

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 MUHANAD MAHMOUD AL FAREKH, September 26, 2017  
7 Defendant. 9:30 a.m.

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8 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL  
9 BEFORE THE HONORABLE BRIAN M. COGAN  
10 UNITED STATES DISTRICT JUDGE  
BEFORE A JURY

10 APPEARANCES

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24 Proceedings recorded by mechanical stenography. Transcript  
25 produced by computer-aided transcription.

SUMMATION - PRAVDA

1404

1 (In open court; Jury not present.)

2 THE COURT: Good morning.

3 Both sides ready?

4 MR. MAHER: Yes, Your Honor.

5 THE COURT: Everyone can stand or sit as they  
6 please, the jurors are in the hall. As soon as the defendant  
7 gets in, we'll bring in the jury.

8 (Defendant enters the courtroom.)

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

10 (Jury enters the courtroom.)

11 THE COURT: Everybody be seated.

12 Good morning, ladies and gentlemen.

13 THE JURY: Good morning.

14 THE COURT: Gentlemen, we're ready for summations?

15 The Government may proceed.

16 MR. PRAVDA: When this trial began, the Government  
17 told you that the defendant, Muhanad Mahmoud Al Farekh, an  
18 American citizen, traveled overseas to join terrorists to kill  
19 Americans. And over the last few weeks, the evidence that you  
20 have seen and heard in this courtroom has proven exactly that.

21 The defendant, Muhanad Al Farekh, watched and  
22 listened to terrorist propaganda with two other men, Ferid  
23 Imam and Maiwand Yar. The evidence has shown that Muhanad  
24 Al Farekh watched videos that glorified the killing of  
25 American soldiers, and Yar and Imam listened to and adopted

1 the ideology, the sermon by Anwar al-Awlaki, that caused Imam  
2 to travel overseas and join terrorists. And they made plans  
3 to heed that call.

4 The evidence has shown that Muhanad Al Farekh and  
5 Imam and Yar answered that call. They abandoned their studies  
6 at the University of Manitoba, and they traveled overseas to  
7 Pakistan on tickets that Al Farekh paid almost \$5,000 to  
8 purchase.

9 The evidence has shown that when they arrived in  
10 Karachi, they immediately traveled to Peshawar in Pakistan,  
11 which you now know is the gateway to the terrorist training  
12 camps in American regions between Pakistan and Afghanistan.

13 The evidence has shown that Muhanad Al Farekh built  
14 a bomb that was intended for an attack on the U.S. Army base  
15 Forward Operating Base Chapman in Afghanistan in January 2009.  
16 A base where Americans stationed there were engaged in a  
17 humanitarian mission providing advice on governance to local  
18 Afghan governors, building hospitals and roads and schools,  
19 and providing medical care at clinics on the base.

20 And you know that Muhanad Al Farekh built that bomb  
21 because 18 fingerprints on that bomb were a match to the  
22 defendant.

23 The evidence has shown that Muhanad Al Farekh became  
24 an official in al-Qaeda external operations division. You  
25 heard testimony from a member of al-Qaeda who identified

1 Muhanad Al Farekh using the kunya or alias Abdullah  
2 al-Shami, as someone who received al-Qaeda's monthly stipend  
3 for its external operation brigade. And the evidence has  
4 shown that years later, in 2013, following the death of other  
5 external operation officials of al-Qaeda, Muhanad Al Farekh,  
6 was hiding out in Waziristan, reclusive, obsessed with secrecy  
7 and fearing his own death in his own sect --

8 Now, ladies and gentlemen, I don't think that there  
9 can be any reasonable dispute that Muhanad Al Farekh traveled  
10 to Pakistan in 2007, nor that he was picked up in Pakistan  
11 custody by FBI agents on April 1st, 2015.

12 -- what was he doing during those intervening years?  
13 The evidence that you have heard tells you the answer to that  
14 question. When you consider that evidence, Al Farekh's abrupt  
15 departure from Canada, evidence of his radicalization,  
16 evidence of the words and actions of his coconspirators, Ferid  
17 Imam and Maiwand Yar, Farekh's fingerprints on that bomb,  
18 Farekh's role in al-Qaeda's external operation brigade, and  
19 Farekh's own words in the handwritten letters that you saw  
20 from Afghanistan with Farekh's handwriting, signed by Abdallah  
21 al-Shami, admitting his membership in al-Qaeda, and  
22 expressing his continuing desire to wage jihad, all of that  
23 evidence points in one direction.

24 Muhanad Al Farekh traveled overseas to wage jihad.  
25 Muhanad Al Farekh joined terrorists. Muhanad Al Farekh

1 provided material support to terrorist organizations, and  
2 Muhanad Al Farekh sought to kill Americans. It is time to  
3 hold him accountable.

4 Now, ladies and gentlemen, the evidence that you've  
5 heard tells you that Al Farekh's journey to terrorism began at  
6 the University of Manitoba where he was a student and he met  
7 fellow students, Ferid Imam and Maiwand Yar. You heard that  
8 the three of them were members of the Muslim Students  
9 Association, that they got to know each other as members of  
10 the Muslim Students Association, and they were regulars at the  
11 prayer room at the University of Manitoba. They went  
12 frequently and often, and there they met, among other people,  
13 Yousef Soufi. And you heard Yousef Soufi testify that in  
14 December of 2006, the four of them, Soufi, Al Farekh, Yar and  
15 Imam, traveled to Saudi Arabia together with another fellow  
16 student, Andell Alexander, and a number of other individuals  
17 on a Hajj trip.

18 And the Hajj trip, Soufi told you, is a pilgrimage  
19 to Saudi Arabia that every Muslim is expected to make at least  
20 one time in their life.

21 And because this was a spiritual journey, a  
22 spiritual journey that they took together, Soufi told you he  
23 felt very close to them. They spent all day together doing  
24 their daily rituals, and they spent most evenings together.

25 And Soufi told you that one incident that really

1 stood out for him, that shocked him, on that Hajj trip, was  
2 that he saw Maiwand Yar listening to a lecture, a radical  
3 lecture, a jihad lecture by Anwar al-Awlaki. And then he  
4 overheard Yar and Al Farekh and Imam discussing that lecture.

5 Remember how he described it to you? They were  
6 discussing it with excitement, with inquisitiveness, with burn  
7 because it was something that was unpalatable to mainstream  
8 Muslims.

9 Now, you've heard a lot of Anwar al-Awlaki during  
10 this trial. And you've seen lots of emails, Yar and Imam  
11 sending links to al-Awlaki lectures. Farekh asking his dad  
12 to purchase parts of Anwar al-Awlaki's lecture series for his  
13 brother. Let's just look at some of that evidence.

14 Tuesday, March 16, 2006, an email from Ferid Imam  
15 to, among other people, Muhanad Al Farekh, subject line, Anwar  
16 al-Awlaki, three exclamation points. And he says, This is  
17 very good lecture that I found called, "It's a War Against  
18 Islam." And you heard from Dr. Vidino and from Evan Kohlmann,  
19 that this is a lecture where Anwar al-Awlaki talks about  
20 some counterterrorism raids that were executed here in the  
21 United States against Islamic charities. And Anwar  
22 al-Awlaki preached that those raids were a pretext for a war  
23 on Islam, and that all Muslims needed to start to prepare for  
24 that work.

25 July 8, 2006, subject line, "Purification of the

1 Soul," Yar email to Ferid Imam and refers to the lectures that  
2 they have listened together by Anwar al-Awlaki. And he  
3 says, those are no longer available on uponsunnah. And you  
4 heard that uponsunnah is one of the websites that people most  
5 frequently go to to download Anwar al-Awlaki audio files.

6 Ferid Imam writes back, July 6th, 2017, those  
7 lectures by Sheikh Anwar, you can find them on Google Video.

8 Now, there's no dispute that Anwar al-Awlaki's  
9 lectures, including radical lectures, are widely available  
10 online. You heard Zarein Ahmedzay tell you, for example, that  
11 he was easily able to find jihadist lectures when he was  
12 radicalizing, listening to those lectures, including listening  
13 to al-Awlaki lecture on Allah preparing us for the victory  
14 which described the clash of civilization between Islam and  
15 the West, and preached that he could not sit on the sidelines  
16 with that coming battle.

17 Now, these email corroborates the idea that  
18 Al Farekh and Imam and Yar were, in fact, talking about Anwar  
19 al-Awlaki's lectures when they were on that Hajj trip. And  
20 you heard that the lectures that they were talking about, the  
21 jihad lecture, is a reference to the "Constant on the Path of  
22 Jihad," which Evan Kohlmann told you was released in 2005, and  
23 it's the most cited, most discussed, lecture by Anwar  
24 al-Awlaki on the concept of violent jihad.

25 And Anwar al-Awlaki said in that lecture that it

1 is an obligation on every Muslim to travel and to fight, to  
2 wage physical jihad, violent jihad, and he preached in that  
3 lecture that it doesn't matter if you live in a country where  
4 there is no violent jihad. If there's violent jihad anywhere  
5 in the world, then, you, as a Muslim, are obligated to travel  
6 to wherever that jihad is happening and defend Muslim lands  
7 against invaders.

8 And remember, later that evening, Soufi tells you  
9 that he overhears Yar make the comment in the context of  
10 fighting in Afghanistan, violence in Afghanistan, that the  
11 motives of jihadi fighters is beyond reproach. They cannot be  
12 questioned.

13 And that's very similar to what you later hear from  
14 Maiwand Yar, in his 2009 letter home to his family, when he  
15 explained why he has gone to wage jihad, and he says, I have  
16 seen the Taliban, and I have been with al-Qaeda, and these  
17 are the best people in the world.

18 Now, following the end of the Hajj trip, Al Farekh  
19 and Imam and Yar and Soufi came back to the University of  
20 Manitoba on January 11th, 2007. And Soufi told you that after  
21 that point, Al Farekh and Imam and Yar made themselves scarce.  
22 He didn't see them on campus. He didn't see them in the  
23 Muslim Student Association prayer room. He said their absence  
24 was notable.

25 And remember, they had been regular and frequent

1 attendees in the prayer rooms. And Soufi, in particular, told  
2 you that he felt close to them, and on the Hajj trip, because  
3 they had taken this spiritual journey together. And that's  
4 why you can understand why he would notice that Al Farekh and  
5 Imam and Yar were not around when they came back.

6 And why weren't they around? They weren't around  
7 because they were planning to travel overseas and they were  
8 making plans for how to do that.

9 Less than a month after their return, Al Farekh sent  
10 two emails to an official at the University of Manitoba. On  
11 February 5, 2007, he writes, I have this problem in which I  
12 have to drop all my courses in your school. I have to go home  
13 to see my family.

14 The next day, February 6th, he writes again to the  
15 same individual, I am going to leave around March 1st if all  
16 goes well. It's a mix of medical and compassionate, and a few  
17 family problems. And he said, My family wants me back.

18 Now, one thing that you know, because of everything  
19 that you've heard in this trial, is that Al Farekh's reasons  
20 for wanting to leave school are not true. You know that he  
21 didn't go home to see his family. You learn in this trial  
22 that he grew up in Jordan and in Dubai, and he didn't go to  
23 either of those places. He went to Pakistan. He went to  
24 Pakistan with two of his friends.

25 And he writes to his dad on March 12th, 2007, after

1 he's already in Pakistan, Dad, how are you and how's the  
2 family? I hope everyone is doing well.

3 If he had gone home to his family, would he have  
4 written that message? Wouldn't he know how his family was  
5 doing if he dropped out of University of Manitoba, because his  
6 family wants him to come home? No. That's how we know that  
7 those emails are not true.

8 Now, defense counsel asked some questions during  
9 cross-examination of some Government witnesses suggesting that  
10 maybe Al Farekh and Imam and Yar actually went to Pakistan to  
11 help the poor people or to pursue some kind of religious  
12 education. If that were true, why wouldn't he say that to  
13 folks at the University of Manitoba when he's leaving? When  
14 he's withdrawing? He doesn't say that, because it's not true.

15 Now, what's happening during this time frame? A  
16 week after Al Farekh sends this email to University of  
17 Manitoba saying that he is going to withdraw, if you read  
18 Imam's email, Maiwand Yar, February 14, 2007, and he emailed  
19 him a link, and you can look at that [www.pakmission.pa](http://www.pakmission.pa), the  
20 Pakistan mission to Canada\embassies\fillableforms\visa  
21 application.

22 This is the link to the visa application for the  
23 people from Canada to travel to Pakistan. And you see that  
24 same day, February 14th, 2007, all three of them fill out visa  
25 applications to travel to Pakistan. All three of those are

1 dated February 14th, 2007. And all of them list the same  
2 information. They're asking for a visa for four months from  
3 March 1 to July 1. They list their purpose as tourism. They  
4 say that they're flying into Karachi and that they are going  
5 to arrive in Pakistan on March 10, 2007.

6 And just four days after that, four days after that  
7 email, four days after Al Farekh knows that he's going to  
8 Pakistan, that he sends that email that you saw yesterday,  
9 telling his dad to get "The Hereafter" lectures by Anwar  
10 al-Awlaki, who you heard from Soufi was Farekh's brother.

11 And he gives a website, salattime.com, which Evan  
12 Kohlmann told you refers to prayer time. And it is also one  
13 of the websites where you can download audio sermons by Anwar  
14 al-Awlaki.

15 Now, the fact that Farekh sends this after he's  
16 already made up his mind to travel to Pakistan, tells you a  
17 lot about what he is thinking during this time. He's already  
18 made up his mind to travel. He's thinking about al-Awlaki and  
19 he's thinking about radicalization, and he sends an email with  
20 their link to the al-Awlaki lecture.

21 You also heard about this video "Lee's Life for  
22 Lies." You know that that video created on February 24th,  
23 2007. And you know that because FBI forensic examiner, Soyup  
24 Hahn, testified that he pulled the meta data off the video  
25 camera that you now know that Imad Salim, one of Farekh's

1 roommates, was using to record what was going on in that  
2 apartment with Al Farekh and Maiwand Yar.

3 And February 24th, 2007, is consistent with  
4 everything that you know about what's going on at that time.

5 Remember, in this photo, you see Farekh sitting at  
6 his computer. He has short hair, and one of the things that  
7 you'll remember that he had let his hair grow out before the  
8 Hajj trip, and then after the Hajj trip, as one of his final  
9 rituals in connection with that trip, Soufi and Alexander and  
10 Yar and Imam and Al Farekh shave their heads.

11 So when you see him in this video, you know that  
12 that corroborates that this is after the return of the Hajj  
13 trip. You also saw snow outside. We will show you the video  
14 in a minute. And one of the things you see, this is a photo,  
15 a still, taken off the video, and the person that you see  
16 standing there is Yar in the kitchen, and to the right of  
17 that, what do you see? A luggage, suitcase, because they're  
18 getting ready to travel.

19 Now, remember the circumstances of this video. You  
20 have Farekh and you hear him on this video trying to sound the  
21 a video on the computer. And he tells you, you can hear his  
22 voice, Wait, wait, I'm trying to find it. And then he finds  
23 the video, but it's not the one that he's looking for.

24 He said, I know, that's not the one I wanted. And  
25 then he keeps looking for it. He says, You have to see it.

1 And then he finds it.

2 And he says, This is it. This is it. This is it.

3 Imad, Imad, Imad. He's referring to Imad, his roommate.

4 Come, come, come and watch the video.

5 And when I show this to you I want you to listen to  
6 how excited Farekh is when he finds the video. And remember  
7 what video he is watching, because you saw the video that he's  
8 watching yesterday. It was an Islamic army in Iraq video  
9 called "Lee's Life for Lies." And you know that that video  
10 depicts graphic violence against American soldiers.

11 And we showed you a short clip from that video.  
12 Remember, the 38-minute, 4-second video. We showed you a  
13 short clip, and in that clip you saw what looks like a hazing  
14 routine of a U.S. soldier. And then you saw footage of the  
15 U.S. soldier on top of a Humvee being blown up in a roadside  
16 bomb. And we stopped the video at that point.

17 But Evan Kohlmann testified that the remainder of  
18 that video contains other very graphic depictions of violence;  
19 IEDs, other roadside bombs, sniper attack, all against  
20 American troops in Afghanistan. This is the video that  
21 Muhanad Al Farekh is watching with excitement, not with  
22 disgust, with excitement. He's exhorting his friend to come  
23 and watch this.

24 Play the video.

25 (Video recording played.)

1 MR. PRAVDA: And they turned the camera off because  
2 a lot of people are going to jail.

3 Now, there's no crime in watching this video. But  
4 what this video does, is this video tells you about Muhanad  
5 Al Farekh's mindset during this period when he is planning  
6 his departure from Canada and his travel to Pakistan.

7 And on March 2nd, 2007, he goes to Sahara Travel &  
8 Tours, and he purchases two tickets. And you saw this receipt  
9 from Sahara Travel, three tickets. Remember number one, 1.1,  
10 Yar, Maiwand; two, Al Farekh, Muhanad; three, Imam, Ferid.  
11 These are the tickets that Al Farekh purchases, and you can  
12 see the itinerary on these tickets.

13 Leg one, AC, meaning Air Canada, March 6th, YWG to  
14 YUL, you heard that's Winnipeg to Montreal.

15 Leg two, also Air Canada, March 6, YUL, LHR, and you  
16 heard that is Montreal to London Heathrow.

17 Leg three, on Qatar Airways, March 7, LHR, DOH,  
18 London Heathrow to Doha.

19 Leg four, also Qatar Airways, March 8, DOH, KHI,  
20 Doha to Karachi.

21 And you heard that Muhanad Al Farekh came into  
22 that travel agency, and he purchased those three tickets  
23 putting down \$2,500 in cash, and \$2,171 that he charged, for  
24 the total of \$4,671.

25 And here is the receipt for these credit

1 transactions for the \$2,171.

2 Now, you know that they did not intend to return.

3 And you know that because Imam and Yar both say that.

4 Remember, Imam sent an email on March 15th, 2007, to  
5 a family member, subject line, worried, he's responding to the  
6 message from the family member. Let me start with the bottom  
7 part that we pulled out from this email.

8 This is probably the last email you'll receive and I  
9 ask Allah to make us a family in Jannah like He has made us a  
10 family in this life.

11 Remember, Jannah means paradise.

12 That's where Imad -- I'm sorry, that's where Ferid  
13 Imam believes that he's going to paradise. Because remember,  
14 one of the things that you heard from Anwar al-Awlaki  
15 lectures, you hear that a Muslim who dies for the cause of  
16 Islam is going to Jannah.

17 And you also heard the concept from Ahmad Yar,  
18 Maiwand's brother, that before somebody -- before a Muslim  
19 dies, they want to pay off all their debts. And the reason  
20 why they want to pay off all their debts are there going to be  
21 consequences in the next life, after death, for them not  
22 paying off all their debts before they die.

23 So Farid Imam writes, and this is the first  
24 paragraph, I hope that you'll got my letter that I sent to you  
25 in USBs. Fahmi should have received it. If you did not get

1 it, please take care of my debts.

2 And Maiwand Yar writes a similar letter to his  
3 family. Remember, his family received this letter on  
4 March 10th, 2007. And he says, I know this is going to hurt  
5 the family, but I chose that path in which Allah has guided  
6 me. I have left the country already with two of my friends,  
7 Muhanad Al Farekh, and Ferid Imam, to help my brothers and  
8 sisters.

9 Also in this letter I have included two papers for  
10 the loan that I owe. One is the Manitoba loan. I have a  
11 little over 2,500 left. And the national student loan, I have  
12 about 4,500 or \$4,000 left. Please pay this for me.

13 So you hear both Ferid Imam and Maiwand Yar making  
14 arrangements, asking their families to pay off their debts,  
15 because if they die, they want to know that that they are not  
16 going to suffer consequences after their death for not paying  
17 off their debts.

18 And even though you know that they were never going  
19 to return, they bought round-trip tickets. Why did they buy  
20 round-trip tickets? It's trade craft. They're trying to  
21 throw off suspicion of law enforcement, because it's  
22 suspicious for three of them to travel on one-way tickets to  
23 Pakistan, so they buy round-trip tickets so that law  
24 enforcement won't be suspicious.

25 Remember on March 8, they arrive in Pakistan from

1 Karachi and you see here these are the Pakistani immigration  
2 records from Karachi International Airport. And you can see  
3 you remember Darren Brown talks about how he got these  
4 records. He's the RTNT officer who was investigating the  
5 disappearance, the disappearance of Al Farekh and Imam, Yar,  
6 and he traveled to Pakistan. He got these records from  
7 Pakistan Immigration authorities.

8 And when somebody enters the country, they take a  
9 picture of the passport and of the person, and they document  
10 the date and time that they arrived. And all three of them  
11 arrived on March 8th, 2007.

12 First one comes through immigration, Ferid Imam, at  
13 11:03:16. Then Maiwand Yar was 11:03:22. Muhanad Al Farekh  
14 at 11:03:30. They come through 14 seconds apart. If there's  
15 any doubt that they were traveling to Pakistan together, this  
16 confirms it for you.

17 Now, you also heard they flew into Karachi.  
18 Remember, we offered this map of Pakistan. Karachi is all the  
19 way down here at the bottom of the country (indicating). And  
20 their ultimate destination is not actually Karachi, it's  
21 Peshawar. And Peshawar is all the way up here (indicating.)

22 And one of things that you learned, as I mentioned  
23 earlier, is that Peshawar is the gateway to where those  
24 terrorist training camps are located. And you heard that from  
25 Zarein Ahmedzay that when he and Najibullah Zazi traveled to

1 join the Taliban, they flew to Peshawar with the objective of  
2 then going to Afghanistan to join the Taliban. And you heard  
3 Sufwan Murad, the al-Qaeda member, that when he went to join  
4 al-Qaeda, he also went to Peshawar, because the training camps  
5 are located in Waziristan, all the training camps for  
6 al-Qaeda, the Taliban, anyone else, and Peshawar is the  
7 gateway to that area.

8 But, again, you have trade craft, because they don't  
9 fly into Peshawar. They fly into Karachi. Remember,  
10 Dr. Vidino, when he testified, he's the expert in  
11 radicalization among Westerners, and he told you that he's  
12 done his studies. He looked at his studies of at least a  
13 hundred people who travel from the West to join al-Qaeda.  
14 And he told you that the most common route that they travel is  
15 that they fly into major international airports, like Karachi,  
16 or Islamabad, not Peshawar, because Peshawar would be  
17 suspicious. They fly into a major airport and then they make  
18 their way to Peshawar, and they try to connect with people  
19 into bringing them into terrorist training camps.

20 And Dr. Vidino told you he doesn't know the facts of  
21 this case. He has no idea what route Muhanad Al Farekh,  
22 Ferid Imam and Maiwand Yar took. He's telling you that based  
23 on his experience with case studies of other individuals who  
24 have traveled.

25 Now, you saw this email a little bit earlier,

1 March 12, 2007, Farekh emailed his dad. Dad, how are you?  
2 How's the family? And he tells you he's in Pakistan.  
3 Pakistan is an amazing country. So we know he's there. That  
4 corroborates all the travel records and all of the other  
5 documents you've seen.

6 You also know, you've also heard from Maiwand Yar  
7 that on March 12th, you heard from Ahmad Yar that in March 12,  
8 his brother, Maiwand, called him and left a voice mail message  
9 and he said, I am where I want to be. And Ahmad Yar, the  
10 caller ID, and he looked at the country code and he recognized  
11 that as a country code from Pakistan where he had grown up.

12 Now, we talked about the fact that he went from  
13 Karachi all the way to Peshawar. And we know that because of  
14 his hotel records. His hotel record from the Lahore Hotel.  
15 And he too road from Peshawar, and you have that Arabic  
16 translated for you and you know that it says Imam and  
17 Al Farekh and Yar, and that two of them are from Canada and  
18 one of them from the United States of America.

19 And you can see in English on the bottom he writes,  
20 United States of America. And he checks into this hotel on  
21 March 14th, 2017, and they checked out on March 17th. I'm  
22 sorry -- 2007. And he checked out on March 17th, 2007.

23 Maiwand is staying at this hotel. That's when Ferid  
24 Imam sends that email saying, This is the last email you're  
25 ever going to receive from me.

1           And you heard that after they left the Lahore Hotel,  
2 that's where the trail goes cold, if you will. But Farekh,  
3 Al Farekh, is still in touch with his family. He is in touch  
4 with his family through an email account that's not associated  
5 with him. And you hear that he receives an email from the  
6 account of Reem Farekh. Reem is his mom's account, by the  
7 way, you see that, when he identifies his mom as Reem on his  
8 passport application, and also on the feedback on the passport  
9 application.

10           And the message says, We love you. May 14th, 2007.  
11 I pray five times a day, and sometimes in the middle of the  
12 night, please send a message.

13           And Al Farekh writes back, he writes back two  
14 weeks later from an account called Karlu Composing Center,  
15 subject, Saif. And he writes back to that Reem account and he  
16 says, I am sorry that I wasn't able to send email as soon as  
17 possible. Things here were little busy and things needed to  
18 be done.

19           Now, how do you know if this email is from Farekh?  
20 Remember, Special Agent Brett Dohnal testified about this  
21 email. And he testified that the IP address that this email  
22 was sent from was an IP address that came back to Pakistan.  
23 So who do you know in Pakistan he might be writing to Farekh's  
24 family? Farekh.

25           And look at the content of the message: I am sorry

1 I wasn't able to send email as soon as possible. And this  
2 comes after a message from the same account, the Reem account,  
3 to Farekh saying, essentially, we haven't heard from you, so  
4 please drop us a line.

5 And think about the content. Look at message back  
6 from Ibrahim, Farekh's brother. I hope that Ibrahim is taking  
7 some responsibilities and is holding his religious  
8 responsibilities towards his parents. I hope he is taking his  
9 religion seriously.

10 And you know that that's a topic that Farekh cares  
11 about, because that's why Farekh earlier sends an email to his  
12 dad asking him to get "The Hereafter" series.

13 And Farekh says, The least he can do is take care of  
14 his five daily prayers. As to the rest of the household, I  
15 hope that the TV is thrown out of the house and that the  
16 household should start spending time with one another and  
17 going out and eating dinner together. And on Fridays the  
18 family should get together. And on Fridays to hold some  
19 halaqa and remind each other of their purpose in life.

20 This message is very similar to the message that you  
21 see from Maiwand Yar when he reaches out to his family in  
22 2009. Remember he sent that long handwritten letter and he  
23 gives everybody in his family specific advice on how they  
24 should behave with respect to their religion. Farekh says,  
25 Throw out the TV. Maiwand Yar says the same thing. He writes

1 to family members, he says, I advise you to continue teaching  
2 the kids about this regime meaning religion. Buy the book,  
3 put all the kids in the front of the school and make them wear  
4 a hijab, a head covering, from an early age. Also make them  
5 stay away from TV. Remember, this all part of the same theme.

6 Now, one other thing that you heard from Special  
7 Agent Dohnal. Remember he testified that Google provided  
8 contents of search email accounts to the FBI in response to  
9 the court order. And he told you that he reviewed all of the  
10 emails from two accounts, malfarekh@gmail.com and  
11 feridimam@gmail.com. And he told you that after the  
12 March 12th email that Al Farekh sent to his father saying,  
13 Pakistan is an amazing country, and after the March 15th email  
14 that Ferid Imam sent to his family saying, This is the last  
15 message you'll receive from me, there were no other outgoing  
16 email messages in either of those accounts through  
17 September 28th, 2007, which is the date that Google produced  
18 the records in response to the court order.

