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

3 UNITED STATES OF AMERICA

4 v.

S(7) 98 Cr. 1023

5 USAMA BIN LADEN, et al.,

6 Defendants.

7 -----x

8

New York, N.Y.
February 7, 2001
10:00 a.m.

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12 Before:

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HON. LEONARD B. SAND,

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District Judge

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1 (Trial resumed)

2 (Robing room conference sealed, filed under separate
3 cover)

4 (Court's Exhibit A was duly marked.)

5 (Jury present)

6 THE COURT: Good morning, ladies and gentlemen. The
7 witness may take the stand.

8 Wednesday, February 14, we will start a little later.
9 We will start at 10:30. I assume you will make arrangements
10 in terms of transportation if you haven't already done that.

11 JAMAL AHMED AL-FADL, resumed.

12 DIRECT EXAMINATION (Continued)

13 BY MR. FITZGERALD:

14 Q. Good morning, sir. If you could keep your voice up and
15 try to speak slowly, again, and sit forward in your chair.

16 THE COURT: The court reminds you, you are still
17 under oath.

18 Q. Sir, are you familiar with a business by the name of the
19 Khartoum Tannery?

20 A. Yes.

21 Q. Can you tell us what the Khartoum Tannery is.

22 A. It belong to the government of Sudan, and we buy from them
23 and we use it for business.

24 Q. What does the tannery do?

25 MR. COHN: Your Honor, that was totally

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1 incomprehensible.

2 A. I want to tell her the answer and she say it in English.

3 (Through the interpreter) We treat the skins of the
4 cows, and then we export them abroad.

5 Q. Did there come a time when the Khartoum Tannery's
6 ownership changed?

7 A. Yes.

8 Q. Can you tell us when that was, approximately.

9 A. I remember end of '93.

10 Q. What happened?

11 A. We buy it from the government.

12 Q. Who is we?

13 A. Al Qaeda group.

14 Q. How much of the Khartoum Tannery did al Qaeda buy?

15 A. We owed money, the Islamic National Front, from the
16 government, from the Sudan government.

17 Q. What did the Sudanese government owe al Qaeda money for?

18 A. We build the Thaadi Road.

19 MR. FITZGERALD: Can the interpreter translate the
20 word Thaadi from Arabic into English.

21 THE INTERPRETER: The revolutionary road.

22 Q. Where did that road go from and to?

23 A. From Khartoum City to Atbar City, Shendi City, Hayar City.

24 Q. Who built the road?

25 A. Hijra Construction Company.

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1 Q. Is that the construction company you described yesterday?

2 A. Yes.

3 Q. Why did the Sudanese government give al Qaeda the Khartoum
4 Tannery or a portion of it?

5 A. Because they don't have money.

6 Q. Was that in exchange, as payment for building the road?

7 A. Correct.

8 Q. During the time that you were in al Qaeda, was there any
9 discussion of how profitable the businesses were in the Sudan?

10 A. Could you repeat the question.

11 Q. Was there a discussion within al Qaeda on whether or not
12 the businesses in the Sudan were making money or not?

13 A. Yes.

14 Q. Can you tell us where those discussions took place.

15 A. I remember we got meeting with Abu Rida al Suri, and Abu
16 Abdallah Bin Laden.

17 Q. Where was that meeting?

18 A. In guesthouse, the big guesthouse.

19 Q. Do you recall approximately when that meeting was?

20 A. Maybe during '91 -- sorry, '92.

21 Q. Can you tell us what was discussed at that meeting about
22 whether the companies were making money?

23 A. We talked about Bin Laden and we asked him if we have to
24 make money because the business is very bad in Sudan, because
25 the pounds go down and the dollar is strong. The Sudanese

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1 pounds always go weak against the dollars.

2 Q. What if anything did Bin Laden say?

3 A. He say our agenda is bigger than business. We not going
4 to make business here, but we need to help the government and
5 the government help our group, and this is our purpose.

6 Q. Are you familiar with something known as the Defaa al
7 Shabi?

8 A. Yes.

9 Q. Can you explain to the jury what the Defaa al Shabi is.

10 A. Defaa al Shabi is the Islamic National Front. They make
11 army under the Sudanese army. They just say bring the
12 students from the college and from high school and they give
13 them training, they try to use him in war in southern Sudan
14 against Christians.

15 Q. Did the al Qaeda provide any assistance to the Defaa al
16 Shabi?

17 A. Yes.

18 Q. What did the al Qaeda provide?

19 A. We buy for them communications for the offices, and also
20 like radio and telephone, and also we buy Kalashnikovs for
21 them.

22 Q. Do you know who in al Qaeda purchased the Kalashnikovs for
23 Defaa al Shabi?

24 A. Yes.

25 Q. Who?

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1 A. Abu Rida al Suri.

2 Q. Did the al Qaeda group provide any assistance to any
3 groups or people in the Philippines?

4 A. Yes.

5 Q. How did you learn this?

6 A. Osama Azmarai tell me this, and also Abu Talha al Sudani,
7 he tell me that.

8 Q. What did Abu Talha the Sudani tell you about the
9 assistance provided to the Philippines?

10 A. Both of them, they told me help group over there to train
11 them and help them against the Philippine government.

12 Q. Did they tell you the name of the group in the
13 Philippines?

14 A. They say it called Jebba Moro.

15 Q. The first word?

16 A. Jebba, mean front.

17 Q. Did al Qaeda provide any help to any groups in Tajikistan?

18 A. Yes.

19 Q. How did you learn that?

20 A. I got conversation with somebody, he is from Pakistan and
21 he is one of our member. His name Asadallah al Sindi.

22 Q. Can you tell the jury what al Sindi means.

23 A. He is from Sind state.

24 Q. What did Asadallah al Sindi tell you that al Qaeda did for
25 people in Tajikistan?

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1 A. He say they try to help group over there to change the
2 government in Tajikistan.

3 Q. Did Asadallah al Sindi tell you the name of the group in
4 Tajikistan?

5 A. Yes.

6 Q. What is that name?

7 A. Hezbe Nahda.

8 Q. Do you know what type of assistance was provided to Hezbe
9 Nahda?

10 A. I remember they send the Azmarai Group on the border of
11 Afghanistan and Tajikistan and they help the Mujahadeen from
12 Tajikistan over there. They train them and they help them to
13 fight.

14 Q. When you said -- where in Afghanistan did they go? You
15 said bored. Tell the Arabic word that you used to the
16 interpreter.

17 THE INTERPRETER: The border.

18 Q. So they sent the Azmarai Group to the border of
19 Afghanistan into Tajikistan?

20 A. Yes.

21 Q. Did al Qaeda provide any assistance to any group in
22 Pakistan?

23 A. Yes.

24 Q. How do you know this?

25 A. I learned that from Sheikh Fazhil ur Rahman. He is emir

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1 of the group.

