other words, Sunni jihadist organizations.

5 Q And in what format does these groups of terrorist
6 propaganda appear?

7 A It appears in a variety of formats. These days,
8 primarily it appears in the form of video recordings;
9 propaganda videos; audio recordings. In other words, audio
10 sermons or songs or other content from theses groups.
11 Magazines, both in English, Arabic and these other languages,
12 as well as actual physical websites.

13 And then plus that, there's actually just
14 communiques. So whenever a terrorist organization just wants
15 to issue a written statement acknowledging an event, taking
16 credit for an event, they'll issue a written statement and
17 that's what we call a communique.

18 Q You testified that you collect this threat intelligence
19 for various clients. Can you describe the nature of the
20 clients that you serve?

21 A Sure. About 70 percent of our clients are in the private
22 sector. Those include major media organizations, such as NBC
23 News.

24 When al-Qaeda releases a new video on the
25 internet, NBC relies on us to get them that video so that they

1 can decide whether it's newsworthy, and potentially show it on
2 television.

3 We also work with major financial institutions;
4 hotel chains; technology companies, like social media
5 companies, in order to provide this information to help them
6 in their daily business.

7 Q In the course of your career, have you previously worked
8 with U.S. government agencies?

9 A Yes.

10 Q Which ones?

11 A I have worked with the Federal Bureau of Investigation,
12 the Department of Justice. I worked with the United States
13 military. I've work with the Department of Treasury. I've
14 worked with, at least in small part, with a variety of
15 agencies from the intelligence community; but primarily with
16 the Department of Justice and the Federal Bureau of
17 Investigation.

18 Q Generally what kinds of work have you done for U.S.
19 government agencies?

20 A I have assisted in recovering elements of terrorist
21 propaganda; i.e., video recordings, communiques and other
22 content that was posted online by terrorist organizations.

23 I've assisted in the recovery of conversations that
24 have taken place on social media platforms and on forums
25 between individuals who are members, supporters and financiers

1 of terrorist organizations.

2 I have done analysis and provided presentations to
3 these agencies. And I've provided expert witness testimony.

4 Q Have you been paid for your work?

5 A I have, yes.

6 Q And over the course of your career, approximately how
7 much have you been paid from these various agencies for these
8 various tasks?

9 A I believe approximately \$1.4 million.

10 Q That's over the course of 16 years?

11 A That's correct, yes.

12 Q What does that money go to?

13 A Well, nowadays, I don't get paid directly anymore. It
14 goes to my company. But previously it went to go pay for
15 translators, office space, computer equipment, travel to
16 various locations. A variety of different expenses.

17 Q As well your own salary?

18 A That's correct, yes. Also my own salary.

19 Q Are you being compensated in this case or will you be
20 compensated in this case?

21 A Yes. I have not been compensated yet, but I do expect to
22 be compensated for my work in this case.

23 Q And what is your hourly rate?

24 A My hourly rate a \$400 an hour.

25 Q And approximately how many hours have you spent preparing

1 for this case?

2 A So far, somewhere between, I believe, 10 and 15 hours.

3 Q Mr. Kohlmann, I'm going to show you what's been in
4 evidence as Government's Exhibit 801.

5 Can describe generally, first of all, the kind of
6 work you have done in preparing for this case?

7 A Yes. I have reviewed content from my own database
8 relating to sermons by Muslim clergy. I have reviewed, I
9 believe, what are exhibits, evidentiary exhibits from this
10 case. And I've also recovered particular documents from my
11 database which are relevant to terrorist propaganda or
12 terrorist communications.

13 Q Looking at Government's Exhibit 801, have you reviewed
14 this email before coming into court today?

15 A I have, yes.

16 Q Do you see the link in that email?

17 A Yes.

18 Q What does that link lead to?

19 A This link leads to a particular subsection on a website
20 known as Aswat Al-Islam. Aswat Al-Islam is Arabic for sounds
21 of Islam.

22 This leads to a particular section on this website
23 which is audio recordings by a Muslim cleric known as Anwar
24 al-Awlaki.

25 Q Over the course of your collection of terrorist

1 propaganda, have you come across an individual by the name
2 Anwar Al-Awlaki?

3 A Yes.

4 Q And in what format did you come across him?

5 A Anwar al-Awlaki has gained a reputation as being a
6 particular radical cleric and he also appeared as a spokesman
7 on behalf of al-Qaeda in the Arabian peninsula.

8 Q What kind of propaganda did you publish, the format of
9 that propaganda?

10 A Initially, for the first, probably, five or six, seven
11 years when his propaganda appeared on the internet, it was
12 primarily in the form of audio MP3 sermons. In other words,
13 no video, just his voice, along with transcriptions and
14 summaries of those audio recordings.

15 Q And then later?

16 A Later he opened up his own online blog and mailing list,
17 and then even further on down the line, video recordings of
18 Mr. al-Awlaki began appearing as published by al-Qaeda in
19 the Arabian peninsula.

20 Q Did you personally view any of those video recordings?

21 A I believe I viewed all of them.

22 Q I'm showing you what's in evidence as Government
23 Exhibit 109.

24 Do you recognized individual in this photograph?

25 A Yes.

1 Q Who is it?

2 A This is Sheikh Anwar al-Awlaki.

3 Q Returning to the email in evidence as 801, can you read
4 the subject line of this email?

5 A Anwar Awlaki, exclamation point, exclamation point,
6 exclamation point, exclamation point.

7 Q Now, you testified that the link leads to a website named
8 Aswat Al-Islam; is that correct?

9 A Correct.

10 Q Have you -- are you familiar with that website?

11 A Yes.

12 Q How?

13 A In the period approximately 2006 to 2007, I visited this
14 website on several occasions in order to download sermons by
15 Anwar al-Awlaki.

16 MS. KOMATIREDDY: If I could show the witness what's
17 been marked as Government Exhibit 1001.

18 Q Mr. Kohlmann, do you recognize that?

19 A Yes.

20 Q What is it?

21 A This is a screenshot of the website Aswat Al-Islam.
22 Specifically it's a screenshot of the section of Aswat
23 Al-Islam which offers Anwar al-Awlaki sermons for download.

24 Q And is that a true and accurate capture of the Aswat
25 Al-Islam website, as you remember it in 2006 and 2007?

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1 A Yes. This is what it appeared in 2006; that's correct.

2 MS. KOMATIREDDY: The Government moves 1001 into
3 evidence.

4 THE COURT: Received.

5 MS. KOMATIREDDY: Please publish it to the jury.

6 (Government Exhibit 1001, was received in evidence.)

7 (Exhibit published.)

8 BY MS. KOMATIREDDY:

9 Q So to be clear, this link in Government Exhibit 801, led
10 to this website, Government Exhibit 1001; is that right?

11 A Correct. If you clicked on that link, this is what you
12 would have seen.

13 Q Now, in the email there's a reference to a lecture named
14 "It's a War Against Islam."

15 Do you see that?

16 A Yes.

17 Q Can that lecture and be found on the website on
18 Exhibit 1001?

19 A Yes. It's the lecture third from the bottom.

20 Q When was that lecture released?

21 A This lecture was actually first released in 2003.

22 Q Approximately how long is it?

23 A About 20 minutes long.

24 Q Have you listened to it?

25 A Yes, I have. Yes.

1 Q Can you summarize it for the jury.

2 A Yes. This is a lecture --

3 MR. RUHNKE: Objection.

4 THE COURT: Received over objection.

5 MR. RUHNKE: Right.

6 A This is a lecture by of Anwar al-Awlaki in reaction to
7 raids by US law enforcement that targeted 16 Islamic
8 institutions and businesses on the east coast of the United
9 States of America.

10 The raids were allegedly counterterrorism raids.
11 Raids that were looking for evidence of terrorist financing or
12 terrorist recruitment.

13 During his sermon, Anwar al-Awlaki argued that, in
14 fact, this was just a pretext for a war against Islam. In
15 other words, that these raids were not actually in the vein of
16 targeting terrorist fundraising. They were actually trying to
17 target Islam and Muslims.

18 Q Turning your attention to what is in evidence as
19 Government Exhibit 804.

20 Mr. Kohlmann, can you please read the first sentence
21 of this exhibit.

22 A Yes. "Those lectures we listened to at Omar's place by
23 Anwar al-Awlaki, doesn't work on uponsunnah no more.

24 Q Are you familiar with what uponsunnah is?

25 A Yes.

1 Q What is it?

2 A Uponsunnah was an English language website and discussion
3 forum for primarily Muslims living in the west;
4 English-speaking Muslims. The website had a focus
5 particularly on clerics and liturgy from the Salafi sect of
6 Islam. It's a particular sect within Islam. It's a
7 conservative sect within Islam.

8 THE COURT: Let me interrupt you a second.

9 Let me have a short sidebar.

10 MS. KOMATIREDDY: Yes, Your Honor.

11 (Continued on the next page.)

12 (Sidebar conference.)

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SIDEBAR CONFERENCE

1 THE COURT: Is this fact testimony?

2 MS. KOMATIREDDY: Yes, Your Honor.

3 THE COURT: That's why you haven't offered him as an
4 expert.

5 MS. KOMATIREDDY: Yes, Your Honor.

6 THE COURT: Okay.

7 (End of sidebar conference.)

8 (Continued on the next page.)

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1 (In open court; Jury present.)

2 BY MS. KOMATIREDDY:

3 Q Mr. Kohlmann, how is it that you are familiar with the
4 uponsunnah website?

5 A I visited this website on several occasions between 2006
6 and 2007. Once again, primarily to download English language
7 sermons by Anwar al-Awlaki.

8 MS. KOMATIREDDY: Let me show the witness only what
9 has been marked as Government Exhibits 1010 and 1011.

10 Q Mr. Kohlmann, have you had a chance to review these
11 exhibits before coming into court today?

12 A Yes.

13 Q Do you recognize them?

14 A Yes.

15 Q What are they?

16 A Exhibit 1010 is a screenshot of what the front page of
17 uponsunnah.com looked like in approximately 2006.

18 If you look on the left side of that website, there
19 is a link. It says "site navigation." Underneath that it
20 says "home page forum" and then "audio."

21 And under the audio section, there's two
22 subsections. One for Qu'ranic recitation. In other words,
23 someone reciting is the Qu'ran and then the second link is for
24 lectures.

25 If you click on lectures, that then brings you to a

1 series of individuals. You can see it on Exhibit 1010, on the
2 left. One of those individuals is Anwar al-Awlaki.

3 If you click on Anwar al-Awlaki, it brings up
4 Exhibit 1010, or -- excuse me -- 1011, which then shows you a
5 series of lectures by Anwar al-Awlaki; English language
6 lectures which are available for download in MP3 format.

7 Q Are Government Exhibit 1010 and 1011 true and accurate
8 captures of the uponsunnah website from 2006, as you remember
9 it, with 1010 being the front page and 1011 being the page of
10 Awlaki lectures?

11 A That's correct, yes.

12 MS. KOMATIREDDY: The Government moves 1010 and 1011
13 into evidence.

14 MR. RUHNKE: May I continue my objection, if we can.

15 THE COURT: Received over objection.

16 (Government Exhibit 1010, was received in evidence.)

17 (Government Exhibit 1011, was received in evidence.)

18 BY MS. KOMATIREDDY:

19 Q Mr. Kohlmann, now that the jury has this on their
20 screens, can you please explain again what we're look at in
21 1010.

22 A Of course. So in Exhibit 1010, what you're looking at,
23 this is the actual front page of uponsunnah.com website. So
24 if you just went to <http://uponsunnah.com>, this is what you
25 would have seen. And in front of you, you see a discussion

1 forum with folks discussing these subjects.

2 On the left side, under "site navigation," it gives
3 the various subsections that are available on the site. One
4 subsection is the forum. Another subsection is audio
5 recordings. And under audio recordings, that are two separate
6 subsections for Qu'ranic recitation and for lectures.
7 Lectures by Islamic clergy.

8 If you click on the lecture section, you then get,
9 essentially, Government Exhibit 1011, which is then you can
10 see a list of clerics that are on the left-hand side. These
11 are predominantly Salafi, from the Salafi sect of Islam.
12 These are English-speaking clerics, and you can see the fourth
13 one down on the list is Anwar al-Awlaki.

14 Now, if you were to click on Anwar al-Awlaki, you
15 would then get this subsection right here, which is all of his
16 sermons or a large subsection of his sermons which are
17 available for download in MP3 format.

18 Q Turning your attention to what is in evidence as
19 Government Exhibit 805, and 820.

20 Do you see the hyperlinks in those emails,
21 Mr. Kohlmann?

22 A Yes, I do.

23 Q Have you had chance to determine -- I'm sorry.

24 Based on your knowledge, what did those links lead
25 to?

1 A I believe those links led to a sermon by Sheikh Anwar
2 al-Awlaki on the subject of Muslim the holiday of Ramadan.

3 Q Are you familiar with that sermon?

4 A Yes.

5 Q Have you listened to it?

6 A Yes.

7 Q Approximately how long is it?

8 A It's about five minutes long.

9 Q Can you summarize it for the jury.

10 A Yeah, it's a --

11 MR. RUHNKE: Objection. These summaries are not a
12 link.

13 THE COURT: Okay. Overruled.

14 A It's a -- essentially it's a description of the Muslim
15 holiday of Ramadan, along with a description of the various
16 different rituals, meals and prayers, that are associated with
17 the holiday, and that are incumbent upon faithful Muslims to
18 perform during that holiday.

19 Q I'm now showing you what is in evidence as Government
20 Exhibit 819.

21 Do you see the link in that email?

22 A Yes, I do.

23 Q What does that link lead to?

24 A This link leads to another website that is known as
25 salattime.com. Salat time means prayer time.

1 Q Are you familiar with that website?

2 A Yes. And, in fact, this leads to a specific section of
3 that website which offers audio sermons in MP3 format for
4 download by Sheikh Anwar al-Awlaki.

5 Q How are you familiar with that website and the page that
6 pertains to Mr. Awlaki?

7 A I'm familiar with this website, generally, because I've
8 looked on there for prayer times. But second of all, I'm also
9 familiar with this website because I also visited this website
10 in order to download sermons by Anwar al-Awlaki.

11 Q And during what time frame did you visit this website?

12 A Approximately 2006 to 2007.

13 MS. KOMATIREDDY: I'm showing the witness only
14 what's been marked as Government Exhibit 1004.

15 Q Do you recognize that, Mr. Kohlmann?

16 A Yes, I do.

17 Q What is it?

18 A This is the section of the website salattime.com, which
19 offers audio lectures for download by Sheikh Anwar
20 al-Awlaki.

21 Q And is that a true and accurate capture of the Salat time
22 website page for Awlaki from 2006?

23 A Yeah. The top portion of it; but, yes, correct. Yeah.

24 Q Just going through the rest of the pages.

25 Is that a true and accurate capture of the full

1 page?

2 A It is, yes.

3 MS. KOMATIREDDY: The Government moves 1004 in
4 evidence.

5 MR. RUHNKE: Continuing the objection.

6 THE COURT: All right. Overruled.

7 (Government Exhibit 1004, was received in evidence.)

8 BY MS. KOMATIREDDY:

9 Q Just to be clear, Mr. Kohlmann, looking again at 819, the
10 links in that email led to this website depicted in 1004;
11 correct?

12 A Exactly.

13 Q Now, back to 819, does that email reference any
14 particular lecture that you are familiar with?

15 A Yes, it does.

16 Q Can you please read the sentence with the reference.

17 A "Call and ask for 'The Hereafter' and Ibrahim likes it,
18 get the rest of the lessons."

19 Q Are you familiar with "The Hereafter"?

20 A Yes.

21 Q Does that lecture appear at the time on the website
22 depicted in 1004?

23 A I believe it did.

24 Q It's right here, "The Hereafter"?

25 A The end of times, "The Hereafter." That's correct, yes.

1 Q When was "The Hereafter" released?

2 A I believe it was released in 2006.

3 Q How long is it?

4 A "The Hereafter" is approximately 22 hours in length.

5 Q Have you listened to some or all of it?

6 A I've listened to some of it. I haven't listened to all
7 22 hours.

8 Q Can you summarize the portions that you've listened to
9 for the jury.

10 A "The Hereafter" is essentially a detailed description --

11 MR. RUHNKE: Objection, Your Honor.

12 THE COURT: Overruled.

13 A "The Hereafter" is essentially a detailed description and
14 sermon about the punishments that will be afforded upon
15 those -- Muslims who fail to live up to their obligations as
16 faithful Muslims, and also details the rewards that will be
17 given in -- after the day of judgment, or upon the day of
18 judgment, to those Muslims who stay steadfast on the cause of
19 Islam, who stay steadfast to their principles to their faith.

20 Essentially, it's all about the day of judgment;
21 talking about things like the hellfire, and paradise, and
22 things like that, at great length. Again, it's 22 hours long.