19 If you're going to Pakistan for a benign purpose, if  
20 you're going to Pakistan to help poor people, if you're going  
21 to Pakistan to pursue a religious education, there's no reason  
22 to stop using your personal email accounts.

23 But if you're going to Pakistan to join terrorists  
24 to wage jihad, then you want to hide yourself. You want to  
25 hide your identity. You want to hide where you are. So when

1 Farekh reaches out to his family, he does so from his email  
2 account that not associated with him.

3 And when Maiwand Yar contacts his family in 2009,  
4 and he says, If you want to reach out to me, use this email  
5 address sabagul26@yahoo.com, similarly an email account not  
6 associated with Maiwand Yar.

7 Now you may be wondering how does someone like  
8 Al-Farekh, someone like Imam, someone like Yar, how do they  
9 radicalize? They seem to go to a good college. Seem to be  
10 doing successfully. How does somebody like that radicalize?  
11 Remember, Dr. Vidino told you, there's no one profile of a  
12 person who can radicalize, he told you anyone from all walks  
13 of life, from any socioeconomic background, from any cultural  
14 background, any demographic background, can embrace and  
15 internalize an extremist ideology, and then carry out acts of  
16 violence in furtherance of that ideology. And that's exactly  
17 what you see here.

18 Now, I submit to you that there's very little  
19 dispute. Well, I take that back. I'm sure there will be  
20 disputes. I submit to you that the evidence has shown that  
21 Al Farekh, and Imam, and Yar, after that trail goes cold at  
22 the Lahore Hotel in Peshawar and they joined terrorists.

23 How do we know that? Let's look at each of them  
24 individually. Let's start with Ferid Imam.

25 Ferid Imam, remember Zarein Ahmedzay who traveled to

1 the FATA with Zazi and the mujahideen because they wanted to  
2 wage jihad and they wanted to die as martyrs in Afghanistan.  
3 Zarein Ahmedzay told you that this was his military weapons  
4 trainer when he joined al-Qaeda. Ferid Imam, who went by  
5 the kunya Yousef, showing you Government Exhibit 103 in  
6 evidence.

7 "QUESTION: Do you recognize the individual  
8 depicted in that photograph?

9 "ANSWER: Yes, I do.

10 "QUESTION: Who do you recognize that to be?

11 "ANSWER: That's Yousef, one of the trainers.

12 "QUESTION: Who is Yousef?

13 "ANSWER: He was one of the trainers at the training  
14 compound, al-Qaeda trainers."

15 And everything that Zarein Ahmedzay tells you about  
16 Yousef is consistent with what you already know about Ferid  
17 Imam.

18 That's Government Exhibit 103, that's Ferid Imam,  
19 that's the person that Zarein Ahmedzay's identified as Yousef.

20 By the way, you saw where that picture came from.  
21 That picture came of off a Manitoba driver's license record  
22 that we put into evidence. So you know that that's Ferid Imam  
23 because you saw that driver's license record and you heard  
24 Youcef Soufi say, yes, that's the guy I came here from the  
25 University of Manitoba with, and that's the guy I went on a

1 Hajj trip, that's Ferid Imam.

2 Ahmedzay testifying about Yousef.

3 "QUESTION: Did he tell you anything about  
4 his experiences?

5 "ANSWER: Yes.

6 "QUESTION: What did he tell you?

7 "ANSWER: He said he was there for about a  
8 year."

9 Remember, Ahmedzay told you that he travels over to  
10 the FATA, the Federally Administered Tribal Area. That's the  
11 name for this part of Pakistan, Waziristan.

12 Ahmedzay told you that he traveled over in  
13 August 2008 and that he took his military weapon training with  
14 Yousef in September of 2008. So Yousef had been there  
15 approximately a year at that point. That puts him there, puts  
16 him arriving there around September 2007, which is consistent  
17 with him traveling to Pakistan in March 2007 and trying  
18 somehow to hook up with al-Qaeda. Because that might not  
19 have happened right away, and he might not have become a  
20 military weapon trainer right away. But we know that the  
21 length of time that he's been there is consistent with what we  
22 know about Ferid Imam. Ahmedzay testified:

23 "QUESTION: What else did Yousef tell you  
24 about his experiences and what he wanted to do?

25 "ANSWER: Soufi said he wanted to go into

1 Afghanistan and fight.

2 "QUESTION: Did he say anything about where in  
3 Afghanistan he wanted to go?

4 "ANSWER: He wanted to go -- he preferred being --  
5 going to the south of Afghanistan and Kandahar or Helmand  
6 province, and not the mountains to the northeast."

7 And Ahmedzay went on to testify that the reason  
8 that Ferid Imam said that is because he didn't think he was  
9 physically able to handle the mountains. And that's not  
10 consistent with somebody who is not from that region, who is  
11 not used to the mountain area, who's a Canadian citizen, who  
12 was born in Ethiopia, which you know from his visa application  
13 as well.

14 Now, Ahmedzay also testified that Yousef spoke  
15 fluent English, like someone from New York. That's why he  
16 thought he might be from the United States. And that, of  
17 course, is consistent with Ferid Imam attending an  
18 English-speaking university. And as Soufi told you, being  
19 fluent in English.

20 Now, what Ahmedzay told you about Farid Imam also  
21 corroborated about what Sufwan Murad told you about Al Farekh.  
22 And here's how. Remember, the person who's bringing Ahmedzay  
23 and Zazi and Medunjanin to the training camp so that they can  
24 be trained by Yousef. Abdul Hafeez, this guy right here,  
25 Abdul Hafeez. Ahmedzay told you that Abdul Hafeez was one of

1 the leaders, one of the people who tried to encourage him and  
2 Zazi and Medunjanin to conduct a suicide mission in the United  
3 States instead of going off to Afghanistan to murder  
4 themselves.

5 And Abdul Hafeez is the same person who Sufwan Murad  
6 told you Muhanad Al Farekh is in the area. Abdallah  
7 al-Shami was working with Sufwan Murad in hiding Muhanad  
8 delivered al-Qaeda to an operation stipend to Abdul Hafeez.  
9 And then after Abdul Hafeez died, they continued to deliver  
10 that stipend to Abdallah al-Shami. And Sufwan Murad  
11 identified the photograph of Muhanad Al Farekh as Abdallah  
12 al-Shami.

13 So that tells you that both Ferid Imam and Muhanad  
14 Al Farekh were working with Abdul Hafeez. And that's how you  
15 know that Ahmedzay and Murad corroborate with each other,  
16 support each other's testimony, even though Murad doesn't know  
17 who Ferid Imam is, and even though Ahmedzay doesn't know who  
18 Muhanad Al Farekh is.

19 Now, this tells you that Ferid Imam is successful in  
20 joining al-Qaeda. You also know that Maiwand Yar was  
21 successful in joining al-Qaeda as well. And you know that  
22 because of the 2009 letter that Maiwand Yar sends home to his  
23 family in February of 2009, because in that letter he tells  
24 his family why he left. Remember Ahmad Yar told you that  
25 Murad had no contact with his family between the time he left

1 that voice mail message on March 12th 2007, and the time that  
2 he received this letter in the first week of February of 2009.

3 And in this letter Maiwand Yar says, I know it has  
4 been a long time since my contact with you guys but I didn't  
5 tell you in detail why I left and where was going to, but I  
6 swear by Allah that I didn't forget you in my dua, even though  
7 it hurts me so much that you believe that I left because I was  
8 brainwashed.

9 And remember Ahmad Yar told you that after his  
10 brother left, he emailed his brother and he said words to the  
11 effect, "I think you're being brainwashed." And you know that  
12 Maiwand Yar received those emails because he specifically  
13 references that message, but he never wrote back again. This  
14 is an example where you see that Al Farekh, and Imam, and  
15 Yar have access to their emails because they're receiving  
16 emails.

17 Maiwand Yar is receiving his brother's emails. You  
18 know that Maiwand Yar is also receiving emails because he  
19 gives them an email account to contact him at. And Farekh is  
20 receiving emails because he's reaching out his family, so you  
21 know they have access to emails. It's not that they don't  
22 have access. That's not the reason why they're not using  
23 their personal accounts. They do have access. They're just  
24 not using their personal accounts because they're hiding where  
25 they are.

1           Now, Yar in this letter continues to tell his family  
2 why he left. He says starting in the middle on the first  
3 line, in our time it is an obligation on every Muslim to fight  
4 those that have entered the Muslim lands, for example  
5 Afghanistan and Pakistan and fights those who have apostated  
6 from this deen for example all the Muslim government.

7           And you heard Ahmad Yar explain that when Maiwand  
8 said apostated from this deen that what he meant was, people  
9 who are not followers of Islam, people who are not following  
10 the mujahedeen.

11           Now this is lot like the message that Evan Kohlmann  
12 told you yesterday that Anwar al-Awlaki delivers in his  
13 lectures. This obligation of jihad is like a fard prayer on  
14 fasting Ramadan, meaning it's compulsory, it's mandatory on  
15 all, and there is no permission needed from anyone to go for  
16 jihad. Remember Evan Kohlmann told you that that is a line  
17 taken straight out of Anwar al-Awlaki's book on jihad.

18           This is the reason why I didn't ask for permission  
19 and didn't tell you because I knew the answer I was going to  
20 get. This is Maiwand Yar telling his family why he left in  
21 2007. And he says, referring to al-Qaeda and Taliban, their  
22 only purpose is to apply the rulings of Allah, but people call  
23 them terrorists and other things. You hear about them on TV,  
24 but this is what you hear on the media around you, but I swear  
25 by Allah that these are the best people in the world. Talking

1 about al-Qaeda and the Taliban, who have left their homes as  
2 doctors, engineers, et cetera, all for the sake of Allah. And  
3 I tell you this from experience because I have spent time with  
4 them.

5 So think about this. This is Maiwand Yar in 2009  
6 telling his family the reason why he left in 2007. And when  
7 he left in 2007, when he left with Farid Imam and he left with  
8 Muhanad Al Farekh, you can infer they left because they  
9 shared the same ideology because they wanted the same things,  
10 and that's why they traveled to Pakistan together, and that's  
11 why they traveled to Peshawar together, and that's why they  
12 went to the FATA together. This is reflective of Muhanad  
13 Al Farekh's mindset when he left Canada in 2007 to travel to  
14 Pakistan.

15 A few more items. This is a reference to that no  
16 kafir should be allowed in the Arabian Peninsula. But they  
17 allowed them to come to the Arabian Peninsula. Kafir are  
18 non-Muslims, talking about the fact that other governments,  
19 Muslim governments, have allowed the United States to come to  
20 the Arabian Peninsula. Remember Dr. Vidino told you that the  
21 number one reason that al-Qaeda launched a plan to attack  
22 the United States starting in 1996 was because the United  
23 States troops were present in the Arabian Peninsula. Yar had  
24 adopted, he internalized, he embraced this ideology and these  
25 founding facts.

1           And this is what tells you that he has been  
2 radicalized by jihadi conflict and that his purpose is to  
3 attack America. And he says and in our time he defeats the  
4 Americans, the super powers of the world, in Iraq and  
5 Afghanistan.

6           I'm going to skip through a bunch of the other items  
7 in the letter. But I just wanted to point out one thing on  
8 the last page of the letter. He says it's a document and  
9 don't tell the Government about this. Remember the last page  
10 of this letter he's talking about having his family come to  
11 Pakistan to spend time with him in Pakistan. He says, If you  
12 do come, don't tell the government. Wallahi, I swear to God  
13 that this is right path I have chosen and the description of  
14 this is a lot in the Qu'ran and hadiths, and this is the place  
15 where I hope to get my shahada inshallah. And you heard Ahmad  
16 Yar translate that phrase for you, and he says it means, This  
17 is the place where I hope to die in jihad, God willing.

18           And you heard that after Ahmad Yar's family received  
19 this letter, they contacted Maiwand and had a phone call with  
20 him, and on that phone call they tell him, we love you, we  
21 miss you, we want to see, and then they talk about the  
22 possibility of meeting in Pakistan.

23           (Continued on next page.)  
24  
25

1 MR. PRAVDA: And they call back. Ahmed calls back a  
2 little bit later, and on the other end of the line, the person  
3 who answers the phone says: This is Maiwand's friend, your  
4 brother is no longer in this world, your brother has died.

5 And you saw Ahmed Yar, at the request of defense  
6 counsel, write down in Pashto the exact words that he  
7 remembers hearing on that phone call. And this we got from  
8 Government's Exhibit 6 and it says exactly what Ahmed Yar told  
9 you. Your brother had died, he is no longer in this world.

10 Now, Muhanad Al Farekh also. And Muhanad Al Farekh,  
11 and from everything that you have heard in this courtroom, was  
12 more successful in achieving the goal of carrying out -- I'm  
13 sorry -- the goal of killing Americans than either Imam or  
14 Maiwand Yar. And that's because he built the bomb that was  
15 used in an attack on an American base in Afghanistan, Forward  
16 Operating Base Chapman.

17 Now, you heard what happened from Commander Barrett.  
18 This is a photograph of Forward Operating Base Chapman. You  
19 see the American flag flying above that base. And you heard  
20 from Commander Barrett that Forward Operating Base Chapman is  
21 a known U.S. base in Afghanistan. It's not a secret facility.  
22 It's been a U.S. base since the U.S. invaded Afghanistan in  
23 2001 or 2002.

24 And Commander Barrett told you that that flag was  
25 flying over that base, the American flag, was flying over that

1 base when he was there in January 2009 when the truck bomb  
2 that Muhanad Al Farekh built was used to attack that base.

3 Now, what happened at the base is beyond dispute,  
4 and Commander Barrett described it very simply. A  
5 pickup-truck-sized vehicle had come into the vicinity of the  
6 north gate and exploded, detonated. And the second truck was  
7 to come in behind and exploit the chaos and now the  
8 nonexistence of the gate. Exploit that chaos that exists  
9 after the first bomb, and bust through what remained of  
10 anything that would hold him back from entering the base and  
11 then go in with a much larger vehicle bomb. And now -- and  
12 that's a typo -- it should be w-r-e-a-k, wreak havoc. A  
13 really substantial amount of damage because you could get past  
14 security that way.

15 When that bomb went off, Commander Barrett described  
16 it to you. Remember he saw it from FOB Salerno which is about  
17 five to ten kilometers away. He looked and he could see off  
18 in the distance some miles, several miles, but very far that  
19 mushroom cloud rising in the air.

20 And you heard yesterday from Mark Ferrell, who was  
21 on the watch tower at the west gate of FOB Chapman when that  
22 bomb went off. And he told you that he was pushed back by the  
23 force of the explosion; that he saw a large fire ball. That  
24 debris and metal shards were flying at him. And he heard  
25 gunshots and he said he saw Afghan troops shooting. And we

1 now know, I think, that what they were doing was they were  
2 shooting the driver of the second VBIED, the second vehicle  
3 borne IED because the first driver was killed in the  
4 detonation when the first truck blew up. But the second  
5 truck, remember, got caught in the crater that was caused by  
6 the first explosion of the first truck and the driver got out  
7 and ran away and was shot by Afghan troops.

8 But that first truck bomb caused some pretty  
9 significant injuries. You heard Mark Ferrell testify that he  
10 continues to suffer even today from tinnitus, or ringing in  
11 his ears, as a result of that explosion. You heard from a  
12 doctor who was providing medical care at the clinic at FOB  
13 Chapman on January 19, 2009; that there was a pregnant woman  
14 who had an 18-inch piece of shrapnel half in and half out of  
15 her back, and she required surgery. You heard her tell that  
16 you her children also suffered shrapnel wounds.

17 You heard the doctor tell that you an Afghan soldier  
18 got shrapnel in his eyes and lost his vision, has blurry  
19 vision, as a result. And you heard him tell you that in total  
20 seven to ten people were injured in that attack, and they were  
21 taken to FOB Salerno for medical care and then that Afghan  
22 soldier who got shrapnel in his eyes was taken to Bagram so  
23 that he could see a specialist.

24 And the person who is responsible for those injuries  
25 is sitting in this courtroom today, Muhanad Al Farekh, and you

1 know that because that second bomb, that second truck that you  
2 see in this picture that didn't detonate. That second truck  
3 was picked apart by a forensic team and Muhanad Al Farekh's  
4 fingerprints were on the bomb in that truck.

5 Now, remember what you heard. You heard an  
6 Explosive Ordnance Disposal team came in, that was Daniel  
7 Camden and rendered that truck safe by detonating a water  
8 charge that blew out the circuitry so that the explosive  
9 couldn't ignite.

10 And then a forensic team called CEXY, the Combined  
11 Explosive Exploitation Cell. That was Arlene Breitbard, and  
12 she came and she took apart with Daniel Camden all the  
13 forensics, and that's what led to the fingerprints being found  
14 on the bomb.

15 I will get to that in a second, but let me talk for  
16 a second about how powerful that second truck would have been.  
17 How damaging it would have been had that second truck  
18 detonated.

19 This is a map, an overhead map, of FOB Chapman, and  
20 you can see in red in the upper-left corner the location of  
21 the second truck, the VBIED. And right next to it in blue is  
22 the medical clinic, the clinic where that pregnant woman was  
23 treated at. And the large blue area below, is the PRT living  
24 quarters, offices, and dining facilities. Remember the PRT is  
25 the Provincial Reconstruction Team that Commander Barrett had

1 headed up and was responsible for the humanitarian mission  
2 that the folks at Chapman were engaged in.

3 And Pete Licata, the explosive expert, testified  
4 that had that second truck detonated -- and keep in mind his  
5 testimony was very limited. Remember there was 7,500 pounds  
6 of explosive in that truck, but Pete Licata told that you  
7 because the explosive were mixed with so many different  
8 things -- TNT, PETN, propane, and bulk explosive powder that  
9 he couldn't tell you how all of those explosives would work  
10 together with each other.

11 And so, what he did was he counted only the TNT that  
12 was contained in that truck. 300 pounds of TNT. And he did a  
13 calculation of what the damage would be if that 300 pounds of  
14 TNT had exploded and he told you that the effects would have  
15 been catastrophic. The range of damage would have been  
16 3,300 feet. And you can see in this map, again, the overhead  
17 image of Forward Operating Base Chapman that it's only  
18 3,000 feet from where that truck was to the outer edge on the  
19 other side of the airfield, well beyond where the PRT's living  
20 quarters and dining halls were. So we know that had that  
21 second truck exploded people would have been killed.

22 Now, let me talk about the fingerprints. 18  
23 fingerprints. You heard from a fingerprint expert who looked  
24 at the latent images and compared them to the known prints of  
25 the defendant, Muhanad Al Farekh. And she explained to you

1 how she was able to go through and compare a latent print to a  
2 normal print to determine if they are a match. She looked at  
3 the patterns like the whorl. She looked at the core. She  
4 looked at the delta. She looked at all of the characteristics  
5 that was touched by the skin.

6 She goes through those characteristics ridge by  
7 ridge, and she identifies is that a continuing ridge, is it a  
8 dividing ridge, is it an ending ridge, is it a dot? And she  
9 looked at all of those things. And she looked at the  
10 orientation of all those different points to each other.

11 And here, where you see a comparison between latent  
12 print 59 which was lifted off of that second VBIED and the  
13 known print belonging to the left index finger of Muhanad  
14 Al Farekh. And she pointed out in this chart ten points in  
15 common. But remember she told you these ten points are just  
16 meant to be illustrative, there were many more points in  
17 common than just these ten. And she concluded that these  
18 prints were a match. And she did that for all the prints that  
19 came back from that second bomb.

20 Remember Craig Coppock photographed or sent for  
21 photography 102 latent images that he identified off the  
22 packing tape on that bomb. And 27 of those were deemed by the  
23 FBI to be prints of value, meaning, that there was enough  
24 information in there for them to compare those latent prints  
25 to the known prints belonging to Farekh. And of those 27, 18

1 of them were a match to the defendant.

2 And you can see going through the fingerprints.

3 This is latent image three, this is a match for Muhanad

4 Al Farekh's right index finger. Latent image seven, this is a

5 match to Muhanad Al Farekh's left middle finger. Latent image

6 eight, this is a match for Muhanad Al Farekh's right index

7 finger. Latent image nine, this is a match to Muhanad

8 Al Farekh's right index finger. Latent image 12, this is a

9 match to Muhanad Al Farekh's right index finger. Latent image

10 14, this was a match to Muhanad Al Farekh's left thumb.

11 Latent image 19, this was a match to Muhanad Al Farekh's left

12 index finger. I'm sorry, right index finger. Latent image

13 22, this was an image to Muhanad Al Farekh's left thumb.

14 Latent image 23, this was a match to Muhanad Al Farekh's right

15 thumb. Latent image 27, this was a match to Muhanad

16 Al Farekh's right index finger. Latent image 30, this was a

17 match to Muhanad Al Farekh's right index finger. Latent image

18 31, this was a match to Muhanad Al Farekh's right thumb.

19 Latent image 35, this was a match to Muhanad Al Farekh's right

20 index finger. Latent image 53, this was a match to Muhanad

21 Al Farekh's left index finger. Latent image 54 this was a

22 match to Muhanad Al Farekh's left middle finger. Latent image

23 59, this was a match to Muhanad Al Farekh's left index finger.

24 Latent image 63, this was a match to Muhanad Al Farekh's left

25 thumb. And latent image 64, this was a match to Muhanad

1 Al Farekh's left index finger. 18 matches. These matches  
2 were verified, you heard, by a second FBI fingerprint examiner  
3 who did his own evaluation and he also confirmed that they  
4 were matches.

5 We have a chart here, ladies and gentlemen. This is  
6 Government Exhibit 325 which depicts the known fingerprints of  
7 Muhanad Al Farekh and you know that because  
8 Special Agent Brian Gander, who took these prints from Farekh,  
9 came here in this courtroom and identified the defendant as  
10 the man whose prints they belonged to, and you remember that  
11 he had the defendant sign on this card to reflect that these  
12 were his prints.

13 And here, you have all the 18 prints. Of the 18  
14 latent images that were taken off the packing tape on that  
15 bomb, on that second VBIED, and all these are a match to  
16 Farekh. These two to his left finger. These three to his  
17 left index finger. These three to his left thumb. These two  
18 to his right thumb. And these eight to his right index  
19 finger. These five fingers, ladies and gentlemen.

20 And think about what Kendra Sibley told you about  
21 packing tape. When someone unrolls packing tape, and they use  
22 their fingers to unroll packing tape, you don't expect to see  
23 the pinky or the ring finger on that packing tape because you  
24 expect to see the dominant fingers that you're going to unroll  
25 that tape and you're going to rip that tape with. That's why

1 those fingers are found on that packing tape.

2 And remember the fingers, the fingerprints, these  
3 latent prints didn't just come off the outside of that packing  
4 tape. Defense counsel can't get up here and tell that you  
5 Muhanad Al Farekh handled that bomb not knowing what he was  
6 doing. No, it came off the adhesive side, the sticky side, of  
7 that packing tape.

8 So you know that Muhanad Al Farekh actually wrapped  
9 the packing tape around that bomb, and you remember what was  
10 inside the packing tape. The packing tape was wrapped around  
11 plastic bags containing an explosive called PETN. And the  
12 PETN was in plastic bags to keep it dry because if it had  
13 gotten wet, that would have damaged its effectiveness. And  
14 each of those plastic bags is covered in that packing tape.  
15 And you saw the summary chart that showed you the matches that  
16 I just went through between the latent images and Farekh's  
17 fingerprints.

18 Now, packing tape is something that is actually  
19 pretty significant in the world of pulling prints off bombs.  
20 And the reason is that, by the way, everybody that came in  
21 here said that. Arlene Breitbard said that, Kendra Sibley  
22 said that, and Craig Coppock said that.

23 What is the significance of packing tape, generally?  
24 In this particular instance, the tape overlaps itself and it  
25 becomes essentially a biometric time capsule. It's a

1 biometric time capsule because what that sticky tape does is  
2 it pulls the oils and the moisture off of your fingers and  
3 they stick to the adhesive side of the packing tape and it  
4 preserves it.

5 That's what Craig Coppock means when he says it's a  
6 biometric time capsule. And he went through the process of  
7 superglue fuming and crystal violet to pull out the latent  
8 fingerprints to pull out the oils and moisture so he could  
9 send them for photography in the hopes that one day there  
10 might be somebody to compare it to.

11 Now, fingerprints aren't the only evidence that was  
12 recovered from that bomb. Remember there was also a hair, and  
13 I circled No. 5 on this chart. No. 5, hair from UBE here from  
14 unknown bulk explosive. And you heard testimony about that  
15 hair.

16 That hair is an eight-and-a-half-inch hair, light  
17 brown in color, artificially treated orange from a Caucasian  
18 individual. And you heard that a mitochondrial DNA analysis  
19 were done of that hair and the mitochondrial DNA sequence was  
20 a match to Muhanad Al Farekh.

21 Now, I just want to be clear on what the limitations  
22 are of mitochondrial DNA. Mitochondrial is not the same as  
23 nuclear DNA. Nuclear DNA is unique. You can take somebody's  
24 nuclear DNA and match it to a specific person just like  
25 fingerprints. Fingerprints are unique not only from person to

1 person, but also from finger to finger.

2 But mitochondrial DNA, more than one person could  
3 have a particular mitochondrial DNA sequence. So you can't  
4 rely on mitochondrial DNA and say, That means he did it. But  
5 the reason why the mitochondrial DNA is useful is because it  
6 narrows the potential pool of people that that hair could have  
7 come from. And when you look at that, together with the  
8 characteristics of the hair that I just mentioned, it supports  
9 the notion that Muhanad Al Farekh was the source of that hair.

10 Remember, Dr. Fisher testified about the  
11 mitochondrial DNA and she explained that she would expect to  
12 see this DNA sequence a limited number of times depending on  
13 the population groups that she's looking at. She mentioned  
14 two databases, a United States database and a European  
15 database. Where the European database pulls from all over the  
16 world.

17 In looking at the United States database for the  
18 Caucasian population, she told you that she would expect to  
19 see this mitochondrial DNA sequence in one out of every  
20 thousand people. The European database is sorted by country,  
21 not every country is represented, but the countries that are  
22 these sequences are also rare. For example, from Morocco, she  
23 would expect to see this sequence in 20 out of a thousand  
24 people. Egypt seven or eight out of a thousand people. The  
25 UAE, 12 out of a thousand people. Even the country with the

1 highest frequency of this DNA sequence, which is Haiti, you  
2 would expect to see the sequence in only 47 out of a thousand  
3 people.

4 So you take the fact the sequence is a match to  
5 Farekh. You take the fact that it's an eight-and-a-half-inch  
6 hair and let me talk about that for a second.

7 The photo on the left is a photo of Muhanad  
8 Al Farekh that is taken from the Minnesota driver's license  
9 that you saw that he got on September 18, 2006. And you can  
10 see that long hair that's well beyond eight and a half inches.  
11 And you remember that after the Hajj trip that I mentioned  
12 earlier he shaved his head because that's one of the last  
13 rituals that you do on your Hajj trip.