2 Q. What did Sheikh Fazhil ur Rahman tell you?

3 A. I remember I learned how guesthouse for the group in
4 Hayatabad. And I give the paper for the license for the rent
5 when I make the agreement between the owner and group.

6 Q. Do you recall approximately what year it was that you
7 rented this guesthouse in Hayatabad?

8 A. In '91.

9 Q. Did al Qaeda have any facilities inside of Lebanon?

10 A. They got guesthouse in Herak area.

11 Q. Do you know who ran the guesthouse in the Herak area of
12 Lebanon?

13 MR. BAUGH: Can we have a time reference, please.

14 THE COURT: Yes.

15 Q. When did you learn of the al Qaeda guesthouse in Lebanon?

16 A. That during '92.

17 Q. Who ran the guesthouse in Lebanon for al Qaeda?

18 A. Usama Lubnani.

19 Q. Does Lubnani mean he is Lebanese?

20 A. Yes.

21 Q. Just so we are clear, Usama Lubnani is a different person
22 than Wadia El Hage?

23 A. Yes.

24 Q. During your time with al Qaeda, did you ever hear anyone
25 referred to by their nickname or by the reference ustadh?

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- 1 A. Could you repeat the question.
- 2 Q. Yes. Did you ever later anyone in al Qaeda or the related
3 groups who was called by others ustadh?
- 4 A. Yes.
- 5 Q. First can you tell us what ustadh means.
- 6 A. The teacher.
- 7 Q. Who was called ustadh?
- 8 A. I remember they call ustadh to Doctor Abu Moez, Abdel
9 Ayman Zawahiri.
- 10 Q. Just so we are clear, Dr. Abdel Moez and Ayman Zawahiri
11 are the same person?
- 12 A. Correct.
- 13 Q. During the time you were involved with al Qaeda, did there
14 come a time when you became involved in an attempt to purchase
15 uranium?
- 16 A. Yes.
- 17 Q. Can you tell us when that was?
- 18 A. That's area of '94 or end of '93.
- 19 Q. Can you tell us how you came to be involved in the
20 purchase of uranium?
- 21 A. I remember Abu Fadhl al Makkee, he call me and he told me
22 we hear somebody in Khartoum, he got uranium, and we need you
23 to go and study that, is that true or not.
- 24 Q. The person who told you was Abu Fadhl al Makkee?
- 25 A. Yes.

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1 Q. What did you do after he told you this?

2 A. He told me go to Abu Abdullah al Yemeni and he talk more
3 about that with you. Also go by Abu Dijana.

4 Q. Abu Abdullah al Yemeni and Abu Dijana, are they the same
5 or different person?

6 A. Same person.

7 Q. Did you go see Abdullah al Yemeni?

8 A. Yes.

9 Q. What happened when you saw him?

10 A. He told me somebody's name, Moqadem Salah Abdel al Mobruk.
11 He is a minister during Numeiri time.

12 Q. Is he a former president of the Sudan?

13 A. Yes, '69 to '83.

14 Q. You said he is Moqadem. Is that a title?

15 A. He is army, one eagle and one star.

16 Q. Tell us what happened next.

17 A. Abu Dijana, he say we know this guy, we hear he got
18 uranium and we need you to go and make sure that's right,
19 maybe we need to buy that.

20 Q. Did you go to see this officer named Mobruk?

21 A. I went to one of my cousins, his name Faisal, and I ask
22 him if he know Moqadam Salah Abdel al Mobruk.

23 Q. What happened then?

24 A. He told me, I know him but I don't have relationship with
25 him, but I tell you I know somebody, he know him better than

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1 me. And he told me go to al Fadl al Shahideen. I went to
2 avenue Shahideen because I know him and I worked with him
3 before, and I told him we want to see Salah Abdel al Mobruk.
4 And he ask me what you want from him. I tell him we hear he
5 got uranium and we want to know, if that true we want
6 president to buy it.

7 Q. Did you actually then go see Mr. Mobruk?

8 A. Yes. He tell me give me few days and I call you back.
9 After week or so he call me and he say I need to meet with
10 you. And I sit down with him and he say I going to make
11 appointment with you and Salah Abdel al Mobruk and you can
12 talk to him face to face.

13 Q. Did you have, did you actually have a meeting with Salah
14 Abdel al Mobruk?

15 A. Yes.

16 Q. Tell us what happened at the meeting.

17 A. I went, and this is first time I meet him, and he told me
18 this guy, his name Basheer, he going to help you, and go with
19 him and discuss everything with him.

20 Q. Had you ever met this person named Basheer before?

21 A. No.

22 Q. Did you go with Basheer?

23 A. Yes.

24 Q. Tell the jury what you did.

25 A. We went to another office in Jambouria Street in Khartoum

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1 City.

2 Q. What happened when you went to that street in Khartoum?

3 A. Basheer, he told me, are you serious? You want uranium?

4 I tell him yes. I know people, they very serious, and they
5 want to buy it. And he told me did the money ready, and I say
6 what they need. They need the information about uranium, they
7 want to know which quality, which the country make it, and
8 after that we going to talk with you about the price. He say
9 I going to give you this information in a paper, and we need
10 \$1,500,000, and everything go well we need it outside. We
11 need the money outside of Sudan.

12 Q. And the price was how much?

13 A. He say he need \$1,500,000. And he say this is for the
14 uranium. But he need commission for himself, and he need
15 commission for Salah Abdel al Mobruk.

16 Q. What happened then?

17 A. After that he tell me how you going to check it? I tell
18 him I don't know, I have to go to those people and I tell them
19 what you tell me and I give you answer for that.

20 Q. What happened that?

21 A. After that I went to Abdallah al Yemeni and I told him
22 what I got. He told me go to Abu Fadhl al Makkee and told him
23 about what you got, what you have information, and I went to
24 Abu Fadhl al Makkee and I told him, and he say you have to go
25 to Abu Rida al Suri and sit down with him and told him, and he

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1 going to go with you after that.

2 I went to Ikhlak company in Baraka building in
3 Khartoum City, and I told him about the whole information, and
4 he say tell him we have our machine, electric machine, we
5 going to check the uranium but first we want to see and we
6 want information. We want to see the cylinder and we want to
7 need information about the quality and which country it make.
8 And he tell me, he give me a little paper and he tell me give
9 him this paper and this information we need. I took the
10 information and I go back to Fadhl Shaheed in and I told him I
11 need meeting with Basheer.

12 Q. When you took the information you went back to Fadhl
13 Shaheed in, and what did you do then?

14 A. Fadhl told me give me few days until I see what say
15 Basheer and told Basheer this guy he want to meet you again
16 and he need more information.