23 Q Does "The Hereafter" contain any references to martyrdom?

24 A Yes.

25 Q Can you describe those for the jury.

1 A According at "The Hereafter," one of the ways that one
2 can avoid the punishment of the hellfire, one of the ways that
3 one can be rewarded on the day of judgment, is if you are
4 martyred. If you become a shaheed, in the cause of Islam.

5 In other words, if you are killed in the cause of
6 Islam, you will be saved from the hellfire and you will be
7 transported to paradise.

8 Q Going to back to Government Exhibit 1004, do you see the
9 lecture at the top of this page, "Allah is preparing us for
10 victory"?

11 A Yes.

12 Q Are you familiar with that lecture?

13 A Yes.

14 Q Have you listened to it?

15 A Yes.

16 Q Approximately how long is it?

17 A It's approximately an hour and 22 minutes.

18 Q When was that lecture released?

19 A In 2006.

20 Q Can you summarize that for the jury.

21 A Yes. In this lecture --

22 MR. RUHNKE: Objection. I object to -- can we just
23 approach sidebar on this issue.

24 THE COURT: Sure.

25 (Continued on the next page.)

(Sidebar conference.)

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1 MR. RUHNKE: Your Honor, I want to be true to my
2 objections to these materials, without wanting to look like
3 I'm obstructing in front of the jury.

4 THE COURT: You're not.

5 MR. RUHNKE: All right. So can I just note that I
6 object to all of the summaries that are included in 3500, 194
7 that was just released. I forget the number of the exhibits.

8 THE COURT: The 3500 that have all these summaries?

9 MR. RUHNKE: Yes. I object to all of them. And the
10 objection can be preserved without interrupting the testimony
11 to do so.

12 THE COURT: I appreciate that. The objection is
13 preserved.

14 MR. RUHNKE: And Your Honor is going to make a 403
15 ruling at some point?

16 THE COURT: Yes, after I've seen these things.

17 MR. RUHNKE: Okay. Thank you, Your Honor.

18 (End of sidebar conference.)

19 (Continued on the next page.)
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1 (In open court; jury present.)

2 MS. KOMATIREDDY: Can I please ask the court
3 reporter to just read back the last question and answer.

4 (Record read.)

5 BY MS. KOMATIREDDY:

6 Q Mr. Kohlmann, can you please provide a brief summary of
7 "Allah is preparing us for Victory" for the jury.

8 A Yes. In "Allah is preparing us for Victory," Anwar
9 al-Awlaki argues that even though it seems that these present
10 times are very difficult for Islam and Muslims, and it's very
11 difficult to be a propagator of Islam. In fact, this is a
12 divine test from God.

13 And that those who persevere against the current set
14 of circumstances where Islam is under threat, those who stay
15 steadfast and who continue to fight for Islam, those are the
16 people who will be rewarded by God. And that those who fail
17 to stay steadfast, even in these difficult times, will not be
18 rewarded. And what's more is that the fact that it's
19 difficult is part of the test. And that if you can't live up
20 to the test, you're not deserving of victory.

21 Q Does this lecture contain a reference to a battle?

22 A Yes, I believe so.

23 Q And can you just describe who the sides of the battle
24 are?

25 A I believe it talks about, among others, I believe it

1 talks about of Battle of Badr.

2 Q Does this lecture refer to something that has been
3 described as the clash of civilizations?

4 A It does that as well, yes.

5 Q Who are the civilizations that are clashing?

6 A This clash of civilizations is a reference to the battle
7 between the Islamic world and the non-Islamic world. In other
8 words, the west versus Islam. This is a theme of several of
9 Anwar al-Awlaki recordings, including this one, that, again,
10 it's a test between Islam and non-Muslims.

11 Q Does lecture have a reference to sidelines?

12 A Yes, it does.

13 Q And can you describe in sum and substance that reference.

14 A Essentially, it says that some people are sitting on the
15 sidelines and that they don't want to get involved. And those
16 people who are sitting on the sidelines and who are not
17 standing up for their beliefs and for Islam, those people will
18 not be victorious.

19 Q Are you familiar with the lecture entitled -- or a
20 lecture series referring to "The Life of the Prophet"?

21 A Yes.

22 Q Is that one the title is here?

23 A "Lives of the Prophets," yes.

24 Q Have you listened to that lecture series?

25 A I have, yes.

1 Q And approximately how long is it?

2 A It's 21 hours long. So I think it's fair to say I've
3 listened to some of it, not all of it.

4 Q When was it released?

5 A That was released in 2003, I believe.

6 Q Can you describe, again, provide a brief summary for the
7 jury about the content of that lecture.

8 A Sure. In this lecture, Anwar al-Awlaki -- it's
9 actually a two-part series. One part -- it's divided by
10 historical period in Islam. It's looking at the life of the
11 prophet Muhammad, and it's trying to take, extrapolate lessons
12 from his life and apply it to present day circumstance,
13 particularly in the way that he struggled for Islam, or that
14 you fought for Islam against all odds. And that he fought
15 even against members of his own family. And these are the
16 various lessons that should be applied to Muslims even living
17 today.

18 Q Are there any references to jihad and paradise in that
19 lecture?

20 A Yes, in several locations.

21 Q Can you describe those references for the jury.

22 A Yes. Anwar al-Awlaki talks about the necessity of
23 fighting in jihad fi sabilillah, jihad in the way of God. And
24 that Muhammad, and those who surrounded him, had no problem
25 fighting for their beliefs. And that those who wished to

1 emulate the life of the prophet, should also be willing to
2 engage in jihad fi sabilillah, jihad in the way of the God.

3 Q What is the Arabic term that Mr. Awlaki uses for
4 paradise?

5 A He uses jannah.

6 Q That's J-A-N-N-A-H?

7 A Correct. Yes.

8 Q In your review of Awlaki lectures, how did these three
9 websites that we reviewed; Aswat Al-Islam, uponsunnah, and
10 salattime, compare to other sources of Awlaki lectures
11 available in the 2006-2007 time frame?

12 A Well, the reason that I visited them was because of the
13 fact that they were -- they were basically the most prominent
14 websites at the time for downloading Anwar al-Awlaki sermons
15 in MP3 format. There was only one other website, really, that
16 had it known -- was known for distributing these audio
17 recordings.

18 These were the easiest ways of getting them. These
19 were the best ways of getting them, because the download links
20 did never disappear. They weren't temporary. They were
21 permanent.

22 Q Were Awlaki's lectures disseminated beyond these
23 websites?

24 A Yes.

25 Q Can you describe some of the forums in which they were

1 disseminated.

2 A Sure. After these lectures were initially posted on
3 these sites in MP3 format, fans of Anwar al-Awlaki took
4 these MP3s and they put a video overlay on them. And what
5 that means is that they would put picture of Anwar
6 al-Awlaki, still photos; or they would put short video clips
7 which appeared to depict what Anwar al-Awlaki was
8 discussing.

9 And then they took these kind of video montages with
10 the audio -- it was the sermon in the background, and then
11 they would upload these videos to video sharing sites, like
12 YouTube and like Google Video and others.

13 Q Now, in your review of Awlaki lectures, is there a
14 particular lecture or lectures known as the jihad lecture?

15 A Yes.

16 Q What the title of that lecture?

17 A The title of that lecture is "Thawaabit 'ala darb al
18 Jihad," which is Arabic for constants on the path of the
19 jihad.

20 Q I'm returning to what is in evidence as Government
21 Exhibit 1011.

22 Do you see that lecture appear anywhere on this
23 website?

24 A Yes.

25 Q In the top left?

1 A Sorry. Yes. It's right there.

2 Q Earlier you testified that in addition to collecting
3 terrorist propaganda you also would view and observe
4 discussion forums related to this material; correct?

5 A Correct.

6 Q In your review of those discussion forums and these
7 websites, is there a particular lecture or lectures that
8 generated more discussion than others?

9 A Yes. On the subject of violent jihad this was,
10 "Constants on the Path of Jihad," was, by far, the most
11 discussed lecture by Anwar al-Awlaki online.

12 Q When was that lecture released?

13 A It was initially released in approximately late 2005.

14 Q And approximately how long is it?

15 A It's about five hours in length.

16 Q Have you listened to it?

17 A A large pieces of it, yes.

18 Q Can you please summarize its contents for the jury.

19 A In his audio lecture, "Constants on the Path of Jihad,"
20 Anwar al-Awlaki argues that there are several constants that
21 are fixed about the concept of jihad and the way of God. And
22 those constants never change.

23 One of those things is that jihad continues,
24 regardless of whether or not there's a commander. Some
25 Muslims believe that you can't wage a physical jihad unless

1 there's a commander, and there's a head of state, and there's
2 a state and all that.

3 Anwar al-Awlaki in his interpretation he says,
4 that, no, you don't need to wait for their to be a commander.
5 You don't need to wait for there to be an Islamic state.

6 Anwar al-Awlaki argues you don't need to -- it's
7 continuous from until the day of judgment. In other words,
8 there's no break in fighting violent jihad. There's no peace
9 time. There's no truce. You're obliged to wage violent jihad
10 until the day of judgment.

11 Another constant is that jihad is not dependent on a
12 particular land. In other words, if you're living in a
13 country where there's no violent jihad taking place right now,
14 you're still obliged. If there's some -- another land
15 somewhere else, and there's jihad going on, you're obliged to
16 take part and include in taking part in your own backyard. In
17 other words, wherever you are in the world, it's your
18 obligation to engage in the duty of jihad.

19 Q In that lecture does Awlaki make clear whether jihad is
20 violent or not violent?

21 A He uses the term jihad fi sabilillah, but he use the
22 words "war," "battle," "fighting," the "sword." It's very
23 clear that he's referring here, and he actually specifically
24 says, This is the primary meaning the jihad, which is physical
25 jihad.

1 Q Now, in looking back briefly at these websites that we've
2 reviewed, Government Exhibits 1001, 1004, and 1011, you've
3 reviewed those websites before coming here today, correct?

4 A That's correct, yes.

5 Q Do any of those websites feature a lecture named
6 "Obesity and Overeating In Islam"?

7 A I don't recall that lecture being on those sites, no.

8 Q Do any of those websites feature a lecture called
9 "Qualities of Great Women"?

10 A I don't recall that lecture being on there either.

11 Q Do any of those websites feature a lecture called "Don't
12 Forget Our Sisters"?

13 A No, I don't believe that was on there either.

14 Q And finally, do any of those websites feature a lecture
15 called "Umar Arasa, Art of Reading the Face"?

16 A No, that was definitely not on those sites.

17 Q Now, in your review of terrorist propaganda more
18 generally, have you observed propaganda from al-Qaeda that
19 references the killing of its members?

20 A Yes.

21 Q Can you describe that generally for the jury?

22 A Often when the senior leaders or senior operational
23 members of al-Qaeda are killed, particularly individuals on
24 the battle field in Afghanistan and Pakistan, the official
25 media wing of al-Qaeda's central leadership will issue

1 written communiques and even video recordings which pay
2 tribute to those individuals.

3 Usually the first thing that comes out is a written
4 statement and then sometimes later there will be a video that
5 will follow up which will explain who this person was and
6 their significance.

7 Q I'm sorry.

8 A Sorry, these communiques between about 2007 and 2013 were
9 issued on the fairly regular basis paying tribute to slain
10 al-Qaeda members and those fighting alongside al-Qaeda.

11 Q Did you observe any communiques regarding the killing of
12 and individual named Saleh al-Somali?

13 A Yes.

14 Q When was that communique issued?

15 A On January 7th, 2010.

16 Sorry, January 6th, 2010. Excuse me.

17 Q And can you describe how al-Somali is referenced in
18 that communique?

19 A This is a communique or it was a communique issued by an
20 individual known as Mustafa Abu al-Yazid, who at the time
21 was the head of al-Qaeda in Afghanistan, and was an
22 al-Qaeda Shura Council member and one of the groups most
23 prominent spokesmen.

24 In the written communique, al-Yazid indicated that
25 an attack that had taken place in December of 2009 targeting

1 U.S. government personnel inside of Afghanistan was carried
2 out to avenge the death, the then recent death of Commander
3 Saleh al-Somali. Abu Saleh al-Somali, excuse me.

4 Q Did you observe a communique that referenced the killing
5 of an individual by the name Abu Abdallah al-Shami?

6 A Yes.

7 Q When did that communique issue?

8 A I believe it was July 31st, 2008. al-Qaeda Central
9 Command once again issued another statement signed by Mustafa
10 Abu al-Yazid acknowledging the death of a senior field
11 commander Abu Abdallah al-Shami, someone who had been
12 imprisoned at Bagram Prison in Afghanistan and had escaped and
13 then had later on led military operations and was then killed
14 in a U.S. -- or purportedly, I should say, killed in a U.S.
15 air strike.

16 Q In your review of terrorist propaganda, have you ever
17 observed any other communique related to a killing of another
18 Abdallah al-Shami?

19 A From al-Qaeda, no.

20 Q Shifting a bit, in your review of al-Qaeda propaganda,
21 did you observe any propaganda that promoted traveling to
22 Syria?

23 A Yes.

24 Q Can you describe the time frame and the general content
25 of that propaganda?

1 A Starting in 2011 and moving all the way through even 'til
2 today, al-Qaeda central leadership has issued regular
3 statements from a variety of its senior leadership, including
4 the top commander of al-Qaeda, Dr. Ayman al-Zawahiri, in
5 which these individuals have endorsed the Syrian battlefield
6 as a legitimate jihad, as a place where individuals who
7 believe in violent jihad should go, and particularly they've
8 endorsed specific units on the ground that individuals should
9 go there and fight with.

10 Q Turning your attention to what is in evidence as
11 Government Exhibit 1202.

12 Do you see the highlighted text, Mr. Kohlmann?

13 A Yes, I do.

14 Q I'm going to read it for the record.

15 "How the body of a mujahed does not decompose until
16 the day of judgment, and how the blood of the mujahed smells
17 like perfume when he dies."

18 Do you see that?

19 A Yes.

20 Q In your review of the al-Qaeda propaganda and other
21 jihadist propaganda, have you observed any propaganda related
22 to the corpse of a martyr?

23 A Yes.

24 Q And what have you observed?

25 A Particularly starting in the 1980s during the

1 Soviet/Afghan war, individuals associated with the founding
2 of al-Qaeda began discussing about how their brethren when
3 they would fall in combat, those who were killed as martyrs,
4 their bodies would miraculously stay pristine for days at a
5 time. The bodies wouldn't decompose. And rather than
6 smelling like a decomposing body, the body and the blood would
7 smell like a beautiful perfume, a beautiful musk. And this
8 kind of -- this is a given as evidence that it's a miracle
9 that's taken place. And this kind of story line, this type of
10 anecdote, we've seen this pop up now in the 1980s in
11 Afghanistan and other jihadi zones, and right now currently
12 what's going on in various different other jihadi zones. It's
13 a common trope amongst Sunni jihadists.

14 (Continued on next page.)

1 DIRECT EXAMINATION

2 EXAMINATION BY

3 MS. KOMATIREDDY: (Continuing.)

4 Q Turning for a moment to another page in this exhibit,
5 Government Exhibit 1201, Page 3.

6 Reading the first highlighted line. "In our time,
7 it is an obligation on every Muslim to fight those that have
8 entered the Muslim lands."

9 Is that line consistent or the same as a line from
10 any of the al-Awlaki lectures that you have reviewed?

11 A I believe it's remarkably similar to a line that comes
12 out of something known as "Mashari al-Ashwaq ila Masari
13 al-Ushaaq," otherwise known as the "Book of Jihad," which is a
14 lecture series by Anwar al-Awlaki.

15 Q And the next highlighted line, "This obligation of Jihad
16 is like a third prayer on fasting Ramadan, for example. There
17 is no permission needed from anyone to go for Jihad."

18 Is that line consistent with the same as a line from
19 any of the al-Awlaki lectures that you have reviewed?

20 A Well, I would say this appears probably in more than one
21 audio recording by al-Awlaki, but this also appears in the
22 audio recording "Mashari al-Ashwaq," "The Book of Jihad,"
23 specifically, the issue about permission.

24 Q And when you say, "The issue about permission," can you
25 elaborate?

1 A Yes. In "Mashari al-Ashwaq," al-Awlaki argues that the
2 obligation of Jihad is such that you don't need to get
3 permission from your parents, you don't need to get permission
4 from anyone you owe money to. You don't need to get
5 permission at all, it's a requirement upon you. The only one
6 you need to seek advice from is God.

7 MS. KOMATIREDDY: Your Honor, we're at a stopping
8 point.

9 THE COURT: Okay. Let's take a morning break,
10 ladies and gentlemen, we'll come back here at 10 to 11:00.
11 Please don't talk about the case. We'll be with you shortly.

12 (Jury exits courtroom at 10: 39a.m.)