14 So when he travels to Pakistan, and he enters  
15 Pakistan, and this is a photograph from his entrance into the  
16 Karachi International Airport, he's got short hair. That's  
17 March 8, 2007. But remember in Sufwan Murad describes  
18 Abdallah al-Shami who you know is Muhanad Al Farekh and he  
19 talks about his hair, he describes him as having long hair.  
20 And when you watched the deposition video and he was asked for  
21 his description of Abdallah Al-Shami, I hope you notice that  
22 he took his hands and gestured toward his shoulders meaning  
23 shoulder length hair.

24 So you know that Muhanad Al Farekh, after he arrived  
25 in Pakistan, started growing out his hair because he looked

1 like the sketch that Sufwan Murad composed with the police  
2 artist after he was in his home country in 2010. And that's  
3 what he said, Abdallah al-Shami, Muhanad Al Farekh, looked  
4 like at that time. So eight-and-a-half-inch hair perfectly  
5 consistent with the defendant. Light brown color, also  
6 perfectly consistent with the defendant. You can look for  
7 yourself. Artificially treated orange.

8 Remember what you heard from Youcef Soufi. Remember  
9 he told you that the Prophet Muhammad used a dye called henna  
10 which give you a red or orange tinge to the hair, that that is  
11 common among people in Pakistan or Afghanistan or the Indian  
12 subcontinent.

13 So think about this. All these characteristics are  
14 consistent with Muhanad Al Farekh. The length of the hair,  
15 the color of the hair, the artificial treatment because he is  
16 someone who is going to follow, and he does follow, the  
17 teachings of the Prophet Muhammad. A Caucasian with hair with  
18 the same mitochondrial DNA sequence that he has.

19 Now, let me just quickly trace the path of these  
20 fingerprints and the hair from the bomb to the match to  
21 Farekh. And I do this because defense counsel suggests during  
22 cross-examination that somehow the evidence had been tainted  
23 between the time that the bomb -- between the time that truck  
24 did not detonate on January 19, 2009, and the time that it got  
25 to the FBI and I just want to go through that.

1           These were the metal cruise boxes. Remember you  
2 have the top of the metal box right here. There were 14 of  
3 those metal boxes inside that truck. And inside each box  
4 wrapped in plastic was bulk explosive powder inside the  
5 plastic. And those boxes had what we would call spider bombs  
6 in them. The spider comes are the circles, the tan circles,  
7 covered by the packing tape. That's the packing tape we were  
8 talking about here that was wrapped around the package.

9           And those black things that are coming out of it,  
10 that's the detonator cord. All of that was tied together. So  
11 when the driver in that track ignited that bomb, it was  
12 threaded through the detonator cord, the donor charges would  
13 have been exploded, and then all of the other explosives that  
14 was in that truck would have blown up as well including the  
15 powder and including the, for example, on the bottom right  
16 picture, you can see the blue circling the outline of a  
17 propane tank.

18           And you heard that the attacks happened on January  
19 19th, and this bomb was rendered safe on January 19th, but  
20 they didn't start taking the evidence back to Forward  
21 Operating Base Salerno until January 20th because the sun had  
22 set and they weren't going to take that bomb apart overnight.

23           Defense counsel suggested that the evidence might  
24 have been tainted because there was somehow no logbook of who  
25 came and went that night. I submit to you that's absurd.

1 That truck, you heard, was guarded by the Afghan National  
2 Army. They were Coalition forces, those are U.S. allies, and  
3 that was under the watchful eye of U.S. personnel at  
4 FOB Chapman standing on watch towers that night.

5 And is it really plausible to think that somebody,  
6 in the middle of the night, is going to dig through a truck  
7 with 7,500 pounds of explosives to somehow taint the evidence  
8 that points to the defendant. That's absurd.

9 Now, Daniel Camden and Arlene Breitbard very  
10 carefully took this bomb apart at FOB Chapman and separated  
11 all the components to be very careful watch out for  
12 secondaries or booby traps that might have detonated that bomb  
13 even though the circuits had been fried with the water charge.

14 And they brought the components of the bomb back to  
15 FOB Salerno where they were kept in something called the ASP,  
16 the Ammo Supply Point which was described as a secured  
17 facility within a secured facility within FOB Salerno. And  
18 there was limited access to that facility and they very  
19 carefully separated out each of the components and documented  
20 that with photographs. And you see pictures here of metal  
21 ordinance and propane tanks and TNT and the mortars and the  
22 like. And here, the picture, Government Exhibit 629 of these  
23 donor charges or the spider bombs, attached to the PETN and  
24 wrapped in the packing tape. And these are pictures, all of  
25 that with the explosive still inside of it. And Arlene

1 Breitbard told you that as she cut those open and she dumped  
2 out the explosive because, obviously, you're not going to send  
3 that with the explosive in it for further analysis.

4 And Government Exhibits 641 and 642 are pictures of  
5 the packing tape after Arlene Breitbard had cut it off and  
6 dumped out the explosive. And she told you that she put that  
7 packing tape in an evidence bag and she marked it with CEXY  
8 Case No. 090083 and she sent it off to Bagram.

9 And at Bagram, Craig Coppock told you that he spent  
10 days unravelling that packing tape. It wasn't an easy  
11 project. Thinking about packing tape. You start using it, it  
12 sticks together, you can't unstick it. Craig Coppock spent  
13 days painstakingly unravelling that packing tape and going  
14 through the process they talked about, the superglue fuming  
15 and the crystal violet that leaves that purple color on the  
16 packing tape.

17 And these are the nine Government Exhibits that  
18 contained the photographs of the 102 latent images that were  
19 recovered from that bomb. The 102 latent images of which 18  
20 were a match to Muhanad Al Farekh.

21 I submit to you, ladies and gentlemen, that they did  
22 amazing work. They did amazing work taking apart that bomb at  
23 great risk to themselves and their safety. Remember they  
24 couldn't use the robot that's normally used, a PackBot to take  
25 apart an IED so that people can stay a safe distance away.

1 And they couldn't use the PackBot that day because of how the  
2 truck was buried in the crater.

3           So Daniel Camden himself went on that truck and  
4 placed that water charge with a live bomb on that truck. At  
5 great risk to themselves, they went in there and they did what  
6 I submit to you is a miraculous job documenting each and every  
7 component of that bomb. It doesn't matter whether Muhanad  
8 Al Farekh's fingerprints came off of donor charge one or donor  
9 charge three or donor charge five or donor charge 14 because  
10 you know, at the end of the day, that those fingerprints came  
11 off the packing tape, the donor wrapped around the donor  
12 charges, and that Muhanad Al Farekh's fingerprints were on  
13 that bomb.

14           What else do we know that Muhanad Al Farekh was  
15 doing in 2009?

16           You've heard testimony from Sufwan Murad. And just  
17 to remind you Sufwan Murad, he is the al-Qaeda member you saw  
18 who testified by videotaped deposition. He told you he was a  
19 member of al-Qaeda from 2007 to 2010; that in 2007, he had  
20 joined al-Qaeda and was going to Waziristan and participating  
21 in al-Qaeda's military weapons training. And that he guarded,  
22 among other people, Mustafa Abdul al-Yazid who was the  
23 commander of al-Qaeda in Afghanistan at that time.

24           And he had a succession of other jobs in al-Qaeda  
25 including watching guest houses and then culminating as the

1 Deputy in Charge of the Family Affairs Wing where he worked  
2 for Hazi Muhammad who was in charge of the Family Affairs  
3 Wing. And he told you that one his jobs in connection with  
4 the Family Affairs Wing was to distribute monthly stipends  
5 given by al-Qaeda to the fighters and their families by giving  
6 them to the heads of the different brigades.

7 And he identified Abdul Hafeez as the head of  
8 al-Qaeda's external operations who received the monthly  
9 stipend from him until Abdul Hafeez's death.

10 Now, when he identified photographs of Abdallah  
11 al-Shami, and we'll come to that in a little more detail, he  
12 wrote some details on the back of that photograph. And one of  
13 the things that he wrote was Abdul Hafeez was Saleh al-Somali.  
14 I put that name up here.

15 And one o the things that you heard Evan Kohlmann  
16 testify and may have escaped your attention because it wasn't  
17 a significant detail. Evan Kohlmann testified that Mustafa  
18 Abdul Al Hafeez put out a communique in January of 2010 where  
19 he said a certain attack in Khost Province against American  
20 forces in December of 2009 was to avenge the recent death of  
21 commander Saleh al-Somali.

22 You also saw Murad testify that Saleh al-Somali was  
23 killed in an air-raid. He didn't know when. He said  
24 approximately. He was very adamant about the approximately.  
25 He said, approximately, and I mean approximately in 2009. And

1 that tells you that he's right about Saleh al-Somali Abdul  
2 Hafeez being killed. And that's when Abdallah al-Shami,  
3 Muhanad Al Farekh, takes over for Abdul Hafeez as the person  
4 who receives the stipend for al-Qaeda's external operations  
5 brigade.

6 (Continued on the next page.)

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1 MR. PRAVDA: Now, one of the things that I want to  
2 take a few minutes to go through is just to explain how you  
3 know that Sufwan Murad was telling you the truth, and you know  
4 that because many of the details that he gives you are details  
5 that are consistent and in some cases identical to details  
6 that Zarein Ahmedzay gave you about his own experiences within  
7 al Qaeda.

8 Now, Murad, you heard, is from the Middle East. He  
9 took his military weapons training in 2007. Ahmedzay, from  
10 the United States, he took his military weapons training in  
11 2008, in September. Didn't know if they ever crossed paths or  
12 that know each other, and yet they both described the same  
13 things, very similar.

14 Sufwan Murad, he described the weapons training that  
15 he received. He spent about two weeks in a guesthouse. There  
16 were ten to 12 individuals. He received training for light  
17 weapons, such as Kalashnikovs and handguns, disassembling,  
18 assembling, cleaning, maintaining how to use them and he also,  
19 received training on medium-range weapons such RPGs and DKAs.  
20 He also referred virtual training on how to use mortars and 82  
21 cannons. He talked about light weapons. He talked  
22 medium-range weapons. He talked about assembling and  
23 disassembling them.

24 "When you say virtual training, what do you mean?"

25 "I mean it was virtual training, not hands on. We

SUMMATION - PRAVDA

1454

1 did not fire them, but we trained virtually on how to use  
2 them. For example, the Kalashnikov, the handgun, and we  
3 learned what -- how many positions we can fire them and how to  
4 hold them properly. They were also in a shooting position."

5 Ahmedzay: "What training did Yusef provide? Yusef  
6 gave us the light weapons training" -- same terminology --  
7 "and heavy weapon training."

8 "What are light weapons?"

9 "Light weapons are the handguns, AK-47."

10 AK-47 is the same thing as the Kalashnikov. That's  
11 what the K stands for in AK-47.

12 "What about heavy weapons?"

13 "Heavy weapons consisted of the PK machine gun, the  
14 LPG grenade launcher."

15 Hand grenade is also another mortar type of weapon.

16 "What was the specific training that Yusef provided  
17 to you on the light and heavy weapons that you described?"

18 "Yusef, who studied the AK-47, told us the name of  
19 the weapon, both in English and Arabic, then he test us on  
20 that. He also taught us how to take it apart and put it back  
21 together, assembling and disassembling, just like Murad told  
22 you. The shooting position of the weapon."

23 "Again, just like Murad told you?"

24 "And medium size and eventually going out and  
25 practicing with the weapons."

1 Back to Murad: "And you actually fired weapons  
2 during this training?"

3 "Yes. After the last day training, you went out in  
4 the mountains and you fired all the weapons that we have just  
5 receiving trained on."

6 That's the same thing that Ahmedzay told you. After  
7 a week of training went out to the mountain and they fired the  
8 weapons that they used.

9 "Did you say that you eventually went out and  
10 practiced with the specific weapon?"

11 "Yeah. So we drove up to an open hillside where  
12 they put target marks in the ground, then you used different  
13 weapons to shoot at them."

14 Now, let's talk about Murad's identification of the  
15 defendant.

16 "During your work in family affairs with Haji  
17 Muhammad, did you meet someone named Abdul Hafeez al-Somali?"

18 "Yes, I did."

19 This is not the identification of the defendant.  
20 This is another way which you know that Murad and Ahmedzay are  
21 telling new recruits because they described Abdul Hafeez the  
22 same way.

23 "Who is Abdul Hafeez?"

24 "Abdul Hafeez al-Somali was in charge of the  
25 external operations."

1 "What did he look like, generally?"

2 Slim, skinny, talk with a dark complexion."

3 Ahmedzay: "Did you any people associated with Ahmad  
4 in Miran Shah?"

5 "Yes."

6 "Who was that?"

7 "There were two men that we met. One of them went  
8 by the name Abdul Hafeez. He was a tall black man."

9 And remember, you also heard Murad testify that  
10 Abdul Hafeez was in charge of external operations and you  
11 heard that external operations, he talked about the attacks on  
12 the west.

13 And isn't it logical that Abdul Hafeez, who is  
14 responsible for attacks on the west, would be the one who was  
15 trying to convince Zarein Ahmedzay and Najibullah Zazi and  
16 Adis Medunjanin to conduct an attack in the west, in New York?  
17 It does.

18 Now, when Sufwan Murad was asked about Abdullah  
19 al-Shami, "Please describe Abdullah al-Shami, the individual  
20 who you saw that day with Haji Muhammad? In view of that  
21 describe any details you recall about him."

22 "Long hair, long straight hair. It was not black  
23 hair. It was not black hair."

24 And I think you can infer from this testimony, by  
25 the way, that most of the people who are in that region of the

1 world have black hair, Abdullah al-Shami being in that way.

2 "Light to medium view of the skin and meaning hair  
3 and beard."

4 "Please describe his skin or complexion."

5 "Fair. White. He's whiter than me. He's lighter  
6 skin than me."

7 And remember when Sufwan Murad was in his own  
8 country in 2010, he was asked to work with a police sketch  
9 artist for what is essentially a police sketch artist and  
10 composed a sketch of Abdullah al-Shami.

11 And he composes the sketch on the left, and he tells  
12 you listen, this sketch I think is about 80 percent accurate.  
13 And then later on, he's shown a picture on the right. That's  
14 Muhanad Al Farekh. And he said, yeah. That's Abdullah  
15 al-Shami? With a hundred percent certainty.

16 And he wrote down in Arabic on the back of that  
17 photograph that he identified, and this is translated for you,  
18 and he wrote Abdullah al-Shami, in charge of external  
19 operations. He is from Syria, originally from Syria.

20 Now, remember that Murad repeatedly during the  
21 deposition described al-Shami as an American Syrian origin,  
22 meaning originally from Syria. That's family origin.

23 "I surrendered myself and he was still there,"  
24 meaning Abdullah al-Shami was still in Waziristan, still in  
25 the FATA, still a member of al Qaeda.

1           In 2010, when Sufan Murad surrendered himself, he  
2 speaks English and Pashtu, and he's between 32 and 35 years of  
3 age, and that's around 1429 Islamic calendar, about 2008. And  
4 he became in charge after the death of Abdulaziz al-Somali.

5           Now, in terms of his certainty -- this is the final  
6 question of the deposition that was asked of him, last  
7 question: "Sitting here today, what's your level of  
8 confidence that the individual in 101B" -- 101B is that photo  
9 on the right, the one that you know is the defendant, Muhanad  
10 Al Farekh.

11           :What is your level of confidence that the person is  
12 the person you knew as Abdullah al-Shami who met with Haji  
13 Muhammad in the your presence?"

14           "My confidence is one hundred percent.

15           Now, Sufwan Murad's testimony did not seem unclear,  
16 the handwriting corroborates that. It supports that, because  
17 the handwriting, as I'll tell you in a minute, is Farekh's  
18 handwriting. You can determine that for yourself. And the  
19 handwriting is on letters that are signed with the kunya,  
20 Abdullah al-Shami.

21           Now, I just want to make one comment before I go  
22 onto that. Remember, just to be clear, as Sufwan Murad  
23 testified about two different people named Abdullah al-Shami,  
24 remember he said this is the defendant is the one who works in  
25 external operation, and then the another person that I also

1 know by Abdullah al-Shami, but that person was not in external  
2 operations.

3 That person lost his foot, had his foot cut off at  
4 the heel. And that person was killed before I left and  
5 surrendered myself, meaning at that Abdullah al-Shami was  
6 killed before Murad surrendered himself in 2010, and when Evan  
7 Kohlmann testified, he was also asked about whether Abu  
8 Mustafa al-Yazid, again, the commander of al Qaeda in  
9 Afghanistan at that point, had issued any communique relating  
10 to the death of an individual named Abdullah al-Shami, and he  
11 had -- and he said Abdullah al-Shami was killed in July of  
12 2008.

13 So you know that the Abdullah al-Shami who writes  
14 these handwritten letters in 2013 is the defendant, and not  
15 this other Abdullah al-Shami. And you also know because you  
16 heard from the members of the arrest team who did the fall and  
17 transfer of custody that when they picked up Muhanad Al Farekh  
18 in Pakistan, he had both of his feet. He's not the other  
19 Abdullah al-Shami.

20 Let me also talk to you for a second about where the  
21 name Abdullah al-Shami comes from, because remember, Ahmedzay  
22 told you a pretty specific story about how Abdul Hafeez told  
23 them to conceal their identities. Remember, first, Ahmedzay,  
24 Zazi and Medunjanin came up with fake names for themselves,  
25 Omar, Mahal Mudid and Muhammad, and then when they met with

SUMMATION - PRAVDA

1460

1 Abdul Hafeez, they told him they had chosen those fake names  
2 and he said, you also needed to hide where you're from. You  
3 can't tell people that you're from the United States.

4 And so he told Ahmedzay and Zazi, you two can say  
5 that you're from Peshawar. Remember, Ahmedzay is from  
6 Afghanistan. Zazi was from Peshawar. They both poke Pashtu.  
7 It was very easy for them to pass as actually being from  
8 Peshawar. But Adis Medunjanin was different. He was light  
9 skinned. He had a light complex. He didn't speak Pashtu. He  
10 was of European decent and he wanted to say I'm from -- I'll  
11 say I'm from Bosnia. I'll say I'm from I'm Chechnya. And  
12 Abdul Hafeez tells him, no, you can't do that because there  
13 might be other fallen fighters from Chechnya, and they would  
14 quickly realize that you're not from Chechnya. So what does  
15 Abdul Hafeez tell Medunjanin to do? He tells him to say that  
16 he's from Syria. And Ahmedzay told you when he testified told  
17 you that that means that he went by Alsumi or al-Shami.

18 And so it's logical to assume that when Abdul Hafeez  
19 met Muhanad Al Farekh, also light complexion, also Caucasian,  
20 also from United States, that he wouldn't want him to say.  
21 He's from the United States, and might also project to say  
22 that he's from Syria.

23 And in his case, it's actually a fairly accurate  
24 description of Muhanad Al Farekh's origin -- because remember,  
25 his parents are from Jordan and you heard Dr. Vidino tell you

1 what al-Sham means and the Sham is a region that encompasses  
2 Syria, Lebanon, northern Israel and northern Jordan.

3           Okay. Let's talk about the handwriting. Remember,  
4 we showed you letters that were recovered from the USB drive  
5 that were given to assistant legal attache and FBI agent  
6 outside the U.S. embassy in Kabul, Afghanistan, and those  
7 letters were compared to known handwriting exemplars from the  
8 defendant. This document, Government Exhibit 732, is one of  
9 those known exemplars of the defendant's handwriting.

10           And one is the words that you see in this document  
11 is the word "permission." And the expert, Dave Watts, when he  
12 testified, he compared that word and others to words that he  
13 saw in the handwritten letters that were recovered from the  
14 USB drive.

15           This is one of those handwritten letters, Government  
16 Exhibit 712, and the word "permission" also appears in this  
17 letter. That's the word "permission." When you put them  
18 side-by-side and you look at how Abdullah al-Shami and how  
19 Muhanad Al Farekh write the word "permission," you can see  
20 that they write it in the same way.

21           And Dave Watts gave you example after example after  
22 example, comparing the handwriting on the letters that were on  
23 that USB drive to the known handwriting of the defendant, and  
24 he pointed out similar characteristics after similar  
25 characteristics.

1           Now, ultimate conclusion was not the top level of  
2 the identification. It was the second level down. These  
3 letters, the letters from the USB drive may have been written  
4 by the defendant. And he told you why. He told you why he  
5 was constrained not to reach identification. It was because  
6 he didn't have the originals of the letters that were  
7 recovered on the USB drive.

8           Now, you know why that is, because the letters were  
9 originally on a USB drive, there were no originals recovered.  
10 That's the only limitation that prevents Dave Watts from  
11 saying that this was a match.

12           But you, ladies and gentlemen, you are the triers of  
13 facts in this case. You are the ones who decide whether the  
14 evidence proved the defendant's guilt. You are the ones who  
15 decide if the handwriting on Muhanad Al Farekh's known  
16 exemplars is the same as the handwriting that you see on the  
17 letters that were recovered on the USB drive.

18           And I will tell you that it's not just the  
19 handwriting that supports the notion that this is Muhanad Al  
20 Farekh. It's also the content of the letters and the reason  
21 for that is because you heard Sufwan Murad who identified  
22 Abdullah al-Shami as Muhanad Al Farekh, tell you that al-Shami  
23 reclusive. He didn't hang out with other fighters. He didn't  
24 socialize with other fighters. He was secretive, and this is  
25 the picture that also emerges from these letters.

SUMMATION - PRAVDA

1463

1           So Government Exhibit 702, writes back and send to  
2 original al Qaeda mail. This is a clear admission by Abdullah  
3 al-Shami, by Muhanad Al Farekh, that he's a member of al Qaeda  
4 because his letters are being communicated through al Qaeda.

5           And you remember that Sufwan Murad testified that he  
6 was in charge of guesthouses, that that was one of his  
7 responsibilities within al Qaeda, that there were centers  
8 within al Qaeda where mail would be forwarded and taped over  
9 with a name on them, and taken to those centers and that was  
10 the system of distributing the mail within al Qaeda.

11           So Government Exhibit 704, Abdullah al-Shami,  
12 writes, "Letters move very slowly in Waziristan," confirming  
13 that that's his location right here in Waziristan, the area on  
14 the Afghanistan/Pakistan border, where all the terrorist  
15 training camps are.

16           Administration is in Miran Shah. Again, Miran Shah  
17 is one of the towns within Waziristan that's actually where  
18 Zarein Ahmedzay told you that he stayed at the guesthouse  
19 house, when he first met Abdul Hafeez, and Miran Shah is right  
20 here, in north Waziristan. (Indicating.)

21           Let's keep going through some of the letters.

22           Now, you may have had some question about why these  
23 letters are found on a USB drive, who is it that scanned these  
24 letters? Why don't we have the originals? These letters  
25 themselves tell you the answer.

1           It's because Abdullah al-Shami, Muhanad Al Farekh,  
2 is the one who scanned the letters. That's how we say in  
3 them. He says, "Want to send a USB," meaning a USB drive,  
4 computer drive, with the letter inside. He said, Government  
5 Exhibit 710, "I usually scan all my letters."

6           And now, you also see that this is an individual,  
7 who is obsessed with secrecy, Government Exhibit 708. "I have  
8 stopped going to the market for security reasons." Government  
9 Exhibit 715, "I haven't left my house in over six months. And  
10 I really don't feel safe to."

11           Government Exhibit 713, "There was a drone strike  
12 quite close." Remember, he is fearful that he will be killed  
13 in a drone strike, just like Evan Kohlmann told you that are  
14 fairly regular indents between 2007 and 2013 of al Qaeda  
15 external operations officers getting killed in drone strikes.

16           Government Exhibit 712, another reference to the  
17 drone program.

18           Government Exhibit 719: "I'm back in my old house,  
19 which I'm trying to keep a secret secret." Not just a secret,  
20 but a secret secret.

21           Government Exhibit 709, "I expose myself a lot and I  
22 don't feel safe going to the markets."

23           Now, one of the things that you also heard from Evan  
24 Coleman is that in the time frame after 2011, al Qaeda  
25 propaganda was talking about how there was another place to

1 engage in jihad and a was in Syria.

2 And you see messages from Muhanad Al Farekh, from  
3 Abdullah al-Shami, expressing his desire to travel to Syria.

4 "I really want to travel to Syria. Brothers that are working  
5 there, getting killed." He's referring to the people who are

6 working in Afghanistan, referring to the deaths of other

7 external operations officials and he says specifically,

8 "Listen, I know that Afghanistan is around the corner, but the

9 Taliban doesn't really need us anymore." He wants to go to

10 Syria because he wants a new place to continue to wage jihad.

11 And he gets arrested and transferred to U.S. custody

12 on April 1st, 2015, and here, you see the many different faces

13 of Muhanad Al Farekh, from 2006, to 2015, and these faces and

14 the evidence that I've just gone through tells you what

15 Muhanad Al Farekh was doing between 2007 and 2015, and it

16 tells you that he is guilty of the crimes charged.

17 Now, he's been charged with nine counts. Five of

18 those counts, I'm going to go through them very quickly. I'm

19 trying to go through them very quickly. I know you have been

20 sitting here for a long time listening to me. Thank you for

21 being so patient.

22 Five of the nine counts relate specifically to the

23 attack in January 2009 and Forward Operating Base Chapman. Of

24 those found five counts, four of them are conspiracy. A

25 conspiracy is basically just an agreement by two or more

1 people to commit an illegal act, an unlawful act.

2 I want to be clear. We're not charging four  
3 separate conspiracies. We're charging one conspiracy that  
4 violates the law in four different ways, and I'm going to go  
5 through that with you in a minute. That's Counts 1 through 5.

6 Counts 6 through 9, charge Muhanad Al Farekh with  
7 providing material support and attempting to provide material,  
8 and conspiring to provide material support to terrorists, in  
9 general, and to al Qaeda, specifically.

10 And those counts, Counts 6 through 9, span the time  
11 frame of December 2006 to October 2014. That's the entire  
12 time period. Now, the government doesn't have to prove that  
13 Al Farekh provided material support to al Qaeda during that  
14 entire time period from start to finish, only that he provided  
15 material support at some point within those dates, and that  
16 those conspiracies, those are conspiracies that he's charged  
17 with committing with Ahmad Yar and Farid Imam.

18 I'm just trying to go through the counts quickly, so  
19 that when you go back into the jury room for your  
20 deliberation, you understand what the evidence is on each of  
21 the counts.

22 Now, following that, I'm going to tell you is a  
23 legal instruction which Judge Cogan is actually going to give  
24 you at the end, once all the summations are done.

25 THE COURT: Mr. Pravda?

SUMMATION - PRAVDA

1467

1 MR. PRAVDA: If I say anything to you that is  
2 inconsistent --

3 THE COURT: Mr. Pravda?

4 MR. PRAVDA: Yes?

5 THE COURT: Unless you're going to finish in the  
6 next ten to 15 minutes, I kind of think we should take a  
7 break.

8 MR. PRAVDA: I think I can do this in about 15  
9 minutes.

10 THE COURT: Then we'll continue. Go ahead.

11 MR. PRAVDA: Should I keep going?

12 THE COURT: Keep going.

13 MR. PRAVDA: Okay.

14 All right. Well, I guess I'll shorten anything that  
15 I mean to say.

16 So as I was saying, if the judge says anything, if I  
17 say anything that's inconsistent with what Judge Cogan tells  
18 you, of course, you have to listen to what Judge Cogan tells  
19 you. I'm trying to be faithful to the instructions that I  
20 know he's going to give.