17 After that, I remember Fadhl, he call me and he tell
18 me -- he give me a date. He tell me in that day, 10:00 in the
19 morning, I need you near Khartoum Bank in Jambourah Street.
20 He told me if you Abu Rida al Suri with you, that's good. I
21 told him we don't have to bring Abu Rida, we just want Basheer
22 information. He told me no, maybe you go to see the cylinder
23 but we don't know. I went back to Abu Rida and I told him
24 that. He say I don't mind, yeah, I going to come in that
25 time.

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1 Q. Did you go to the meeting?

2 A. Yes.

3 Q. Who did you go with?

4 A. We went over there and we meet Basheer, and he tell me
5 leave your car here, and he tell Abu Rida leave your car
6 there, and he go with me. I remember he got jeep and me and
7 Abu Rida al Suri and Fadl Shaheedin, we went together to
8 Khartoum north town, it's called --

9 Q. You went with Fadl al Shaheedin and Abu Rida al Suri in a
10 jeep to Khartoum north to a town called Bait al Mal, with
11 Basheer?

12 A. And we went over there and we, they took us inside house
13 in Bait al Mal, and after few minutes they bring a big bag and
14 they open it, and it cylinder, like this tall.

15 Q. For the record, the witness is indicating approximately
16 two to three feet.

17 A. It's like this tall, I believe. And they give us a paper
18 before that, and Abu Rida al Suri, I remember he took the
19 paper and it's a lot written in the cylinder. It's like --

20 Q. Tell the word that you are saying to the interpreter.

21 A. (Through the interpreter) The information was like
22 engraved.

23 (Continuing in English) Abu Rida al Suri looked to
24 his paper and he looked to the cylinder, and after that he say
25 OK, that is good. And he got conversation with Basheer, and

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1 we left the house, and few days later he told me --

2 THE COURT: Who told you?

3 A. Abu Rida al Suri, he told me go to Fadl al Shaheedin and
4 tell him we want to see Basheer again.

5 Q. So Abu Rida al Suri told you to go to Fadl al Shaheedin
6 and tell him that who wanted to meet?

7 A. He told me go to Basheer and tell him we need another
8 meeting, and in the same time he give me the paper we got from
9 Basheer about the information, and he told me I needed to take
10 this paper to Abu Hajer and give him this paper, and whatever
11 he tell you, or if he don't say anything, that's fine.

12 Q. So he told you to take the paper to Abu Hajer. What did
13 you do?

14 A. I went to Abu Hajer in his house and I give him the paper
15 and he need it and he say OK.

16 Q. What was on the paper?

17 A. It's information, I remember it say South Africa and
18 serial number and quality something. It's all in English. So
19 I don't remember all the what in the paper.

20 Q. What happened when you gave this paper to Abu Hajer?

21 A. He read it and he say OK, he say go back to Abu Rida al
22 Suri.

23 Q. What happened then?

24 A. After that, I followed, he make a meeting with me and
25 Basheer, and we told Basheer, the people they like to buy the

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1 cylinder. And he told me how you going to check it, and I
2 told him what Abu Rida al Suri tell me, they wait for machine
3 come from outside to check it.

4 Q. Did Abu Rida al Suri tell you where the machine to test
5 the uranium was coming from?

6 A. He told me going to come from Kenya.

7 Q. Did you tell that to Basheer?

8 A. Yes, and he ask me how long is going to take. I tell him
9 I don't know.

10 Q. What happened that?

11 A. After that, after few days Abu Fadl al Shahideen, he told
12 me he make meeting between Abu Rida al Suri and Salah Abdel al
13 Mobruk.

14 Q. So the meeting was between Abu Rida al Suri and Salah
15 Abdel al Mobruk.

16 A. And I tell him I don't know that, and he say you have to
17 talk with Abu Rida al Suri. And I told him you don't want me
18 no more go for this, and he say yes, everything fine, you did
19 great job, and he give me \$10,000.

20 Q. Did he tell you what the \$10,000 he gave you was for?

21 A. He says this is for what you did, and he told me don't
22 tell Mohamed al Nalfi and don't tell anybody, you did great
23 job, we going to check it and everything be fine.

24 Q. The person, Mohamed al Nalfi?

25 A. Yes.

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1 Q. What was your relationship with Mohamed al Nalfi?

2 A. He is one of our group and he married my sister daughter.

3 Q. After that, did you take any more role in this attempt to
4 buy uranium? Did you do anything else?

5 A. No.

6 Q. Did they ever tell you whether in fact they bought that
7 uranium?

8 A. No, but I hear they check it in Hilat Koko.

9 MR. BAUGH: Objection, your Honor, to what he heard.

10 MR. FITZGERALD: We consent to that.

11 Q. After that, did you hear anything more about what happened
12 to the uranium? Yes or no.

13 A. Yes.

14 Q. Without telling us what was said, who told you this
15 information?

16 A. Al Amin Abdel Marouf.

17 Q. Who is al Amin Abdel Marouf?

18 A. He work in our company before, and he is a member of
19 Islamic National Front in Sudan.

20 Q. Is he one of the people you mentioned yesterday that you
21 went to Hilat Koko with?

22 A. No, I didn't mention yesterday. I say his brother run the
23 building, his brother Dr. Omar Abdel Marouf.

24 Q. Where did you have a conversation with the Abdel Marouf
25 who told you what happened to the uranium?

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1 A. This conversation in the company he run for Islamic
2 National Front is called Kameem Company.

3 Q. Can you give the word to the interpreter.

4 THE INTERPRETER: The Summits, S-U-M-M-I-T, plural.

5 Q. What were the circumstances under which this person Abdel
6 Marouf told you about what happened to the uranium?

7 A. He told me --

8 Q. Don't tell me what he said. What were the circumstances?
9 How did it come up that you had a conversation?

10 A. I work with him before and we talk about the south Sudan
11 and the army, they lose a lot of fighting because of the rain
12 and the people in south Sudan do better in the rain against
13 the government, and we talk about the chemical weapons, they
14 try to build it to win the war in south Sudan. After that, he
15 say you did great job about the uranium and they going to
16 check it in Hilat Koko.

17 Q. Did you ever hear whether or not in fact they checked the
18 uranium in Hilat Koko?

19 A. No.

20 Q. Did al Qaeda have any facilities or bank accounts or
21 anything else in Cyprus?

22 A. Yes.

23 Q. How do you know that?

24 A. I remember when I run Taba Investments in Khartoum, Abu
25 Fadhl al Makkee, he make paper works from the Bank of Shamal,

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1 and that account that time is shared between me and him in
2 Sudanese pounds and dollars.

3 Q. The paperwork that was done for the account that was
4 shared in your name and the name of Abu Fadhl al Makkee, where
5 was the money going to?

6 A. Going to Koprus.

7 MR. FITZGERALD: If the interpreter could translate
8 the Arabic word he just said.

9 THE INTERPRETER: Cyprus.

10 Q. Did you have any conversation about why the money was
11 going to Cyprus?

12 A. He told me, and that time I remember another person, we
13 sit together in the office in McNimr Street office, Abu Isra
14 al Iraqi. And he told me we need visa for Abu Isra al Iraqi
15 because we want to send him to Koprus.