13 THE COURT: All right. Be seated.

14 Do we need to excuse the witness for this?

15 MS. KOMATIREDDY: I don't think so, your Honor.
16 He's already seen all of these clips.

17 THE COURT: Let me see them.

18 MS. KOMATIREDDY: Turning first to the excerpt from
19 "The Hereafter," which is Government Exhibit 1017.

20 THE COURT: You need the laptop podium?

21 MS. KOMATIREDDY: Yes, sir.

22 COURTROOM DEPUTY: It's on.

23 THE COURT: Okay.

24 MS. KOMATIREDDY: I thought we tested this out.

25 THE COURT: There is not a test.

1 MR. TUCKER: This is audio.

2 (A brief pause in the proceedings was held.)

3 MS. KOMATIREDDY: Starting again with 1017 from the
4 beginning. It's two and a half minutes.

5 (Audio file played in open court.)

6 (Audio file concludes.)

7 MS. KOMATIREDDY: That is from "The Hereafter."

8 The next clip is 1012-A which is "Constants on the
9 Path of Jihad," "The Jihad Lecture."

10 (Audio file played in open court.)

11 (Audio file concludes.)

12 MS. KOMATIREDDY: 1012-B is later in the "Constants"
13 lecture.

14 (Audio file played in open court.)

15 (Audio file concludes.)

16 MS. KOMATIREDDY: Finally, the clip from "Lee's Life
17 for Lies."

18 (Video file played in open court.)

19 (Video file concludes.)

20 THE COURT: What was the second video relevant to?

21 MS. KOMATIREDDY: The second video where al-Awlaki
22 equates terrorism with Jihad? It's mainly relevant to the
23 notion that, I think, the strongest evidence that this idea
24 that has been suggested at trial that Jihad can be a peaceful
25 thing; that you can have an inner struggle, that that is not

1 what al-Awlaki was talking about. It was very explicit that
2 Jihad is exactly what we see here: Fighting, violent
3 fighting, against what these Jihadists would consider enemy
4 forces.

5 And it's relevant because Mr. Soufi testified that
6 the defendant, Imam, and Yar all listened to the Jihad
7 lecture, knew that it was unpalatable to mainstream society,
8 and talked about it with some excitement and that there was a
9 buzz around it. And that that happened right as the
10 conspiracy was forming in the December 2006-January 2007 time
11 period where they are making a plan to go and fight against
12 Americans when they're in Saudi Arabia. And then when they
13 come back and are noticeably absent, I think, is the strongest
14 evidence that the lectures that the defendant and his
15 co-conspirators are listening to. That particular lecture
16 overtly advocates for waging war against the United States.

17 THE COURT: Okay.

18 MS. KOMATIREDDY: And.

19 THE COURT: I got it. Anything further from
20 defense?

21 MR. RUHNKE: Your Honor, especially going to, again,
22 there's no I think it's a misstatement of Mr. Soufi's
23 testimony to say that they listened to this very video. There
24 were discussions of al-Awlaki as there was among many Muslims.
25 And we seem to be losing sight of the fact that there's

1 nothing illegal about viewing these kinds of video.

2 THE COURT: It's state of mind evidence. It's not
3 illegal in and of itself, but it does tend to show, arguably,
4 a particular mindset. So I think your stronger approach is on
5 403.

6 MR. RUHNKE: I was coming to the 403.

7 I mean, the danger of unfair prejudice, the danger
8 that the jury will draw the conclusion that, for example,
9 Professor Vadino could not draw that somebody who was exposed
10 to this kind of material is, therefore, more likely to act out
11 on that kind of material. And that's the 403 objection that
12 should be front and center.

13 I'd like to discuss the "Lee's Life for Lies"
14 separately. But in terms of these excerpts, and it's a
15 graphic example, it's the oral words of al-Awlaki, we've had
16 them described, and it seems to me that the jury is going to,
17 the risk is the jury will put themselves in the place of
18 Mr. Al Farekh and draw the inference that if you're exposed to
19 this kind of thing that you're more likely to become a
20 Jihadist where the experts say absolutely not, there is no one
21 path, there is no one example. That's the 403 objection, your
22 Honor.

23 THE COURT: Give me a few minutes to think about it.

24 MS. KOMATIREDDY: Your Honor?

25 THE COURT: Five minutes.

1 MR. RUHNKE: Can we discuss the "Lee's Life" before
2 you leave?

3 THE COURT: Do it.

4 MR. RUHNKE: A couple of comments on "Lee's Life for
5 Lies," I think to put that in context.

6 I'd prefer if the witness was not sitting here while
7 we're discussing this.

8 MS. KOMATIREDDY: Sure.

9 THE COURT: The witness is stepping out.

10 THE WITNESS: Thank you, your Honor.

11 (Witness leaves the witness stand.)

12 MR. RUHNKE: Your Honor, it's unclear from the
13 testimony, at least the excerpt. I suppose Mr. Kohlmann will
14 describe, "Lee's Life for Lies."

15 But the premise of it is that there is a member of
16 the United States military who is stationed in Iraq who
17 becomes disillusioned with the mission and writes a lengthy
18 letter home to his parents explaining what has caused him to
19 become disillusioned.

20 The back story on it, at least according to the
21 Internet research that I've done, is that somebody somewhere
22 got ahold of a thumb drive of personal material related to
23 this particular member of the military, and in it were scenes
24 like what opened up, which must have been very unclear to your
25 Honor, it was kind of a birthday hazing that's going on.

1 THE COURT: I figured that out.

2 MR. RUHNKE: It's a little confusing when you first
3 see it when it's going on. There are scenes in the longer
4 video, United States soldiers basically physically mistreating
5 civilians in their homes. There's a lot more to it than was
6 presented.

7 But the illustrations themselves of jihadi attacks
8 on United States military vehicles where you can see, for
9 example, the first one that there is a soldier in a helmet in
10 an open turret on the top of that Humvee that then gets blown
11 to bits. We've also had real-time explosions and slow motion
12 explosions to illustrate what the power of an explosion can
13 do. The idea of presenting videos of American soldiers being
14 killed to the jury to me is the essence of unfair prejudice.

15 THE COURT: The problem is that this is the video
16 that, arguably, your client is watching and recommending to
17 his friends with great excitement. So that's pretty high
18 probative value as to state of mind.

19 MR. RUHNKE: The fact of the video being discussed,
20 the contents of the video, being the subject of Mr. Kohlmann's
21 testimony, presents that to the jury without the baggage of
22 United States military personnel being killed in front of the
23 jury.

24 THE COURT: I don't think his summary said that
25 United States military personnel were killed in actual footage

1 in the video.

2 MR. RUHNKE: It does not say it, but if you look at
3 the footage.

4 THE COURT: I know the video clearly depicts that.

5 MR. RUHNKE: Yes.

6 THE COURT: I'm saying Mr. Kohlmann did not
7 summarize the video as depicting that.

8 MR. RUHNKE: That's right, and I think that's a fair
9 summary. And I think that's a fairly less severe summary than
10 it could have been. And I think, at that level, my 403
11 objection becomes less meritorious, although meritorious
12 nonetheless. But the showing of the footage is -- I can't put
13 it any differently than "over the top" of what should be
14 presented to a jury.

15 THE COURT: That's a pretty strong objection.

16 MS. KOMATIREDDY: I understand the objection, your
17 Honor, but your Honor hit the nail on the head. This is the
18 video that the defendant chose. We are not showing other
19 al-Qaeda propaganda of people being killed. We're not showing
20 the things generally out there on the Internet. The jury has
21 already seen this defendant seeking out this video and they
22 need to know what's in it, and right now the record doesn't
23 have what's in it. And I think a verbal description doesn't
24 do it justice because the defendant doesn't give a verbal
25 description to his friend and his co-conspirators, the

1 defendant shows them the video.

2 This is a video that he has obviously watched before
3 February 24, 2007, and he's watching it after having applied
4 for a visa to Pakistan, but three days before he books his
5 tickets.

6 THE COURT: Here's what I'm going to do. You can
7 use the videos except for "Lee's." And, as to that, you can
8 use it through the first explosion. You can then have
9 Mr. Kohlmann testify that it depicts other actual attacks on
10 American soldiers. I think the explosion after explosion runs
11 a risk of unfair prejudice just depicting it visually.
12 Whereas, there will be less of that risk if you show one
13 example, the first one, and then Mr. Kohlmann testifies that
14 there were others.

15 I think that will sufficiently reduce the prejudice
16 to allow the highly probative impact of the defendant being
17 excited with his friends and watching this video to come into
18 evidence.

19 MS. KOMATIREDDY: Understood, your Honor.

20 MR. TUCKER: Just so it's clear, your Honor. To the
21 extent that defense counsel crosses and suggests we unfairly
22 sampled from the video, your Honor will be able to reconsider
23 it.

24 THE COURT: All bets are off if that happens.

25 MR. TUCKER: Thank you.

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1 THE COURT: Let's have the witness and the jury
2 back.

3 MR. RUHNKE: Your Honor, can we take a break?

4 THE COURT: We'll take five minutes, come back at
5 11:00.

6 (A recess in the proceedings was taken.)

7 (Defendant enters the courtroom at 11:08 a.m.)

8 COURTROOM DEPUTY: All rise.

9 THE COURT: All right. Let's have the jury, please.

10 COURTROOM DEPUTY: Jury entering.

11 (Jury enters courtroom at 11:09 a.m.)

12 THE COURT: All right. Be seated, please.

13 Sorry we took a little longer than I told you,
14 ladies and gentlemen. We had a few details, you solve one
15 problem and realize there's a new one.

16 Please proceed.

17 MS. KOMATIREDDY: Thank you, your Honor.

18 EXAMINATION BY

19 MS. KOMATIREDDY: (Continuing.)

20 Q If I can please turn to the Elmo.

21 Showing the witness and the jury what is in evidence
22 as Government's Exhibit 819.

23 Mr. Kohlmann, turning your attention back to this
24 e-mail, can you please read for the record who the e-mail is
25 from?

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1 A Yes, the e-mail is from Muhanad Al Farekh,
2 malfarekh@gmail.com.

3 Q And date of the e-mail?

4 A The date is February 18, 2007.

5 Q Can you read the highlighted sentence again?

6 A "Call and ask for 'The Hereafter,' and if Ibrahim likes
7 it, get the rest of the lessons."

8 Q Showing for the witness only what's been marked as
9 Government Exhibit 1017.

10 Mr. Kohlmann, do you recognize this disk?

11 A I do.

12 Q What is it?

13 A It is a disk that contains excerpts from the audio
14 lecture by Anwar al-Awlaki titled, "The Hereafter."

15 Q How do you recognize it?

16 A Because I reviewed it and I initialed the CD afterwards.

17 Q And is the excerpt on this disk a true and accurate
18 excerpt of the al-Awlaki's "Hereafter" lecture?

19 A It is.

20 MS. KOMATIREDDY: The Government moves 1017 into
21 evidence.

22 THE COURT: Received over objection.

23 (Government's Exhibit 1017 was received in evidence
24 as of this date.)

25 MS. KOMATIREDDY: Your Honor, if we may please turn

1 to the lectern laptop.

2 Q And just to be clear, Mr. Kohlmann, is there any video
3 associated with this lecture?

4 A No, this is the original audio recording. An excerpt of
5 the original audio recording. So, again, no video, just
6 audio.

7 MS. KOMATIREDDY: Publishing 1017 for the jury.

8 (Audio file played in open court.)

9 (Audio file concludes.)

10 Q Pausing for a moment, Mr. Kohlmann.

11 What is the meaning of the word "shahid" based on
12 your review of Mr. al-Awlaki's lectures?

13 A What he says, "a shahid," he means "the martyr," someone
14 who is martyred in the cause of Islam.

15 MS. KOMATIREDDY: Continuing with the recording.

16 (Audio file played in open court.)

17 (Audio file concludes.)

18 Q Pausing for a moment, Mr. Kohlmann. There is a reference
19 that he will be married to 72, and then an Arabic phrase.

20 Are you familiar with that Arabic phrase?

21 A Yes.

22 Q And in the context of listening to these lectures, do you
23 have an understand of the meaning of that phrase?

24 A Yes.

25 Q What does it mean?

1 A He says, "Hoor al-ayn" which is Arabic for "paradise
2 virgins," or virgins of paradise.

3 Q And there's also reference to intercessions for 70 of
4 your family members.

5 Do you have an understanding after listening to
6 these lectures what an intercession means?

7 A Yes.

8 Q What is it?

9 A Someone who is killed as a martyr they can step in, and
10 on behalf of 70 of their relatives, they can bring all those
11 people into paradise with them regardless of whatever those
12 people have done, whether or not they're faithful or not, as
13 long as they're family members of the martyr, the martyr can
14 intercede and bring them into paradise with them.

15 MS. KOMATIREDDY: Continuing with the recording.

16 (Audio file played in open court.)

17 (Audio file concludes.)

18 Q Turning back to the document camera.

19 I'm showing you again the website at
20 Government Exhibit 1011. You discussed this lecture
21 "Constants on the Path of Jihad."

22 Do you recall your testimony about that?

23 A Yes.

24 Q And you testified that that was the lecture that
25 generated the most discussion in the terrorist propaganda and

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1 discussion forums that you monitored?

2 A On the subject of violent Jihad, yes, correct.

3 Q I'm showing you what's been marked as Government Exhibit
4 for the witness only, please, Government Exhibit 1012-A
5 through 1012-D.

6 Do you recognize that disk?

7 A Yes.

8 Q How do you recognize it?

9 A I recognize it because I initialed it after reviewing it.

10 Q And what do you recognize it to be?

11 A I recognize it to be a disk containing excerpts from the
12 audio lecture "Constants on the Path of Jihad" by Anwar
13 al-Awlaki.

14 Q And are those excerpts contained on the disk true and
15 accurate excerpts of the audio lecture by al-Awlaki,
16 "Constants on the Path of Jihad"?

17 A I believe they are, yes.

18 MS. KOMATIREDDY: The Government moves 1012-A and
19 1012-B in evidence.

20 THE COURT: Received over objection.

21 (Government's Exhibit 1012-A and 1012-B were
22 received in evidence as of this date.)

23 MS. KOMATIREDDY: If I may publish them to the jury
24 beginning with 1012-A.

25 (Audio file played in open court.)

1 (Audio file concludes.)

2 Q In that lecture, Mr. Kohlmann, Mr. al-Awlaki says,
3 "Terrorism is Jihad. That's what they mean by it." Correct?

4 A Correct.

5 Q In the remainder of that lecture, does Mr. al-Awlaki
6 comment on the desirability of Jihad?

7 A Yes.

8 Q What does he say in sum and substance?

9 A He says it's a requirement upon all Muslims to engage in
10 physical Jihad. And Jihad, as he described it, Jihad in the
11 way of God.

12 Q Now, publishing for the jury what's been admitted as
13 Government Exhibit 1012-B.

14 (Audio file played in open court.)

15 (Audio file concludes.)

16 Q At the end of that lecture, Mr. al-Awlaki says, "Whoever
17 fights my Awliya, I will wage war against them." Is that
18 right?

19 A That's correct, yes.

20 Q The reference to Awliya, do you have an understanding of
21 what that means from listening to these lectures?

22 A Yes.

23 Q What does it mean?

24 A He's talking about the servants of Allah. He also calls
25 them, "Taifut al-Mansoura," the victorious party, or the

1 victorious sect. He's talking about people that support the
2 word of God.

3 Q Mr. Kohlmann, I'm now going to show you what's in
4 evidence as Government Exhibit 503.

5 Have you had a chance to review this before coming
6 into Court today?

7 A I have, yes.

8 Q And I want to fast forward to 00:55 or 55 seconds into
9 the video and play it.

10 (Video file played in open court.)

11 (Video file concludes.)

12 Q Mr. Kohlmann, did you see the video on the defendant's
13 computer screen that's depicted here?

14 A Yes.

15 Q Do you recognize that video?

16 A Yes.

17 Q What is the video?

18 A The video is titled "Lee's Life for Lies." It was
19 produced by a group in Iraq, a Sunni insurgent group, known as
20 the Islamic Army in Iraq.

21 Q How do you recognize that video?

22 A I recognize that video because I'm familiar with the
23 group generally and I personally downloaded and viewed this
24 video when it was when initially released.

25 Q When was it initial released?

1 A It was initially released on January 6, 2007.

2 Q Who released it?

3 A It was released and produced by, again, a group called
4 The Islamic Army in Iraq, a Sunni insurgent group in Iraq
5 fighting against the U.S. military and the Iraqi government.

6 Q Where was it released?

7 A It was released in several different locations on the
8 Internet.

9 First, it was published on forums that are run by
10 jihadi organizations to distribute their propaganda,
11 basically, chat forums. So the same chat forums that al-Qaeda
12 releases their propaganda through, those forums also published
13 this video.