21 So I'm going to start with Count 4, conspiracy to  
22 use a weapon of mass destruction by a U.S. national. There  
23 are three elements. One is there was a conspiracy to use a  
24 weapon of mass destruction outside the United States.

25 Now, when Judge Cogan instructions you on

1 conspiracy, he's going to tell you that it just means an  
2 agreement. It doesn't have to be explicit. It doesn't have  
3 to be in writing. We don't have to prove that two people sat  
4 down at a table and worked out the agreement because most of  
5 the time, these agreements are secret and they're not -- many  
6 times, they are not explicit. They're unsaid.

7 But you can infer the existence of the agreement  
8 from the acts that these people engaged in. So I'm going to  
9 give you an example.

10 Conspiracy to use a weapon of mass destruction  
11 outside the United States, let's look at the attack in Khost  
12 in Afghanistan. You know that there were multiple people  
13 involved. You know that Farekh built the bomb. You know that  
14 that was a driver of the first truck that detonated. You know  
15 there was a driver of the second truck that did not detonate.  
16 Neither of those people were Farekh. So you know right away  
17 at least three people were involved. Even if they didn't sit  
18 down together in advance and say, let's do this. Their  
19 actions showed you that there was a conspiracy to do this.  
20 Okay? That's all a conspiracy is.

21 So, Count 4, was there a conspiracy to use weapons  
22 of mass destruction outside the United States? You know there  
23 was because you know that at least three people were involved  
24 in building a bomb that was used to attack forward Operating  
25 Base Chapman.

1           The next element, Muhanad Al Farekh knowingly and  
2 intentionally became a member of that conspiracy, and you know  
3 that. And by the way, let me step back. Weapons of mass  
4 destruction, I want to make clear that you understand what  
5 that means. Any bomb is a weapon of mass destruction. It's  
6 not going to be disagreement about that.

7           Outside the United States obviously means anywhere  
8 outside the United States. That can include Afghanistan and  
9 you know that Farekh knowingly and intentionally joined that  
10 conspiracy because of evidence that you've seen, that his  
11 fingerprints were on that bomb, that he built that bomb. And  
12 you heard the evidence that the hair that supports the fact  
13 that these fingerprints are his.

14           Al Farekh is a national of the United States. You  
15 know that's true. Remember we brought the local registrar  
16 from Houston, Texas, where Al Farekh was born, to put his  
17 birth certificate into evidence. And you may have wondered at  
18 the time why we did that, why is it necessary for us to prove  
19 that Muhanad Al Farekh was a U.S. citizen? This is why,  
20 because it is an element of this crime, conspiracy to use a  
21 weapon of mass destruction outside the United States by a U.S.  
22 national.

23           Okay. Count 3, conspiracy to use a weapon of mass  
24 destruction against U.S. nationals or property. So the  
25 difference between Count 4 and Count 3 is that Count 4,

1 Farekh -- the fact that Al Farekh is a U.S. national is the  
2 basis of the why a court like this court can exercise  
3 jurisdiction over the crime.

4 Count 3, the basis is not that Al Farekh is a U.S.  
5 nationality, but that the target of the attack was either U.S.  
6 persons or U.S. property, U.S. person while they were outside  
7 the United States or U.S. property, property own, leased or  
8 used by the United States.

9 Now, FOB Chapman, you know that's property that's  
10 owned, leased or used by the United States, because you heard  
11 that it's been a United States base since 2001 and 2002. And  
12 the U.S. nationals who are there -- remember, you heard  
13 Commander Barrett tell you that that base was staffed by  
14 ninety members of provincial reconstruction team, that they  
15 were U.S. Army, U.S. Navy, U.S. Navy Reserve, Illinois Army  
16 National Guard and also civilians, those are U.S. Nationals,  
17 who are outside the United States at the time.

18 Did Farekh knowingly and intentionally become a  
19 member of this conspiracy? Yes, he did. And you know that  
20 because you know Farekh's mindset when he left Canada to  
21 travel to Pakistan, he you know that he was following the  
22 teaching of Anwar al-Awlaki. You know that he was embracing a  
23 video with the lies, the video that qualified to kill American  
24 soldiers and you know that he shared the mindset of Farid Imam  
25 and Ahmad Yar, and they also traveled and joined al Qaeda.

1           So when Al Farekh traveled to Pakistan to join  
2 terrorists you know that one of his objectives in doing that  
3 was to attack Americans. And you know that his joined up with  
4 Abdul Hafeez because Murad tells you he was working with Abdul  
5 Hafeez and then took over for Abdul Hafeez, when Abdul Hafeez  
6 died. You know that Abdul Hafeez was one of the very senior  
7 officials in al Qaeda external operation, which is designed to  
8 attack Americans.

9           So all of these ways corroborate each other that Al  
10 Farekh knowingly and intentionally became part of a conspiracy  
11 to attack Americans and American property.

12           Remember Yar's letter from 2009, he specifically  
13 says, we're going to see the defeat of the Americans, the  
14 superpower of the world in Iraq and Afghanistan. This is  
15 Farekh acting out on that ideology that he and Imam and Yar  
16 embraced.

17           Count 2, conspiracy to murder U.S. nationals.  
18 There's a conspiracy to murder U.S. nationals and al Farekh  
19 knowingly and intentionally became a member of that  
20 conspiracy. The reason that I had just given you on Count 3  
21 are equally applicable to this count.

22           You know that they tried to murder U.S. nationals  
23 for all the reasons that I just told you. There's no  
24 practical difference between a conspiracy to use a weapon of  
25 mass destruction against U.S. nationals which is going to have

1 the effect of killing U.S. nationals, and the conspiracy to  
2 murder U.S. nationals.

3 Now, some conspirator took an action that advanced  
4 the goal of the conspiracy. The judge is going to tell you  
5 about some overt acts that the government alleged in the  
6 indictment. An overt act is simply any step that is taken to  
7 further the conspiracy. That only applies to this particular  
8 conspiracy. It doesn't apply to the other two that I've just  
9 told you about.

10 And here, you know that there were many overt acts.  
11 They don't have to be taken by Al Farekh. Could be as simple  
12 as the driver of the first VBIED driving up to FOB Chapman and  
13 detonating that truck or the second driver driving the second  
14 truck up to the base. That is an overt act taken in  
15 furtherance of the conspiracy.

16 And finally, Al Farekh engaged in the charged  
17 conspiracy outside the United States. And we know that's true  
18 because in fact he had been not in the United States during  
19 the entire time period of the conspiracy. He went to Canada,  
20 to Pakistan, to Afghanistan, possibly to this attack. So you  
21 know that it all happened outside the United States.

22 Count 5, conspiracy to bomb a government facility.  
23 Same evidence applies here. There was a conspiracy to bomb a  
24 U.S. government facility. That's Forward Operating Base  
25 Chapman. Al Farekh knowingly and intentionally became a

1 member of the conspiracy. You've heard all of that evidence  
2 that summarized it to you already.

3 And finally, that federal jurisdiction existed over  
4 the offense. Federal jurisdiction can be satisfied in a  
5 number of ways, one of which Muhanad Al Farekh is a U.S.  
6 national. You don't need anything more than that to satisfy  
7 federal jurisdiction, even though you also know and these also  
8 satisfy federal jurisdiction, that the victim or the intended  
9 victims of the act were U.S. nationals or that FOB Chapman was  
10 a government facility of the United States.

11 Count 1, use of explosives. This is actually a  
12 substantive count. This is not a conspiracy count. So we're  
13 not saying that there is an agreement. This is actual use of  
14 explosives. Al Farekh can be liable for those actions if he  
15 used the explosives, if he attempted to use the explosives, if  
16 he aided and abetted the use of the explosives.

17 You know that the explosives damaged or destroyed  
18 property by means of fire or explosives because that first  
19 bomb detonated. You know the property was owned, possessed or  
20 leased by the United States because it was a U.S. base in  
21 Afghanistan, and you know that Al Farekh acted maliciously.

22 Maliciously means without regard to the likelihood  
23 that damage would be caused or the intent to commit harm, and  
24 you know that can happen because nobody is going to drive a  
25 7,500 pound truck bomb to an American base without knowing

1 that the intent -- without knowing that harm is going to be  
2 caused by that act, by the detonation of that truck.

3 Now, you're also going to be asked in connection  
4 with this count if the use of explosives either caused or  
5 intended to cause substantial injury. And you know while you  
6 heard about the injuries that people suffered, you heard about  
7 the pregnant woman with the shrapnel in her back. You heard  
8 about the Afghani's own army soldier who lost his vision. You  
9 heard about Mark Farrell, continued to suffer from tinnitus in  
10 his ear.

11 So clearly, there's injury and a substantial risk of  
12 injury because had that second truck detonated, you know it  
13 would have endangered the entire base and the results would  
14 have been catastrophic.

15 Now, let me just do the material support counts.

16 Remember, four material support counts. This one,  
17 providing or attempting to provide material support to  
18 terrorists. These are for actions that Al Farekh talked to  
19 Imam and Yar and also for actions that he independently took  
20 at any time between the December 2006 and October of 2014.

21 One element of Al Farekh providing material support  
22 to resources including himself or other personnel, providing  
23 personal to al Qaeda, including yourself to the terrorists,  
24 including yourself is a crime.

25 Al Farekh provided himself to terrorists to provide

1 his services to terrorists .he also provided Imad and Yar to  
2 terrorists, so that they could work for terrorists, that is  
3 material support, and he did so knowingly and intending that  
4 he, Imad and Yar could be used to prepare for or carry out any  
5 of the following. You don't have to find all of them, just  
6 one of them: Killing or attempting to kill officers or  
7 employees of the United States; killing a U.S. national while  
8 the national is outside the United States or attempting or  
9 conspiring to kill a U.S. national.

10 And remember, you have gone through this evidence.  
11 Remember their mindset. Remember their reason they left  
12 Canada to travel to Pakistan was to kill Americans. And they  
13 provided themselves to terrorist.

14 When Farekh built that bomb, when Salim Imad trained  
15 people who wanted to go to Afghanistan and kill Americans, but  
16 wound up coming back here and trying to kill people on  
17 subways. That is material support.

18 Count 6, conspiring to provide material support to  
19 terrorist. Again, you have heard conspiracy just means an  
20 agreement. There was an agreement between imam and Farekh,  
21 and Yar to travel to Pakistan for the purpose of waging jihad,  
22 for the purpose of providing material support to terrorists  
23 and you know from all the evidence that you have seen that Al  
24 Farekh knowingly and intentionally became a member of that  
25 conspiracy.

1           Now, just even if you found -- if you find that this  
2 conspiracy existed, even if you thought that okay, I believe  
3 Ahmedzay when he tells you that this imam trained him to be --  
4 to learn how to use military weapons for the purpose of  
5 helping terrorists, and you find that that is in furtherance  
6 of the conspiracy, that alone is enough to find Farekh guilty  
7 on the substantive charge of providing and attempting to  
8 provide material support.

9           And that makes sense, right? Because if you have an  
10 agreement with other people that you're going to provide  
11 material support to terrorists, and then one of the people  
12 that you agreed with goes and provides that material support,  
13 and is foreseeable to you that that would happen, then you are  
14 liable for their conduct.

15           Now, while I'm talking about Ahmedzay, let me just  
16 say a quick word about him, because you have heard from him  
17 and you heard from another cooperators, Sufwan Murad, and  
18 these are people who tried to commit pretty horrible crimes.

19           Remember, Ahmedzay came back to New York City with  
20 the intent of blowing up the New York City subways that we all  
21 take every day, and a lot of people would have died if he had  
22 gone through and carried out that plan.

23           But keep in mind, he pled guilty to his crime. He  
24 is going to be sentenced by a judge, who decides what sentence  
25 he gets, based on his crime and based on the cooperation that

1 he's provided to the government.

2 I don't decide what sentence he gets. No one at the  
3 government table decides what sentence he gets. Only a  
4 federal judge is going to decide what sentence he gets. Okay?

5 These are horrifying crimes. We're not asking you  
6 to like him. These crimes, you should be horrified by the  
7 crimes that he intended to commit, but he's not before you  
8 today. You're not judging his guilt. You're not deciding his  
9 sentence. You're judging the guilt of that man, Muhanad Al  
10 Farekh.

11 And keep in mind why Zarein Ahmedzay testified at  
12 this trial. Keep in mind why Sufwan Murad was called as a  
13 witness. They were both members of al Qaeda. And who else  
14 can testify about what Muhanad Al Farekh or Salim Imad did as  
15 members of al Qaeda, but other members of al Qaeda?

16 As government prosecutors, we love to call as  
17 witnesses people who committed no crimes, have a clean  
18 criminal history, but those are not the people who have any  
19 idea what Muhanad Al Farekh and Salim Imam were up to when  
20 they were members of al Qaeda. Only somebody who is a member  
21 of al Qaeda can tell you that.

22 So the government didn't chooses Zarein Ahmedzay and  
23 Sufwan Murad to testify. The defendant and Salim Imam chose  
24 them as witnesses at this trial when they went over to  
25 Pakistan and they joined al Qaeda and they worked with them,

1 as fellow members of al Qaeda.

2 Okay. So as two counts of providing or attempting  
3 to provide material support to al Qaeda, again, the first  
4 element is the same. Al Farekh providing material support and  
5 resources including himself and others and himself, and Imad  
6 and Yar to al Qaeda. Second element, al Farekh providing  
7 material support and resources to a foreign terrorist  
8 organization, specifically, al Qaeda.

9 Remember, Ms. Cook earlier in the trial read from  
10 the pages of the Federal Register which were put into  
11 evidence, and she read you the designation by the Secretary of  
12 State that al Qaeda is a designated foreign terrorist  
13 organization. That satisfies this element.

14 Al Farekh did so knowingly and intentionally,  
15 knowingly and intentionally meaning that he knew at the time  
16 that he provided material support and resources that al Qaeda  
17 either was a designated foreign terrorist organization or  
18 engaged in terrorism or terrorist activity.

19 And you know that he knew -- you know what the whole  
20 world knows that al Qaeda was responsible for 9/11, that al  
21 Qaeda was responsible for the U.S. embassy bombing in Kenya  
22 and Tanzania. Al Qaeda is responsibility for the USS Cole  
23 attack.

24 You heard Dr. Vidino testify about all of those  
25 attacks and how well publicized they were how they were used

1 by al Qaeda in their promotional material that's recruiting.

2 And finally, there is federal jurisdiction over the  
3 offense. And again, same thing, the defendant is a national  
4 of the United States, which he is. He's a U.S. citizen, U.S.  
5 national. That provides federal jurisdiction over the  
6 offense.

7 There is also federal jurisdiction because after he  
8 was taken into custody in Pakistan, he was brought here to the  
9 United States to face charges. That's sufficient to give rise  
10 to jurisdiction here in the United States, even if he was  
11 brought here in the custody of the armed forces.

12 And finally, conspiracy to provide material support  
13 to al Qaeda. And again, same evidence that I've already  
14 outlined tells you how you know that Al Farekh provided  
15 material support to al Qaeda.

16 All right. Now, ladies and gentlemen of the jury,  
17 I'm at the end of my remarks. Judge Cogan told you at the  
18 outset that this case when you were sworn in as jurors to let  
19 common sense be your guide, subject to the instructions that  
20 he's going to give you.

21 We ask you to look at the evidence, apply your  
22 common sense. Look at all the evidence as a whole, not reach  
23 out individually, all the evidence as a whole. They support  
24 each other. They corroborate each other. They tell you why  
25 Muhanad Al Farekh is guilty of the all the crimes charged.

1           Consider his abrupt departure from Canada in 2007,  
2 the radicalization that led him to travel to Pakistan, the  
3 acts and words of his coconspirators, Salim Imad and Ahmad  
4 Yar, that told you what Al Farekh's mindset was when he left  
5 Canada for Pakistan, his fingerprints on the bomb, the  
6 supporting hair and DNA evidence, the photographic  
7 identification by Sufwan Murad. The handwriting, Al Farekh's  
8 handwriting on the letters that are signed Abdullah al-Shami.

9           And when you consider all of that evidence and you  
10 look at that as a whole, I submit that you that the only one  
11 conclusion that you can reach is that Muhanad Al Farekh joined  
12 terrorists. Muhanad Al Farekh, provided material support to  
13 terrorists. Muhanad Al Farekh tried to kill Americans. And  
14 when you consider all of that evidence, I ask you to come back  
15 here and return the only verdict that is consistent with all  
16 of that evidence: A verdict of guilty on all counts. Thank  
17 you.

18           THE COURT: Thank you, Mr. Pravda.

19           Ladies and gentlemen, I'm going to let you go in  
20 just one minute, but I need to talk to the attorneys at  
21 sidebar, to figure out what I'm doing with you. Just hang on  
22 for a moment.

23           (Sidebar.)  
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(Sidebar.)  
THE COURT: So let me let them go for lunch now.  
(Sidebar ends.)  
(Continued on the next page.)

1 (In open court.)

2 THE COURT: Okay, ladies and gentlemen. We're going  
3 to take a lunch break now. Please come back at 1:05 sharp.

4 Do not talk about the case. Stay away from any  
5 media coverage. We're almost there. One hour, 1:05. See you  
6 then.

7 MR. AL FAREKH: Your Honor. I'm Muhanad's father.  
8 I need you for a minute.

9 THE COURT: No.

10 MR. AL FAREKH: I'm 62 years old.

11 (Jury exits.)

12 THE COURT: Recess 'til 1:05.

13 MR. RUHNKE: Thank you, Your Honor.

14 (Lunch recess.)

15 (Continued on the 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: 1:05 p.m.)

3 (In open court; Jury not present.)

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

5 (Jury enters the courtroom.)

6 THE COURT: Everyone be seated. We will hear from  
7 the defense.

8 MR. MAHER: Thank you.

9 Good afternoon.

10 THE COURT: Good afternoon.

11 MR. MAHER: Muhanad Al Farekh is absolutely not  
12 guilty of every single charge in this case. Absolutely not  
13 guilty. Not only is he presumed innocent by you as a jury,  
14 under law, he is actually innocent.

15 Now, this case is not about whether a group of  
16 people attacked FOB Chapman with one vehicle that blew up, and  
17 leaving behind another unexploded truck bomb.

18 The issue is not whether Anwar al-Awlaki made  
19 controversial sermons and lectures, some that can be  
20 interpreted to exhorting people, perhaps, engaging jihad. He  
21 did.

22 The issue is not whether Muhanad, with his friends,  
23 Ferid and Maiwand, left Winnipeg, Canada and went to Pakistan.  
24 They did.

25 The issue here is whether the Government has proven

1 beyond a reasonable doubt that Muhanad Al Farekh has  
2 committed the crimes charged beyond a reasonable doubt. And  
3 let me tell you, the answer to that is a resounding no.

4 So what do we actually know what happened?

5 You just saw quite a display of sites and pictures.  
6 Let's now bring it back a bit.

7 What do we actually know after sitting here for more  
8 than two weeks listening to testimony; all right?

9 We know that in 2006, Maiwand, Muhanad and Ferid  
10 were friends in Winnipeg. They're at the University of  
11 Manitoba. They were -- they have known each other. They were  
12 involved in the MSA, the Muslim Student Association, a  
13 political mainstream student religious group, and they  
14 practiced Islam, just like other people, just like Professor  
15 Soufi, who came here and testified about that.

16 The three of them took a trip along with Mr. Soufi,  
17 Professor Soufi now, and Andell Alexander, in the December  
18 2006. They took a trip to Saudi Arabia for Hajj. One of the  
19 five pillars of Islam.

20 It was a wonderful trip. It was a  
21 spiritual-renewing trip. Nothing nefarious happened, and  
22 there's no allegation that anything nefarious happened with  
23 Muhanad as he went to Hajj in December and January of 2007.

24 So the three and the five come back from Saudi  
25 Arabia; all right? We know that on March 6th, the three of

1 them, Muhanad, Ferid and Maiwand fly to Pakistan. We know  
2 that. We've seen the records; all right? There's no debate  
3 about that.

4 What we don't have in this case is any evidence  
5 whatsoever that anyone in Muhanad's family was alarmed.  
6 Government talked about that.

7 What we don't have is any evidence that anyone in  
8 Ferid's family was alarmed.

9 What do we really know about this trip and what was  
10 going on? We know that Ahmad Yar, who came to testify, the  
11 older brother of Maiwand, was concerned. He was concerned  
12 about Maiwand going to Pakistan. And when pressed why he was  
13 concerned, he conceded he was concerned because his younger  
14 brother, who is in college, has run off to Pakistan, most  
15 likely to get involved in Dawa-e-Tabligh and he's in a country  
16 where, as a Westerner, he could be kidnapped. He could be  
17 robbed. He could be hurt.

18 Ahmad Yar, at that point, did not think that his  
19 brother, Maiwand, had any intention whatsoever of going to  
20 join jihad, going to join al-Qaeda, or anything like that.

21 So what do we know happens next? As Ahmad Yar  
22 testified, that within a couple of weeks, a few weeks, the end  
23 of March, after the young men left, Ahmad Yar, on his own,  
24 flies out to Pakistan; right? He doesn't go with police  
25 intelligence people. He goes on his own looking for his

1 brother.

2 Now, the Government asked you earlier to use common  
3 sense. So let's use common sense.

4 If the Ahmad Yar thought his brother was actually in  
5 or on the way to al-Qaeda, and in their grasp at that point,  
6 does he, on his own, going to trekking around Peshawar, trying  
7 to get his brother back?

8 But even before you get there, what did Ahmad Yar  
9 testify? He said that all he knew, at that point in time,  
10 again, we're in this timeline now on the far left; okay? It's  
11 the screen in front of you. Sorry the type is a little small.

12 Okay. We're in March of 2007. Ahmad doesn't know  
13 what his brother is doing at all at this point. He just knows  
14 he's in Pakistan. But he testified he does some research. He  
15 wants to find out what the families of the other two young men  
16 know about the situation.

17 And he testified, he said that he did internet  
18 research and he found out who Muhanad's father was. They  
19 lived in Dubai, and he testified he reached out to  
20 Mr. Al Farekh, the father of Muhanad, and after his phone call  
21 with Mr. Al Farekh, Ahmad Yar not only went to Pakistan, he  
22 went directly to the Lahore Hotel, room 316, believing that  
23 his brother was not in danger; that his brother was going to  
24 be involved in Dawa; proselytizing with Dawa-e-Tabligh. That  
25 is the mindset. That is what was going on in March 2007.

1           And so Mr. Yar told us, he testified, how when he  
2 goes to that Lahore Hotel. He talks to the manager. And the  
3 manager lets him look at the registry book. And he saw all  
4 three names were registered in the registry book. Pretty open  
5 for proto al-Qaeda operatives. But nonetheless, it's there.

6           And then Mr. Yar testified that after speaking with  
7 that hotel manager, he went to another specific location. He  
8 went to the Dawa-e-Tabligh center. Why did he go there?  
9 Because he thought that his brother was there.

10           And Mr. Yar testified how at this center in  
11 Peshawar, anyone can come volunteer. And he says that he went  
12 there looking for his brother. He was told that at this  
13 center in Peshawar, that only Pakistani nationals could join  
14 the group there.

15           If you're from outside the country, you had to go to  
16 the center in a different city called Raiwind. So Mr. Yar  
17 testified he then went to Raiwind and as we said, he went to  
18 the center and he saw how many thousands of people were coming  
19 in and out of this place. He testified anywhere from 8- to  
20 10,000 people a day were going through the doors of this  
21 organization to volunteer for Dawa; okay? A completely  
22 legitimate organization, as every Government witness, expert  
23 or not, has testified about.

24           So Mr. Yar testified that he tried to look in their  
25 logbooks to see whether Maiwand had actually signed up there

1 or not. So he testified how there were -- he was told there  
2 were two sets of books. One set of books for people who  
3 wanted to show their passport and ID. Another set of books  
4 for people who didn't want to sign in with a passport or ID.

5 Now, Mr. Yar says that he looked through the books  
6 and didn't see his name. Sure. But realistically, if 8- to  
7 10,000 people a day are coming, signing some logbooks, and you  
8 don't know what day your brother came in or out of that place,  
9 and whether he signed his own name or not, do you really think  
10 it's expected that he would see the name? Is it expected that  
11 maybe a Westerner would not want to flash a Canadian or  
12 American passport in front of people?

13 So and, again, it's not like we have the original  
14 logs here for you to look at. We have all these documents  
15 from around the world that the Government has found, but yet,  
16 we don't have the original logbooks.

17 So at that point, Ahmad Yar leaves Pakistan. And I  
18 asked him at this point, before you left Pakistan, again, end  
19 of March, beginning of April 2007, did you call back to  
20 Canada? Did you call the RCMP, the Royal Canadian Mounted  
21 Police? Did you call Canadian intelligence and say I need  
22 help? Okay. I really think my brother, and possibly his  
23 friends, are on their way to join al-Qaeda? Help me stop  
24 him.

25 Did he do that? No. He went back. He said he felt

1 no need, on cross examination, to call the authorities. And  
2 the reasonable inference why, is because he thought all was  
3 fine. He thought all was fine. And that was after having  
4 received that first letter. That we'll talk about in a little  
5 bit.

6 So, at that point, Ahmad Yar thinks that his brother  
7 and his two friends are likely free-spirited, college men, who  
8 wants to get out of school, maybe do some good in the eyes of  
9 their God, and volunteer. Maybe they just want to go to  
10 Pakistan to do something different for a while, blow off some  
11 steam. Who knows?

12 But at that point, Ahmad Yar does not feel that his  
13 brother is in mortal danger of joining jihad or al-Qaeda.  
14 Because his actions would have been very, very different.

15 So then what do we know? What do we actually know  
16 from March-April 2007, on?

17 I think one thing we probably know, okay, is that  
18 two years later, two years, okay, is when Mr. Yar gets this  
19 letter, a second letter. This is in February 2009; okay?  
20 This is at least a month or a few weeks, two weeks to a month,  
21 after what event? After the attack at FOB Chapman; right?

22 There is no reference whatsoever in that letter to  
23 an attack. There's no reference whatsoever in that second  
24 letter to working with his specific friend, Muhanad  
25 Al Farekh. There's nothing about that. Nothing.

1           The Government -- well, let me move past that for a  
2 second.

3           So after this in 2009, after this second letter and  
4 the phone call that Mr. Yar had with Maiwand, where he is then  
5 told by a stranger he is no longer, he is dead. What do we  
6 actually know about the life Muhanad Al Farekh at this  
7 point, from what the Government has brought to you?

8           We basically know nothing. It's another five and a  
9 half years. There is not one single credible witness who sees  
10 Muhanad Al Farekh at all after March 6th, 2007. Not one.  
11 Not one credible person has come before you to tell you that  
12 they saw Muhanad Al Farekh.

13           And trust me, we're going to talk about Mr. Murad in  
14 a bit.

15           So what we know next on our timeline? We know that  
16 according to the Government's indictment, the Government  
17 alleges that any alleged criminal activity end in  
18 October 2014. 2014. Okay?