16 Q. Did he tell you why they needed to send Abu Isra Al Iraqi
17 to Cyprus?

18 A. He say the sesame, he say the sesame and the peanut, that
19 when we send it to Europe it doesn't make good money, but if
20 we send it to Koprus, over there it's free market area, and we
21 can sell it and make more money than send it direct to the
22 company in Europes, because he say in Koprus, we can take the
23 cover from the sesame and also we can take the red cover from
24 the peanuts, and we package small package and we make more
25 money than we send it direct to the Europe companies.

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1 Q. Do you know if anyone else besides Abu Isra al Iraqi ever
2 traveled to Cyprus?

3 A. I remember Abu Rida al Suri and Abu Abdallah Lubnani.

4 Q. How did you know that they traveled to Cyprus?

5 A. At that time I work in Taba Investments in McNimr Street,
6 and most of the time when people travel for that business or
7 that company I know, because I do the paperwork and we make
8 the money for the traveling.

9 Q. Let me ask you a question. You mentioned that you were
10 arrested in Budapest the other day?

11 A. Yes.

12 Q. You mentioned that you were near a farm in Khartoum where
13 some explosions happened. Were you ever arrested at any other
14 time in the Sudan?

15 A. Yes.

16 Q. Can you tell us the circumstances under which you were
17 arrested in the Sudan.

18 A. The company I run, it's called the Zirqani Company, and we
19 got loan from the Muduhrman Bank, \$300,000 for six months.
20 When the time come to bring the money back, we make short like
21 15, 20 percent. We cannot give it to the bank at that time.
22 And the bank, he say no, we need the money because we only
23 give you six months and we cannot give you more than that.

24 Q. So what happened then?

25 A. After that, the lawyer for our company, he talk to the

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1 lawyer for the bank, and they don't have anything together and
2 they say no, we arrest him because we give him six months and
3 he have to get all the money back, and they came to my house
4 and they took me to the jail.

5 Q. How long did you stay in the jail?

6 A. Few days.

7 Q. When you got out, did you ever go back to jail?

8 A. They arrest me again also for I think week or a little
9 more.

10 Q. Can you tell us approximately what year it was that you
11 were arrested.

12 A. This is area of '95.

13 Q. The second time you were arrested, what was the reason for
14 that arrest?

15 A. Same problem with the bank.

16 Q. Was it the same money transaction?

17 A. Yes.

18 Q. During your time that you were with al Qaeda, did anyone
19 tell you that there was a certain country that you should not
20 travel to because you might be arrested?

21 A. Yes.

22 Q. First of all, who told you this?

23 A. Mohamed al Nalfi Abu Musab al Sudani.

24 Q. Is that one person or two?

25 A. Same person.

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1 Q. What did Mohamed al Nalfi tell you?

2 A. He told me Dr. Abdel Moez Ayman al Zawahiri told him tell
3 Abu Bakr al Sudani -- that's me -- and yourself to never, ever
4 go to Egypt, not even if you go to another country, don't even
5 stop in airport for a few hours.

6 Q. Your name is Abu Bakr of Sudan?

7 A. Yes.

8 Q. Did Dr. Abdel Moez tell you or Mr. Nalfi why it was that
9 you were wanted in Egypt?

10 A. I remember after that, I meet him in the big guesthouse in
11 Khartoum City, Riyadh Khartoum City, and he told me don't try
12 to go to Egypt, or even if you go to another country and the
13 airplane going to stop for hour, don't do that. And I ask him
14 I hope everything right. He say we have two brothers arrest
15 over there and they talk about what going on here and they
16 mention your name and Mohamed al Nalfi name and the farm and
17 Khartoum north and that. And he say the intelligence office
18 in Egypt, they took for you and Mohamed al Nalfi.

19 Q. As of today you are married, correct?

20 A. What?

21 Q. You are married?

22 A. Yes.

23 Q. When did you first marry your wife?

24 A. From Sudan in '86.

25 Q. You told us yesterday that there came a time when you

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al-Fadl - direct

1 moved to the United States in the mid-1980's.

2 A. Yes.

3 Q. When you came to the United States, did you bring your
4 wife or did you leave her in the Sudan?

5 A. No, I leave her in Sudan.

6 Q. When you came to the United States, did you get married
7 again?

8 A. Yes.

9 Q. When you got married in the United States, had you
10 divorced your wife back in the Sudan?

11 A. No.

12 Q. Did you tell your wife in the United States that you had a
13 wife back in the Sudan?

14 A. No.

15 Q. There came a time when you left the United States to go to
16 Afghanistan. You were married in the United States. What
17 happened with your wife in the United States?

18 A. I told her I work with people and those people need me to
19 go to another country and I have to leave. She told me so
20 you're not going to come back? I tell her I don't know. If
21 they want me back I come back, if they tell me stay over
22 there, I stay over there.

23 Q. Did you then go to Afghanistan?

24 A. Yes.

25 Q. Did you bring your wife with you, American wife?

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1 A. No.

2 Q. Did you ever see her again after that?

3 A. No.

4 Q. Did you ever tell your wife in the Sudan that you married
5 a woman in America?

6 A. No.

7 Q. Did she ever find out?

8 A. Yes.

9 Q. In Islam, are you allowed to have more than one wife?

10 A. Yes, allowed until four in the same time.

11 Q. Let me talk to you about a person named Sadiq al Mahdi.

12 Can you tell the jury who Saddiq al Mahdi is.

13 A. He is president of Sudan between '86 until '89.

14 Q. Did Saddiq al Mahdi have any famous ancestors, relatives?

15 A. Yes.

16 Q. Who is his famous ancestor?

17 A. Ahmed al Mahdi.

18 Q. Who is he?

19 A. In 1885 he make groups, and at that time England, they
20 support Sudan, they run the government in Sudan. He make
21 groups and fight England until he took them out of Sudan.

22 Q. So he is considered responsible for driving England out of
23 the Sudan?

24 A. Yes. And after that he died, but his relatives, they run
25 group, if somebody die another person take -- he be leader for

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1 his group until there come a time Saddiq al Mahdi, he be
2 leader for group in 1950's.

3 Q. When did Saddiq al Mahdi stop being the leader of the
4 Sudan?

5 A. I remember June 1989.

6 Q. Who was he replaced by? How did he stop being the leader
7 in the Sudan, Saddiq al Mahdi?

8 A. I remember military people, they change the government and
9 they put him in jail.

10 Q. During the 1990's when you were in the Sudan, what was
11 your relationship between Saddiq al Mahdi and the National
12 Islamic Front?

13 A. At that time I remember they don't have relationship
14 because they don't like each other, and he mad because they
15 change the government, and he came to the government because
16 they make a vote and he win. But in '89, the Islamic National
17 Front, they got relationship with military --

18 MR. SCHMIDT: Your Honor, objection. I don't think
19 the witness was in the Sudan since 1986. So I would object to
20 the basis of all of this testimony.