14 In addition, the video was published on the official
15 forum of the Islamic Army in Iraq, also known as al-boraq.
16 And it was -- it was also published on an actual .com website
17 that the Islamic Army in Iraq just to distribute this video.
18 The website was known as leeflash.com. Again, it was set up
19 just to distribute this video.

20 Q Was it thereafter posted in other places online?

21 A Yes.

22 Q Can you describe some of those places?

23 A Shortly thereafter, this video began to proliferate not
24 just in the original locations where it was placed by the
25 Islamic Army in Iraq, individuals who were watching this video

1 and were digesting it were then also re-uploading it to other
2 locations including Google Video, YouTube, and a variety of
3 other video sharing services.

4 Q You testified that you downloaded a copy of this video
5 when it was first released; is that right?

6 A Correct.

7 Q Is the copy that you had downloaded 38 minutes and
8 4 seconds in length?

9 A It is exactly 38 minutes and 4 seconds, yes.

10 Q In your review of terrorist propaganda, have you ever
11 come across another video entitled "Lee's Life for Lies,"
12 issued by the Islamic Army in Iraq that is 38 minutes and
13 4 seconds in length?

14 A No, there's no such video. It's just this.

15 Q Can you please summarize be the contents of this video
16 for the jury?

17 A This video was produced by at Islamic Army in Iraq and
18 consists largely of a combination of footage that was stolen
19 from a USB drive that was a taken from a U.S. military
20 serviceman in Iraq -- letters, personal video, et cetera. And
21 then that is juxtaposed with video footage of IED attacks,
22 roadside bombings, sniper attacks, other insurgent attacks
23 targeting U.S. forces in Iraq.

24 The idea behind the video, the purpose of the video,
25 is to convince the audience that the war in Iraq is unwinnable

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1 and that the situation for U.S. soldiers in Iraq is dire and,
2 that they are under constant threat of being killed or wounded
3 in IED attacks, roadside bombings, sniper attacks, et cetera,
4 et cetera.

5 Q Does the video depict scenes of violence?

6 A Yes. The video contains multiple clips originally taken
7 from Islamic Army in Iraq propaganda, again, showing the
8 immediate aftermath and detonation of IEDs and roadside bombs
9 targeting U.S. Humvees, sniper attacks on U.S. soldiers in the
10 field, graphic footage.

11 Q I'm going to show you on the document camera, please, and
12 just for the witness what's been marked as
13 Government Exhibit 506.

14 Do you recognize that, Mr. Kohlmann?

15 A Yes, I do.

16 Q How do you recognize it?

17 A Because I have initialed it.

18 Q And what do you recognize it to be?

19 A I recognize this to be a disk containing clips, short
20 clips, originally taken from the Islamic Army in Iraq video,
21 "Lee's Life for Lies."

22 Q And are the clips on that video true and accurate
23 excerpts from the full "Lee's Life for Lies" video?

24 A They are.

25 MS. KOMATIREDDY: The Government moves 506.1 and

1 506.5 which are contained on this disk into evidence.

2 THE COURT: Those are received over objection.

3 (Government's Exhibits 506.1 and 506.5 were received
4 in evidence as of this date.)

5 MS. KOMATIREDDY: Your Honor, if I may please
6 publish it to the jury?

7 THE COURT: Yes.

8 MS. KOMATIREDDY: Playing 506.1 followed by 506.5.
9 (Video file played in open court.)

10 (Video file concludes.)

11 Q And just pausing it at the conclusion of 506.1.

12 Mr. Kohlmann, you saw the bombing in that video,
13 right?

14 A Yes.

15 Q Does the remainder of "Lee's Life for Lies" contain
16 similar footage of bombings of American U.S. service members?

17 A Yes. It contains a variety of different scenes, again,
18 of roadside bombings, sniper attacks, other very graphic
19 footage close-up footage of attacks on U.S. personnel inside
20 of Iraq.

21 MS. KOMATIREDDY: No further questions.

22 THE COURT: All right. Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. RUHNKE:

25 Q Mr. Kohlmann, good morning.

1 A Good morning.

2 Q I'm looking for the microphone. There it is.

3 So you've gotten a lot of experience with
4 downloading stuff off the Internet; correct?

5 A Among other things, yes, that's correct.

6 Q And if I were to download a video such as "The Hereafter"
7 series which you've described and click on the link, download
8 it to my laptop, and assume I never deleted it, it would be on
9 my laptop; right?

10 A Correct. Unless you deleted it, it would likely be on
11 there.

12 Q I said, "unless I deleted it." Correct?

13 A Yes, that's accurate.

14 Q And I could take that download and if I wanted to, I
15 could download to it my smartphone; correct?

16 A Correct.

17 Q Play it on my smartphone; correct?

18 A Correct.

19 Q If I wanted to, I could copy it from my laptop onto a
20 small portable thumb drive if it was large enough?

21 A That's correct, yes.

22 Q I could copy it onto a portable hard drive; correct?

23 A Correct.

24 Q You said that you had looked through, and had been shown
25 some of the evidence in this case; is that correct?

1 A That's correct, yes.

2 Q And you've testified and identified a number of lectures
3 of Anwar al-Awlaki; correct?

4 A That's correct, yes.

5 Q You went through them in Exhibit 1003. Do you remember
6 Exhibit 1003?

7 A I believe so, yes.

8 MR. RUHNKE: Can I have the Elmo, please.

9 Q And this is an excerpt from 1003. And these are, I think
10 we can agree, some of the discussions and lectures of Anwar
11 al-Awlaki that you talked about before?

12 A Correct, yes.

13 Q We played a brief clip of "The Hereafter" a few moments
14 ago. Do you remember that?

15 A Yes.

16 Q And where in "The Hereafter" series that we're looking at
17 did that come from?

18 A Where exactly?

19 Q Not exactly. There are eight different chapters or eight
20 different parts of "The Hereafter." Correct?

21 A That's correct. Offhand, I don't remember exactly what
22 chapter it came from. I think it was "Preparing for Death,"
23 but don't quote me on it, I'm not certain.

24 Q It was chapter what, I'm sorry?

25 A Chapter 2, "Preparing for Death," but I'm not certain

1 about that.

2 Q This whole lecture, or series of lectures, runs 22 hours;
3 right?

4 A Correct, yes.

5 Q Somewhere in there is that minute-and-some-odd excerpt;
6 correct?

7 A Correct.

8 Q Have any of the documents that you've been shown in this
9 case reflected some or all of these lectures being downloaded
10 to any device associated with the defendant, Mr. Al Farekh?

11 A I haven't reviewed any devices or any device information
12 in this case, so I don't have any information about that.

13 Q So you haven't been shown anything like that; correct?

14 A Not to my knowledge.

15 Q I'm now on 1004, further lectures by al-Awlaki.

16 One of them is called "Stories from the Hadiths."
17 Correct?

18 A Correct.

19 Q You're not an Islamic scholar?

20 A Not especially, no.

21 Q Okay. But the hadiths are basically stories and sayings
22 by the Prophet Muhammad, the leader, the God of Islam;
23 correct?

24 A Not really by him, about him. Yeah, it's people that
25 were around at the same time as the Prophet who were

1 recounting stories about his life or things he might have done
2 or said, and that's an important source of Islamic liturgy.

3 Q Similar to the Gospels in the Christian Bible?

4 A I would say so.

5 Q But you haven't seen anything that shows you that
6 Mr. Al Farekh ever downloaded these particular stories or
7 videos; is that correct?

8 A No. Again, I haven't reviewed any device information, so
9 I wouldn't have access to that.

10 Q Next one which is "Lessons from the Companions." Again,
11 you've never seen anything that's been downloaded by
12 Mr. Al Farekh to your knowledge?

13 A Not to my knowledge, no.

14 Q The next are, again, a long series of stories, of
15 lectures, I'm sorry, by Mr. al-Awlaki. And, again, I don't
16 want to belabor point, but, as far as you know, there is no
17 evidence that any of these materials were ever downloaded on
18 any device controlled by Mr. Al Farekh; is that correct?

19 A I haven't reviewed any evidence like that, not to my
20 knowledge.

21 Q The same would go with an "Academic Study of Jihad: The
22 Story of Ibn ul-Akwa," consisting of 12 different lectures.

23 Again, there is no evidence that Mr. Al Farekh, to
24 your knowledge, ever accessed, downloaded, or did anything at
25 all with any of those videos; is that correct?

1 A I don't know if there's evidence of that or not, I
2 haven't reviewed any evidence like that, that's correct.

3 Q The point is, nobody is showing you anything like that;
4 correct?

5 A That's correct, yes.

6 Q You don't know all the evidence that's been produced in
7 this case, I assume?

8 A That's accurate.

9 Q So all you can say is: If it exists, nobody has shown it
10 to me?

11 A Correct.

12 Q The final item on here is an NPR interview that was done
13 in 2004.

14 And, again, you've seen no evidence, there might be
15 evidence, but you just don't know if there is any evidence
16 that Mr. Al Farekh, for example, ever downloaded this NPR
17 interview?

18 A That's correct I have seen no evidence of that.

19 Q Fair to say that the video "Lee's Life for Lies" probably
20 been downloaded by millions and millions of people since it's
21 posted?

22 A Millions sounds like a lot. But I would say if the
23 question is, have a lot of people have downloaded, I think a
24 lot of people have downloaded.

25 Q And when it comes to the lectures of Anwar al-Awlaki,

1 millions and millions and millions of people have viewed
2 those; is that correct?

3 A Millions? I don't know if I would say that. But I would
4 say a large number of people have downloaded and viewed them,
5 yes.

6 MR. RUHNKE: I have nothing further.

7 THE COURT: Any redirect.

8 MS. KOMATIREDDY: No, your Honor.

9 THE COURT: You may step down.

10 THE WITNESS: Thank you very much, your Honor.

11 THE COURT: Government's next witness.

12 (Witness leaves the witness stand.)

13 MS. KOMATIREDDY: The Government calls Aaron
14 Sherbondy.

15 (Witness takes the witness stand.)

16 COURTROOM DEPUTY: Raise your right hand.

17 (Witness takes the witness stand.)

18 S.A. AARON SHERBONDY, called by the Government, having been
19 first duly sworn/affirmed, was examined and testified as
20 follows:

21 THE WITNESS: I do.

22 COURTROOM DEPUTY: Please state and spell your name
23 for the record.

24 THE WITNESS: Aaron Sherbondy. S-h-e-r-b-o-n-d-y.

25 COURTROOM DEPUTY: Thank you.

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1 THE COURT: You may inquire.

2 MS. KOMATIREDDY: Thank you, Judge.

3 DIRECT EXAMINATION

4 BY MS. KOMATIREDDY:

5 Q Mr. Sherbondy, where do you work?

6 A I work for the Critical Incident Response Group.

7 Q What agency is that a part of?

8 A It's with the FBI.

9 Q What is your title at the Critical Incident Response
10 Group?

11 A Supervisory Special Agent.

12 Q Are you with familiar with an FTOC?

13 A Yes.

14 Q Please explain to the jury what an FTOC is?

15 A An FTOC is a Foreign Transfer of Custody. It's where we
16 take custody of a subject from a foreign country.

17 Q In April of 2015, were you involved in an FTOC?

18 A Yes, I was.

19 Q And who was the subject that you were transferring at
20 that time?

21 A Muhanad Al Farekh.

22 Q I'm going to show you just for the witness, please,
23 that's been marked as Government Exhibit 150.

24 Do you see that on your screen, Agent Sherbondy?

25 A Yes, I do.

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1 Q Do you recognize it?

2 A Yes, I do.

3 Q Who do you recognize the individual in that photograph to
4 be?

5 A Mr. Al Farekh.

6 Q Is that a true and accurate depiction of Mr. Al Farekh
7 when you took custody of him?

8 A Yes, it is.

9 MS. KOMATIREDDY: The Government moves 150 into
10 evidence.

11 MR. MAHER: No objection.

12 THE COURT: Received.

13 (Government's Exhibit 150 was received in evidence
14 as of this date.)

15 THE COURT: Pull the mic closer to you. Thanks.

16 Q You testified that a Foreign Transfer of Custody involves
17 taking custody of a subject from a foreign government.

18 Can you describe, to the best of your memory, where
19 you picked up Mr. Al Farekh?

20 A We picked him up in Pakistan.

21 Q And can you describe the circumstances of the pickup?

22 A Yes. It was the Bhutto International Airport. Looked
23 like what appeared to be a military section of the airport,
24 and we took custody of him from individuals who were wearing
25 different kinds of military fatigues.

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1 Q When you took custody of him, did he walk on the plane?

2 A Yes, he did.

3 Q Did he have two feet?

4 A Yes, he did.

5 Q At the time that you took custody of him, was he wearing
6 the clothing that he's wearing in Government Exhibit 150?

7 A No, he was not.

8 Q Can you describe generally the type of clothing he was
9 wearing?

10 A The clothing he had on was fairly soiled and dirty, so we
11 provided him with new clothing, cleaner clothing, to wear.

12 Q And can you just describe the nature of the clothing that
13 we see in Government Exhibit 150?

14 A They're blue medical scrubs.

15 Q After you took custody of Mr. Al Farekh, where did you
16 go?

17 A After that, we flew to a European country.

18 Q And did you land in a European country?

19 A Yes, ma'am.

20 Q At the time that you landed, did you retain custody of
21 Mr. Al Farekh?

22 A At that time, I handed him to over Supervisory
23 Special Agent Brian Butler with the FBI.

24 Q Did you have any other involved in this case?

25 A No, I did not.

S.A. A. Sherbondy - Cross/Mr. Maher

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1 MS. KOMATIREDDY: No further questions.

2 THE COURT: Any cross?

3 MR. MAHER: Yes, please.

4 CROSS-EXAMINATION

5 BY MR. MAHER:

6 Q Is it accurate that you first saw Mr. Al Farekh on
7 April 1, 2015?

8 A Yes, it is.

9 Q Your role was to transport Mr. Al Farekh from Pakistan
10 back to the United States. Is that accurate?

11 A Partly back to the United States, yes.

12 Q You helped --

13 A Yes.

14 Q -- on that trip?

15 A Yes.

16 Q Is that accurate?

17 A Yes.

18 Q When you first saw Mr. Al Farekh, he was in custody by
19 non-Americans; correct?

20 A Yes.

21 Q By Pakistani officials; right?

22 A Yes.

23 Q You say that you observed that Mr. Al Farekh's clothes
24 that he had on at the time you first saw him appeared soiled
25 or dirty, words to that effect; right?

1 A Yes.

2 Q Did you learn how long Mr. Al Farekh had been in custody
3 by the Pakistani authorities?

4 A No.

5 MS. KOMATIREDDY: Objection, calls for hearsay.

6 THE COURT: Hang on. Sustained. The jury will
7 disregard the answer.

8 Q Do you have any knowledge yourself how Mr. Al Farekh's
9 clothing that he was wearing when you observed him actually
10 became soiled and dirty?

11 A No, I do not.

12 MR. MAHER: Nothing further.

13 THE COURT: Any redirect?

14 MS. KOMATIREDDY: No, your Honor.

15 THE COURT: You may step down. Thank you very much.

16 (Witness leaves the witness stand.)

17 THE COURT: Call your next witness.

18 MS. KOMATIREDDY: The Government calls Brian Butler.

19 (Witness leaves the witness stand.)

20 (Continued on the next page.)

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1 (Witness takes the witness stand.)

2 BRIAN D. BUTLER, called as a witness, having been first duly
3 sworn/affirmed, was examined and testified as follows: is

4 THE COURTROOM DEPUTY: Please state and spell your
5 name for the record.

6 THE WITNESS: Brian, B-R-I-A-N, middle initial, D,
7 Butler, B-U-T-L-E-R.

8 THE COURT: You may inquire.

9 MS. KOMATIREDDY: Thank you, Judge.

10 DIRECT EXAMINATION

11 BY MS. KOMATIREDDY:

12 Q Mr. Butler, where do you work?

13 A I work for the Critical Incident Response Group of the
14 FBI.

15 Q What is your title there?

16 A Supervisory special agent.

17 Q Are you familiar with what an FTOC is?

18 A Yes, ma'am.

19 Q Can you explain for the jury what an FTOC is?

20 A FTOC is a foreign transfer of custody.

21 Q In April of 2015, were you involved in a foreign transfer
22 of custody?

23 A I was.

24 Q And who was the subject that you were transferring?

25 A Muhanad Al Farekh.

1 (Exhibit published.)