19           We then know, based on a testimony of the agents who  
20 came in here just a day or two ago, maybe yesterday, that US  
21 Government authorities took custody of Mr. Al Farekh on  
22 April 1st -- April 1, 2015. The Government official on the  
23 stand said he had no information how long Mr. Al Farekh had  
24 been in Pakistani custody. No information.

25           And the Government, of course, brought you no

1 information about that. Had he no information why  
2 Mr. Al Farekh's clothes were in disheveled and potentially  
3 filthy. He was just here to tell you, as of April 1, 2015,  
4 the US Government has Mr. Al Farekh in their clutches.

5 Now, though, the US Government, based upon what I  
6 submit is speculation, fear and politics, has Muhanad locked  
7 up in the United States on these outlandish charges, but the  
8 Government has a problem. Muhanad is a US citizen and he is  
9 entitled to the full protection of the United States  
10 Constitution. And the Government now has to back up its  
11 speculation with actual evidence.

12 So now we see the mad dash starting after April 1,  
13 2015. You see the mad dash of the Government trying to  
14 backfill the gaping holes in its case with so-called forensic  
15 evidence. None of which, none of which they had when they  
16 arrested Mr. Al Farekh on April 1, 2015.

17 Before we look at the evidence even more closely, I  
18 do want to touch on some of the legal principles. And I need  
19 a quick drink of water.

20 Judge Cogan will talk to you and give you  
21 instructions, and I urge you to listen to the entire  
22 instruction. Each piece has to be listened to in connection  
23 with the whole instruction. But there are three principles  
24 that are so central to our system that they deserve  
25 discussion.

1           These principles protect us all as American  
2 citizens. They protect each and every one of us, should we  
3 ever find ourselves in Muhanad's position; an innocent man  
4 falsely accused of crimes he or she didn't commit.

5           The first of these principles is the presumption of  
6 innocence. This presumption of innocence cloaks all of us as  
7 American citizens. It protects every, every member of our  
8 community, should we ever be falsely accused with a crime.  
9 This cloak of innocence may never be removed, never, unless,  
10 until, and until, the Government has met its very high burden  
11 of proof beyond a reasonable doubt.

12           But let me tell you, this important cloak of  
13 protection that makes up the foundation of our great justice  
14 system, only works if every member, every member, of our  
15 community believes in this principle.

16           Before being sworn as jurors, each and every one of  
17 your swore your oath to follow the laws that the Court's going  
18 to give you. The presumption of innocence is part of this.  
19 And you have agreed by becoming a juror and taking your oath,  
20 that you will not remove this cloak from Mr. Al Farekh, from  
21 Muhanad, until you decide that the Government actually has  
22 proved its case beyond a reasonable doubt. So as you listen  
23 to my arguments, any rebuttal, to the Court's charge, and even  
24 when you begin deliberation, you are required under law to  
25 presume innocence.

1           The second principle I wanted to touch on is the  
2 burden of proof. And as you have figured out, it lies  
3 squarely at the table behind me, with the United States  
4 Government. We do not require any person in this country to  
5 prove her or his innocence. We don't do that. Our system  
6 insists that before the Government can take away a citizen's  
7 liberty, it must bear the entire burden of proving accusations  
8 against the person.

9           This means that if any of you have questions about  
10 what happened, don't understand, are perplexed, you can't come  
11 to me, or Mr. Ruhnke, or Mr. Al Farekh, and say why didn't you  
12 giving us these answers? It is the Government's burden to  
13 prove and to answer those questions. And their failure to do  
14 so, in and of itself, can be considered reasonable doubt  
15 sufficient to acquit.

16           The third element or principle I want to talk about  
17 is reasonable doubt.

18           How high is reasonable doubt? You're going to get  
19 the instruction from Judge Cogan, but I want read one part of  
20 this. And it's also on you screen here.

21           The instruction is going to tell you. Proof beyond  
22 a reasonable doubt must, therefore, be proof of such a  
23 convincing character, that a reasonable person would not  
24 hesitate to rely and act on it, in the most important of their  
25 own personal affairs. Not hesitate. Think about that.

1           This is not saying that you're not just willing to  
2 act on the information. It's that you don't hesitate. Think  
3 of a reasonable person in the most important significant of  
4 their personal affairs; safeguarding their life savings; the  
5 savings for their children's college; making the decision  
6 whether they or their spouse should have invasive surgery or  
7 not.

8           What is the type of quality of information that a  
9 reasonable person wants before they embark on upsetting their  
10 life savings; before allowing a surgeon to cut open their  
11 loved one? Before they hesitate to even do that, and that's  
12 after they're talking to trained doctors at some of the best  
13 hospitals in the world in this state. Do you think people  
14 hesitate? Ask for a second opinion? Even with the best, most  
15 qualified officials and professionals in the most important  
16 significant of our personal affairs?

17           That's the type of quality of evidence this is  
18 talking about. It needs to be, so that you feel that the  
19 Government has met this high of a burden. This is high. And  
20 maybe you're not comfortable with that. Maybe just think, ah,  
21 I don't know. It just seems like asking a lot.

22           Yeah, maybe it is. But that's our law. That is the  
23 law of this country. And that is what you have sworn to  
24 uphold.

25           So in one way you can think of this practically, is

1 that the question one shouldn't ask a juror, at this point is,  
2 you know, why wasn't Muhanad over there? The question instead  
3 is, well, has the Government actually proved that Muhanad was  
4 committing any of these crimes? Maybe but it's a different  
5 way of approaching it. Based on taking the presumption of  
6 innocence, and the idea of reasonable doubt, to heart.

7 So these are protections that every one of us enjoys  
8 and is protected by under our system. And you are the people  
9 charged with ensuring that these protections are provided to  
10 Mr. Al Farekh. And in one respect, your job is extremely  
11 difficult. But in another, it is very easy.

12 It's difficult because you're given the  
13 responsibility that most people will never know; to hold the  
14 entire faith of another human being in your hands and  
15 decision. This is a grave responsibility that makes your job  
16 difficult.

17 However, in another respect, it makes it easy. It's  
18 easy because are you actually not asked to figure out what  
19 happened in this case. Let me say that one more time. You  
20 are not being asked to figure out what happened in this case.

21 You are not being asked to determine whether  
22 Mr. Al Farekh is innocent. You're only being asked to decide  
23 to determine whether the prosecution has convinced you beyond  
24 a reasonable doubt that Mr. Al Farekh has committed the  
25 charged offenses.

1           If you have uncertainty, if you're not sure, if  
2 there are unanswered questions that keep you from feeling  
3 confident to the level that we were talking about before, your  
4 job actually is easy, because you're required to acquit.

5           Judge Cogan is also going to give you an instruction  
6 that it's clear, you all saw, that Mr. Al Farekh Muhanad did  
7 not testify in this case. And in no way should that be held  
8 against him. And we trust, as jurors who are taking your  
9 solemn oath and have done so, that you will do this. Because  
10 we, in this country, don't require innocent people or anyone  
11 to stand up just to say I'm innocent. Merely putting the  
12 Government to its burden is saying that. That's all we have  
13 to do. And it can't be held against Mr. Al Farekh in any way  
14 for not testifying.

15           The last piece of all that I want to touch on is  
16 about inferences. Judge Cogan is going to talk to you about  
17 when you commit inferences; okay? And it's an important part  
18 of the charge, I think, because a specific part of this says,  
19 An inference -- and it's on the screen for you, if you want to  
20 read along. An inference is not a suspicion or a guess. It  
21 is a reasoned, logical, decision to conclude that a fact  
22 exists on the basis of another fact that you know exists. It  
23 as deduction or a conclusion that you are permitted, but not  
24 required, to draw from the facts that have been proved by  
25 direct or circumstantial evidence.

1           And here's the kicker. You are not to the engage in  
2 speculation based on matters that are not in evidence. You  
3 are not to engage in speculation on matters that are not in  
4 evidence. That is the instruction that you all are getting,  
5 which is entirely consistent with everything I believe I've  
6 been telling you so far.

7           This dovetails with an idea, you can call "knowing v  
8 guessing." And whether you want to think about this when you  
9 start deliberating, I invite you to. You want to disregard  
10 it, disregard it. But the idea is this: Beyond a reasonable  
11 doubt means you're knowing, you're knowing something happened  
12 versus, you're guessing.

13           So if there's something the Government is telling  
14 you happened, and you think, ah, it sounds like they're  
15 guessing a bit. That's not the standard. That's speculation.  
16 And speculation can't be given a push for the prosecution.

17           Even if you think, you know, maybe that it be it.  
18 You can't speculate. It has to be a logical inference that  
19 you believe meets the high standard of proof. So just think  
20 as you go through the evidence, are you knowing or are you  
21 guessing?

22           Another thing I want to talk about for a second is  
23 this idea of confirmation bias. And this came out when we  
24 cross-examined a couple of experts. Confirmation bias,  
25 remember, this is the idea that when researchers are

1 conducting research, that confirmation bias is a type of  
2 cognitive bias that involves favoring information which  
3 confirms previously existing beliefs or biases.

4 Basically, in some ways, you can think about this  
5 through the lens of being a juror and reasonable doubt or not,  
6 and whether you're using the presumption of innocence.

7 Because confirmation bias means that when someone has a kind  
8 of a natural way of look at something, when they see things  
9 that are new, they see it through that lens.

10 So if someone really likes the color red, and then  
11 they see, you know, something that they like is in red, they  
12 might like that thing more. They might tend to think, yeah,  
13 red's a great color.

14 Now, they might ignore things that they see that are  
15 red that are bad, because they're kind of discounted a little  
16 bit. The red really shouldn't have been on that one. I'm  
17 going to discount that one.

18 That's just kind of a down-to-earth way of saying  
19 what confirmation bias is. But the thing is, if you approach  
20 this case with the idea like, you know, reasonable doubt, you  
21 know, it's just if he's been charged with these types of  
22 crimes, you know, most likely, he's guilty, you know, but I'll  
23 listen to everything.

24 If you're approaching with that type of perspective,  
25 you know, there's more than enough here. You can say, yeah,

1 sure. I can rubber stamp this. More than enough.

2 But if you approach it, I'm suggesting, from truly  
3 embracing the presumption of innocence, your perspective is  
4 Muhanad Al Farekh, is absolutely innocent. And until there is  
5 something that shakes this, that's the road that I stay on.

6 So turning now to science. You heard a lot of  
7 science. You probably had experts in almost every field that  
8 comes to these courts almost over the last couple of weeks.  
9 In the Government's summation, just before lunch, and we have  
10 a forensic science. I'm going to juxtapose that against a  
11 different concept called junk science. So that's really what  
12 we have going on in this case.

13 There's a tension; all right? What the Government  
14 actually told you before lunch is, quote -- I think this the  
15 right quote, almost word for word, Don't look at each part of  
16 the evidence. Look at the whole.

17 Think about that. The don't look at each part of  
18 the evidence, look at the whole. What that is telling you,  
19 first off, is the exactly wrong way how to look at evidence;  
20 all right?

21 That's like saying if there is this beautiful house  
22 that's on a beach, and I look at it from a distance, and looks  
23 likes a beautiful, well-constructed house, but then you get  
24 closer and you see that each wall is made out of sand. And  
25 the roof is made out of sand. And then there's some like

1 little twigs that are put in it to make windows, is that  
2 structure going to stand when the wind comes, a kid comes and  
3 kicks it? No. Why? Because each part is weak.

4 You look at the evidence, particularly scientific  
5 evidence, with a strong sense of what is the Government really  
6 trying to pass through here? Is it really something that we  
7 know? Or are we guessing?

8 And there is also just kind of the phrase, you know,  
9 garbage in, garbage out. If it's made with garbage, doesn't  
10 matter how good it looks at the end, it's still garbage.

11 So let's talk about actual forensic science.

12 So we had two examples of what I would consider  
13 actual, hard forensic sciences. One is the mitochondrial DNA  
14 testimony that you heard about --

15 (Continued on next page.)

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1 MR. MAHER: -- and the sampling, the testing of the  
2 chemicals in the unexploded truck bomb and that is a process  
3 called gas chromatography. As you can see on your screens,  
4 these were some of the slides the Government had with this.

5 Before we get to a fancy slide, and information like  
6 this, what goes on behind the scenes before those experts can  
7 testify on these two matters. Okay.

8 Well, first thing behind this is the scientific  
9 method. And, the scientific method relies on a number of  
10 parts. Okay.

11 One is, that there has to be an experiment that can  
12 be replicated. You have a hypothesis, you have something you  
13 are trying to figure out. That you test out variables. You  
14 test one thing, and you see if you can reproduce the results  
15 over time. And if you do that over and over, and you make  
16 sure that there is not a kink in the system or something in  
17 the mix you didn't think about, you can start to draw  
18 conclusions whether something actually effects another thing.  
19 That is how science is supposed to work. Okay. It involves  
20 repeated experiments, repeated testing.

21 Like with DNA, it requires significant demographic  
22 research. You heard some testimony about how scientists from  
23 around the planet, have been doing research on basically  
24 mtDNA, mitochondrial DNA and how different sequences appear in  
25 different populations around the world.

1           Now that wasn't done by someone eye balling people's  
2 skin cells. It was done through meticulous experiments that  
3 had been built up piece by piece over decades to ensure their  
4 reliability. Okay.

5           Another hallmark of science is error rate and  
6 confidence interval. You heard how Doctor Fisher, I believe  
7 she is a doctor. Talked about confidence intervals with these  
8 demographics, okay. Whether little less than five percent of  
9 people in Haiti would have the exact same mitochondrial DNA  
10 sequence as Mr. Al Farekh. That was a confidence interval.  
11 It can also be considered an error rate. Error rates and  
12 confidence intervals come from significant statistical  
13 research and analysis.

14           Again, it is not based on eyeballing, it is not  
15 based on eyeballing and having a colleague eyeball over your  
16 shoulder. It is based on actual science.

17           So, let's turn to mitochondrial DNA. What do we  
18 actually know at this point about what this mitochondrial DNA  
19 evidence means in this case.

20           First off, we know that it is not nuclear DNA.  
21 Meaning, unrelated people, unrelated people can have the same  
22 mitochondrial sequence, all right. In general, the research  
23 shows that mitochondrial DNA follows a maternal line. But, it  
24 has been found through actual research that people who are not  
25 even maternally related can share the same mitochondrial DNA

1 sequence.

2 Doctor Fisher also said that it is correct, that  
3 tens of thousands or millions of people can have the same  
4 mitochondrial DNA sequence. She also agreed that  
5 mitochondrial DNA cannot be used to conclusively identify an  
6 individual because mitochondrial DNA is maternally inherited  
7 and all materially related individuals are expected to have  
8 the same mitochondrial DNA profile, right? Yes.

9 So, what we know about the DNA, and this hair. That  
10 is the range that we are talking about at this point.

11 What do we know-- that is the limitations in the  
12 science. Okay. And the predictive ability of mitochondrial  
13 DNA versus nuclear DNA. What do we know about the limits of  
14 DNA testing in this actual case?

15 Well, first off, we have what I will call the  
16 mystery hair. Okay. And, there is one hair that is the basis  
17 of this DNA sample. All right. We have two people who say  
18 they found the exact same hair. You had Camden and you had  
19 Breitbard. Who are -- one was on -- Breitbard was on the CEXY  
20 team as they called themselves, Camden was on the bomb  
21 ordinance explosive team. They both testified that they were  
22 the ones who found that hair. Unequivocally, no pause, no  
23 hesitation. They found this hair.

24 The hair that they say appeared somewhere in one of  
25 these 14 boxes of granulated explosives. Filler. At some

1 point they don't know.

2           This hair then is placed at some point in this  
3 envelope. When the FBI testifies about chain of custody, I  
4 think it was Ms. Cunningham. We talked about -- I asked her  
5 questions about, how do you protect chain of custody. What  
6 are some of the things that you do to protect the integrity of  
7 evidence.

8           Well, first you log in, and you document who finds  
9 things. You keep track of it because you know what, someone,  
10 someone could be going away. Based on something like this.  
11 So, you keep darn good track of where this is found, and where  
12 it goes. Every step along the train, whether it is from  
13 Afghanistan, Pakistan, Kalamazoo, before it gets here to  
14 Brooklyn, New York, you better know. And you better preserve  
15 it.

16           Is there tape on here? You saw at least when it got  
17 to the FBI, who knows when, they at least started wrapping  
18 this thing with tape. Is there tape on this? No.

19           So, who knows whether the sticky back even works,  
20 who knows. We are told that this one hair, that is the basis  
21 for this DNA evidence had orange dye on it. So the Government  
22 is now, maybe it is like the old adage that, you know, behind  
23 every lawyer is a frustrated novelist. But, now there is this  
24 whole story how somehow Muhanad Al Farekh is running around  
25 Pakistan with orange hair, with not one witness who has ever

1 seen him with hair dye.

2 And, in direct contradiction to a witness that the  
3 Government called. Because I asked Professor Soufi, if he  
4 knows about the idea of dying hair orange. I think I asked  
5 him or someone did, it is in the transcript. He said, yeah  
6 there are some people who do that when they have gray or white  
7 hair. When they have gray or white hair, that is the  
8 testimony.

9 So, this is just one example of probably the dozens  
10 or more of extrapolation and speculations that were littered  
11 throughout the presentation you heard before lunch.

12 Transference, this is another idea. Mr. Ruhnke  
13 asked the experts about transference, what does this mean.  
14 Okay.

15 This can happen in both the context of the hair, and  
16 in the context of the fingerprints. I will take this for  
17 demonstrative purposes only. I am taking out a latex glove.

18 So, imagine now, that I take this roll of tape, this  
19 packing tape that Mr. Pravda opened up with his fingers.  
20 Okay. Now, I don't have a microscope or I don't have  
21 magnifying glasses and other things.

22 But, let's assume that Mr. Pravda's latent print is  
23 left on the adhesive side of this tape that he just showed  
24 you. Let's say he doesn't care about this thing of tape, it  
25 is only a dollar fifty or something, I don't know. He leaves

1 it in the courtroom and I grab it afterwards and I will use  
2 it. Then at some point, you know, my daughter comes back from  
3 college, and she wants to borrow the tape. So she takes it  
4 back to college. And then, someone in college takes the tape  
5 and they do something really, really dangerous or stupid with  
6 it. Either themselves or they leave it in a hotel, where  
7 someone, anyone can pick it up.

8 And someone does something stupid with it. Whose  
9 prints are on it? Not the person who is smart enough, if they  
10 are doing something that is dangerous to know, like every  
11 person who told you that they deal with explosives and  
12 chemicals said they used protective gloves, right. That  
13 person's prints are not on the tape. It is someone who could  
14 have been way down the line.

15 I am using this as an example of what transference  
16 means. Okay. That is what transference means.

17 The other example is with hair. And how you learn  
18 that one hair from a person, can fall on that person's  
19 shoulder, can be brushed into somebody else, fly through the  
20 air. Can be on the tarp of a truck that is put on top of a  
21 whole bunch of evidence for a night, two nights, three nights,  
22 who knows how long. Who knows.

23 So, even finding DNA, does not explain to you how it  
24 got there or why. We also don't know anything about the other  
25 four hairs.

1           So, let's turn to fingerprint analysis for a second.  
2           And, let's talk about the handwriting too. The Government is  
3           coming in here and trying to portray fingerprint analysis and  
4           handwritten analysis as actual science. That is ludicrous.  
5           It is ludicrous. Let's just look right now. You can look at  
6           one of these fingerprints on the top right.

7           Let's take the one on the top right. With that  
8           circle in blue. How many people on the planet have a circle  
9           like that on their finger? Does Agent Sibley know? No. How  
10          many people on the planet have a circle like that and a  
11          dividing ridge below it? Does Sibley know? No.

12          Does Mr. Watts, looking at the word "things", know  
13          how many people on the planet make their "S's" like that? No.

14          Did they point to any demographic research that  
15          backs up their conclusions whatsoever? I mean just give us  
16          something. Something. No. It is not there. It is not  
17          there.

18          Now, I'm not going to go as far to say that  
19          fingerprint analysis is junk science. I think it approaches a  
20          doorway in some respects, but it can be used to exclude. It  
21          can be used to exclude. At this point, the research shows  
22          that they have not found people that as you grow, that your  
23          latent print appreciably changes. Now maybe they just have  
24          not found it in a person yet, but at this point, that is what  
25          they think.

1           But, what they cannot do is say that they can  
2 exclude somebody-- excuse me, that they can say that two  
3 people can't have the same print. They can't do that.

4           And, in their testimony on the fingerprints, and in  
5 their summation, the Government went on and on like there is  
6 10 points of significance. There is even more than 10 points  
7 of significance. So what? Unless you know what a point of  
8 significance means, it is meaningless.

9           In DNA sequencing, they know what it means because  
10 they have done the hard science, with actual people analyzing  
11 people's actual DNA sequencing to say, this is the population  
12 that has this. This is the error rate, the confidence  
13 interval.

14           Fingerprints, we have got none of this. We have  
15 guess work. We have people eyeballing it and guessing. That  
16 is what it is.

17           Now, I want to give you an example. Just if you  
18 could hang with me for a second. Imagine again that there is  
19 a visitor from another world who pops down on earth. And this  
20 visitor, is supposed to report back to their planet, we know  
21 that there are these beings walking around the planet, trying  
22 to figure out, are they different beings or are they all kind  
23 of like the same being. Just like perfect replication of each  
24 other all over the planet.

25           Now, this visitor can say, well, look, I have looked

1 at ten or more characteristics, every one of these beings, I  
2 see walking around the planet has one head, everyone I see has  
3 two eyes, they have one nose. So, far when I see everyone has  
4 a belly button, two arms, two legs, two knees, two heels.

5 I see an overwhelming number of similarities. My  
6 conclusion is, based on my observations, that all those beings  
7 are the same. Because I have found 20 similar things between  
8 every being that I looked at.

9 Now, I say that, you think that is just ridiculous,  
10 every human being on the planet is unique. We have  
11 similarities but there are differences. It comes down to what  
12 is the significance of the differences and similarities you  
13 are looking at. That is the difference between DNA and this  
14 junk science. Because they have no meaning behind these  
15 ridges and diversions and these upswings and downswings and  
16 curls and whether the "T" is on the right or left. They have  
17 nothing to back it up. Except eyeballing and having their  
18 cohorts or colleagues, eyeball it with them.

19 That is not enough. They covered this-- well, Mr.  
20 Ruhnke, used a phrase which kind of encapsulates it. You know  
21 it when you see it, right? That is basically what they have  
22 said with these. They know it when they see it.

23 They use this veneer, they said ACE-V. It is  
24 interesting that both, fingerprints and this handwriting, is  
25 basically the same methodology. They call it ACE-V. It

1 sounds scientific, analysis comparison evaluation  
2 verification. That sounds scientific.

3 But not when you look at, when analysis means, the  
4 person looks at it. They say hum, do I have enough  
5 information? Well, how do you know if you have enough  
6 information? Are you comparing it against a database, are you  
7 comparing it against something that has been screened through  
8 computer algorithms to know that you are leaving out bias, you  
9 are not overlooking anything.

10 There is comparison. Again, they eyeball it.

11 Evaluation, more eyeballing. Deciding.

12 Then verification, a supervisor or colleague, if  
13 they have a problem, then eyeballs it themselves.

14 This has no error rates, no confidence intervals.  
15 There is no standard way to account for background noise.

16 I mean Mr. Watts' handwriting even says, I believe  
17 he actually said, one given person doesn't even write the same  
18 way their entire life. Right. That their handwriting can  
19 change.

20 How are you going to say, that this writing is their  
21 writing, if their own writing is changing? What are you  
22 comparing it against. You are trying to compare it against a  
23 moving target. Everybody else's writing, they have moving  
24 targets. So what point in time are you comparing writings.

25 And how people get sucked into it and-- the most

- Defendant's Closing -

1511

1 tragic thing that can happen in this country, at least way at  
2 the top, is an innocent person being convicted for something  
3 that they did not do, or something that the Government did not  
4 take the time and effort to prove sufficiently.

5 And, junk science is the basis of how this happens  
6 unfortunately. Because it is too easy to fall in the trap, I  
7 will look at it myself. I will look at the exhibits. Yeah,  
8 these prints, they look close to me. This handwriting looks  
9 close. Would you do that to look at the DNA? No, you say you  
10 are not qualified to do that.

11 The kind of idea, a lay person can see it makes  
12 sense just by looking at it. That is what sucks you in and  
13 that is the fallacy of it. That is why it is so dangerous, so  
14 dangerous to convict someone on this.

15 So, besides these structural problems with what I'm  
16 calling the junk sciences, there are the limitations in the  
17 specific case.

18 So, Agent Sibley who again, works for the FBI was  
19 asked, so at some point, you all shifted over, to what is  
20 called, friction ridge analysis, to sometimes ridgeology,  
21 right? She says, yes. Of course, we don't know what is the  
22 basis of changing methodologies, what science backs that up.  
23 So that you are essentially saying, it is a match when the  
24 examiner reaches that threshold of saying, there are so many  
25 similarities here, I'm calling it. I'm calling it an

1 identification, correct?

2 "ANSWER: Yeah, an identification is reached  
3 when an examiner feels they would not expect to see  
4 that amount of agreement duplicated in a different  
5 source."

6 "QUESTION: I don't mean any disrespect, it  
7 comes down to it, I know when it when I see it, based  
8 on training and experience; is that correct?"

9 "ANSWER: I would not phrase it as, I know it  
10 when I see it. The information that is used is  
11 documented for the conclusion that is reached, on  
12 latent print comparisons when you would not expect to  
13 see that amount of agreement duplicated in a different  
14 source."

15 I would have guessed that was actually spoken by a  
16 lawyer, but you boil that down, and that is an agreement. It  
17 is basically her saying, when she has an examiner, feels that  
18 that is enough, it is enough.

19 To Mr. Watts, and this comparison that you did, you  
20 look at one document, and then you look at the next document.  
21 And you say to yourself, are their similarities that I am able  
22 to observe, correct?

23 "ANSWER: Yes, correct. Either similarities  
24 or dissimilarities."

25 This, I'm sorry, is not science. And, give it what

1 it is worth. I submit in a case of this importance, it is  
2 worth nothing.

3 Now, just another part of the whole fingerprints is  
4 the partial prints. And just the utter confidence, that Agent  
5 Sibley had in picking out these prints, partials and the  
6 excerpt I have on the screen to your right, is again where she  
7 concedes that a partial print doesn't have full information.  
8 It makes it more difficult. She is sure in this case it is,  
9 but, yeah, partial information is limited information.

10 So, again, when the Government is going 18  
11 fingerprints, we again have 18 partials, with limited  
12 information on each, with no hard science to backup the  
13 conclusion of this examiner.

14 Some of it -- you guys have seen enough of these  
15 this morning.

16 So, before you even get to the science, right,  
17 getting back to this idea of garbage in, garbage out. You  
18 have to say, well, how did stuff get to the experts or so  
19 called experts to begin with. And that comes down to careful  
20 evidence collection and preservation.

21 Now, the Government argued before lunch that a  
22 miraculous job was done on the scene of the car bomb in  
23 finding evidence. I will concede, I will agree, it is  
24 miraculous, that more people were not hurt. And we are all  
25 thankful for that. But the idea that this was the type of

1 crime scene investigation that should be used to convict a  
2 person in a Federal Court, under our constitution, is to use  
3 the word the Government said once, ludicrous.