21 THE COURT: Lay a foundation.

22 Q. Sir, when you went through the world, did you read the
23 newspapers?

24 A. Sometimes I read newspapers.

25 Q. Did you keep track of who the government was in the Sudan?

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1 A. Sometimes from the newspapers, sometimes from my friends,
2 sometimes because I work for this government. I got
3 information from different ways.

4 MR. SCHMIDT: Objection, your Honor.

5 Q. Did there come a time when someone in the Sudan talked to
6 you about Saddiq al Mahdi specifically?

7 A. Yes.

8 Q. Can you tell us what time that was?

9 A. I remember that during 1994.

10 Q. Who came to talk to you?

11 A. Doctor Abdel Munim al Khabir.

12 Q. Can you tell the jury who Doctor Abdel Munim al Khabir is.

13 A. He Sudani guy and he work in immigration office, belong to
14 intelligence office in Sudan.

15 Q. Can you tell us what Dr. Abdel Munim al Khabir told you
16 about Saddiq al Mahdi.

17 A. I remember me and another guy, his name Abu Musab al
18 Sudani, were both told by Dr. Abdel Munim al Khabir, we need
19 you to start relationship with Umma Party.

20 Q. Tell the jury what the Umma Party is.

21 A. Umma Party, it's run by Saddiq al Mahdi and it's a big
22 party, it's big group in Sudan.

23 Q. What did Dr. Abdel Munim al Khabir tell you he wanted you
24 to do, why he wanted you to get close to Saddiq al Mahdi?

25 MR. SCHMIDT: Objection, your Honor. Hearsay, and I

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1 don't know how this allegedly fits into this alleged
2 conspiracy.

3 MR. FITZGERALD: Your Honor, I would prefer not to
4 speak in front of the jury.

5 THE COURT: It is overruled, the objection.

6 Q. What did Abdel Munim al Khabir tell you as to why he
7 wanted you to become close to Saddiq al Mahdi?

8 A. He say Saddiq al Mahdi, the intelligence office --

9 Q. What did Dr. Abdel Munim al Khabir tell you they were
10 doing to Saddiq al Mahdi?

11 A. He try to kill him.

12 Q. You said the word arrest?

13 A. He say we arrest him, we give him hard time, we tell him
14 don't make lecture against us, don't be against the
15 government, and he say he don't want to stop that. And he say
16 we think the better way, to kill this guy because he give the
17 government hard time, and most of the Sudanese people believe
18 what he say, what his lecture, in the Friday prayer or through
19 the newspaper.

20 Q. What did he want you to do?

21 A. He want me and he want Abu Musab to be close to the Umma
22 Party to make relationship, and he say when you start this
23 relationship, tell them we don't have anything with the
24 Islamic National Front, we quit working with the al Qaeda
25 group and Islamic National Front and we love to be with Umma

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1 Party and do whatever he tell us and we are glad to do that.

2 Q. When he told you to tell the Umma Party that you had left
3 the al Qaeda group and had nothing to do with the National
4 Islamic Front, was that in fact true?

5 A. No, because he say if you don't told them that, they going
6 to find anyway, so tell them that and I need you for few weeks
7 till this over, don't come to the guesthouses, don't come to
8 the companies, just stay home, make relationship with him, and
9 we don't need them to know you have any relationship.

10 Q. What did you do?

11 A. I remember me and Musab, we went to somebody named Abdel
12 Mahmababo. He is one of the Umma Party member and he is very
13 close to Saddiq al Mahdi. We got different meeting with him,
14 and he told us about what the group live, what the politic is,
15 about the religion, about Islam, about relationship between
16 Islam and Christian and Shia and that.

17 Q. Just go a little bit slower.

18 Did you eventually ever have a meeting with Saddiq al
19 Mahdi himself?

20 A. Yes. After that for while we got chance to meet him.

21 Q. Tell us what happened.

22 A. If you me explain a little bit something before that's
23 make more clear.

24 Q. What happened before?

25 A. I remember Dr. Abu Khabir, he give us a list of like 25,

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1 30 questions. He say study these questions clear and try to
2 memorize, and you have the chance to see Saddiq al Mahdi, try
3 to ask him those questions, and we need you to be careful with
4 the answer. Whatever answer he say, when the meeting finish
5 and you went far from his house, try quick put all answer he
6 say, and we going to sit down and we need the answers.

7 Q. So what happened when you had the meeting with Saddiq al
8 Mahdi?

9 A. We went to his house with somebody, his name was Mutwakal.
10 This is the first time I saw him, first time I sit down with
11 him, and he say I hear you working for Afghanistan and he kick
12 the Russia out and that's great job, and he say he went to the
13 Iran before and he liked if the Muslims come together, Sunni
14 and Shia.

15 After that we asking him what you think about the
16 what going on in Sudan now, and he said Islamic National
17 Front, sometimes they make agreement with our party but they
18 break the agreement, sometimes they work together, sometimes
19 we split, and he said I did with them 30 years, and he say
20 sometimes our group make relationship with them but later on
21 they break their promise. And he say it's better for the
22 Sudan if all the group come to together and make one
23 government, and he say since 1956 when the Sudan government
24 run the country, there is no government, bring all Sudanese
25 people together.

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al-Fadl - direct

1 Q. Those questions that you were given by Dr. Abdel Munim al
2 Khabir did you ask those questions of Saddiq al Mahdi during
3 the meeting?

4 A. Yes, and one of the questions we ask him what you think,
5 the south of Sudan 5 or 6 million Christians, the north of
6 Sudan 20 or 25 million Muslims, what do you think about this
7 relationship? Do you think if the subjects better or if the
8 government in Khartoum gives the Christian confederation. And
9 he say if we came together and we try that before, he say he
10 didn't think so, the life is going to be good for both of
11 sides. And he say also, if we give them separate government,
12 they don't have enough school, they don't have enough people
13 to run the government, and he say the system over there is
14 tribe system, he afraid if we give them separate, they going
15 to fight each other, and Rwanda, Kenya, African middle
16 countries, they going to come and involved with that. He say
17 the best way if we give them confederation and help build the
18 schools and make the people know how to run the government and
19 after that, until we help them to build education, and when
20 they do that we give them separate government, their own
21 government.

22 Q. After the meeting with Saddiq al Mahdi, did you report
23 back to the people who told you to go meet with him?

24 A. Yes.

25 Q. Can you tell us what happened at that meeting?

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al-Fadl - direct

1 A. I remember we went back with Dr. Abdel Khabir and we met
2 him with another guy, Dr. Motrif al Sadeek. He is a manager
3 of delegation office in Sudan.