2 Q Showing you what is in evidence as Government
3 Exhibit 150, do you recognize that?

4 A I do.

5 Q And who do you recognize that to you?

6 A That's Mr. Al Farekh.

7 Q And is that a true and accurate depiction of Mr. Farekh
8 as you encountered him in April of 2015?

9 A It is.

10 Q In the course of your foreign transfer of custody, who
11 did you receive custody of Mr. Farekh from?

12 A From the Special Agent Sherbondy.

13 Q His full name is Aaron Sherbondy; is that right?

14 A That's correct.

15 Q Can you describe generally where you received custody of
16 Mr. Farekh from Mr. Sherbondy?

17 A Received custody in an airport in Europe.

18 Q After receiving custody of Mr. Farekh, did you then --
19 what did you do next?

20 A We transported Mr. Farekh to JFK.

21 Q And for the record, "JFK" is John F. Kennedy
22 International Airport; is that right?

23 A That is correct.

24 Q Is that the first place that your plane landed in the
25 United States?

B. BUTLER - DIRECT - KOMATIREDDY

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1 A That is.

2 Q And after -- at the time that you landed, can you
3 describe generally who you transferred custody of Mr. Farekh
4 to?

5 A Yes, we transferred custody of Mr. Farekh to agents
6 from the New York field office of the FBI.

7 Q How long have you been an agent with the FBI?

8 A Eighteen years.

9 Q And as an agent, have you become familiar with the
10 judicial districts in the United States?

11 A I have.

12 Q And what district is John F. Kennedy International
13 Airport located in?

14 A It's within the Eastern District of New York.

15 Q Did you have any other involvement in this case?

16 A I did not.

17 MS. KOMATIREDDY: No further questions.

18 THE COURT: Recross?

19 MR. RUHNKE: No, Your Honor.

20 THE COURT: You can step down, please.

21 (Whereupon, the witness was excused.)

22 THE COURT: Moving right along.

23 MS. COOK: The Government calls Mark Ferrell.

24 (Witness takes the witness stand.)

25 MARK FERRELL, called as a witness, having been first duly

M. FERRELL - DIRECT - COOK

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1 sworn/affirmed, was examined and testified as follows:

2 THE WITNESS: I do.

3 THE COURTROOM DEPUTY: Please state and spell your
4 name for the record.

5 THE WITNESS: Mark Ferrell. M-A-R-K.
6 F-E-R-R-E-L-L.

7 THE COURT: Please proceed.

8 MS. COOK: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MS. COOK:

11 Q Good morning.

12 A Good morning.

13 Q Will you please tell the jury how you are currently
14 employed?

15 A I'm currently a patrol sergeant at Southern Illinois
16 University Edwardsville Police Department.

17 Q How long have you work at Southern Illinois University?

18 A Six years.

19 Q And when did you become a patrol sergeant?

20 A In April of this year.

21 Q Did you have to complete any training for that promotion?

22 A Yes, I did. I took a 40-hour leadership course
23 September 11th through the 15th of this year.

24 Q Are you currently serving in the military?

25 A No.

1 Q Have you ever served in the military?

2 A Yes, I have.

3 Q Which branch did you serve in?

4 A The Illinois Army National Guard.

5 Q Were you assigned to a particular unit?

6 A Yes, I was. I was assigned to second 130th Infantry out
7 of Marion, Illinois.

8 Q Sergeant Ferrell, how old were you when you joined?

9 A I was 18 years old.

10 Q Did you ever deploy overseas?

11 A Yes, I did.

12 Q Where did you go?

13 A I was deployed to Khost, Afghanistan.

14 Q Did you have a particular post there?

15 A I was assigned to FOB Chapman.

16 Q When did you arrive in Afghanistan?

17 A Approximately October of 2008.

18 Q And how old were you when you arrived?

19 A I was 19 years old.

20 Q How long were you at FOB Chapman?

21 A Approximately nine months.

22 Q Would you mind explaining to the jury what "FOB" means?

23 A It's a forward operating base for military units. It's a
24 safe area.

25 Q What rank were you when you deployed?

1 A I was a private first class.

2 Q What was your assignment at FOB Chapman?

3 A We were assigned to a Provincial Reconstruction Team.

4 The Army's mission was to provide security for Navy engineers
5 to do their mission.

6 Their mission included surveying sites to dig wells,
7 build girls schools as well as orphans. We provided security
8 for those teams.

9 Q And is it fair to say that your assignment was to provide
10 security for those who were doing those projects?

11 A Yes.

12 Q Did you have any assignments with regard to FOB Chapman
13 itself?

14 A Yes, I did. We did a rotation of two weeks on those
15 missions I previously mentioned, and then one week of
16 assignment as guards for the base.

17 Q When you would guard the base, where would you be?

18 A There were three different posts. Two were towers and
19 one was a gate for the entrance to the base.

20 Q Did the towers have names?

21 A They did. One was the West Tower, and one was the East
22 Tower.

23 Q When you would perform tower duty, what would you do?

24 A It was a 12-hour assignment at which you were assigned to
25 survey the area, look for any oncoming threats, any

1 countersurveillance to the base, and just overall ensure
2 security that no one entered the base.

3 Q When you did tower duty, would you do that with partner?

4 A No.

5 Q Do you recall the West Tower?

6 A I do.

7 Q How high was it?

8 A It was approximately 15 feet in height.

9 Q What was it built out of it?

10 A Mostly dirt and plywood.

11 Q Did it have windows?

12 A It had some small windows made of plexiglass that were --
13 you could open or close them.

14 Q What could you see from the West Tower?

15 A Mostly the foreign fields as well as a road and the north
16 gate.

17 Q What was the north gate typically used for?

18 A I believe it was used for pedestrian traffic. The locals
19 working on the base to enter.

20 MS. COOK: Ms. Clarke, if I have could have the
21 document camera for an exhibit already in evidence.

22 (Exhibit published.)

23 Q Sergeant Ferrell, I'm showing you what's been marked as
24 Government's Exhibit 656.

25 Do you recognize this?

1 A Yes, I do.

2 Q What is it?

3 A This is an overhead view of part of FOB Chapman.

4 Q Using the screen there in front of you, can you please
5 circle the area where the West Tower was located?

6 A (Witness complying.)

7 Q Can you also circle the area where the gate was located?

8 A (Witness complying.)

9 Q And a moment ago in your testimony you mentioned that
10 there were fields and a road that were visible from the West
11 Tower.

12 Will you please also indicate those for the jury?

13 A (Witness complying.)

14 This was the roadway here (indicating). And then
15 the fields this area (indicating), as well as to myself and to
16 my west as well.

17 MS. COOK: Ms. Clarke, if I have could have the
18 document camera for the witness only.

19 Q Sergeant Ferrell, I'm going to show you four photographs
20 that have been marked for identification as Government's
21 Exhibits 671, 672, 673, and 674.

22 Do you recognize those?

23 A Yes, I do.

24 Q What are they?

25 A They're views from inside the West Tower, as well as a

1 view from the north gate looking at the West Tower.

2 Q Do these photographs fairly and accurately portray the
3 view that you would have been able to see from the West Tower
4 at FOB Chapman?

5 A Yes, they do.

6 MS. COOK: The Government moves for the admission of
7 Exhibit 671, 672, 673, and 674.

8 MR. RUHNKE: No objection.

9 THE COURT: Received.

10 (Government Exhibit 671, was received in evidence.)

11 (Government Exhibit 672, was received in evidence.)

12 (Government Exhibit 673, was received in evidence.)

13 (Government Exhibit 674, was received in evidence.)

14 MS. COOK: May I publish these to the jury, Your
15 Honor?

16 THE COURT: You may.

17 (Exhibit published.)

18 Q Beginning with Government's Exhibit 671, will you please
19 tell the jury what we are looking at in this photograph?

20 A This is a view where I would have been standing inside in
21 the West Tower looking north. You can see the previously
22 mentioned farm fields, as well as a small portion of the road
23 and the north gate.

24 Q At the bottom of photograph there is a shadow. What is
25 it that is casting that shadow?

1 A The largest blocked out portion would be the West Tower.
2 And the poles are poles for a small chain linked fence which
3 is visible in the photo.

4 Q Using the screen in front of you, will you please show
5 the jury where the north gate is located?

6 A (Witness complying.)

7 Q Moving to Government's Exhibit 672, will you please tell
8 the jury what we are looking at in this photograph?

9 A Similar to 671, it's just a more zoomed-in version. You
10 can see the roadway better as well as a partial view of the
11 north gate.

12 Q And, again, using the screen, will you please show the
13 jury where the north gate is located?

14 A (Witness complying.)

15 Q Moving down to Government's Exhibit 673. What are we
16 looking at in this photograph?

17 A This is also a view from inside the West Tower. The
18 difference being is those small plexiglass windows are closed.
19 Still you can see part of the structure of the tower as well
20 as still looking north toward the road and the left gate.

21 Q When you say part of the structure of the tower can be
22 seen, are you referring to the dark mass at the bottom of 673?

23 A Yes.

24 Q And finally, Government's Exhibit 674, what do we see in
25 this photograph?

1 A This is a view from the road area of the north gate
2 looking at the West Tower.

3 Q Will you please circle the West Tower?

4 A (Witness complying.)

5 Q And the portion of a brick structure that can be viewed
6 along the side of the photograph, what is that?

7 A That's part of the north gate.

8 Q Going back to Government's Exhibits 656 and 671, you
9 previously described this area here (indicating) as fields
10 that were visible from the West Tower.

11 On Government's Exhibit 671, do you see those same
12 fields?

13 A Yes, I do.

14 Q Will you please indicate them to the jury?

15 A (Witness complying.)

16 Q Sergeant Ferrell, did you perform tower duty in January
17 of 2009?

18 A Yes, I did.

19 Q Do you remember the day that you performed tower duty in
20 January of 2009?

21 A January 19th.

22 Q How is it that you were able to recall that date from
23 2009?

24 A While I was on duty, there was an attack to include an
25 explosion during my day.

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1 Q On January 19th, were you in the West Tower that we've
2 seen in the photographs?

3 A Yes, I was.

4 Q Was there anyone else with you?

5 A No.

6 Q Do you recall what you were wearing?

7 A I was wearing my full uniform, as well as a Kevlar helmet
8 and bulletproof vest. It's standard issue in the military.

9 Q Did you have any equipment with you at that time?

10 A I had my assigned M4 rifle, as well as there was a larger
11 weapon assigned to the tower.

12 Q And you say that on January 19th, 2009 an explosion
13 occurred.

14 A Yes.

15 Q Please tell the jury what happened.

16 A While just scanning the area looking for any -- you know,
17 during the day sometimes there are children that come up near
18 the tower from those fields. That particular day, off to my
19 right side a little ways there was an explosion, which I was
20 able to see, feel, and hear that caused me to be kind of
21 pushed back by the force, including debris being sent into the
22 tower with small pieces of metal. And then immediately I had
23 a very strong ringing in the ears, as well as a very severe
24 headache from that attack.

25 Q When you say that you saw the explosion, what did you

1 see?

2 A A large fireball.

3 Q What went through your mind?

4 A Just the immediately knowing we were under attack and
5 that where the West Tower sits I was alone, I was going to be
6 by myself for several minutes, so I was trying to process
7 exactly what was happening, look for any other threats
8 oncoming to the base to protect myself and the other people
9 inside.

10 Q What action did you take?

11 A After a few seconds of getting myself back together to
12 figure out what's going on, I started scanning the area,
13 looking for any other people running in or vehicles or any
14 other type of attack. At that time I started hearing some
15 gunshots.

16 I was having trouble hearing, but I could still hear
17 the loud ring of gunshots. I then observed a few Afghan
18 military soldiers running across the roadway that was
19 previously seen. It was pretty clear to immediately
20 understand they were chasing somebody. After a short chase,
21 there were about 12 or 14 more rounds fired, and nothing else
22 was incoming toward my tower at that time.

23 Q Did anyone come and check on you?

24 A Yeah, after a few minutes there is a sergeant of the
25 guard. He's assigned to check on the soldiers inside the

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1 towers as well as the gate. He was able to arrive, check on
2 me, and then after a few more minutes, he was able to call for
3 someone to replace me so I could be checked out.

4 Q Did the sergeant of the guard talk to you?

5 A He did.

6 Q Did you have any difficulty hearing what that person was
7 saying?

8 A I did have a hard time hearing him his voice, yes.

9 Q When you were sent away from the tower, where did you go?

10 A I was taken -- because our mission was joint Army and
11 Navy, I was taken to a Navy medic to be checked out.

12 Q Sergeant Ferrell, how has that day affected you?

13 A It's -- to this day, I still have what's called tinnitus,
14 ringing in the ears. It's not constant, but they also don't
15 know what causes it. Couple times a week my left ear will
16 ring really loud. And just knowing and understanding, I guess
17 how young I was and how my life could have been forever
18 changed that day by being alone in that tower.

19 Q Does that day stand out in your memory?

20 A Yes, it does.

21 MS. COOK: If I could have a moment, Your Honor.

22 THE COURT: Sure.

23 MS. COOK: No further questions.

24 THE COURT: Any cross?

25 MR. RUHNKE: No, Your Honor.

1 THE COURT: All right, you may step down. Thank you
2 very much.

3 (Whereupon, the witness was excused.)

4 THE COURT: Government's next witness.

5 MR. TUCKER: Your Honor, at this time, subject to
6 any rebuttal case, the Government rests.

7 THE COURT: Okay. Ladies and gentlemen, I think
8 what I'll do is send you for an early lunch and have you back
9 here after that.

10 Please don't talk about the case amongst yourselves
11 or with anyone else. No researching, no communicating over
12 the internet, nothing to do with this case.

13 Have a good lunch. Come back here at 1:00. Thank
14 you very much.

15 (Jury exits the courtroom.)

16 THE COURT: All right, have a seat.

17 How would the defendant like to proceed?

18 MR. MAHER: Your Honor, at some appropriate moment
19 we would like to make a Rule 29 motion.

20 THE COURT: This is as appropriate as ever.

21 MR. RUHNKE: Fine. We'll make the motion that the
22 Court should enter a judgment of acquittal because of the
23 facts and circumstances of the case, even giving the
24 Government all inferences, no reasonable jury could return a
25 verdict of guilt beyond a reasonable doubt upon reading of the

1 charges, and that's the motion.

2 THE COURT: All right, I'll hear the Government
3 briefly.

4 MS. KOMATIREDDY: Okay. Given that the defense did
5 not state specific grounds, I'll just go through the counts
6 one by one, Your Honor, briefly, unless the Court wishes a
7 different approach.

8 THE COURT: Is there a way for you to marshal a few
9 facts that you think satisfy all the elements without going
10 through each count?

11 MS. KOMATIREDDY: Absolutely, Your Honor.

12 THE COURT: Okay.

13 MS. KOMATIREDDY: First, with respect to the
14 defendant's state of mind, generally, the evidence has shown
15 to a sufficient level that the defendant sympathized with and
16 subscribed to the jihadist ideology that is consonant with
17 al-Qaeda and other terrorist group's ideology that
18 encouraged him and others to travel overseas and fight against
19 Americans.

20 There is evidence that he listened to lectures by
21 Anwar al-Awlaki, at least as that we heard earlier today,
22 but not just that he listened to them, that he encouraged
23 others to listen to them. We've seen an email from the
24 defendant to his father encouraging his father to distribute
25 those same lectures to his brother, and so, therefore, he's

1 actively promoting that ideology and further promotes that
2 ideology in the video depicted as Government Exhibit 503.

3 THE COURT: You're giving me too much detail.

4 MS. KOMATIREDDY: Yes, sir.

5 So there's evidence in the record that the defendant
6 has the mindset to go travel overseas and fight against
7 Americans, and that mindset is corroborated by travel records
8 and other documents that show that he actually does travel
9 with his coconspirators Maiwand Yar to Pakistan. I think
10 there's no dispute in this case that those actions occurred.
11 There's no dispute that the three went to Pakistan. The only
12 question is what happened for the seven years that he was in
13 Pakistan between 2007 through 2014.

14 The evidence that the defendant's fingerprints are
15 found on a bomb that was supposed to -- intended to explode
16 and wipe out a U.S. military base in combination with
17 corroborating evidence that the defendant's DNA matches the
18 mitochondrial DNA found of a hair in those explosives is
19 sufficient to find the defendant -- for the jury to consider
20 defendant's guilt on Count One.

21 As to Count Two, Count Three, Count Four, and Count
22 Five, all four of those conspiracy counts reference the same
23 plot to attack the U.S. base. It is one plot that the
24 defendant and others were involved in.

25 The existence of a conspiracy is evidence by the

1 fact that multiple people were required, the perpetrated two
2 drivers, and the bomb makers, including the defendant, and the
3 specific aspects in which -- so that plot is proven. And then
4 the four ways that that plot is charged that one plot violates
5 the law four ways. First, in Count Two, because it is a
6 conspiracy to murder U.S. nationals and evidence in the record
7 that the U.S. base FOB Chapman was with overtly in U.S. base.