4 Here is what Breitbart said about their process of  
5 evidence collection. Quote, it is not like in the laboratory  
6 doing picture, picture, picture document, one five hundred,  
7 whatever time. You know, I'm just there on the scene  
8 collecting what I can to be expedient as possible in the  
9 environment.

10 Then I asked, the specific question is, "as you sit  
11 here now, you cannot tell us which specific container, that  
12 specific cable cord that is taped from, came from, right?"

13 "ANSWER: That's correct. We don't do it in  
14 a manner of what folks watching on television. This is  
15 a combat zone. I think that the manner you are  
16 discussing would be at a level that far surpasses any  
17 level that I am to provide at this."

18 Think about that. Now, I'm not going to go into the  
19 politics of the war, and our military over there. But, the  
20 U.S. Government cannot have it both ways, which is what they  
21 are trying to do. Because if you are going to try to bring a  
22 U.S. citizen into this courtroom, and have a jury convict him  
23 of the most severe charges that one can think of, you cannot  
24 say, sorry, it is a combat zone, we are doing our best, so  
25 sorry for him.

1           And I'm not putting any disrespect on our service  
2 people. They have-- they are put in an impossible position.  
3 You heard this. These people, Ms. Breitbard, she has to  
4 decide as Ms. Camden, they have to weigh when they are  
5 collecting at a crime scene, do they protect themselves, and  
6 the people around them? Or do they do their best to collect  
7 the evidence, and do it in a way that is actually going to  
8 preserve it for real forensic analysis later. Unfortunately  
9 they are placed in an impossible position. It is personally  
10 not their fault.

11           But, when you then try to say, it doesn't matter  
12 that we as a Government can't say, which piece of tape these  
13 prints were on, we can't say who touched this stuff or when,  
14 or who was near it when, for how long. That is a major  
15 problem.

16           That is not what this country is about as far as  
17 convicting people of terrorism, based on crime scene  
18 preservation and collection like this.

19           There was -- whether you call it combat scene or  
20 crime scene, not only was it difficult to begin with, but  
21 Camden testified how he had to blow up the cab. Right.

22           So then you have an explosion. There is no real  
23 documentation. There is no logs, and we are not trying to be  
24 sticklers. But, there is nothing that the Government has  
25 brought to say that the integrity of this scene has been

1 protected.

2 And, the witnesses Camden and Breitbard admitted on  
3 cross, that they were not there at least for one night. That  
4 it was under the control of local Afghans. Then they said  
5 Afghan National Army. Whoever. They have no idea who was on  
6 the ground with this stuff. For how long. They say one  
7 night. We don't have the documents to show actually how long  
8 that stuff was there.

9 Assume it was one night. We don't know what could  
10 have happened. You don't know. Is that speculation? Is it  
11 reasonable logical inference that a major crime scene like  
12 this, being guarded by local Afghans, who may or may not be  
13 infiltrated by other groups, or people, or interests, have the  
14 run of this stuff. As far as we know.

15 That is the chain from which this DNA evidence comes  
16 from, and this fingerprint evidence comes from. That is where  
17 it begins. And that can never go away from it. No matter  
18 what someone does with it at a later time.

19 We see, we have these pictures. So they took time  
20 to take pictures of kind of rough processing. But if you  
21 recall, when Comic, Konic, Coppick, sorry, talked about, he  
22 was like the second or third layer person who looked at the  
23 fingerprints. He is one who actually started cutting up the  
24 tape.

25 He said when he was done after a couple of weeks

- Defendant's Closing -

1517

1 cutting up this tape, he had over 1000 pieces of tape. Over  
2 1000 pieces of tape that came from these det charge wrappings.  
3 Okay.

4 The Government tells you it doesn't matter. It  
5 doesn't matter which it came from or where it came from on  
6 here. It doesn't matter. All you need to know, the prints  
7 were there, he is guilty. No, no, no.

8 You need to be knowing, not guessing. What if all  
9 18 partial prints were found right here on one of these at the  
10 end? And then cut apart each of those. I think maybe one was  
11 in another bag, maybe a bag got separated. Maybe two bags out  
12 of how many, many bags we have. We don't have an exact count  
13 right here. You don't know. You can't say.

14 Because none of it is documented. You don't know.  
15 So that eventually turns into this, again without individual  
16 chain of custody for any of this.

17 These cords again, then just get put together. No  
18 individual labeling, separation, identification. None of it.  
19 It gets chopped down, all of that somehow gets down to this.  
20 We don't know from which piece of where or when. How many  
21 people actually had access to it. Again, we covered this  
22 already, no log books.

23 We get to, I will just to finish that thought on  
24 those things. I think I made myself clear.

25 If you don't have the knowledge of where something

1 was actually found, how it actually got there, what the intent  
2 was behind anything getting there or not, you are guessing.  
3 And then if on top of that, you layer junk science, opinion,  
4 eyeballing, that is how you end up with a false conviction.  
5 That is the recipe. I am imploring you to not let that  
6 happen.

7 Handwriting-- Mr. Ruhnke cross examined Mr. Watts  
8 about the handwriting. One of the main things that Mr.  
9 Ruhnke's cross examination is this, the defense Exhibit 7.  
10 This was a slide that was actually in Watts' presentation, but  
11 the Government pulled it before he actually testified. And  
12 what this slide says is, his actual conclusion in the case.

13 His conclusion was, the question none obliterated  
14 English writing on item 1 through 7, may have been prepared.  
15 May have been prepared by the item 8 writer. A definitive  
16 determination could not be reached due to the limited clarity  
17 and detail of the submitted items.

18 Okay. He didn't write anything about, well, all I  
19 needed was the originals, he could have put that in the  
20 conclusion. If you give me the originals, I would have  
21 sufficient detail and clarity. He didn't say that. That is  
22 not in his conclusion.

23 He could not conclude. All he can give you is a  
24 maybe. Is a maybe at best. He is asked-- is there anything  
25 scientific with the analysis in the sense that if there is a

1 database that you can go to that contains objective criteria,  
2 such as the percentage of the population that writes "T" with  
3 a cross to the right.

4 "ANSWER: There is no doubt to be looked  
5 at -- well, no."

6 "QUESTION: Does the examiner make his or her  
7 own independent check of your actual conclusions or  
8 just check to make sure your methodology was proper?"

9 "ANSWER: They checked to make sure my notes  
10 support my conclusions, and to check I followed the  
11 methodology."

12 Think about that. So they are not even checking  
13 doing it themselves. They are not doing their own eyeballing.  
14 They are just saying, when you went through your ACE-V and you  
15 made notes that you first looked at it and analyzed it, you  
16 validated it, evaluated it and verified it, compared it. As  
17 long as you say you did that, check, good enough.

18 Did they make their own independent verification?  
19 And that verification they are just checking to make sure that  
20 I followed all the procedures, and that my notes support their  
21 conclusions. If they don't, then they will bring that up.

22 And the comparison. And the comparison is that, you  
23 sit there, and you look at one document, and then you look at  
24 the next document. You say to yourself, are there  
25 similarities, am I able to observe, correct?

1 "ANSWER: Yes, either similarities or  
2 dis-similarities."

3 It goes on to say there is no reference to any  
4 scientific database. You can't say that there is any  
5 percentage of the population that writes in any sort of way.  
6 He says there is no blind verification.

7 He also says, that he doesn't know what confirmation  
8 bias is. He is a researcher. So, these are just the  
9 limitations that he is admitting about his profession. Okay.  
10 Not the limitations in this case.

11 I'm not going to go through the letters. Feel free.  
12 You are going to have all the exhibits that you want to look  
13 at. Just as the Government can circle some words and some  
14 letters and say, hey, these look similar. You can dig through  
15 and you can find all kinds of words, that don't look the same.  
16 That are not similar. What does that mean? To me it means  
17 nothing. Because I don't know. I can't base it off of  
18 anything. There is nothing to compare it to. There is to  
19 database to tell me anything.

20 So, if you want to go through the exercise, I invite  
21 you. You will find differences. But, to me it is a waste of  
22 time, because there is no science to back this up.

23 Other types of forensic issues you have, had to do  
24 with computers in this case. All right. E-mails for example.  
25 This is an example of an E-mail header. We have no big

1 problem with this type of evidence, right. We had legitimate  
2 representatives of E-mail providers, Google, Yahoo came in and  
3 say, yes, we have these servers, these are the E-mails. You  
4 had a Government official said we got these lawfully. These  
5 are the type of records that are generated on these E-mails.

6 So we have no problem with this. We didn't cross  
7 examine these people. So that these E-mails went back and  
8 forth between these E-mail addresses. But, what do you know  
9 versus when are you guessing?

10 You have E-mail between two accounts. Does that  
11 mean that the person who receives an E-mail automatically read  
12 the E-mail? Does it mean that the person who receives an  
13 E-mail automatically hit a link on the E-mail? Does it mean  
14 the person who receives an E-mail with a link on the E-mail  
15 actually hit the link and then went to a specific lecture or  
16 sermon in the E-mail? Absolutely not.

17 But the Government has created this whole scenario,  
18 where Muhanad is drawn to Anwar al-Awlaki and he is watching  
19 all these inflammatory sermons and listening to them that you  
20 heard about. Yet, there is not one witness, one witness who  
21 has testified that Muhanad Al Farekh even listened to, one of  
22 the so called jihadist sermons of al-Awlaki.

23 Soufi tried in his direct to imply that, and then I  
24 cross examined him. He admitted he never said anything about  
25 that. That is in defense stipulation, Exhibit 13. That Mr.

1 Al Farekh never told anything about watching jihadi lecture.  
2 The only thing potentially is a reference to the hereafter  
3 which we will talk about.

4 So we have this type of forensic issue versus this.  
5 The mysterious USB. Now maybe it just of kind wash passed.  
6 There are so many, many exhibits. If you look at the exhibit  
7 sheet which you will get, I mean this thing is like 14 pages.  
8 It goes up to 3001. Of course there is not 3001 exhibits.  
9 They are numbered like that. It makes you think that. There  
10 are not.

11 Again, the is quality not quantity. But in one of  
12 these, was this USB. This mystery USB. Why is this  
13 important? Against the idea of garbage in, garbage out.

14 This is the USB that miraculously, mysteriously, out  
15 of no where, drops in the hands of legal attache Dalziel, in  
16 September 2015. A year, half a year at least, six months  
17 after Mr. Al Farekh is already in American custody. It is  
18 either 2015 or 2016. It is 2015, this USB appears out of no  
19 where.

20 You get nothing from the Government about where this  
21 thing came from, except it popped up in the embassy in Kabul.  
22 You don't know where it was found, you don't know who took it,  
23 you don't know who had it. You don't know who uploaded  
24 anything on it. You don't have any metadata about anything on  
25 it.

1           What you have though, is the Government giving you a  
2 handful of handwritten letters, supposedly written by  
3 Abdallah, Abdallah al-Shami that comes off this USB.

4           Think about that. All these letters the Government  
5 talked about. Handwritten, they are saying by Muhanad  
6 Al Farekh that are dated 2013, if that is even accurate. That  
7 is what is written on these documents printed out. Comes from  
8 this USB that you know nothing about. Nothing.

9           You know nothing about when each file was put on it,  
10 who put it on, what context. Whether they are forgeries,  
11 whether it is disinformation, you know nothing. But yet, you  
12 are supposed to take these letters, and use them as a basis to  
13 convict Mr. Al Farekh. Based then on this junk science  
14 handwriting analysis.

15           Do you see this? Sure. Look at the whole. The  
16 Government says of course they are telling you to look at the  
17 whole. You look at the whole, it can look really bad. When  
18 you drill down, you look at each piece. You go, this is  
19 madness, this is madness.

20           How you are building a case off of a USB that you  
21 know nothing about. How this data gets in there, with  
22 handwriting comparison that has no science to back it up, and  
23 you are saying this leads to a guilty verdict. It is mind  
24 boggling. But, it just can flow through. It can flow  
25 through.

1           When you strip down the so called forensic evidence  
2 in this case, this is what you really, I submit, know versus  
3 what you are guessing.

4           You heard that the confidence interval at the top  
5 end, for mitochondrial DNA with Mr. Al Farekh's sequence is a  
6 little under five percent. That is with the demographic of  
7 Haitians. I round it down to four. Remember though, we have  
8 no demographic information for people of Jordanian and  
9 Palestine descent. We didn't have one for Pakistan or Indian,  
10 all right. So, we will run with this.

11           If you think four out of one hundred, and you just  
12 keep multiplying each side of that column by ten, okay. So  
13 four out of one hundred, would be forty in a thousand people  
14 have the same sequence. Four hundred in one hundred thousand.  
15 Okay. You get up to out of every billion people on the  
16 planet. There are four million people who have that sequence.

17           After Mr. Ruhnke suggested the correct world  
18 population is around 7.5 billion, okay. Four percent of  
19 7.5 billion is three hundred million people on this planet  
20 potentially if it is a confidence interval of four percent  
21 have the exact same sequence as Muhanad Al Farekh.

22           Do you know what the population of the United States  
23 is right now? It is a little more than three hundred million.

24           So you have this great DNA evidence, and if everyone in the  
25 world, we know it is somebody in the United States. Convict.

1 That is the most solid piece of scientific evidence you have  
2 besides that we know that the chemicals in the back of that  
3 unexploded truck were the chemicals that can cause explosions.  
4 That is what the science has, that you know at this point.  
5 Everything else is garbage.

6 So, moving from scientific evidence to witness  
7 testimony, you are going to be instructed that physical  
8 evidence, witness testimony, stipulations, they are all the  
9 same under the law. But use common sense. There is a  
10 difference between actual DNA, nuclear DNA versus a witness.  
11 A human being who has motives to lie, who forgets things,  
12 biases, who have agendas both overt and covert.

13 So let's look again now back at our timeline all  
14 right. What we are going to do now, for you, if you follow  
15 with me. We are kind of looking at this timeline, kind of  
16 zone of speculation, what the Government is doing, okay.

17 So, our first zone of speculation, is everything up  
18 until March 6, 2007. What do we actually know at this point?  
19 We know that Muhanad Al Farekh as you all know, was a student  
20 at University of Manitoba, born in Houston. His parents live  
21 in Dubai. He has a brother in the United States. His uncle  
22 and grandmother live in Winnipeg by where he goes to school.

23 There is no witness whatsoever who came in here and  
24 said that, anyone heard him say anything about Jihad. That he  
25 E-mailed anyone about Jihad. Nothing. Not one person. And

1 there is not one E-mail in this period, nothing, nothing.

2 If you go back you look at the evidence. You heard  
3 from Professor Soufi now, who confirmed what I just said. And  
4 he described how when he knew Muhanad in this time period,  
5 Muhanad was funny, affable, open-minded, goofy, had a smiley  
6 disposition. Okay. That he and Muhanad were not close  
7 friends, that he never saw Muhanad listen to or watch radical  
8 lectures. All right. That his trip to Saudi Arabia for the  
9 Hajj with Muhanad was just fine, it was a great trip with  
10 Muhanad.

11 Soufi talked about Awlaki, in this time period. Now  
12 we got to go back. This again is 2006, beginning 2007.  
13 Professor Soufi, right, he is a legitimate professor of  
14 history. Okay. And Islamic law at a respected university in  
15 Canada. His opinion of Awlaki at that time was like at that  
16 time, basically, doing regular religious talks. That people  
17 are listening to. Lots of people are listening to. They are  
18 apolitical and people listened. There are a few out there.  
19 But, you know, most people are listening to the regular stuff  
20 that is what Soufi told you.

21 Soufi is never questioned by the RCMP. I think an  
22 indication that he actually was not that close with Mr.  
23 Al Farekh.

24 Mr. Soufi, I think though did feel some pressure in  
25 testifying. He -- just one example, is kind of a gratuitous

1 comment that he was making I think against Ferid Imam. He  
2 says, Ferid Imam said he didn't have empathy for victims of  
3 terrorism. He said, yeah, he made a comment about victims of  
4 9/11. That was just gratuitous, because when I cross examined  
5 and there is a stipulation now, where it is conceded that he  
6 never said this to investigators before, anything that Ferid  
7 Imam said about 9/11.

8           The thing is, that is all it takes, just a little  
9 kernel like that for the Government to just take it and run.  
10 Right? A comment about 9/11. A hyper link to a 22-hour  
11 lecture that has a two-minute snippet where shahid are  
12 discussed.

13           Then more into this grand conspiracy to join  
14 al-Qaeda. That is all it takes. That is what the Government  
15 is using to stitch this together.

16           We know at this point, that Maiwand, is loved by his  
17 family. What do we know about his family at this point. We  
18 know his own father, his own father who is a physician, from  
19 Afghanistan, had to flee Afghanistan because of the Soviet  
20 invasion.

21           (Transcript continues on next page.)  
22  
23  
24  
25

1           MR. MAHER: They took refuge in Pakistan and he was  
2 a physician in a German hospital. Maiwand Yar's father was  
3 poisoned to death by Islamic radicals, extremists. That is  
4 known in the family. They then fire-bombed the family's home,  
5 apartment, and Maiwand's mother had to take them all to the  
6 safety of Winnipeg. I mean, you can't, it's heartbreaking.

7           But this is the Government's theory that Maiwand now  
8 is running over to join the very people who did that to his  
9 father and family. That's what the Government is asking you  
10 to believe, based on a few e-mail exchanges. That's what they  
11 want.

12           We know, at this point in time, Maiwand is  
13 characterized by his brother as a shy, lazy couch-potato and  
14 he's never said anything about wanting to join jihad. We do  
15 know at this point that Dawa-e-Tabligh is legitimate. Mr. Yar  
16 confirmed that. We also know that Maiwand Yar had something  
17 very potentially tumultuous about to happen in his life. He  
18 was to be married to his cousin from Germany in a few more  
19 months in the summer of 2007. It was an arranged marriage  
20 between him and his cousin that he had to follow through with  
21 in the eyes of his family. And Ahmad Yar talked about how  
22 important that was for him, Ahmad, seeing that this happened.  
23 How important it was for the cousin's family because,  
24 hopefully, then she could get Canadian citizenship and bring  
25 her family over.

1           But think; if you're a young man, a somewhat  
2 cosmopolitan man in a big university in Canada and you're  
3 expected, in a very, very tight-knit family to marry your  
4 cousin and you don't want to, and you don't want to disappoint  
5 your older brother who has basically been a father-figure to  
6 you, other people in your family, what kind of things might a  
7 young, impetuous, college-aged male do, without thinking  
8 things through? Or thinking things through and just making a  
9 decision? Do we have anything to show that maybe Maiwand  
10 didn't just want to get out of Canada, go to Pakistan, start a  
11 new life and not be in this arranged marriage? Do you have  
12 anything to disprove that.

13           We have a mystery phone call that's going to come up  
14 in our timeline, right? A mystery phone call where he's told  
15 he's dead. Do we have a death certificate that Maiwand's  
16 dead? Do we know? Are we knowing? Are we guessing? How is  
17 it this family member Naseer, right, is able to arrange these  
18 phone calls? Remember, Ahmad Yar says he actually gets on the  
19 phone call two years later, right, after he gets this second  
20 letter and has a phone conversation with Maiwand that's  
21 arranged through a family member, a cousin named Naseer in  
22 Peshawar. How the heck is Naseer and Maiwand communicating  
23 two years later in 2009 and there's nothing from the  
24 Government about investigation of Naseer or what's going on or  
25 what's going on with Maiwand? It's just accepted, your

1 brother's no longer. He is dead. And that's it? Maybe he is  
2 dead. Maybe. That would be tragic. Maybe he's not. Are we  
3 knowing? Or are we guessing?

4 In late March 2007 to 2009. This is the time  
5 period, if you believe him, that Ahmedzay testifies about,  
6 okay? Ahmedzay. He is the man who wrote the letter to the  
7 Government basically saying, get on with it, I've basically  
8 been promised -- with a wink, wink, nod, nod -- to get six to  
9 seven years. Oh, all I planned to do was blow up women and  
10 children in the New York subway, but you know, I got that six  
11 to seven year sentence I'm supposed to be getting, which at  
12 this point equals, equals time served. So, let's get on with  
13 it. I'm getting impatient, right? He has no reason ever to  
14 fabricate anything, to shade the truth. No reason at all.  
15 He's utterly a legit person. Give me a break, okay?

16 Look at this letter. Come on. You saw him on the  
17 stand. Not only is it ludicrous to say that this is a  
18 believable person. He also has the history of lying on top of  
19 it for the Medicaid fraud, the tax fraud. I mean, you name  
20 it. But now he's a Government star witness. He's hoping to  
21 get what's called a 5K letter. And before lunch the  
22 Government said the Judge decides the sentence. Yes, the  
23 Judge will eventually decide Ahmedzay's sentence. But you  
24 know what? The Judge will not be able to treat Mr. Ahmedzay  
25 as a cooperator, as someone who has given substantial

1 assistance to the Government -- which is the standard,  
2 substantial assistance -- unless the Government submits a  
3 letter on his behalf and tells the Judge, now the Government  
4 approves it. So, the Government decides whether the Judge is  
5 then allowed to give him a lesser sentence. Okay? So, let's  
6 have all the facts about how this plays out.

7           But let's say you believe everything Ahmedzay says.  
8 For the sake of argument, let's accept it. What does that  
9 mean for Muhanad Al Farekh in 2008. September 2008, Ahmedzay  
10 says that he's at this camp. He says he sees Ferid Imam. He  
11 doesn't know him as Ferid. He calls him Yusuf, okay? Does he  
12 see Muhanad Al Farekh at any of these camps, any of these safe  
13 houses anywhere? No. Yet this is the same Muhanad Al Farekh  
14 who's going to somehow magically transform into Abdullah  
15 al-Shami, external operational of al-Qaeda, yet he's nowhere  
16 seen in the pipeline being tutored by Abdul Hafeez, right?  
17 Where is Mr. Al Farekh if he's a part of the gang here? He's  
18 not there. Even Ahmedzay, back when he first talked to the  
19 Government, didn't say anything about that. Why? Because he  
20 couldn't even go that far. Muhanad had nothing to do with  
21 this. He wasn't there and he certainly wasn't there with  
22 Ferid potentially a year, two years after March of 2007. It's  
23 speculation.

24           But what Ahmedzay also says is that he says Abdul  
25 Hafeez is in charge. Then he says that Ibrahim is the head of

1 external operations. And that's in his testimony. Yet the  
2 Government, with Murad, is saying Abdul Hafeez gets killed at  
3 some time, although it's ambiguous when. And then Murad says  
4 that al-Shami took over. Well, what happened to this Ibrahim  
5 guy? Where did he go? Nothing about that.

6 So, one thing Ahmedzay also did talk about is the  
7 importance that he said of Westerners being used by al-Qaeda.  
8 That a Westerner with an American passport, with a European  
9 union passport, Canadian passport is much more valuable as an  
10 undercover operative than being cannon fodder in an Afghan  
11 desert or mountain. So, if that's the case, if Muhanad really  
12 has this desire to wage jihad, okay, and being a smart guy he  
13 wants to do it most effectively. Is he going to go sit in a  
14 house for seven years, sit in a house for seven years like  
15 this Abdullah al-Shami in these letters or is he going to do  
16 something like Ahmedzay, okay? It's ridiculous. If you  
17 actually look at each part of this evidence, it all crumbles.  
18 It just is ridiculous. And there's nothing about Ahmedzay  
19 even hearing the name al-Shami at that point. Nothing.

20 So, then we get to this period now after the bombing  
21 of Chapman where we get this second letter from Yar,  
22 supposedly. It's in his handwriting that is very jihadist,  
23 the Government says. But what's not in this letter? There's  
24 no mention whatsoever about the bombing of FOB Chapman. And  
25 this letter arrives after that happened. So, if this is a

1 letter by Maiwand Yar who's supposedly in the mix as a  
2 co-conspirator and he's been involved in helping this and  
3 exhorting his family to jihad, why doesn't he take some credit  
4 for being involved in this or having a good friend who helped  
5 do this? It's not in there. Because they weren't even in  
6 contact and we don't even know what this letter's about. We  
7 don't know.

8           We get to, in this period now, of Murad. And this  
9 is the man who is testifying on the video screen. And he  
10 wasn't in court. You basically saw, right, a cutoff of him  
11 sitting in a chair. You've got your video screen of him. And  
12 if you saw his direct testimony he's very  
13 answer-answer-answer. Then, when I start asking him  
14 questions, everything became complicated. Everything became  
15 complicated. Couldn't remember things. Didn't know this,  
16 didn't know that.

17           The Government entered a stipulation, okay, with the  
18 Defense. Defense Exhibit 14. This stipulation, this is five  
19 pages long and every fact on here is basically a fact that he  
20 lied about in his deposition or tried to say that he didn't  
21 say before. That's what this stipulation is. It's confirming  
22 that all the facts that I asked him in that deposition where  
23 he said no, I don't believe I said that, maybe I could have, I  
24 don't remember, no, I didn't say that. This is where he  
25 actually did say that to investigators.

1           And I'm not going to go through them all. It's five  
2 pages, okay? And that's just what came out of his mouth over  
3 a few hours, all right? And the Government is saying, you  
4 need to rely on this guy as the only, only person on the  
5 planet who says that they saw Muhanad Al Farekh after  
6 March 6th, 2007. Only person. That's what the Government has  
7 before you, okay? Murad. Let's just talk about a couple of  
8 things with him.

9           The picture on the left is the picture the  
10 Government says that he identified Mr. Al Farekh positively  
11 from. Sure. Picture on the right is Defendant's Exhibit 5,  
12 the picture that in April 2015 or somewhere in 2014 or '15,  
13 it's unclear, that another, quote, foreign Government showed  
14 him. And he was not able to say who this person was. Then  
15 tried to say, well, this photo isn't clear enough. So, how is  
16 the same photo, he says, with unknown Government people in  
17 2011 is the person on the left, but then a few years later,  
18 the mysterious al-Shami, he can't pick him out, okay?

19           In fact, he was shown -- these are all Defense  
20 Exhibits, 1 through 5 -- 1 top left, he was shown this picture  
21 of Mr. Al Farekh. Couldn't pick him out. Says, I don't know  
22 that person. Says, picture unclear.

23           Number 2. He didn't know this person. This is not  
24 Mr. Al Farekh, sorry.

25           And picture 3 and 4 are the two on the right with

1 Mr. Al Farekh with the beard. First one he said resembles Abu  
2 Ibrahim al-Daghistani. So, if Mr. Al Farekh looks like this  
3 on these two pictures they have, a 4 and 5 in the corners --  
4 those aren't the exact numbers as your Exhibits --  
5 Mr. Al Farekh looks like that in Pakistan. Assuming, assuming  
6 that Mr. Al Farekh is not running around Pakistan looking like  
7 he did years earlier, like a potential member of Pearl Jam,  
8 okay? That's what he looks like. And he says that the man on  
9 the right resembles the person on the bottom left,  
10 al-Daghistani. So he says, if anything, I think is  
11 al-Daghistani.

12 He certainly says the last one, I have not seen him  
13 before, okay? What I mean is, this, during this period, I  
14 cannot recall all the details of the individuals being shown  
15 to me.