4 Q. The delegation office is part of what?

5 A. Part of intelligence office and part of Islamic National
6 Front.

7 Q. What happened at that meeting?

8 A. We told him everything, this is what his answer, and the
9 guy is very nice with us, he give all the answers, and Abdel
10 Munim very happy and Dr. Motrif al Sadeek is very happy about
11 that. And the meeting end. We tell them and they very happy
12 and that's it.

13 Q. Did they have any further discussion about anything they
14 wanted you or Abu Musab to do regarding Saddiq al Mahdi?

15 A. I remember one time we got meeting, me and Musab al
16 Sudani --

17 MR. BAUGH: Objection, need time reference on the
18 second meeting.

19 MR. SCHMIDT: Objection to this whole line about the
20 government.

21 THE COURT: I will see --

22 MR. FITZGERALD: I would cite one word, Giglio.

23 THE COURT: All right, proceed.

24 Q. Can you tell us what happened at the second meeting.

25 A. The second meeting --

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al-Fadl - direct

1 THE COURT: When was the second meeting?

2 Q. When was the second meeting?

3 A. It's during '94.

4 Q. Where was it?

5 A. In Jam Qatar Heira. It's Qatar organization.

6 Q. Is that the same organization you described yesterday or a
7 different one?

8 A. Yes, same one.

9 Q. Is that the Qatar Charitable Organization?

10 A. Yes.

11 Q. What happened at that meeting?

12 A. Dr. Munim al Khabir, he say some members in Islamic
13 National Front, they believe they did their best to bring
14 Saddiq al Mahdi to make relationship with him to start
15 something, unite all the groups of Sudan to run the
16 government, but Saddiq al Mahdi, he don't like that because we
17 change the government during his time, and he say some people
18 say if we kill him is better for Sudan, because Saddiq al
19 Mahdi got relationship with other countries, and any time we
20 find a chance, he told them, and he make them mad against the
21 Islamic National Front in Sudan.

22 Q. Just so we are clear, the people asking you to kill Saddiq
23 al Mahdi were from the Islamic National Front and the
24 intelligence service, not from al Qaeda?

25 A. No, from Islamic National front.

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al-Fadl - direct

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al-Fadh1 - direct

1 Q. What did you do when they asked about killing Abu Fadh1 al
2 Makkee?

3 A. I tell them that's not going to be easy because Abu Fadh1
4 al Makkee, he's -- it's big group.

5 Q. Did you ever, following that meeting, did you ever kill
6 Abu Fadh1 al Makkee?

7 A. No.

8 Q. Did you ever do anything to try to carry out killing Abu
9 Fadh1 al Makkee after that meeting?

10 A. No.

11 Q. During the time you worked with al Qaeda in the Sudan, did
12 you have access to Usama Bin Laden's money and al Qaeda's
13 money?

14 A. Would you repeat this, sir?

15 Q. During the time you worked with al Qaeda in the Sudan, did
16 you have access or control of money belonging to al Qaeda?

17 A. Could she help me?

18 Q. During the time that you were with al Qaeda in the Sudan,
19 did you have access, did you have control over money that
20 belonged to al Qaeda?

21 A. Yes.

22 Q. And during that time did you steal money from Usama Bin
23 Laden?

24 A. Yes.

25 Q. Can you tell the jury approximately in dollar figures the

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al-Fadh1 - direct

1 amount of money you stole from Usama Bin Laden?

2 A. It's around 100,000 or \$10,000.

3 Q. Sorry?

4 A. \$110,000.

5 Q. Can you just briefly describe the method by which you
6 stole the money from Usama Bin Laden?

7 A. How?

8 Q. Yes.

9 A. How?

10 Q. Yes.

11 A. At that time we buy some stuff come from outside and some
12 stuff we buy from other company in Sudan, like sugar, and we
13 sell it to local business companies. And I, because I know
14 everybody buy this stuff, he going to make a lot of money for
15 it and a lot of people, they ask to buy the stuff. And I say,
16 well, if I ask them for commission, we -- if the people buy
17 the supplies or the stuff, it means they give me commission.

18 And I have one cousin, and I told him that, and I
19 told him I can give you oil, a lot of oil, and I can give you
20 sugar and I can wait for you to pay easier. And he said, he
21 tell me that's good.

22 Q. And did you actually then collect commissions?

23 A. Yes.

24 Q. And did you understand that you were allowed to collect
25 commissions?

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al-Fadh1 - direct

1 A. No.

2 Q. Did there come a time when the people in al Qaeda figured
3 out that money was missing?

4 A. Yes.

5 Q. Can you tell the jury what happened?

6 A. I remember Abu Fadh1 al Makkee, he told me somebody told
7 him I make commission when I sell the stuff.

8 Q. What did you tell Abu Fadh1 al Makkee when he first
9 confronted you?

10 A. I tell him, no, that's not true, and if somebody have
11 evidence against me, I'm glad to see that.

12 Q. And when you told him that wasn't true, that was a lie,
13 correct?

14 A. What?

15 Q. Was that a lie when you told him it wasn't true?

16 A. Yes, I lied to him that time.

17 Q. Did you have further conversations with al Qaeda people
18 about the missing money?

19 A. After that, we got -- they make meeting with me in the
20 guesthouse. Abu Fadh1 al Makkee and Saad al Sharif and Abu
21 Ishem Madani.

22 Q. Why don't we stop and spell them names. Abdul F-A-D-H-L
23 al Makkee, Saad, S-A-A-D, al Sharif, S-H-A-R-I-F, and Abu
24 I-S-H-E-M M-A-D-A-N-I.

25 A. And Abu Ibrahim al Iraqi.

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al-Fadhil - direct

1 And they told me, we know for fact you took
2 commission. And I told them, no, that's not true and I never
3 did that and I never did that, and they told me, no, that guy,
4 his name Fadhil, he told somebody you take commission when you
5 buy stuff for him.

6 Q. Did there come a time when you admitted to al Qaeda that
7 in fact you had stolen the money by taking commissions?

8 A. Yes, when I find they know I take the money, I tell them
9 yes, I did.

10 Q. And can you describe briefly to us what you were doing
11 with the money you stole?

12 A. I remember I bought land. I buy one land for my old
13 sister and I buy another land for myself.

14 Q. How many pieces of land did you buy total?

15 A. Four.

16 Q. And did you buy anything else with the money?

17 A. I buy car, also.

18 Q. What happened after you admitted to al Qaeda that you had
19 stolen this money?

20 A. Could you repeat the question?

21 Q. What happened after you told the al Qaeda people that in
22 fact you had stolen the money?

23 A. They told me Abu Ibrahim al Iraqi and Abu Fadhil al Makkee,
24 they told me our relationship start from beginning with you.

25 If there is -- you one of the people, the first people who

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al-Fadh1 - direct

1 start the al Qaeda group and we cannot believe you did that.