8 There's additionally with respect to Count Three,
9 conspiracy to use a weapon of mass destruction against a U.S.
10 national or property owned by the U.S., that there's evidence
11 in the record that again the fingerprint and the DNA that puts
12 the defendant in as part of that conspiracy to use the bomb.
13 He in fact built the bomb. It's reasonable to infer that it
14 was supposed to be used.

15 With respect to Count Four, conspiracy to use a
16 weapon of mass destruction by a U.S. national. Similarly with
17 Count Three, the fingerprint and the DNA pin the defendant as
18 part of that conspiracy. The fact that he is a U.S.
19 national's been proven by a shore certificate and a passport
20 application for the record. A conspiracy to bomb a Government
21 facility. Again, there's evidence in the record that FOB
22 Chapman was a government facility.

23 With respect to the material support counts, there
24 are two counts: Conspiracy, attempt and provision of material
25 support for terrorists; and two counts of including conspiracy

1 provision and attempted provision which also support to
2 al-Qaeda. That conspiracy references the three individuals
3 the defendant involved and --

4 THE COURT: All right, I've heard from you
5 sufficiently.

6 MS. KOMATIREDDY: Yes, Your Honor.

7 THE COURT: All right, I'm going to deny the motion.
8 I find that construing the facts in the light most favorable
9 to the Government, there is a prima facie case for the jury to
10 find in favor of the Government.

11 What now?

12 MR. MAHER: Can the defense team just have a few
13 moments and then report to the Court? I think also it would
14 be helpful if we confer with the Government. I think things
15 will move very quickly, but I just want to make sure we're on
16 the same page at our table and a brief conference will be
17 helpful to the Court.

18 THE COURT: That's fine. Let me just have a little
19 dialogue with Mr. Al Farekh, if that's all right with you.

20 One of the things, Mr. Al Farekh, that your
21 lawyers have discussed with you or are going to discuss with
22 you is whether you should testify in this case. I am not in
23 any way trying to get to you testify or to not testify. The
24 decision is entirely yours. That's the only point I want to
25 make to you. You should consider and confer with your lawyers

1 and make your own decision. It's not their decision, it's
2 your decision as to whether you're going to testify, and
3 you're not going to be able to complain later by saying, oh,
4 my lawyers told me to, or my lawyers told me not it, because
5 it's going to be your decision. All right?

6 I'm not asking for that decision now. Let's meet at
7 five to one, and I'll get that decision then and then we'll
8 see where we go.

9 MR. MAHER: Thank you.

10 THE COURT: Okay.

11 (Whereupon, a recess was taken at 12:07 p.m.)

12 (Continued on next page.)

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

2 (Time noted: 12:07 p.m.)

3 (In open court; outside the presence of the jury.)

4 THE COURTROOM DEPUTY: All rise.

5 THE COURT: Okay. Be seated, please.

6 How is the defendant going to proceed?

7 MR. RUHNKE: I'm sorry, Your Honor?

8 THE COURT: What do you want to do?

9 MR. RUHNKE: Okay. Here's where we are: There's
10 some stipulations to be worked out. We're working on the
11 final drafts now. We do not anticipate any witnesses. And
12 what we would propose is give us a chance to work out the
13 stipulations, present those to the jury first thing tomorrow
14 morning, and have a charge conference at some point this
15 afternoon.

16 MR. TUCKER: Your Honor, I -- I think the
17 Government's request would be that we resolve these tonight
18 because I don't want the uncertainty hanging out tonight. I
19 think that would make sense. We are very close. One of the
20 stipulations we just got to see that it's quite short.

21 What I would propose is that, if the Court's
22 willing, give the parties a little more time and then we can
23 wrap this up tonight. The defense can rest tonight, and then
24 we can proceed with closings tomorrow, and of course, we'll do
25 the charge conference today.

1 I just want to make certain that everyone knows and
2 everyone's clear about --

3 THE COURT: I agree. Whatever the defendant is
4 going to do, it ought to be done today.

5 So how much time do you think you need to resolve
6 these stipulations?

7 MR. MAHER: On the safe side, with -- if we want to
8 have the physical printouts and everything, I would say give
9 us an hour. And if -- most likely it will be much, much
10 quicker than that. If not --

11 THE COURT: Well, I am not going to keep the jury
12 locked in the room for an hour.

13 MR. TUCKER: I think it could be faster than that,
14 Judge. One -- one of the documents we're nearly done with.
15 We worked on it over the weekend.

16 MR. MAHER: We should be. Again, I -- I'm just
17 trying to factor in if there's a problem or if we leave
18 something out right now.

19 THE COURT: Yes, but think of the welfare of the
20 involuntary jury, right?

21 MR. MAHER: Right.

22 THE COURT: You know, they are locked in that room,
23 and if we tell them an hour and they cannot leave, that is not
24 very nice. If we tell them go and come back in an hour, it is
25 a little nicer.

1 MR. MAHER: Exactly. That's why our initial
2 suggestion to Your Honor was --

3 THE COURT: Okay. I am going to have Ms. Clarke,
4 unless anyone objects, tell them that we are going to finish
5 the case today, and they should go off for an hour and be back
6 here in an hour.

7 Is that okay with everybody?

8 MR. TUCKER: Yes, Your Honor.

9 MR. MAHER: Very well, Your Honor. Thank you.

10 THE COURT: All right. Let's do that.

11 We are in recess.

12 (Recess taken.)

13 (Continued on next page.)

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1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Have a seat, please.

4 Okay, the defendant has entered, where do we stand?

5 MR. MAHER: We stand at the defense is not going to
6 call any witnesses. We have one stipulation right now that's
7 ready to go. A clean copy of another defense stipulation that
8 all parties have agreed to and a fresh copy is on its way to
9 the courtroom hopefully within the next minute or two.

10 And then with those two stipulations, once entered,
11 if the defense is permitted to read those to the jury, the
12 defense will rest.

13 THE COURT: Mr. Al Farekh, you talked about
14 whether you should testify with your attorneys?

15 THE DEFENDANT: Yes.

16 THE COURT: You decided not to testify; is that
17 right?

18 THE DEFENDANT: Yes.

19 THE COURT: All right, let's bring in the jury.

20 MR. MAHER: Your Honor, the second stip, the clean
21 copy is not in the courtroom yet.

22 THE COURT: But you said it will be here in one
23 minute. Well... That's what you said.

24 MR. MAHER: You're right, Your Honor, I believe I
25 said that.

1 THE COURT: Are you backing off of that? Do you
2 think it will not be one minute?

3 MR. MAHER: I could say I'm basing it on the
4 representation from Mr. Tucker, but it's our understanding
5 that it's being walked over right now.

6 THE COURT: So are you saying you want to wait to
7 bring the jury in until it's actually physically in the
8 courtroom?

9 MR. MAHER: I think that will be the cleanest use of
10 the jury's time.

11 THE COURT: Okay.

12 MR. MAHER: Thank you.

13 THE COURT: Okay.

14 MR. MAHER: Just 15 seconds, Your Honor.

15 (Pause.)

16 MR. MAHER: We're ready. Thank you very much.

17 THE COURT: All right, let's have the jury.

18 (Jury enters the courtroom.)

19 THE COURT: Everyone be seated. Welcome back,
20 ladies and gentlemen.

21 The Government having rested, how would the
22 defendant like to proceed?

23 MR. MAHER: Your Honor, at this point the defense
24 has two stipulations we'd like to enter into the record.

25 THE COURT: All right, go right away.

1 MR. MAHER: Thank you. If I may use the document
2 camera.

3 The first is Defendant's Exhibit 13. If I may read
4 it into the record, Your Honor.

5 THE COURT: Please.

6 MR. MAHER: It is hereby stipulated and agreed by
7 and between the United States of America, by Assistant United
8 States Attorney's Richard M. Tucker, Douglas M. Pravda,
9 Saritha Komatireddy, and trial attorney Alicia Cook, and the
10 defendant, Muhanad Mahmoud Al Farekh, by his attorneys Sean
11 M. Maher, Diane Ferrone, and David Ruhnke, Esquires, that:

12 July 27th, 2016, when Yousef Soufi was interviewed
13 by American authorities on July 27th, 2016, Mr. Soufi stated
14 that Ferid Imam, Maiwand Yar, and Muhanad Al Farekh listened
15 to a popular lectures series by Anwar al-Awlaki about the
16 life of Muhammad or the first Kalifs. Mr. Soufi did not state
17 that Mr. al Farekh listened to any lecture on jihad by Anwar
18 al-Awlaki.

19 During the same interview Mr. Soufi stated that
20 Ferid Imam stated that Mr. Imam did not have sympathy for
21 victims of terrorism. Mr. Soufi did not state that Mr. Imam
22 said anything about victims of 9/11.

23 And it's dated today's date and signed by the
24 parties.

25 THE COURT: Okay.

1 MR. MAHER: With the Court's permission, I'd like to
2 read now what's been marked as Defense Exhibit 14, which is
3 the second stipulation that's been entered into by the
4 parties.

5 And in the interest of time, if I might, the first
6 paragraph is the same as the other stipulation, all the
7 parties agreeing to the following facts.

8 One, Sufwan Murad testified about two members of
9 al-Qaeda who went by the name Abdallah al-Shami. One that he
10 identified as the defendant, and another who Murad said was
11 killed. The statements below all pertain to the individual
12 named Abdallah al-Shami that Murad identified as the
13 defendant.

14 November 2010. In November 2010, Sufwan Murad told
15 foreign government authorities the following, among other
16 things:

17 al-Shami had hazel eyes.

18 al-Shami spoke Arabic extremely well.

19 Murad was unsure if al-Shami was a native Arabic
20 speaker and hesitated when asked what dialect al-Shami
21 spoke.

22 Murad commented that al-Shami looked European but
23 did not know his nationality.

24 al-Shami was approximately 70 inches tall.

25 al-Shami had a medium fit build.

1 al-Shami had medium light skin that was described
2 as both white slightly red.

3 al-Shami that long, fine straight hair.

4 And al-Shami was born in approximately 1975.

5 On November 13th 2010, Murad noted generally to
6 foreign government officials, where Azzam al-Amriki lived.

7 Murad clarified that he had neither visited
8 al-Amriki's house nor seen it from the outside.

9 April 7th, 2015. On April 7th, 2015, Sufwan Murad
10 told foreign and American government authorities the
11 following, among other things:

12 Murad met al-Shami five or six times.

13 Al-Shami did not speak with the Levant dialect.

14 al-Shami spoke Arabic, Pashto, and English.

15 Murad believed al-Shami was 33 to 34 years old.

16 al-Shami was 160 to 170 centimeters tall.

17 al-Shami was short with a medium build.

18 And al-Shami had long blond, slightly brownish
19 fine straight hair.

20 June 15th, 2015. On June 15, 2015, Sufwan Murad
21 told foreign and American government authorities the
22 following, among other things:

23 Al-Shami was mysterious person, And al-Qaeda had
24 announced in As-Sahab media that person called the Abdullah
25 al-Shami had been killed and then said it was not him.

1 October 20th, 2016. On October 20th, 2016, Murad
2 told foreign and American government authorities the
3 following, among other things:

4 Murad was responsible for coordinating the movement
5 of the travelers and their weapons providing food and checking
6 on their well-being. The guesthouses Murad was in charge of
7 were in Wana and Gaba'el Mas'ual, and that most of the
8 al-Qaeda guesthouses were in those areas.

9 Murad was in charge of approximately three
10 guesthouses in Wana and two in Gaba'el Mas'ual, and that he
11 spent most of his time in Gaba'el Mas'ual.

12 During the raid in Afghanistan in which Murad said
13 he participated, he was told to retrieve a truck but instead
14 fired a rocket propelled grenade, RPG, at the truck.

15 al-Shami was of medium heights.

16 al-Shami had soft, long hair; and.

17 al-Shami had a medium length beard.

18 February 15th, 2017. On February 15th, 2017, Sufwan
19 Murad told foreign and American government authorities the
20 following, among other things:

21 The Abu Bakr al-Saddiq brigade was made up of
22 approximately 35 members, and that Abdul Wakeel was one of the
23 members. Most of big al-Qaeda achievers were in the Abu
24 Layth brigade, which was very reclusive; and.

25 At the time Murad departed the region, he had not

1 heard that al-Shami was a member of any brigade. It is
2 possible that al-Shami was assigned a brigade later, but
3 unlikely since members were usually assigned a brigade when
4 they first arrived in the region; and.

5 Murad met al-Shami approximately five times, and
6 they only exchanged greetings in Arabic.

7 Additional stipulations: The parties agree and
8 stipulate that 160 to 170 centimeters would convert to
9 approximately five-foot three inches to five-foot seven
10 inches.

11 At no time in any of the nine meetings that Sufwan
12 Murad had with the American officials from April 7th, 2015
13 through the date of the deposition, did Murad tell American
14 officials that he knew al-Shami was American. But Murad
15 stated during the April 7th, 2015 meeting, and on other
16 occasions thereafter that he believed al-Shami came from the
17 west.

18 The parties agree and stipulate that following his
19 return to his home country in 2010, Sufwan Murad was charged
20 with the following ten crimes:

21 Traveling abroad to join a foreign militia and
22 plotting to target security sites as part of jihad.

23 Harming the representation of his country by joining
24 a foreign militia and plotting to target security sites as a
25 part of jihad.

1 Joining al-Qaeda, receiving training, providing
2 material and ideological support by being tasked to act as an
3 administrative manager to the organization centers to address
4 their personnel and organizational needs.

5 Committing money laundering by transporting money to
6 members of al-Qaeda in Afghanistan by transporting and
7 providing funds to al-Qaeda coordinators.

8 Participating as a member of al-Qaeda for three
9 years, including participating in combat operations and
10 attacks on Afghani camps.

11 Mishandling a travel document, a passport, by giving
12 it to al-Qaeda members in Afghanistan and not retrieving it.

13 Receiving actual and virtual training courses in the
14 use of weapons, such as handguns, automatic rifles artillery,
15 explosives and rocket-propelled grenades.

16 Associating with a number of fugitives from his home
17 country before leaving Afghanistan, frequently visiting
18 fugitives and not reporting them to the authorities.

19 Meeting with a known fugitive, knowing that the
20 fugitive trains jihadist fighters and not reporting that
21 fugitive to authorities.

22 And visiting the retreat of a different fugitive and
23 not reporting him to the authorities.

24 And the stipulation is dated as of today and signed
25 by the parties.

1 THE COURT: All right. Thank you, Mr. Maher.

2 Any further evidence from defendant?

3 MR. MAHER: No, at this point the defense rests.

4 THE COURT: All right. Any evidence in rebuttal
5 from the Government?

6 MR. TUCKER: No, Your Honor, the government rests.

7 THE COURT: All right, the evidentiary record is,
8 therefore, closed.

9 Ladies and gentlemen, here's what's going to happen
10 now. I'm going to spend the afternoon working with the
11 attorneys on the closing instructions for you, the final
12 instructions that I'll give you as to how to deliberate in
13 this case. We'll have you back here at 9:30 tomorrow morning,
14 and you will hear closing arguments and I'll give you your
15 instructions, and I believe we can do all those things
16 tomorrow and then you will get the case. It will be yours to
17 decide.

18 So I'm going to send you home now. Please do not
19 discuss the case amongst anyone, not even yourselves. Stay
20 away from social media. Do not do any research on the
21 internet or otherwise. If you see anything on TV or
22 newspapers, flip the page, hit the remote, make sure you don't
23 read about this case anywhere or anything having anything to
24 do with it.

25 Have a very good night, we'll see you at

1 9:30 tomorrow morning. Thank you again for your hard work.

2 (Jury exits the courtroom.)

3 THE COURT: Ready for charge conference?

4 MR. TUCKER: Yes, Your Honor.

5 THE COURT: The way I want to do this is since most
6 of the proposed charge that I handed out to you is
7 boilerplate, I'm going to ask you grossly if there's any
8 problem with any of the general boilerplate charges, and that
9 is what runs from page 4 up until the beginning of page 21.

10 Take your time, just tell me if there's anything
11 wrong with any of that.

12 And I'll just note that we did distribute this on, I
13 think, Saturday.

14 MR. PRAVDA: Your Honor, the Government has just a
15 few comments.

16 THE COURT: Okay, go ahead.

17 MR. PRAVDA: First of all, with respect to general
18 instructions, we propose two additional instructions for
19 Court's consideration.

20 One view, as the Court knows, Mr. Maher in some of
21 his cross-examination of Government witnesses elicited
22 testimony about the Government meeting with those witnesses in
23 advance of trial, and so we'd like to add a general
24 instruction that it's proper and appropriate for the
25 Government to meet with its witness prior to trial.

1 THE COURT: Well, I don't want to tie it just to the
2 Government. I will say it is common and usual for attorneys
3 to meet with witnesses that they intend to call at trial in
4 advance of trial.