16 This is the iron-clad positive ID that the  
17 Government wants you to hang your hat on and convict this man  
18 of these what, nine, eleven, how many counts are there? This  
19 is it. This is it. This is it. Murad. That's what you're  
20 supposed to convict Mr. Al Farekh on. On this.

21 I'm going to hit a quick highlight reel of the lies.

22 He says at some point that he saw al-Shami five to  
23 six times. He says that al-Shami spoke, you know, Arabic,  
24 Pashto, English, I think. Then on cross he says, well,  
25 actually, I saw, I don't remember actually see him, seeing him

1 two times. And then he concedes, well the two times I  
2 actually saw the mysterious al-Shami, I actually stayed in the  
3 car and the guy I was with went outside and talked to al-Shami  
4 outside and in his car were outside. And I couldn't hear  
5 because I'm in my car.

6 So, if the only two times you see this al-Shami  
7 you're sitting in your car and you admit, you flat-out admit  
8 you can't hear him, how are you telling investigators you know  
9 what languages he speak, much less three. And that he  
10 exchanged greetings in Arabic about him. What is going on?  
11 The guy is a liar. You heard these charges. He's got ten  
12 counts or so in his home country somewhere in the Middle East.  
13 You don't think that he had chickens come home to roost if he  
14 didn't start talking and giving whatever people wanted. I  
15 mean, but they're planning to ask him questions, he's just  
16 trying to say stuff. And he's just saying stuff.

17 Another example is, this is just one example. You  
18 can go through it if you want. He talks about how he knew  
19 details of Azzam al-Amriki's house. This is the person the  
20 Government says Adam Gadahn, an American who turned al-Qaeda,  
21 and he lived in this area of Waziristan. In his direct Murad  
22 goes into detail. He goes talks about the mud bricks on the  
23 house. Mud bricks. He's talking about the details of this  
24 house. Talking about how he was in the house. He was there.  
25 In the stipulation you will see that he says he had never seen

1 the house from the outside, never actually been there. He  
2 generally knew where it was. He had never been there and  
3 never seen it on the outside. What more, what more can  
4 Mr. Al Farekh do? I mean, what more can we do? You're going  
5 to convict a man on the word of someone like Murad.

6 He gets a drawing, he says. Back when he first saw  
7 the picture back in 2011 he thought al-Shami was 32 to  
8 34 years old. He's six to eight years older. It's just, it's  
9 just ludicrous. And this is what the Government says, they  
10 say based on this sketch, right, that looks nothing, nothing  
11 like Muhanad Al Farekh. I mean, look at the eyes, look at the  
12 nose. The only thing, I mean, the beard is a very interesting  
13 touch. The only thing is maybe the hairstyle, right? Between  
14 the left and the middle picture.

15 And does it maybe indicate that maybe he was shown a  
16 picture before he was asked by some unnamed Government  
17 official to help with a sketch artist to come up with hair  
18 like that? Because we think that Mr. Al Farekh, that Muhanad  
19 again, had his hair styled like that after having shaved,  
20 going to the Hajj in 2007, after the picture you see in 2015  
21 where it all stayed short the entire time? Do we think he's  
22 walking around like he did back in 2006? Come on, give me a  
23 break.

24 This is, in the middle, a picture of Abdul Hafeez.  
25 The picture of Muhanad on the right is from 2005 that Murad

1 says I can't pick him out, but the picture's not good quality,  
2 okay? Again, this is the picture, the copy that's funneled  
3 down to the Defense team, you know, later down the line, we  
4 have no idea what the original looked like that he actually  
5 saw. But you look in the middle, this is what they say is the  
6 picture of Abdul Hafeez that he did positively identify. So,  
7 if he's able to pick out this man in the middle here with that  
8 picture, look at that picture. He says he could pick that man  
9 out as Abdul Hafeez but yet he couldn't pick out the picture  
10 on the right as Muhanad Al Farekh. The exact same picture he  
11 supposedly picked Muhanad out years earlier. Give me a break.  
12 That is not the quality of information that if a real person  
13 was going to go to Murad and say, I need to decide based on  
14 your word whether, you know, a child in a family should go get  
15 brain surgery, okay? That's not the quality of information  
16 you'd use. It's ridiculous.

17 So we get to our last period of time. And this is  
18 after October 2014 when, according to the indictment, there's  
19 no more criminal activity that Mr. Al Farekh's supposedly  
20 involved in. We get to April 1st, 2015. That's the day that  
21 U.S. authorities put the cuffs on Mr. Al Farekh in Pakistan,  
22 put him on a plane, bring him back here to New York. What  
23 happens after April 1, 2015? That's when now you get a  
24 fingerprint card made of Mr. Al Farekh, so now they start  
25 doing fingerprint comparisons.

1           Now, did they have prints before that? I guess the  
2 Government's saying that they didn't, but no fingerprint  
3 comparison is done against Mr. Al Farekh to say that he had  
4 any connection whatsoever to any print until after April 1,  
5 2015, after they already arrested him. There is no  
6 handwriting analysis until after April 1, 2015. There is no  
7 DNA. There is no so-called forensic evidence or junk science  
8 or anything until after Mr. Al Farekh has already been locked  
9 up and charged with these charges.

10           So, what that means is that Mr. Al Farekh was  
11 basically charged in this case based on the word, potentially,  
12 of Murad and that identification. And maybe corroboration, if  
13 you want to say, from Ahmedzay that he saw Yusuf, who he  
14 thinks is Ferid Imam. And based on that, fear, speculation,  
15 politics, Muhanad Al Farekh now is here before you. And I'm  
16 here before you, imploring you to please weigh this decision  
17 with everything that you have. Whatever you come out to, we  
18 respect your decision, but please, weigh it with the judgment  
19 that's required with this type of decision.

20           Anwar al-Awlaki. You would think, if you have been  
21 watching this case inside in courtroom the last couple of  
22 weeks, that this is not the case of United States versus  
23 Muhanad Al Farekh. You would think this is the case of  
24 United States of America versus Anwar al-Awlaki. We heard a  
25 great case against Anwar al-Awlaki. Wonderful. What does

1 that have to do with Muhanad Al Farekh? Nothing. Because  
2 there's no evidence he listened to any of these so-called  
3 jihadist sermons.

4 There's one called The Hereafter and that's with the  
5 two-and-a-half minute blurb that you heard when he talked  
6 about shaheed, that martyrs go to heaven and they may have  
7 intercession. Kohlmann, when asked, you know, in  
8 that 22 hours of The Hereafter series, what part was that  
9 little segment about the shaheed, which of course is in the  
10 Qu'ran, okay? Which part was that in the lecture? Well, I  
11 don't know. Hours into it, the Government is trying to use a  
12 two-and-a-half snippet out of a 22-hour lecture series. That  
13 is the only thing about al-Awlaki that potentially, from an  
14 e-mail link, that the Government can say that Mr. Al Farekh  
15 had listened to at some point.

16 And Mr. Soufi, I believe, even said that things such  
17 as that were just apolitical religious. Which it is.  
18 Actually, I'll just leave it at that.

19 What do we now about that al-Awlaki stuff? We know  
20 from Vidino there's no causation. There's no science. We  
21 can't say if you watch a jihadist sermon or lecture that  
22 you're now going to join al-Qaeda. Of course not, that's  
23 ridiculous. What this is meant to do is instill fear. It's  
24 meant to instill fear that if a young man who is Muslim  
25 watches one of these things, you better watch out because he's

1 on the road to jihad. And just think about how dangerous that  
2 idea is. Think about how dangerous that is if it gets turned  
3 against anyone else in our country as it, unfortunately, has  
4 in this country. It's not the place that I don't think we  
5 want to be. But that's exactly what this Government is asking  
6 you to do.

7           The Government has scoured Mr. Al Farekh's e-mails.  
8 You heard the agent. He had open access to every e-mail.  
9 They had his phone numbers, they had everything. Do they have  
10 one e-mail where Mr. Al Farekh is plotting or conspiring with  
11 another person, doing anything surreptitious whatsoever with  
12 Ferid, with Maiwand, with anyone. They don't have one. Not  
13 one because it doesn't exist. Not one.

14           E-mails. If you look at these links that the  
15 Government has been holding up, they started with this  
16 al-Awlaki stuff. You go to these links and what did Kohlmann  
17 tell you? First of all, it's interesting. Kohlmann, he says  
18 he remembers this website from 2006. Did you catch that? And  
19 he says he remembers everything on this website from 2006.  
20 Okay? He didn't bring us the metadata. There's nothing on  
21 here that says this is a screen shot of a specific date in  
22 2006 or at the time actually that this link was. I did, I  
23 missed it and I apologized. He didn't testify about that.  
24 It's his memory. That is remarkable. Absolutely remarkable.  
25 Photographic memory. I've never heard of that.

1 But let's say, let's go with what Kohlmann says  
2 about these websites. You look at every one of these Exhibits  
3 that the Government gives, there's multiple lectures on this,  
4 there's multiple lecturers, okay? He said, this one, salaah  
5 time is used. Kohlmann himself looks on it to see what the  
6 prayer times are. These are regular sites with all kinds of  
7 stuff and most of it apolitical religious material. Yet the  
8 Government is trying to use this to get you to convict  
9 Mr. Al Farekh.

10 And when you also look at these e-mails, most of  
11 them aren't even about Muhanad. The few about al-Awlaki,  
12 there might be one, there's a couple that are sent to Muhanad.  
13 But they're sent by Maiwand and Ferid. And again, in the body  
14 of the e-mail, there's nothing saying, oh, you know, skip to  
15 the part about becoming martyrs, can't wait for that trip next  
16 month. There's nothing like that. Nothing. There's no  
17 evidence at all. Mr. Ruhnke was very clear in asking this.  
18 Any evidence that Mr. Kohlmann knew at all or that anyone has  
19 testified about that Mr. Al Farekh listened to these  
20 way-out-there sermons supposedly and certainly had any intent  
21 to do anything.

22 The one thing the Government's going to point to,  
23 and they've done it over and over again, is this Lee's Life of  
24 Lies, the video of the Islamic Army of Iraq. If you watch  
25 that video, the first one, you will hear a voice go like,

1 "hadada, hadada." If you listen to it, it's a clip of another  
2 video that's kind of like an equivalent of a Dave Chapelle  
3 parody of jihadis. So, the first one is a comedy making fun  
4 of the so-called jihadi videos. Then it cuts to them cooking  
5 food and then Muhanad says, come here, watch this one. And  
6 the camera shows five, ten seconds maybe of the beginning of  
7 Lee's Life of Lies. And then they say, oh, you're going to go  
8 to jail. He's kidding, he's kidding, you're going to go to  
9 jail, and he turns the camera off. This is their friend.

10 So, if this video -- first off, what do you know.  
11 What are you knowing and what are you guessing? Do you know  
12 why Muhanad asked his friend to come check this video out? Do  
13 you know what Muhanad was thinking at that point? Do you know  
14 how much of it they actually watched? Do you have any  
15 forensics from the computer or from computer surveillance to  
16 say how much of the video they actually watched? Do you know  
17 what Muhanad's opinion was after seeing even ten seconds of  
18 it? Do you have any -- he didn't even watch all 52 minutes,  
19 47 minutes, whatever it is, of it. Do you know anything?

20 If this is the basis of showing their criminal  
21 intent, why the heck would Muhanad let his friend walk out  
22 with a camera phone with footage of them watching this red-hot  
23 material? Oversight? Give me a break. All this is, is  
24 college kids watching what most of us would say is  
25 inappropriate material to material that we wouldn't want to

1 see, but that's what happens, okay? People watch this stuff  
2 on the Internet. It doesn't mean that you're going to then  
3 join al-Qaeda.

4           There is an e-mail where the Government says it's  
5 from Saifullah to the family of Muhanad. Again, we don't know  
6 who that is from. The Government says well, this Saifullah  
7 e-mail was sent from a computer in Pakistan, therefore, it  
8 must be Muhanad. What are you knowing, what are you guessing.  
9 Are there any other family members in the Al Farekh family who  
10 could have been in Pakistan when this was sent? Are there  
11 other people who aren't part of the Al Farekh family who might  
12 have had a reason for sending an e-mail like this? Is it an  
13 e-mail that maybe Mr. Al Farekh sent because Saifullah is a  
14 family nickname? Do you know? What do you know, what are you  
15 guessing? There is nothing in here about paying off debts,  
16 about never seeing me again, sell my belongings, any intent to  
17 die, to disappear. Nothing. The Government can twist it that  
18 way, but come on.

19           There are so many unanswered questions. So, many  
20 unanswered questions. Coppick talked about this tape again  
21 and how on the adhesive side, you saw the blurb earlier, how  
22 biological material can stick to it. He said skin. What do  
23 we know about the DNA? Not mitochondrial DNA, but nuclear DNA  
24 testing of these fingerprints on the tape, which could have  
25 DNA. What do we know about that?

1           What do we know about this other al-Shami flying  
2 around, okay, that we don't have a handle on, but we know  
3 there's another al-Shami who was in the area who was a  
4 high-ranking al-Qaeda person. What do we know about that  
5 person? There's an announcement from al-Qaeda that he died,  
6 that expert testified about. What don't we have? Do we have  
7 any announcement from al-Qaeda that Ferid Imam died? Do we  
8 have any announcement from al-Qaeda that Muhanad Al Farekh;  
9 i.e., al-Shami the Second, was captured by enemy forces, look  
10 over him as he is in enemy territory? Any announcements like  
11 that through the experts? No.

12           Do we even know, and bear with me a second, do we  
13 even know that al-Qaeda is behind the attack on FOB Chapman.  
14 How do we know that al-Qaeda was even behind it? You heard  
15 testimony, there's all kind of insurgent groups. There's  
16 groups in Pakistan, there's groups in Afghanistan. Some are  
17 aligned, some have cross-currents. There's the Taliban.  
18 There's others.

19           You heard how DNA was taken of that driver who was  
20 shot dead. Who is that person? Who belongs to the other four  
21 strands of hair? Where is the announcement from al-Qaeda  
22 saying they're taking responsibility for this? What basis do  
23 we have to say there was actually an al-Qaeda attack? Did  
24 Murad say when he was floating around in 2008 that he heard  
25 people at the camp talking about building this big bomb or a

1 series of bombs to go get FOB Chapman? Did Ahmedzay say  
2 anything about it? Nothing.

3 The Government may argue, well, it wasn't a  
4 successful operation for al-Qaeda so they wouldn't want to  
5 publicize that. Knowing or guessing? Come on. So, now the  
6 absence of evidence is going to be used, to be evidence to  
7 prove that al-Qaeda did it because they didn't say anything  
8 about it? Uh-uh. The Government hasn't even proved that  
9 al-Qaeda did this. And yet, they want you to go through all  
10 these machinations, all these twists and turns and give every  
11 inference possible to them and their so-called experts and  
12 witnesses like Murad to convict this man. Don't do it.

13 The al-Shami letters. Read these letters if you  
14 like. If they're legit, who is this guy? Is he really a  
15 leader of external operations? First off, who actually said  
16 that he was, that al-Shami was a leader? I think it was  
17 Murad, said based on his two observations in a car he thought  
18 so. Read the letters. Is this a person who is running around  
19 like Abdul Hafeez, getting people ready to go on suicide  
20 missions around the world or is this someone who is sitting in  
21 a house with his family, bored silly, and not having any real  
22 responsibility at all except for pushing some money around.  
23 Okay.

24 I'm not going to be able to speak again and I'm not  
25 going to go through -- I know I've covered a lot and I

1 can't -- on behalf of Mr. Al Farekh and the entire Defense  
2 team, we can't thank you enough for your attention, for  
3 putting up with everything. This is hard to be away from your  
4 families, from your work and just putting what you all have  
5 done. It's just, thank you. I want to express that  
6 appreciation, first off.

7 I'm not going to get a chance to speak again and the  
8 Government, one of them is going to come up and they're going  
9 to explain to you why everything I say is anywhere from  
10 misguided to wrong to inaccurate to ludicrous to crazy to just  
11 plain hysterical, okay?

12 (Continued on following page.)  
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1 MR. MAHER: What I ask you is when you go back in  
2 deliberations, if there is an argument that's being made from  
3 the Government's perspective, even if you don't necessarily  
4 agree, think: What would someone who is presumed innocent,  
5 what might they say in response to that with what you have in  
6 front of you and what you don't. If you could just think  
7 about that. But, again, you do this, however, you all feel is  
8 appropriate.

9 I want to close on this idea of radicalization, all  
10 right, and you heard this from Professor Vidino.  
11 Radicalization, right, how that's Jihadists are radicalizing  
12 people and how dangerous this is. And, of course, there is a  
13 danger. I want to read you this quote:

14 "These are revolutionary times. All over the globe,  
15 men are revolting against all systems of exploitation and  
16 oppression and out of wounds of a frail world, new systems of  
17 justice and equality are being born. The shirtless and  
18 barefoot people of the land are rising up as never before.  
19 The people who sat in darkness have seen a great light. We in  
20 the West must support these revolutions."

21 A radical statement. That was said on April 4,  
22 1967, in the Riverside Church in Manhattan by Martin Luther  
23 King, Jr., exactly one year before his assassination.

24 I am in no way equating Anwar al-Awlaki with the  
25 Rev. Martin Luther King. But what I am saying when this

1 government, this American government, tries to use what we as  
2 citizens look at, read, thinks as being too radical for them,  
3 that is not a place where we want to be.

4 Thank you so much.

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

6 Ladies and gentlemen, we'll take a midafternoon. Come back  
7 here, please, at 3:22. Do not talk about the case amongst  
8 yourselves or anyone else.

9 See you in a few minutes.

10 (Jury exits courtroom at 3:09 p.m.)

11 THE COURT: It's looking to me like we are not going  
12 to charge today. If anyone has a contrary view, let me know.  
13 By the time we're done with rebuttal, the charge is going to  
14 be an hour and a half to an hour and 45 minutes. The jury  
15 will be totally exhausted, I think we should charge them fresh  
16 tomorrow morning.

17 MR. MAHER: Thank you, your Honor.

18 MR. TUCKER: That's fine with the Government.

19 THE COURT: See new 15 minutes.

20 (Defendant exits from courtroom at 3:10p.m.)

21 (A recess in the proceedings was taken.)

22 (Defendant enters the courtroom at 3:26p.m.)

23 COURTROOM DEPUTY: Jury entering.

24 (Jury enters courtroom at 3:27p.m.)

25 THE COURT: All right. Everyone be seated, please.

1 We'll hear the Government's rebuttal. Mr. Tucker.

2 MR. TUCKER: Thank you. Good afternoon, everyone.

3 THE JURY: (Collectively) Good afternoon.

4 MR. TUCKER: The evidence here proves that this  
5 defendant is guilty. I really want to emphasize that point.  
6 It's the evidence that matters, it's the evidence that you  
7 need to look at, the evidence that you've sworn to consider in  
8 your deliberations. It's not what the lawyers argue. It's  
9 what's been presented to you over the last two weeks: The  
10 testimony from the witnesses, the physical exhibits, the  
11 photographs, the documents. That's evidence that proves that  
12 the defendant built a bomb that was used to attack a  
13 U.S. military base and that he joined and provided material  
14 support to al-Qaeda.

15 Everyone should feel proud of what's happened over  
16 the last two weeks. This is not an easy case and everyone  
17 should feel proud of the fact that even in a case like this,  
18 with charges as serious as the defendant faces, that the  
19 Government was called to present its proof.

20 One thing that defense counsel and the Government  
21 don't disagree on is that, we have the burden of proof in this  
22 case. It's our burden to prove our case beyond a reasonable  
23 doubt.

24 And you should feel proud that you live in a country  
25 where a defendant charged with such a serious crime has the

1 right to put the Government to its burden to say, You have to  
2 come into court and call witnesses and present evidence and  
3 show why I'm guilty. And I submit to you that's exactly what  
4 we did here in a case as serious as this, in a case with this  
5 much evidence. We came in, we called the witnesses, we  
6 presented the proof.

7 Now, defense counsel talked about knowing versus  
8 guessing. There shouldn't be any guessing here, I completely  
9 agree. And so, when counsel guesses and offers speculation,  
10 that should give you great pause. And my whole purpose in my  
11 address to you, which I can tell you will be substantially  
12 shorter than the previous argument you've heard, will be to  
13 draw you back to the evidence in the case because that's  
14 honestly what really matters here.

15 There are certain basic points, I submit, that there  
16 can't really be any dispute on. The first point, and defense  
17 counsel has conceded, is that the defendant and Maiwand Yar  
18 and Ferid Imam left Canada together and went to Pakistan. And  
19 they left under extremely suspicious circumstances. They left  
20 abruptly. They left pretty much without warning and that is  
21 significant because it tells you something about their state  
22 of mind when they left.

23 Now, one of the points that counsel made right from  
24 the outset in his argument, and I have to point it out right  
25 away is that he said they left and no one was alarmed. None

1 of the families were alarmed.

2           These are important facts. This is important  
3 evidence when you're considering the case, when you're  
4 considering your verdict. I implore you, go back to the  
5 evidence. Go back to the testimony if you have any questions  
6 because, I submit to you respectfully, that defense counsel's  
7 arguments at times were untethered from the evidence and were  
8 in some cases flat wrong, and this is the first of several of  
9 those examples.

10           Ms. Clarke, can I have the document camera?

11           This is Government's Exhibit 822. This is an e-mail  
12 from Ferid Imam to his family. And, ladies and gentlemen,  
13 this e-mail is dated March 15, 2007, which you know is about  
14 one week after the defendant and Maiwand Yar and Ferid Imam  
15 left Canada and went to Pakistan. And right away, you know  
16 there's a problem with defense counsel's argument because he's  
17 just not correct. This is an e-mail from a family member  
18 saying, We're worried. Hi Ferid please let me know where you  
19 are. Everybody is worried. Just let us know where you are.

20           It's simply not correct that no one was concerned  
21 about where these three men were. People were worried right  
22 from the outset and they had cause to be because the responses  
23 that they got like Ferid Imam's e-mail here, This is probably  
24 the last e-mail you'll receive and I ask Allah to make us a  
25 family in Jannah, in paradise, like they made us a family in

1 this life.

2 Ladies and gentlemen, people were worried, they left  
3 under strange circumstances. Youcef Soufi told you about  
4 that. They were close friends and then they were gone.

5 I submit to you there also cannot be meaningful  
6 dispute that Maiwand Yar and Ferid Imam became members of  
7 al-Qaeda. How do you know? Well, have the letter. I'm not  
8 going to go through it all again. This was the letter that he  
9 received in February 2009, that Ahmed Yar received, and the  
10 language is unambiguous.

11 Referring to al-Qaeda and the Taliban, their only  
12 purpose is to apply the rulings of Allah but people call them  
13 terrorists and other things. You hear about them on TV but  
14 this is what you hear in the media around you. But I swear by  
15 Allah that these people are the best people in the world who  
16 have left their homes as doctors engineers, et cetera, all for  
17 the sake of Allah. "I tell you this from experience because,"  
18 and this is really important, ladies and gentlemen, this is  
19 Government's Exhibit 1202. It reads, I have spent time with  
20 them but if you look carefully what's struck out. It says, "I  
21 am with them." Al-Qaeda and the Taliban.

22 And what happens not long after Ahmed Yar gets this  
23 letter? He learns that his brother is dead and one of the  
24 comments that was made by counsel both with respect Maiwand  
25 Yar and Ferid Imam is where was the death certificate? Where

1 is the proof of their death. Well, ladies and gentlemen, you  
2 know the tragic reality is people who go and die under those  
3 circumstances.

4 And what that leaves people's families feeling like  
5 Ahmed Yar when he came and test before you. There is no death  
6 certificate there. There's no glory. The reality is that  
7 they died and their families are left broken as you heard.

8 And you Ferid Imam joined al-Qaeda because you heard  
9 testimony from another member of al-Qaeda. From Zarein  
10 Ahmedzay that says Ferid Imam is his weapons trainer. He says  
11 that's Youcef, that's my trainer.

12 Ladies and gentlemen, I submit to you there's no  
13 meaningful dispute on that point. Maiwand Yar and Ferid Imam  
14 become members of al-Qaeda.

15 And then there's Abdallah al-Shami. I submit to you  
16 there is no meaningful dispute that there is a man named  
17 Abdallah al-Shami who is in the External Operations Group from  
18 al-Qaeda.

19 Now, counsel talked about, and this is really  
20 important. Counsel talked about this stipulation which he  
21 described as a list of Sufwan Murad's lies. But I'm going to  
22 come back to Sufwan Murad.

23 I encourage you, as with all of the evidence in this  
24 case, look at it for yourselves. It's really, really  
25 important stuff. This is not a list of Sufwan Murad's lies.

1 This is a list of things Sufwan Murad said previously to the  
2 deposition that you heard. And as early as November 2010, the  
3 parties agree, this is Defense 14, he's talking about a guy  
4 named Abdallah al-Shami. That's November 2010, that's five  
5 years before the defendant's arrested by the FBI and brought  
6 back to the United States. This guy's not a figment of  
7 somebody's imagination, he's for real. And you know he's for  
8 real because in 2013 somebody's writing letters signed in  
9 Arabic, Abdallah al-Shami, and he's using al-Qaeda mail. This  
10 guy's for real and he's a bad guy. He's an honest to goodness  
11 al-Qaeda bad guy.

12 And the reason I want to you focus on this reality  
13 is these are useful guideposts as you consider the rest of the  
14 Government's proof as you consider the evidence in this case.

15 And you know that the defendant was  
16 Abdallah al-Shami, and you know it not because of the  
17 testimony of Sufwan Murad, not just because of the fact that  
18 he travels overseas with these two men who both join al-Qaeda,  
19 but because of the fingerprints on the bomb that's used to  
20 attack the U.S. military base in Khost, because of the DNA  
21 sequence that matches the mtDNA sequence that matches the  
22 defendant because you know that defendant was an avid consumer  
23 of Jihadist media before he traveled overseas.

24 Now, I have to talk about "Lee's Life for Lies." I  
25 honestly wasn't going to discuss it very much but a point had

1 been made.

2 Defense counsel said something. He said, if you  
3 listen, you'll hear at the beginning they're listening to some  
4 kind of joke video. Ladies and gentlemen, watch that video,  
5 look at the record. There is nothing in the record to suggest  
6 in any way that the video that Farekh listens to at first is a  
7 joke. It is not.

8 In any case, what does it matter? What that video  
9 definitely does tell you is that Muhanad Al Farekh had  
10 listened and watched "Lee's Life for Lies" before the video is  
11 shot. That's Government's 503.

12 And you know it because he's encouraging them to  
13 come over and listen and watch the video with him. He's seen  
14 it before. So when defense counsel says watching that video  
15 doesn't tell you anything. It doesn't tell you whether he's  
16 seen that video before. Doesn't tell you how he feels about  
17 it. Well, you know that's just not true. He's seen it  
18 before. He knows what it is, he's looking for it  
19 specifically.