2 MR. SCHMIDT: I'm sorry, I didn't understand the
3 first part of that answer.

4 A. He say --

5 THE COURT: Madam Reporter, read the last two
6 sentences, back.

7 (Record read)

8 A. And I told them I did it and I asked forgive and I try my
9 best to bring the money back. And they asked me, we want to
10 know and Abdallah Bin Laden, he want to know what the reason,
11 because you know you make bayat to al Qaeda and we know you
12 good person, you fight hard for Afghanistan, why you need the
13 money? We want to know why you need the money.

14 And I told them I know for fact some people, they
15 took commission from when they do business for al Qaeda, and I
16 know there is Egyptian people, they got more chance, they got
17 more salary than other people. And we talk with Bin Laden
18 before and we talk with Abu Fadh1 al Makkee before about that,
19 and I know another people, they got more salary than me and
20 other people and we start the al Qaeda before them. And we
21 talk about that a lot and there is no one listen, and it come
22 a time I feel I have to do something for myself.

23 Q. Did you pay back --

24 A. And they say this is not, there is no reason here to do
25 that.

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al-Fadh1 - direct

1 Q. Did you actually pay back all the money?

2 A. I pay out around between 25,000 to 30,000 back.

3 Q. And did you ever pay back the rest?

4 A. No.

5 Q. And when you didn't pay the back the money, did you have
6 further meetings with al Qaeda about what should be done?

7 A. When I pay the money, the money I paid back I paid to Abu
8 Dijana al Yemeni. And I told him I don't have no more money.
9 He told me, I can't help you, you have to pay all the money
10 back, and he told me you have to talk with Abu Fadh1 al Makkee
11 about that or Abu Abdallah Bin Laden.

12 Q. The person you spoke to, Abu Dijana, told you you had to
13 speak about that with Abu Fadh1 al Makkee or Usama Bin Laden?

14 A. Yes.

15 Q. And who did you speak to?

16 A. I met first Abu Fadh1 al Makkee and he told me, I can't
17 help you. If you pay more than, more than half, that's much
18 better, but you pay a little and you have to do your best and
19 this is not -- I can't control that. And if you can pay more,
20 that's better. If you can't, you have to try to meet Abdallah
21 Bin Laden.

22 Q. What did you do?

23 A. I tell him, could you make meeting, could you give me --
24 ask Bin Laden, because I want to see him and make appointment
25 with me and him. And he say he's busy now, but I try my best.

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al-Fadh1 - direct

1 And later he call me and he tell me come to the big guesthouse

2 Thursday and maybe after isha prayer you can meet him.

3 Q. You mentioned isha prayer. What time of day is isha

4 prayer?

5 A. It's the last prayer and after, half hour after the magrib

6 prayer, or sunset prayer.

7 Q. Did you actually meet with Bin Laden on the day?

8 A. I went that day, and Abu Fadh1 al Makkee, he says he's

9 busy but see him tomorrow in Wadi al Aqiq.

10 Q. Did you actually then go to the meeting the next day at

11 the Wadi al Aqiq Company?

12 A. Yes, I went the next day, and I wait like two hours and

13 after that I meet with him.

14 Q. When you met with him who was in the room?

15 A. Abu Fadh1 al Makkee, he sit, but after few minutes he went

16 out and only me and him.

17 Q. Can you tell the jury what happened when you met with

18 Usama Bin Laden over the money you stole?

19 A. He start and he told me, I don't care about the money, but

20 I care about you because you start this from the beginning.

21 You work hard in Afghanistan, you are one of the best people

22 in al Qaeda group and we want to know -- we give you salary,

23 we give you everything, when you travel we give you extra

24 money, we pay your medical bill -- why you did that, what you

25 need the money. If anybody outside the group ask you to do

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al-Fadh1 - direct

1 that, you established group, we want to know what the reason
2 for that.

3 I tell him, no, the reason we talk about, we tell you
4 before, the Egyptian people, they got a lot of money, they got
5 more salary than other, and we told you some people, they
6 joined the al Qaeda only a few years ago and we started the al
7 Qaeda and why they got salary. And we start talking like
8 that.

9 He said, there's no reason for you to do that. If
10 you need money, you should come to us, Abu Fadh1 al Makkee or
11 you should come speak with me and told me I want to buy house,
12 I want to change my car, I want to do that, and you didn't do
13 that, you just stole the money. And I told him, I give Abu
14 Dijana already some of that money, but I don't have no more
15 money and I ask you for forgive and if you accept that, I did
16 my best to be a good person and I love to be in al Qaeda group
17 again and I love to continue.

18 And he say, there's no forgive until you bring all
19 the money back. I cannot do that. He say if I say okay, that
20 means everybody else in al Qaeda, they take it as a reason I
21 took money and he ask for forgive. Go do your best and give
22 all the money back, and after that everything going to be
23 fine. I tell him, but there's no money left, and he say, I
24 can't, I can't forgive you until you give all the money. And
25 the meeting end like that.

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al-Fadh1 - direct

1 Q. How long was this meeting, approximately?

2 A. Like 30 minutes or 45 minutes.

3 Q. What did you do after that meeting?

4 A. I don't have any hope when I left the office, and I went
5 back and I tell my brother Azeri what going on, and I meet
6 after that with Abu Fadh1 al Makkee.

7 Q. You mentioned Azeri, and you went to Abu Fadh1 al Makkee?

8 A. And after few days, I went back to Abu Fadh1 al Makkee in
9 his house and I told him what is going on in the meeting. And
10 he told me, I tell you you have to bring the money because our
11 rule, we cannot use that because somebody going to do same
12 thing and another bayat. You have to bring the money back and
13 after that everything going to be fine, and I tell him I
14 really don't have money.

15 Q. The bottom line, did you ever bring any money, more money
16 back to al Qaeda?

17 A. No.

18 Q. What did you do?

19 A. After that, I feel like I have to leave the group because
20 even if I have -- I say, even if I bring money back, even if I
21 bring money back, the relationship already started --

22 MR. BAUGH: Objection, your Honor.

23 MR. FITZGERALD: Stop there. We'll consent to
24 strike.

25 THE COURT: Yes.

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al-Fadh1 - direct

1 BY MR. FITZGERALD:

2 Q. Don't tell us what you thought.

3 A. Okay.

4 Q. Just tell us what you did.

5 A. I, after that, there is no hope and I think to leave

6 Sudan.

7 Q. And did you in fact leave Sudan?

8 A. Yes.

9 Q. And did you go to a number of other countries?

10 A. Yes.

11 Q. And did you talk to a number of other countries and talk
12 about what happened in the Sudan and Bin Laden?

13 A. Yes.

14 Q. And without telling us the country you were in, did there
15 come a time when you approached the United States Government?

16 A. Yes.

17 Q. Without telling us the country you were in, can you
18 describe how you did that?

19 A. I went to the American embassy in that country and I went
20 to the visa line, and when my chance come, the person he help
21 for you the application, he asked me, do you want visa? I
22 tell him, no, I don't want visa, but I have some information
23 for your government and if your government help me, and I have
24 information about people, they want to do something against
25 your government. And he told me sit in that chair until I

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al-Fadh1 - direct

1 come back to you.