5 Is there specific language you want on that?

6 MR. PRAVDA: That is fine.

7 THE COURT: Okay.

8 Anything else?

9 MR. PRAVDA: We can submit some specific language --

10 THE COURT: Please do.

11 MR. PRAVDA: -- which may actually be standard
12 language that we can submit to the Court.

13 THE COURT: I'll be happy to look at it.

14 MR. PRAVDA: Okay. And then I don't know if this
15 will go under general instructions, Your Honor, where we
16 reference two specific counts.

17 But Count Sixty-Nine charged conduct between
18 October -- I'm sorry December of 2006 and October of 2014, and
19 particularly with respect to conspiracy counts, but also with
20 respect to the substantive counts, we just want it to be clear
21 that the Government doesn't have to prove that the defendant
22 committed the acts that are charged throughout that entire
23 period, the conduct during any point during that time frame is
24 sufficient.

25 THE COURT: Give me some language on that, too.

1 That's fine.

2 MR. PRAVDA: We will.

3 THE COURT: Okay, what else?

4 MR. PRAVDA: And then, Your Honor, there's a section
5 on impeachment by prior inconsistent statements.

6 THE COURT: Right.

7 MR. PRAVDA: And in light of the stipulation that
8 the defense just read into evidence, we think it's appropriate
9 to advise the jurors that the prior alleged -- prior alleged
10 inconsistent statement are not offered for their truth but
11 only with respect to impeachment of witness' credibility.

12 THE COURT: It says that. It says that. It's
13 called impeachment by prior inconsistent statements.

14 The whole instruction is written in terms of
15 credibility, so I don't know what more there is to say on
16 that.

17 You can give me something specific to look at, I
18 will, but, you know, these are already -- I'd say this an
19 hour, 45 minute to two-hour charge as it is, so I'm really
20 hoping the parties will tell me things not to say, not things
21 to say more.

22 MR. PRAVDA: Your Honor, we will consider -- we'll
23 take another look at that language and consider whether it
24 covers our concern. And if we do decide to submit something,
25 we will keep it as tight as possible.

1 THE COURT: Okay.

2 MR. PRAVDA: And then the last comment with respect
3 to the general instruction is on page 19, the Court has a
4 section on identification testimony.

5 THE COURT: All right.

6 MR. PRAVDA: And I believe that that is specific to
7 the photographic identification that Murad made of the
8 defendant.

9 We would request that the Court would just reword
10 "identification," that the word "photographic identification"
11 be added. And the reason I say that is because there's other
12 testimony, for example from the fingerprint expert, that there
13 was an identification between the fingerprints and the
14 defendant's prints, and likewise the word "identification" is
15 also used by other forensic experts when describing their
16 process. So we just want it to be clear that that paragraph
17 refers to photographic identification.

18 THE COURT: What does the defendant think of that?

19 MR. RUHNKE: That's in comment to the section also,
20 but there were numerous witnesses in court who also identified
21 Mr. Al Farekh by pointing out that "there he is."

22 You might change it to an out-of-court
23 identification of Mr. Al Farekh, or words to that effect,
24 we're which I think covers what talking about.

25 THE COURT: You know, it's -- we did use the word

1 "identification" in so many different contexts in this case
2 that it's hard to try to narrow it.

3 MR. RUHNKE: Your Honor, out-of-court photographic
4 identification, I think that solves the Government's problem.

5 THE COURT: I think so. I think that does it.

6 MR. PRAVDA: Out-of-court photographic
7 identification will be fine.

8 MR. RUHNKE: Yes.

9 THE COURT: Okay, we'll do that.

10 Okay.

11 MR. RUHNKE: In terms of general comments in these
12 first 21 pages, my first suggestion is going to be one that
13 cuts the charge down somewhat, as Your Honor asked.

14 On page 7 you talk about the defense attorneys being
15 appointed on page 7. I'd ask that you change the words "paid
16 for" to "compensated." Paid for has kind of a bought and paid
17 for ring to it, so I --

18 THE COURT: I have no problem with that.

19 MR. RUHNKE: I've added a syllable that will cut
20 down the Government's words.

21 THE COURT: That's fine.

22 What else?

23 MR. RUHNKE: Actually two syllables. I'm sorry.

24 More substantively on page 19 at the top, where the
25 Court instructs the -- asks the jury a series of rhetorical --

1 asks the jury to ask themselves a series of rhetorical
2 questions which in essence make the Government's argument.
3 The rhetorical questions that are asked, are questions that
4 run towards the Government.

5 I ask that you include in those rhetorical questions
6 at the end of the first sentence, where it reads: You should
7 ask yourselves whether this witness would benefit more by
8 lying or by telling the truth and -- I'm sorry, let's take it
9 to the end of that where it says: Or did he testify -- did he
10 believe that his interests would be best served by testifying
11 truthfully or by lying in an effort to curry favor with the
12 Government in hoping to get a way with a lie. And that's a
13 rhetorical question that runs more in our direction.

14 THE COURT: This is the standard language that I use
15 in every case and I think it's pretty well balanced because it
16 asks the jury in each question is the witness lying or is the
17 witness not?

18 Now, I'm not going to weight it in favor of lying
19 for the Government, but if you think that last question is
20 one-sided because it doesn't have the counter of or would he
21 be lying. I will add to it, or by lying to protect his own
22 interests.

23 MR. TUCKER: Your Honor --

24 MR. RUHNKE: That will be fine, Your Honor.

25 MR. TUCKER: -- the other side of that position is

1 addressed in the preceding sentence. Was the cooperating
2 witness' testimony made up in any way because he believed or
3 hoped that he would thousand receive favorable treatment by
4 testifying falsely.

5 THE COURT: That's why I say this is pretty
6 balanced. The last question, though, does ask -- oh, I see
7 the last question really balances the preceding question.

8 MR. TUCKER: Exactly, Your Honor.

9 THE COURT: Think of it that way, Mr. Ruhnke.

10 MR. RUHNKE: I actually liked the formulation that
11 Your Honor just put forward.

12 THE COURT: Well, you do, but now I have two for you
13 and only one for the Government.

14 MR. RUHNKE: Take out one of mine.

15 THE COURT: If we take out one of yours, we're back
16 where we started.

17 I mean look how it starts out. The first question
18 is balanced: Benefit more by lying or telling the truth,
19 balanced. Was the cooperating witness' made up in any way
20 because he believed or hoped that he'd get favorable treatment
21 by testifying falsely? That's for you.

22 And then the last question is: Did he believe that
23 his interests would be best served by testifying truthfully?
24 That's for them.

25 So the first question is for both, then one for you,

1 and one for them.

2 MR. RUHNKE: The word somehow receive beneficial
3 treatment is --

4 THE COURT: I'll take out "somehow".

5 MR. RUHNKE: Just the way it's phrased, he would
6 receive favorable treatment by testifying falsely.

7 THE COURT: That's your argument.

8 MR. RUHNKE: It's not really the argument, he's
9 definitely going to receive favorable treatment by testifying
10 falsely.

11 THE COURT: What's he going to get?

12 MR. RUHNKE: If he's testifying falsely, he's not
13 going to get favorable treatment. The only way you get
14 favorable treatment if he testifies falsely and gets away with
15 it.

16 THE COURT: Well, that's your argument. I'm going
17 to leave it as is. I will take out the word "somehow" if you
18 want. Somehow also I think gives you more room to argue what
19 it might be. But if you want it out, I'll take it out. Other
20 than that, I'm going to leave it.

21 MR. RUHNKE: I would prefer the idea of lying to
22 protect his own interests.

23 THE COURT: But that would shift the balance
24 unfairly against the Government. Your sole option is take out
25 somehow or leave somehow.

1 MR. RUHNKE: Also on page 19 --

2 THE COURT: Wait, let's get through this one first.
3 Do you want the somehow or not?

4 MR. RUHNKE: I do not want the somehow.

5 THE COURT: Okay. So I will take out the word
6 "somehow," otherwise I'm not going to change that paragraph.
7 What else do you have.

8 MR. RUHNKE: On the same page, on the identification
9 testimony, the photographic identification.

10 THE COURT: Yes.

11 MR. RUHNKE: That, the second full sentence asks to
12 consider the circumstances of the identification, and the next
13 sentence that says: You should consider the circumstances
14 under which the witness later made the identification. And
15 since this is case-specific, I would also add the following
16 sentence:

17 You should also consider circumstances where the
18 witness failed to make an identification when presented with a
19 likeness of the individual.

20 And that's exactly what happened in this case is
21 that the witness failed to make several photographic
22 identifications of Mr. Al Farekh when presented with them.

23 THE COURT: I think that's your argument. You're
24 going to take this existing sentence and say, yes, he made
25 this identification but look at the earlier times when he

1 couldn't make the identification. I don't need to instruct on
2 your argument. You make the argument.

3 MR. RUHNKE: If the Court respectfully is going to
4 say: You should consider the circumstances under which he
5 made the identification, you should also occur the
6 circumstances under which he failed to make the identification
7 when presented with a photograph.

8 THE COURT: I think the circumstances under which he
9 failed to make the identification are part of a subset of the
10 circumstances under which the witness later made the
11 identification. So I think your point is subsumed.

12 Again, this is very standard language, so I'm going
13 to overrule the objection.

14 MR. RUHNKE: Okay, and that was our comments on the
15 first 21 pages.

16 THE COURT: Okay, let's go on to the substantive
17 part, therefore, and as to those I'm going to go one page at a
18 time.

19 So we are starting at page 21.

20 Anything from either side on 21?

21 MR. TUCKER: No.

22 MR. MAHER: No, Your Honor.

23 THE COURT: You don't have to say, "no," I'll wait a
24 decent interval and if no one responds I'll just go to the
25 next page.

1 MR. TUCKER: Thank you, Your Honor.

2 THE COURT: Anything on 22?

3 MR. MAHER: Just a second, Your Honor.

4 THE COURT: Sure.

5 MR. RUHNKE: Your Honor, Mr. Maher points out to me
6 that I don't think there was any evidence of the AKA citing of
7 al-Shami. So that should come out.

8 THE COURT: What does the Government think about
9 that?

10 MR. PRAVDA: Your Honor, I think we should keep the
11 consenting email, that was under the name Saif al-Shami. We
12 can take out the al-Shami. We don't have any objection to
13 that.

14 THE COURT: Okay.

15 MR. RUHNKE: Your Honor, there was a different name.
16 It was Safula?

17 THE COURT: Well, wasn't it Saif something else?
18 Let's take a look at the email.

19 MR. PRAVDA: Your Honor, the Government can hand up
20 a copy.

21 THE COURT: Saif ala. Right? Saif ala, the sword
22 of God.

23 MR. PRAVDA: Yes, Saif is a short form for Saif ala.

24 THE COURT: But it's not Saif al-Shami.

25 MR. PRAVDA: Saif.

1 THE COURT: Saif from Syria or Saif, sword of God.
2 Different names. I'm taking it out.

3 Okay. That was 21. Now we're still on 22.

4 Twenty-three.

5 Twenty-four.

6 Twenty-five.

7 Twenty-six.

8 Twenty-seven.

9 And if I'm going too fast, don't hesitate to tell
10 me.

11 Twenty-eight.

12 Twenty-nine.

13 Thirty.

14 MR. PRAVDA: Your Honor, on 30 and 31, we have one
15 redacted change, which is to make clear the first element we
16 cited used weapon of mass destruction outside the United
17 States. That it is not necessary to prove that the conspiracy
18 was specifically to attack a United States military base in
19 Afghanistan, and the reason why I say that, Your Honor, is
20 because in the first paragraph under Count Four the to-wit
21 clause of the indictment specifics a United States military
22 base in Afghanistan. Obviously, that's the purpose of
23 providing notice to the defendant of the conduct of which is
24 he charged, and to prevent him, or to allow him to assert a
25 double jeopardy defense, but it is not an element that the

1 Government must prove with respect to this count.

2 THE COURT: But what theory could the Government
3 have that would support a jury verdict on any other facility?

4 It has to be a case in Afghanistan.

5 MR. PRAVDA: Well, the --

6 THE COURT: I don't want them to say that they think
7 that he was objecting -- he was attempting to attack a base in
8 London, because that wouldn't be right.

9 MR. PRAVDA: The point is, that the defendant
10 wouldn't have to have knowledge that it was an American base.
11 So in other words, the difference between Count Three --

12 THE COURT: I see.

13 MR. PRAVDA: -- and Count Four is that Count Three
14 is conspiracy to use a weapon of mass destruction specifically
15 against American people or American property. Whereas, Count
16 Four is US national conspiring to use weapons of mass
17 destruction outside the United States.

18 THE COURT: So you're saying the jury could convict
19 under Count Four, based on the defendant's knowledge that a
20 weapon was going to be used outside the United States, even if
21 he didn't know where outside the United States.

22 MR. PRAVDA: That's correct.

23 THE COURT: What does the defendant think about
24 that? I think it's technically right.

25 MR. RUHNKE: When you go on to defining the elements

1 that you -- there's no mention at all that it is a military
2 base or other anything other than a United States national who
3 conspires to use a weapon of mass destruction outside the
4 United States. Those are the elements that are pretty clear.

5 I'm not sure what we're arguing over here, and
6 unless the jury was to go completely off the rails and find
7 some other kind of conspiracy, and I think tethering it
8 factually to the charges in the case focuses the jury
9 appropriately, and you do tell them what the actual elements
10 are very succinctly and very clearly.

11 THE COURT: Well, I don't want to tell them,
12 Mr. Pravda, that the defendant could knowingly conspire to
13 attack a base outside of the United States without thinking of
14 a specific base, in light of the physical evidence that the
15 Government has put into the record.

16 It would not be, I think, while -- while it would be
17 a technically correct verdict for the jury to find, yes, he
18 intended to attack a base outside the United States. Based on
19 the proof of this case, if they don't think he meant to attack
20 a base in Afghanistan, something's wrong. Because the only
21 way I see them able to convict -- I don't see a view of the
22 evidence in this case that would permit them to find that he
23 intended to attack a base outside of the United States, but
24 didn't know it was in Afghanistan.

25 He has to know it was in Afghanistan. That's why

1 you have all that physical evidence.

2 MR. PRAVDA: But he doesn't have to know that it was
3 an American base. The American part of it is certainly not an
4 element.

5 Obviously, we put forward factual evidence that it
6 was an American base. I don't think there could be any
7 dispute about the fact that it was an American base. But if
8 the question is, the defense, for example, you know jury --
9 didn't know -- we didn't hear any evidence that the defendant
10 knew that that bomb was going to be used to attack an American
11 base in Afghanistan without actually knowing it was an element
12 of the crime.

13 THE COURT: Are you going to make that argument?

14 MR. MAHER: We're not making the argument that
15 Mr. Al Farekh had anything to do with building the bomb that
16 was going to go attack.

17 THE COURT: That's not my question.

18 The question is: Are you going to say the
19 Government failed to meet its burden to prove that even if the
20 defendant intended to attack a U.S. military base, he knew it
21 would be Afghanistan.

22 MR. MAHER: I don't see it as making an argument.

23 THE COURT: I don't either. I don't either. But I
24 just wanted to make sure.

25 MR. TUCKER: And if the defense isn't going to do

1 this we can move on. I think the specific concern, which is
2 tied to a few lines in the defense's opening and some of the
3 cross, was, ladies and gentlemen, it could be that the
4 defendant was a guy who worked on a bomb assembly line, and he
5 didn't know if those bombs were going to be used to attack
6 Americans, or to fight some kind of civil war, or for mining.
7 And the Government hasn't shown you otherwise. And the point
8 would be, that doesn't matter the fact that he is involved in
9 conspiracy to use weapons of mass destruction and he's
10 American are sufficient.

11 If the defense isn't going to go there, the
12 Government agrees. We don't need to make this charge more
13 complicated, but if that's going to be a defense, we need to
14 address it.

15 MR. MAHER: That's a different scenario.

16 THE COURT: Yes.

17 Look, I think we're agreed that to be guilty of this
18 charge, the defendant did not need to know that a particular
19 base was going attacked with his handiwork in Afghanistan.
20 That's one thing we agree on.

21 I think we similarly agree that the defendant did
22 not need to know that some U.S. facility in Afghanistan was
23 the target of his handiwork. But he did have to know that the
24 target of his handiwork was some American interest; right?

25 MR. TUCKER: No. I don't think that's correct, Your

1 Honor.

2 THE COURT: Okay. That's where we have to iron this
3 out.

4 MR. TUCKER: On Count Four, all we know that he was
5 a member of a conspiracy to use a weapon of mass destruction
6 outside of the United States.

7 THE COURT: Right.

8 MR. TUCKER: And that he was an American. I'm sorry
9 Mr. Pravda.

10 MR. PRAVDA: The jurisdiction for Count Four is the
11 fact the defendant is himself a U.S. national. So nothing
12 more is needed, other than it prove that a weapon of mass
13 destruction would be used outside of the United States.