20 And, by the way, you heard testimony that that video  
21 was published just about a month before the recording of the  
22 defendant's watching the video was made. That tells you  
23 something interesting, too. That tells you the defendant, in  
24 the months leading up to his travel to Pakistan, with Maiwand  
25 Yar and Ferid Imam he's on the cutting edge of videos like

1 that. Videos depicting extreme violence against American  
2 soldiers. American vehicles being blown up, American soldiers  
3 being killed by snipers. The reason that that video is  
4 important is because it tells you something about the  
5 defendant's state of mind just a couple weeks before he gets  
6 on that airplane. It tells you that he doesn't have the  
7 reaction that a normal person would to that kind of violence.

8 When he watches that kind of video, he's psyching  
9 himself up. He's getting in the state of mind that he has to  
10 be in to engage in the types of violence that you know he  
11 committed. Like building a 7,500-pound truck bomb that gets  
12 driven up to the front gate of FOB Chapman on January 19,  
13 2009.

14 Now, defense counsel offers a series of sort of  
15 excuses, sort of speculation. One of the things he said he  
16 wasn't doing and accused the Government of doing. But that's  
17 I submit exactly what he engages in. He says maybe Yar's  
18 fleeing an arranged marriage. Maybe they all went overseas to  
19 do dawah.

20 There is absolutely nothing in the record to support  
21 that theory. And so much evidence that suggests that's not  
22 true. On the tablighi jamaat point, remember the testimony  
23 from Ahmed Yar. That guy went overseas, his father's dead.  
24 Ahmed Yar is the oldest, he's the patriarch of the family at  
25 that point. He's the head of the family. And he said that he

1 had a mission when he went overseas to bring his little  
2 brother back.

3 Put yourself in his shoes for a minute and how  
4 incredibly torturous that must have been to go over there to  
5 desperately look through volume after volume of tablighi  
6 jamaat registration documents hoping that you can find your  
7 brother to be just a few weeks behind them at the hotel in  
8 Peshawar, but to know that you just missed them.

9 Put yourself in Ahmed Yar's shoes. But what his  
10 testimony tells you is that he's able to find no indication  
11 that the defendant and Maiwand Yar and Farid Imam went off to  
12 do dawah and went to do service. And you know that Maiwand  
13 Yar and Ferid Imam certainly didn't.

14 The other problem with this completely unsupported  
15 theory that defense counsel's trying to propose here is that  
16 the defendant's own actions undermine it. His own lies betray  
17 him now because they don't make any sense. This is  
18 Government's Exhibit 816 and Government's Exhibit 817.  
19 Mr. Pravda showed you these this morning.

20 Ladies and gentlemen, again, just put yourself in  
21 the defendant's shoes here. If you're talking about going to  
22 do service overseas, if that's your goal, first off, why not  
23 wait until the summer, why go in the middle school year? But  
24 fine, let say for a moment they wanted to take a break. Like  
25 defense counsel said, They were footloose young men who just

1 wanted to travel overseas. Why do you tell a lie here?  
2 What's the value in lying there's no -- it doesn't make any  
3 sense. Why create a different story that you know isn't true  
4 because the defendant doesn't go home. He goes to Pakistan.  
5 You know that.

6 Same problem with the visa application to Pakistan.  
7 Here he says it's about tourism. Again, why tell that lie?  
8 It doesn't make any sense. You would say I'm going to do  
9 service. Tourism is not service. He even lies to his family.  
10 I'm doing some sightseeing as well as some hiking and the rest  
11 of the outdoors.

12 Ladies and gentlemen, there's absolutely nothing in  
13 the record to support defense counsel's claim that these three  
14 guys were heading overseas to do some kind of service and help  
15 poor people. It's simply not true, and the defendant's lies  
16 show you that's just not true.

17 Now, counsel spent some time talking to you about  
18 what Ahmed Yar believed when he traveled overseas to find his  
19 brother in 2007. I submit to you, even assuming that Ahmed  
20 Yar at that time thought may be that Ferid Imam is doing  
21 service, and Maiwand Yar was doing service doesn't matter at  
22 all because again, ladies and gentlemen, put yourself in Ahmed  
23 Yar's shoes. That's denial. That's hope. That's maybe he's  
24 still alive which, I submit to you, permeated all of Ahmed  
25 Yar's testimony. He still hopes his brother is alive. He

1 doesn't know.

2           But what he thinks might have happened or what he  
3 tells the authorities might be the case in 2007 isn't  
4 probative at all on the question that you have to decide  
5 today. What you know, what is proved, is that Maiwand Yar is  
6 writing letters about being a members of al-Qaeda. Yes, it  
7 might very well be true that some of the defendant's friends  
8 and some off Yar's friends and some of Imam's friends hoped in  
9 2007 that they had not gone off to join a terrorist group but  
10 that, unfortunately for the defendant, doesn't move the needle  
11 at all.

12           One other point on the February 2009 letter by  
13 Maiwand Yar. Defense counsel noted that there's no reference  
14 to the FOB Chapman attack in there and suggests that somehow  
15 that undermines the theory that the defendant, whose  
16 fingerprints and DNA were recovered from that scene, with a  
17 hair sample with consistent DNA was recovered from that scene,  
18 that some of that undermines the theory.

19           Ladies and gentlemen, again, use your common sense,  
20 supplemented by the testimony that you heard in this case.  
21 Al-Qaeda doesn't take credit for failed attacks. Just doesn't  
22 make sense. Why on earth would Maiwand Yar sent a letter home  
23 to his family and say, you know, I'm part of a group that  
24 participated in a failed attack. Even assuming that he was  
25 part of it. Again, the issue here is that defense counsel's

1 making arguments that have no foundation in the evidence.

2 What really matters is what the evidence does show you -- the  
3 fingerprints, the testimony, the documents, the e-mails.

4 Now, I have to talk about the forensics for a few  
5 minutes because this is really important.

6 Now, defense counsel talks about that there's not  
7 documentation regarding chain of custody. You know that's not  
8 true. You had a human chain of custody come into this  
9 courtroom and walk you step by step through the recovery of  
10 this evidence.

11 It started with Daniel Camden when he put on a bomb  
12 suit like this at enormous personal risk and walked up to that  
13 truck bomb, that 7,500-pound VBIED. And, as he testified, one  
14 possibility would have been to simply destroy the truck,  
15 right? Destroying the truck would certainly have placed  
16 Daniel Camden in a much less dangerous situation. That's not  
17 what Danny Camden and Arlene Breitbard do because part of  
18 their mission is to recover evidence from scenes like that.

19 And why do they do that? They explained it to you.  
20 It's because they hope to learn from what happened. They hope  
21 to identify the people responsible and identify the tactics  
22 employed because that might save lives down the line.

23 (Continued on the next page.)  
24  
25

1 MR. TUCKER: There's no point in destroying evidence  
2 if you can recover it. And so Danny Camden, at enormous  
3 personal risk to himself, and Arlene Breitbard, enormous  
4 personal risk to herself, removed Cruise box after Cruise box  
5 of potentially booby-trapped explosives.

6 Remember the photograph. This is Government's 668.  
7 Remember how Danny Camden testified that they used a line to  
8 remove one Cruise box at a time, because he was concerned that  
9 there might have been a hand grenade or some kind of secondary  
10 explosive that might have gone off.

11 Again, there's simpler ways to do this, ladies and  
12 gentlemen; but they went through this painstaking process,  
13 tearing apart each bomb in the hopes that they could recover  
14 some kind of useful forensic evidence. And if you put  
15 yourself in their shoes, they're doing this in January 2009.  
16 They have no idea, when they're exposing themselves to this  
17 kind of risk, when Danny Camden's walking up to that VBIED not  
18 being able to communicate with his team because he can't use a  
19 radio, because he's afraid he will set the bomb off. He has  
20 no way of knowing that eight years later he might appear in a  
21 federal courtroom and talk about the work that he did.

22 As far as they know, you know, it's arranging deck  
23 chairs on the Titanic. It's arranging furniture in a burning  
24 house. There's no immediate payoff. There's no guarantee of  
25 payoff ever. But that's what they do, because the hope is

1 that some day their hard work will pay off.

2 They disassembled these bombs. They removed  
3 extremely powerful, high explosive P-E-T-N, PETN, from the  
4 individual donor charges. That's Government's 629.

5 They bag up the tape. That's Government's 639, 641  
6 and 642. And they send it to Bagram where Coppick is waiting  
7 for them, and he goes through that process of painstaking  
8 removing the tape, piece by piece, and cutting it up.

9 And you know what Mr. Pravda said before, in light  
10 of defendant counsel's argument, I have to say it again. I  
11 submit to you, ladies and gentlemen, it doesn't matter at all  
12 whether the piece of tape came from here, or here, or here,  
13 and remember, we're talking about 18 different pieces of tape.  
14 But it doesn't matter where they came from, because they all  
15 came from donor charges that had PETN inside of them, that  
16 would have detonated the 7500-pound bomb that would have  
17 caused enormous damage to FOB Chapman.

18 Craig Coppick pulls the prints and he takes  
19 photographs of that, and Arlene Breitbard bags up all of the  
20 physical evidence, that trace evidence, including the hair,  
21 which -- for the record that's 406M, that's envelope number  
22 three, not five, number three -- and it says on that envelope,  
23 "Hair from UBE." And you know by now UBE means unidentified  
24 bolt explosives. That tells you where this comes from.

25 There was some argument about Danny Camden's finding

1 the mystery hair, and that somehow there was kind of tension  
2 in their testimony, between the testimony of Danny Camden and  
3 Arlene Breitbard. Defense counsel read from one portion of  
4 the transcript.

5 This is my point when I say you have to go back and  
6 look at all the evidence. This is the next page of what  
7 Mr. Maher read from. Is this is transcript page 145, which,  
8 for the record, this is still cross-examination. Sometimes  
9 for arguments that we only pick direct and redirect. But this  
10 is cross-examination.

11 "And at that point, you recovered the hair. What  
12 did you specifically do when you saw the hair? "We stopped  
13 and I pointed to it and I said, I think there's a hair right  
14 there. And Chief Breitbard, Arlene, was there during the  
15 download procedure and she pulled out one of those little  
16 light brown envelopes, and she took out some tweezers and put  
17 them in there, and put it in evidence bag, and set it aside  
18 for whatever else we found." Now, ladies and gentlemen, I  
19 want to be clear, Danny Camden doesn't know, and he can't know  
20 today, whether that particular hair that he spotted was the  
21 hair that went in envelope number three, or number one, or  
22 number five. There's no inconsistency there. And there's  
23 also no meaningful dispute that all those hairs that Arlene  
24 Breitbard bagged up, came from UBE, including trace sample M,  
25 which had the DNA profile, the mitochondrial DNA profile, that

1 is the same as the defendant's. This is what I mean when I  
2 said the transcripts matter. The evidence matters. And so if  
3 you're not sure, look at the transcripts. Look at the  
4 evidence. That's what matters in this case.

5 Defense counsel talked about junk science. He said  
6 fingerprints were junk science. Now, you heard a lot of  
7 testimony about fingerprints. You heard a lot of forensic  
8 testimony generally. I am not going to go through it all  
9 again, but I want to make just a couple of important points  
10 about the fingerprint comparison that Kendra Sibley went  
11 through.

12 First off, Kendra Sibley, just so the record is  
13 clear, she is not an agent. Mr. Maher called her an agent.  
14 She's not an agent. She is a specialist in the area of  
15 fingerprint comparison and analysis. She's been doing for a  
16 long time, despite the fact that she looks pretty young. She  
17 talked about how she's a supervisor, and that this is her job,  
18 and that she takes it seriously.

19 And she explained to you all the different processes  
20 that led up to her conducting her fingerprint comparison;  
21 right? She described how first there was this process, this  
22 computer process, called a fingerprint cascade. And there was  
23 a possible match.

24 That's not the match the Government's relying on in  
25 any way; but that's an important first step, that would lead

1 eventually to her painstakingly comparing fingerprint after  
2 fingerprint.

3           And here's another important point. Of the  
4 fingerprints that she deemed of value, she did not match every  
5 fingerprint. She testified that there were 27 latents of  
6 value, I believe, and she was able to determine that 18 of  
7 them were matches to the defendant. That means that nine  
8 fingerprints that were recovered from the brown packing tape,  
9 didn't match to the defendant.

10           If this is an example of confirmation bias, or the  
11 Government cooking the case somehow, that seems like a pretty  
12 bad way to come at it. And remember, Kendra Sibley also  
13 testified that she had one print where she wasn't sure it was  
14 a match. So what we did is, she asked the investigative team  
15 for major case prints. And it was explained to you, that  
16 major case prints are a more detailed way, pulling a  
17 fingerprint from an individual for use in comparisons. And  
18 after that process, she determined that was not a match.

19           You know, one of the reasons that Kendra Sibley  
20 testified was not only so that she could offer her -- you her  
21 opinion, that there were 18 latent print matches; but so that  
22 she could explain to you, the jury, the methodology that she  
23 employed. I'm sure the defense counsel didn't mean to do  
24 this, but I found some of the points here I want to highlight.

25           This wasn't just a question of is the known prints

1 and the unknown print bought a swirl, or is it a whirl, or is  
2 it a different kind of print? She explained that this was a  
3 point-by-point analysis, where she painstakingly worked from  
4 one friction ridge to another to determine whether the known  
5 prints and the questioned print were, in fact, a match. So it  
6 wasn't just these general attributes. She looked to see  
7 whether the print pulled from the packing tape shared the same  
8 detailed attributes as the questioned one. And that's really  
9 important to know.

10 And she didn't do that just for one print, ladies  
11 and gentlemen. She did that for 18 different fingerprints.  
12 And, yes, they are partial prints. You heard testimony from  
13 Craig Coppick and Kendra Sibley, who explained that a latent  
14 print is an unintentionally left print. Latent prints aren't  
15 complete. That's the whole business of fingerprint analysis.

16 She was able to go through and find multipoint  
17 comparisons, and similarities, and identifications between the  
18 known prints and the questioned prints. And she was able to  
19 determine, and another fingerprint examiner was able to  
20 verify, these 18 matches between the defendant. And these  
21 prints that were pulled from the packing tape wrapped around  
22 those explosive charges.

23 Ladies and gentlemen, I submit to you that's not  
24 junk science. And you know it's not junk science because it  
25 was explained to you in detail.

1           Now, counsel talked about -- he offered, again, some  
2 sort of speculative way, this possibility that maybe the  
3 fingerprints were left accidentally. He put his glove on and  
4 he kind of pulled the tape off again.

5           But this is really an instance, ladies and  
6 gentlemen, where you, as the jury, have to bring your common  
7 sense to this question. Think of everybody has used tape like  
8 this before. Think about how you use this tape. You don't  
9 roll it off, and roll it back, and use it later. You don't  
10 peel off and put and it on the table for weeks or months to  
11 sit around. That's just not how people use brown packing tape  
12 in the real world. You take it off. You wrap it around  
13 stuff, and you're done. You break it. You use it. That's  
14 it.

15           And by the way, ladies and gentlemen, on this point,  
16 that if the defendant were the really smart he would have worn  
17 gloves when he was applying the tape. You know that doesn't  
18 make sense, because the defendant expected that this tape  
19 would be incinerated in a huge explosion that his 7500-pound  
20 bomb was going to create. He didn't wear a print -- he didn't  
21 wear gloves because he wasn't worrying about prints. Not  
22 because he wanted to get caught, but because he believed that  
23 this attack was going to be successful. This was a big  
24 attack. This with a big bomb. Danny Camden, the guy who's  
25 seen his share of bombs, told you this was the biggest one he

1 ever met.

2 Defense counsel talked about the lectures. Anwar  
3 al-Awlaki lectures. And I submit to you that there was a  
4 suggestion made that this prosecution was somehow motivated by  
5 the fact that the defendant listened to or had his friends  
6 listen to extremist jihadist propaganda. And then there was  
7 an analogy drawn to Dr. Martin Luther King.

8 Defense counsel sort of bounced back and forth  
9 between al-Awlaki being harmless, or maybe he was bad, or  
10 there's no proof that the lectures that the defendant listened  
11 to were, in fact, bad. And then there was the suggestion that  
12 "The Hereafter," which is -- just so we're all clear, we're  
13 all talking about the same thing, right -- that's the one  
14 email that even defense counsel, I think, realizes he's sort  
15 of stuck there. This is Government Exhibit 819.

16 This is Farekh to his father saying, Call and ask  
17 for "The Hereafter". And if Ibrahim likes it, get the rest of  
18 the lessons. You don't recommend a lecture unless you have  
19 listened to it before.

20 But, ladies and gentlemen, you heard a number of  
21 al-Awlaki lectures, and you heard a number of them  
22 summarized. But I think this one bears playing one more time.

23 I'm going to ask Ms. Cook to assist me here and  
24 play, anytime you are ready, and play  
25 Government's Exhibit 1017.

1 (Audio playing.)

2 MR. TUCKER: Ladies and gentlemen, that's what the  
3 defendant's listening to in February 2007, just before he  
4 travels overseas. That's what he's recommending to his  
5 brother.

6 I submit to you, ladies and gentlemen,  
7 notwithstanding what defense counsel may have said, that's not  
8 some historical discussion of the Koran. That is a very  
9 practical, very modern, very extremist perspective, on what  
10 otherwise should be a far more mundane discussion. This a  
11 discussion about bombs, and swords, and explosions. This a  
12 discussion about death.

13 And to defense counsel's point, that while Ferid  
14 Imam may be saying goodbye to his family, why is Farekh  
15 talking about death when he emails his?

16 I submit to you, ladies and gentlemen, he's doing  
17 just that. "The Hereafter" is a series about death, and  
18 that's what's on the defendant's mind just a couple weeks  
19 before he travels overseas.

20 And I have to speak briefly about the testimony of  
21 Mr. Murad and Mr. Ahmedzay.

22 Now, first I want to talk about Mr. Murad's  
23 testimony. Now, as a threshold matter as Mr. Pravda said  
24 earlier, Mr. Murad and Mr. Ahmedzay are bad guys. No question  
25 about it. Mr. Murad was in a position to testify about the

1 things that he did, because of his own criminality, because of  
2 his own membership in al-Qaeda. And it's striking when you  
3 think about someone who, you know, clearly I think, by his own  
4 admission, was not a particularly good fighter, that he  
5 managed to have contact with senior al-Qaeda leaders, like  
6 Haji Muhammad, like Mustafa Abu al-Yazid, like Abdul Hafeez or  
7 Saleh al-Somali, but because he had contact with those  
8 individuals, and particularly because of his job as the  
9 deputy, as the driver in, whatever you want to say, in the  
10 family, he was in a position to encounter the defendant in the  
11 FATA in 2009 and 2010, just like he said.

12 Now, I want to talk about the photo ID for a moment,  
13 because it's really, really important. And I think it got a  
14 little muddled, frankly, in counsel's argument. I really want  
15 to make it clear; right?

16 So this is 101B. This is the photograph of the  
17 defendant that Sufwan Murad identified as Abdallah al-Shami.  
18 And then there were a series of other photographs, which  
19 counsel asked questions about during the deposition, and which  
20 the Government does not dispute, Sufwan Murad did not  
21 identify.

22 Photo identifications, you have to look carefully at  
23 the photographs. And I submit to you, this is Defense 1,  
24 Defense 3, Defense 3 and 4, which are sort of the same photos  
25 from different sides. And you know what, they -- the Sufwan

1 Murad didn't identify them. But I submit to you, ladies and  
2 gentlemen, that's one, understandable; and two, a significant  
3 indicator that Sufwan Murad is not just identifying anything  
4 that moves as Abdallah al-Shami.

5 Look at these photographs back in the jury room.  
6 The first off, they are of low quality, and defense counsel  
7 made this suggestion that this was a form that they reached  
8 defense counsel at the end of the day. This is what's in  
9 evidence. This the form the Government has. This is what was  
10 used.

11 And if you look at these photographs, they are  
12 grainy. They're black and white. And that's significant.  
13 The other thing to say, if you look at these photographs,  
14 there can't be any meaningful dispute that over the years the  
15 defendant's appearance changed dramatically. He cut his hair.  
16 He grew his hair long. Sometimes he had a beard. Sometimes  
17 he didn't.

18 I submit to you -- and this is your determination  
19 that controls -- but look at these photographs. His  
20 appearance changes. And it makes sense, I submit, that Sufwan  
21 Murad recognized the photograph of the defendant when he  
22 looked in a similar way as when he encountered him, with long  
23 hair. Which is exactly what he sketched.

24 And by the way, ladies and gentlemen, look at the  
25 transcript. The record is really clear. Sufwan Murad did the

1 sketch before he saw the photograph. That was his testimony.  
2 And that's what makes sense.

3 Now, this is Defense 5. This is 101B. This one is  
4 black and white. This one's color. And I submit to you,  
5 ladies and gentlemen, that's important, too.

6 If you think about Sufwan Murad's testimony, he's  
7 able to recognize Abdallah al-Shami by hair color, by skin  
8 color, by eye color. Those things are important. That  
9 information is not available in this the photograph. So think  
10 about that when you're assessing whether you credit the photo  
11 identification.

12 The other thing that, obviously, you have to  
13 consider, you have to consider the other evidence in this  
14 case. And for all the reasons that Mr. Pravda went through  
15 this morning, Sufwan Murad's testimony is supported by the  
16 testimony of Zarein Ahmedzay and the handwritten letters.

17 Now, defense counsel's absolutely right. There's  
18 nothing in the record about the circumstances in which those  
19 letters were found. But it is the Government's contention,  
20 and I encourage you to look carefully at them. Please do read  
21 them, that those letters on their own are very probative.

22 And on the handwriting part, I'm not going to  
23 belabor it. You all saw the slides. Go back in the jury room  
24 and take a look for yourselves. We encourage it. Gabe Watts  
25 was just the first part of that process. This is your

1 determination, he just identified things to focus on.

2 But, ladies and gentlemen, I submit to you, that  
3 when you look at those -- look at that handwriting, you look  
4 at those comparisons, and think about the broader context of  
5 what you know the defendant was doing during that time, you  
6 will conclude that those are his letters. And then when you  
7 take into account the letters and Sufwan Murad's testimony,  
8 and Zarein Ahmedzay's testimony, and the fingerprints on the  
9 bomb, and the hair recovered with consistent DNA, and the  
10 radicalization by defendant when he traveled overseas, you  
11 will conclude that his testimony is credible.

12 Now, with respect to Zarein Ahmedzay. Again, he  
13 committed a terrible crime. You heard testimony that he had  
14 entered into -- has entered into a cooperation agreement with  
15 the Government. And you saw the letter that he wrote to  
16 Mr. Pravda.

17 A cooperation agreement isn't truth serum, ladies  
18 and gentlemen. I'm not here to tell you that it is. It  
19 doesn't turn a devil into a saint; but what it does do, is it  
20 changes motivations. It makes and creates strong incentives  
21 for a bad person to tell the truth.

22 That said, it should not be lost. And I'm sure it  
23 isn't on any of you, that Zarein Ahmedzay identifies Ferid  
24 Imam, but does not identify the defendant. And I submit to  
25 you that should make you more inclined to believe him, because

1 he's not shading his testimony. If this guy's makings up  
2 lies, come up with a better lie.

3 The reason he's not -- you know he's not lying, I  
4 submit, is because his testimony isn't too good to be true.  
5 His testimony has the hallmarks of credibility, and it makes  
6 sense.

7 And one of the points that counsel made was where is  
8 the defendant? Well, you know where defendant is, ladies and  
9 gentlemen. He is building a bomb that's going to be used to  
10 attack FOB Chapman. He is not training Zarein Ahmedzay and  
11 Najubullah Zazi as and he is doing something else.

12 And you also know from the testimony of Dr. Vidino  
13 and from the testimony of Zarein Ahmedzay, and Sufwan Murad,  
14 and this was a point that defense counsel emphasized,  
15 al-Qaeda is a compartmentalized organization. There is not  
16 one camp where everyone in al-Qaeda hangs out and talks  
17 about what they're doing. That would be crazy. That would be  
18 foolish. That's not how these organizations work. That's  
19 trade craft, ladies and gentlemen.

20 Ladies and gentlemen, let me end. This case is not  
21 about a single piece of evidence or a single witness. You do  
22 need to consider everything as a whole.

23 Defense counsel talked about getting a second  
24 opinion from a doctor. When you're making an important  
25 decision in your own life, such as trying to decide about

1 medical treatment, you want to get a second opinion from a  
2 doctor. I don't disagree with that.

3 But the analogy doesn't take that you far in this  
4 case, but I submit to you, that this is how the analogy  
5 concludes. In this case, your second opinion is a different  
6 piece of evidence. You look at Sufwan Murad's testimony.  
7 Should I believe that? I need to get a second opinion.

8 I'm going to think about what Zarein Ahmedzay says.  
9 I'm thinking about Zarein Ahmedzay and Sufwan Murad. I need a  
10 second opinion or third opinion. What do you consider the 18  
11 fingerprints recovered from the VBIED used to attack the U.S.  
12 military base in Khost. That's how second and third opinions  
13 work. You don't consider facts in isolation. You consider  
14 the evidence as a whole.

15 Ladies and gentlemen, if there's one theme that rose  
16 above in this case. I think it's clear that this defendant  
17 was careful and he engaged in trade craft. He was cautious.  
18 And at the end of day, he was not cautious enough, because he  
19 never imagined that the bomb that he helped build, wouldn't go  
20 off and that the brown packing tape would be recovered and  
21 that some day he would be brought into a U.S. courtroom and  
22 asked to be held accountable for his actions.

23 He never expected that the U.S.B drive that he used  
24 to securely communicate with other al-Qaeda members would be  
25 analyzed by the FBI, letters found, handwriting compared and

1 presented to a jury. But that's exactly what happened.

2 Ladies and gentlemen, after more than a decade of  
3 holding extremist ideology far more important, traveling to  
4 Afghanistan and Pakistan to join al-Qaeda and to change his  
5 radical thoughts into actions after joining al-Qaeda,  
6 providing material support to al-Qaeda, and building a bomb  
7 that was destined for a U.S. military base, he is here in  
8 court.

9 Find him guilty, ladies and gentlemen, not because I  
10 say he's guilty, or that any of the prosecutors say he is  
11 guilty; but because the evidence leads to you that one  
12 conclusion that he must be guilty because the evidence shows  
13 that the Government has proved its case beyond a reasonable  
14 doubt.

15 Find him guilty, ladies and gentlemen. Guilty as  
16 charged.

17 Thank you.

18 THE COURT: Thank you, Mr. Tucker.

19 All right. Ladies and gentlemen, I'm not going to  
20 try to give you the final instructions tonight. I'm going to  
21 do that first thing tomorrow morning. So I'll ask you to go  
22 home and get some rest.

23 As I told you before, this is very hard work. I was  
24 watching all of you through the arguments. You concentrated  
25 intensely and we really appreciate that.

1           Please continue to observe the admonitions against  
2 communication, research, internet visiting, media, all the  
3 things that I've been telling you throughout this trial.

4           So you'll come back at 9:30 tomorrow. I will give  
5 you your instruction and you will begin deliberations  
6 tomorrow.

7           All right. Thank you very much. Have a good night.

8           (Jury exits the courtroom.)

9           THE COURT: All right. We're adjourned until  
10 9:30 tomorrow.

11          MR. MAHER: Thank you.

12          MR. TUCKER: Thank you, Your Honor.

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14          (Proceedings adjourned at 4:20 p.m. to resume on  
15 September 27, 2017 at 9:30 a.m.)  
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