14 Whereas, Count Three in contrast, there's no
15 requirement that he be a U.S. national; but there is a
16 requirement that the target of that conspiracy to use a weapon
17 of mass destruction can be either the American people or
18 American property.

19 THE COURT: Right. So the only thing he has to know
20 for Count Four is that there was going to be use of his
21 handiwork outside the United States.

22 MR. PRAVDA: That's right. That's why we're asking
23 for that clarification in the charge.

24 THE COURT: Okay. I think that's right.

25 But that's the first element. Why do we need

1 clarification?

2 MR. PRAVDA: We need clarification, Your Honor,
3 because in the first paragraph under Count Four, where the
4 Court is describing what the indictment charges, we have the
5 to-wit clause at the end of the paragraph that's outside the
6 United States.

7 It's clear to attack a United States military base
8 in Afghanistan, but that language is not something that needs
9 to be proven. That's language that puts the defendant on
10 notice of the conduct that the Government is intending.

11 THE COURT: Okay. I see your point. It seems to me
12 your kind of hoisted on your own petard by having given too
13 much information in the indictment. But I think you're
14 entitled to clean that up.

15 So I think I will have a "provided, however," clause
16 in that first element that says the defendant need not have
17 intended any particular target, as long as he had a target --
18 as long as he knew there would be a target outside the United
19 States.

20 MR. PRAVDA: That's fine, Your Honor.

21 THE COURT: Okay. We'll do something like that.

22 Okay. Thirty-one.

23 Thirty-two.

24 Thirty-three.

25 Thirty-Four.

1 Thirty-five.

2 Thirty-six.

3 MR. MAHER: I -- Your Honor, we do have an objection
4 on 36.

5 THE COURT: Okay.

6 MR. RUHNKE: Thirty-Six is the first time in the
7 charge that Your Honor discusses coconspirator *Pinkerton*
8 liability in the indictment.

9 Just as it's just a form and language objection at
10 the bottom of 36, you tell the jury if you find that the
11 Government did not prove beyond a reasonable doubt that the
12 defendant used explosive, the Government has three other
13 theories on which it could still prevail.

14 That sounds a little bit --

15 THE COURT: Too much of a menu. I know you're
16 concerned about that, and I'm open to your suggestions about
17 how I can make sure they consider these alternate three
18 theories, because I think we all agree, that is three
19 alternate ways of convicting, without making it seem like a
20 menu of choices.

21 If there's a way to do that, I'm happy to do it.
22 This was the best I was able to do.

23 MR. RUHNKE: So I mean, the way to rephrase that,
24 perhaps, is, you may consider whether the defendant's guilt
25 has been established beyond a reasonable doubt on the theory

1 of attempt, aiding and abetting, or was known as coconspirator
2 liability.

3 THE COURT: You may also consider whether the
4 Government has met its burden of proving the defendant's guilt
5 beyond a reasonable doubt by considering the theory of
6 attempt, aiding and abetting and coconspirator liability.

7 MR. RUHNKE: Yes. That's a better editorial way.

8 I'm now going to muck it up a bit by saying we
9 object, generally, to the coconspirator liability theory. I
10 fully understand what the law is in the Second Circuit. I'm
11 fully hope that *Pinkerton* some day goes away, and I want to be
12 on the record of saying we did not accede to a Pinkerton
13 theory and that carries throughout, Your Honor's charge. Time
14 and again you talk about the five elements of
15 *Pinkerton*/coconspirator liability. We're going to object to
16 that throughout.

17 THE COURT: Right. Well, certainly your position is
18 preserved on that.

19 Okay. But I will take the language improvement that
20 we arrived at for the bottom of 36.

21 Anything else on 36?

22 MR. PRAVDA: Yes, Your Honor. I just have one
23 comment on that language. If you could change the word "may"
24 to "must." It's not optional that the jury consider these
25 alternative theories. They are required to consider these

1 alternative theories. So you "must" consider, rather than you
2 "may" consider.

3 THE COURT: Right.

4 MR. RUHNKE: Actually, I have difficulty with the
5 "must consider" language, where we start telling juries what
6 they have to do. And, in fact, it comes up later on.

7 But I think the jury understands when you say "you
8 may consider the following," that they -- that nobody on the
9 jury is going to say, well, the Judge didn't say we have to
10 consider the following.

11 THE COURT: Why? Why do you think they won't say
12 that?

13 MR. RUHNKE: Well, it would sort of be an irrational
14 decision interpretation.

15 THE COURT: It's very unpleasant doing deliberations
16 for a jury. I'm concerned that if you give them a "may,"
17 they'll view it as an option.

18 What's less mandatory about the alternative
19 theories, the three alternative theories, than primary guilt
20 itself? I don't think there is anything. I think the fact of
21 the matter is they must consider. They need not find, but
22 they must consider.

23 MR. RUHNKE: You should have give consideration to
24 the following theories?

25 THE COURT: I think I can live with should. I think

1 should. I'm giving them a direction.

2 MR. PRAVDA: I think should still has an element of
3 being optional.

4 THE COURT: I don't think so.

5 When it comes from a judge, you shouldn't consider,
6 I think that gives a near mandatory, without what Mr. Ruhnke
7 is concerned about. If you say "must," it makes it sound like
8 I think these are pretty good ones. Take a hard look at
9 those.

10 So I'm going to go with "should". I think "should"
11 is okay.

12 Okay. Thirty-Seven.

13 Thirty-eight.

14 Thirty-nine.

15 Forty.

16 MR. RUHNKE: Your Honor, just to be precise, that's
17 where you instruct on the five elements of coconspirator
18 liability. We object to that whole section of coconspirator
19 liability. It goes down to "injury" of "substantial risk of
20 injury" on page 41.

21 THE COURT: Okay. We have your objection.

22 Forty-one.

23 Forty-two.

24 Forty-three.

25 Forty-four.

1 Forty-five.

2 Forty-six.

3 MR. RUHNKE: And, again, 46 and 47 repeat
4 coconspirator liability, and we object to it.

5 THE COURT: Okay.

6 Forty-seven.

7 Forty-eight.

8 Forty-nine.

9 Fifty.

10 Fifty-one.

11 Fifty-two. I have your objection, Mr. Ruhnke.

12 MR. RUHNKE: Thank you, Your Honor.

13 THE COURT: And 53.

14 Okay. And the remainder few pages are also
15 boilerplate. Any comments as to those pages?

16 Everyone's standing up. No one's suppose to stand
17 up. This is all the same in every case. No one ever changes
18 this.

19 All right. You first, Mr. Pravda.

20 MR. PRAVDA: Your Honor, we would just ask that Your
21 Honor would pull the partial verdict instruction of the jury
22 and give that only if during deliberation that is something
23 that is necessary to instruct them on.

24 THE COURT: Do I have a partial deliberation
25 instruction here?

1 MR. PRAVDA: Fifty-five.

2 MR. TUCKER: Judge, just for the record, this with
3 an excellent charge. If that was an error, the charge,
4 otherwise, is excellent.

5 THE COURT: I know, you like my tie, too. That's
6 fine.

7 Yes. Partial verdict. I must have gotten tired
8 from reading at end. That goes out, unless needed.

9 Okay. Anything else in these last few pages?

10 MR. RUHNKE: At the top of page 54, Your Honor,
11 mindful of what I had just said to the Court about the
12 alternative theories of liability.

13 I think it's clear that if the Government fails to
14 meet its burden, the jury must return a verdict of not guilty
15 and it's not should. They must return a verdict of not
16 guilty. Mindful of what I just said ten minutes ago.

17 MR. MAHER: Very different situation, Your Honor.

18 THE COURT: So you're saying -- the Government is
19 must, but your -- no, no. The Government is "should," but
20 you're a "must"?

21 MR. RUHNKE: Yes.

22 THE COURT: It lacks a certainly symmetry, don't you
23 agree?

24 MR. RUHNKE: It does lack symmetry.

25 THE COURT: What does the Government think?

1 MR. PRAVDA: Your Honor, I think what's good for the
2 goose is good for the gander.

3 THE COURT: I'm familiar with the case of Goose v.
4 Gander. I'm going to keep it symmetrical. I'm going to leave
5 in should both ways.

6 For the same reason, Mr. Ruhnke. I think the jury
7 gets the message when I say "should," they understand this is
8 what they're supposed to do.

9 MR. RUHNKE: Yes, sir.

10 And the final comment on the last sentence, just
11 before the subheading B communications to the Court.

12 THE COURT: Right.

13 MR. RUHNKE: We use the word "conviction." I'm
14 going to substitute for that is, your final vote must reflect
15 your individual judgment as to how the case should be decided.
16 I would like the word "conviction" right in the middle of
17 that.

18 THE COURT: No one's ever said that to me before.
19 I've never given a charge without it, but that doesn't mean we
20 should give it again.

21 MR. RUHNKE: That's in the context of jurors
22 sticking to their guns or not giving up their own individual
23 judgment, just because they're outnumbered, et cetera.

24 THE COURT: Why not say judgment?

25 MR. RUHNKE: That's fine, Your Honor.

1 THE COURT: Their conscientious judgment as to how
2 the issue --

3 MR. PRAVDA: Conscientious judgment is fine with the
4 Government.

5 THE COURT: Okay.

6 Anything else in that last two pages?

7 MR. RUHNKE: Not from the defense, Your Honor.

8 THE COURT: Okay. Let's go to the verdict form.

9 Any comments on that?

10 MR. PRAVDA: Your Honor, the Government is fine with
11 the verdict form.

12 THE COURT: Okay.

13 MR. RUHNKE: I looked. I don't see any difficulty
14 with the verdict form from our perspective, Your Honor.

15 THE COURT: Okay.

16 Now, one question I have for you is, after I charge
17 the jury, the parties have a preference as to what I should do
18 with the alternates. The options being, send them home under
19 instructions. We'll call them if we need them.

20 Another option being, put them in a separate room
21 and keep them there in case we need them.

22 Another option being, stick around the courthouse.
23 We'll call you if we need you.

24 Anyone care?

25 I know, Judge Gershon always keeps her jurors in a

1 room and doesn't let them go anywhere. I'm not crazy about
2 that. But if both parties wanted to do that, I might.

3 MR. RUHNKE: I'm comfortable with letting them go
4 home and being on call. I prefer not to have them kind of
5 wandering around the courthouse while the jury's deliberating.
6 People talk in elevators. You know how jurors are in those
7 kind of instances.

8 THE COURT: What do you think?

9 MR. PRAVDA: Your Honor, we think as a preliminary
10 matter that the jurors should still come in, the alternates
11 should still come in, until deliberations commence. And after
12 that point, they should be kept close to the courthouse so
13 that if we need them, they can come.

14 THE COURT: Yes. But Mr. Ruhnke's point is that if
15 they are free agents circulating around the courthouse, they
16 may hear things they're not supposed to hear. They may run
17 into the jurors at some point, or the jurors aren't coming out
18 of that room until the end of the day.

19 MR. PRAVDA: I think the danger of that is if we let
20 them go, and they're up to, whatever they're up to, that when
21 we do need them, they won't be available and they won't be
22 reachable.

23 THE COURT: Okay. I'm going to use a modified
24 Judge Gershon approach. They're going to have to report here
25 every morning. They do not have to sit in a room, but when we

1 break for the day, I will have seen them previously and sent
2 them home for that day, so that they don't run into the actual
3 jurors who are here. Because I don't want to, you know, lock
4 them up. They're not deliberating and it drives someone -- it
5 could be quite annoying.

6 So that's what we'll do here.

7 MR. RUHNKE: Practically speaking, where would they
8 be during the day that avoids the problem running into --

9 THE COURT: Well, if we keep them locked up where I
10 usually do that when I do that, is in the jury room next to
11 the jury room where the deliberations are going. So I guess
12 there is a risk someone goes out to use the bathroom, all the
13 bathroom are back there, too. Although, there are two
14 bathrooms within the jury room. It's a very small risk. I
15 think it's fine.

16 MR. RUHNKE: So the option, then, is keep them
17 essentially locked up?

18 THE COURT: Yes.

19 MR. RUHNKE: I don't mean that literally.

20 THE COURT: Yes.

21 MR. RUHNKE: But segregated from the rest of the
22 courthouse.

23 THE COURT: Yes.

24 MR. RUHNKE: I guess preferable to letting them
25 wander around the courthouse, Your Honor.

1 THE COURT: Okay. I'm going to think about it.
2 I'll let you know.

3 Okay. One more thing for you.

4 Do I have estimates on how long closings are going
5 to take? I assume we'll follow the standard procedure of
6 Government, defense, short rebuttal from Government? Anyone
7 want to estimate?

8 Can I throw out a two-hour maximum number? Is that
9 possible?

10 MR. PRAVDA: Your Honor, it might be a little too
11 preliminary for us to say. We prefer not to be limited in
12 that fashion, if possible.

13 THE COURT: I'm not going to limit you. I'm just
14 trying to get an idea.

15 If you say two hours, and it takes three hours, I
16 won't stop you. I just want to know if you have an estimate
17 now.

18 I think it's a little strange that here we are the
19 night before closings, you don't even have an estimate, a
20 nonbinding estimate; but if you don't, you don't.

21 Does anyone have one?

22 MR. MAHER: I hope to be under two hours.

23 MR. TUCKER: My rebuttal will be short, Judge. I
24 can say that. Mr. Pravda --

25 MR. PRAVDA: We also hope to be under two hours,

1 Your Honor.

2 THE COURT: Okay. I mean, you know, it's not a
3 binding commitment. If you went four hours, I might have a
4 problem.

5 I'm just trying to figure out, can we get the two
6 arguments, the rebuttal, and the charge in in one day. And I
7 think the answer is yes. I just want to make sure we can do
8 that so we don't have to think of something else.

9 Okay.

10 MR. PRAVDA: Your Honor, one last thing on the
11 verdict form. I apologize. My colleague points out that if
12 you remove --

13 THE COURT: Yes. Right, we're going to remove that
14 from the caption both in the verdict form and the jury is
15 going to get a set of the instructions, so we'll remove it
16 from the caption and the jury instructions as well.

17 MR. TUCKER: I just had one question. What is Your
18 Honor's practice with respect to exhibits? Do they go back
19 automatically or on request?

20 THE COURT: They go back automatically. And I
21 expect the parties to confer right after the jury starts
22 deliberating and agree on the set of exhibits, and then we'll
23 take them back.

24 MR. TUCKER: Understood, Your Honor. Thank you.

25 MR. RUHNKE: And then just one --

1 THE COURT: Wait one second.

2 Open question on the indictment, whether we should
3 send that back. Redacted, of course, to take out Saif
4 al-Shami. I don't think it's necessary because it's in the
5 instruction.

6 MR. RUHNKE: We would prefer not to have it sent
7 back.

8 THE COURT: Okay.

9 MR. TUCKER: I don't think that's unfair.

10 THE COURT: Okay.

11 MR. RUHNKE: Just a question. What is Your Honor's
12 practice about how late juries deliberate, et cetera, so we
13 make some plans?

14 THE COURT: Until they tell me they are ready to go
15 home. If they want to stay until 9:00 or 10:00 at night, I
16 will let them stay until 9:00 or 10:00 at night.

17 MR. TUCKER: Does Your Honor like to keep the
18 parties in the courtroom? I typically stick around, but what
19 is Your Honor's practice.

20 THE COURT: I don't think we make them stick around,
21 but you have to be on telephone notice to Ms. Clarke at any
22 moment.

23 MR. TUCKER: Thank you, Your Honor.

24 THE COURT: Okay. And not too far. I mean, you
25 have an advantage. You can be back in your office.

1 Okay. Anything else?

2 MR. RUHNKE: I just wanted to ask, how far is the
3 subway from Broadway close enough? Is that too far?

4 THE COURT: Kind of far.

5 MR. RUHNKE: Yeah, it is kind of far.

6 THE COURT: If you want, we'll be glad to set up a
7 conference room for you, so that you can hang out in.

8 MR. RUHNKE: We'll be around.

9 THE COURT: Okay. Okay.

10 Anything else we need to cover?

11 MR. TUCKER: Nothing from the Government, Your
12 Honor, thank you.

13 MR. RUHNKE: No. Thank you.

14 THE COURT: I have to tell you before the jury
15 finishes their deliberations. What a pleasure it was to try
16 this case with every lawyer here. I just can't recall having
17 a case where everybody was top level. At some points I
18 thought, gee, you know, I really I wish I could be back out
19 there trying cases again if I could try it like these people.
20 And then I thought, are you nuts? I don't want to do that.

21 But it was really a pleasure to hear all of you.
22 Thank you. So good luck to everybody.

23 MR. TUCKER: Thank you, Your Honor.

24 MR. MAHER: Thank you, Your Honor.

25 (Defendant leaves the courtroom.)

1 (Proceedings adjourned at 3:12 p.m. to resume on
2 September 26, 2017 at 9:30 a.m.)

3

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