2 And he went inside, and 20 minutes later a lady opens
3 the door and she point to me and tells me come inside. And
4 she took me inside the room and she tell me, what kind of
5 information? I told her I was in Afghanistan and I work with
6 group and I know in fact those people, they try to make war
7 against your country and they train very hard, they do their
8 best to make war against your country.

9 And she tell me, what kind of war? I tell her, I
10 don't know, maybe they try to do something inside United
11 States and they try to fight the United States Army outside,
12 and also they try make bomb against some embassy outside. And
13 she tell me, how you know that? I tell her, because I work
14 with them more than nine years and I left the group and
15 there's no relationship with them no more and I do my best, if
16 you help me, I give you all the information and --

17 MR. BAUGH: Can we have a time period, please?

18 BY MR. FITZGERALD:

19 Q. Can you tell us approximately the year and the month, if
20 you can recall, that you walked in this embassy?

21 A. That's in '96.

22 Q. Do you recall the month or the season?

23 A. I think during between June and -- between May and July.

24 Q. Okay. And after you met with this person, did you meet
25 with other people in the embassy?

1271bin2

al-Fadh1 - direct

1 A. Yes. She told me go to where you live. I tell her where
2 I live. She told me go to that hotel, don't leave the hotel,
3 and she give me some money and she tell me come Wednesday.

4 Q. Did you come back that Wednesday?

5 A. I come Wednesday and she give my a lot of, a lot of
6 questions and she tell, I need you to answer these questions
7 and when you finish, I need you to focus what you believe and
8 what you know what the group they going to do exactly to our
9 government. And I put all that information, and after that
10 she asked me, do you think these people, they going to do
11 anything in these few months?

12 MR. SCHMIDT: Objection, your Honor.

13 A. I don't know.

14 THE COURT: Sustained. Stricken.

15 BY MR. FITZGERALD:

16 Q. Without telling us the rest of the conversation, did you
17 have meetings with other people after that?

18 A. Yeah, when I finish inside, she tell me come Friday
19 because three people, they going to come to our government and
20 they going to meet you.

21 Q. Did you, without telling us the conversation, did you meet
22 with three people from the U.S. government that Friday?

23 A. Yes.

24 Q. And without telling us the conversation, for how long did
25 you meet with those three people in that country?

1271bin2

al-Fadh1 - direct

1 A. Three weeks.

2 Q. Without telling us what you did tell them, during those
3 three weeks did you make a decision to intentionally not tell
4 them anything?

5 A. Yes.

6 Q. Can you tell the jury what it is you decided not to share
7 with those three people from the U.S. government?

8 MR. SCHMIDT: Objection, your Honor.

9 A. I don't want to tell him about --

10 MR. SCHMIDT: Objection.

11 May we approach on this, your Honor, a brief sidebar
12 on this?

13 THE COURT: We'll take a recess. We'll take a
14 recess.

15 (Jury not present)

16 THE COURT: All right, Mr. Schmidt, you have an
17 objection? What is the nature of your objection?

18 MR. SCHMIDT: Your Honor, the government has begun to
19 go into prior consistent or inconsistent statements with this
20 witness.

21 THE COURT: Yes.

22 MR. SCHMIDT: Until cross-examination, I don't think
23 it's appropriate to do that because the question is what
24 issues am I going to raise on cross-examination, not issues
25 that the government wishes to head off prior to my

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al-Fadh1 - direct

1 cross-examination.

2 THE COURT: Oh, the government is entitled to
3 anticipate, and if the witness in fact made incorrect
4 statements or withheld, deliberately withheld information, the
5 government is entitled to establish that on direct.

6 MR. SCHMIDT: Well, I would then request to make sure
7 that they don't try to bring out consistent statements that
8 he's alleged to have made because that's not proper.

9 THE COURT: I take it the government is aware of
10 that, right?

11 MR. FITZGERALD: Yes, exactly. That's why I told
12 him --

13 MR. SCHMIDT: You don't have a repeat of his earlier
14 testimony.

15 THE COURT: He's not going to reprise everything that
16 he told them. I think the questions are what did he -- other
17 things he decided not to tell them.

18 MR. FITZGERALD: Exactly, your Honor.

19 THE COURT: And that's it.

20 MR. FITZGERALD: That's it.

21 THE COURT: Does that conclude this witness's
22 testimony?

23 MR. FITZGERALD: And then we'll go through his coming
24 to America and pleading guilty.

25 THE COURT: Okay. So we'll finish before noon?

1271bin2

al-Fadh1 - direct

1 MR. FITZGERALD: Yes.

2 MR. RUHNKE: Your Honor, can we just have a proffer
3 of what he didn't tell them, just so it's not problematic.

4 MR. FITZGERALD: He didn't tell them he stole the
5 money.

6 MR. RUHNKE: Okay.

7 MR. SCHMIDT: Answered my question.

8 THE COURT: Short and sweet. We might as well
9 resume, right?

10 MR. FITZGERALD: Yes.

11 MR. BAUGH: Are we taking a recess or bringing the
12 jury back?

13 THE COURT: Bringing the jury back.

14 (Brief recess)

15 THE COURT: Can we have by Tuesday morning the
16 redacted voir dire of the 18 who are on the panel?

17 MR. KARAS: Yes.

18 THE COURT: In terms of the 100 who were not on the
19 panel, we'll defer that until, if ever, until there is a need
20 for it.

21 All right, we're all set. We'll bring the jury in.

22 (Jury present)

23 THE COURT: Ladies and gentlemen, please remember
24 when we next adjourn to bring your binders to the jury room.

25 The witness may resume the stand.

1271bin2

al-Fadh1 - direct

1 MR. FITZGERALD: May I proceed?

2 THE COURT: Yes.

3 BY MR. FITZGERALD:

4 Q. Sir, I'm going to ask you questions about the
5 conversations you had during that three-week period. I don't
6 want you to tell us what you did say, I just want to focus on
7 one question: What was it that you deliberately decided not
8 to tell the people who were talking to you?

9 A. What people?

10 Q. When you were in the country talking to the three U.S.
11 government people that you had a meeting with and you spent
12 approximately three weeks in that country and you were talking
13 to them, just before the break you said that there was
14 something you decided not to tell them.

15 A. Yes.

16 Q. Can you tell the jury what it is that you decided not to
17 tell them?

18 A. I don't want to tell them about I stole money from Bin
19 Laden group.

20 Q. And can you just briefly describe why you didn't want to
21 tell them that?

22 A. I just embarrass about that.

23 Q. Did there come a time when you did tell those people that
24 you did steal the money?

25 A. After two days talking, yes, I tell them.

1271bin2

al-Fadh1 - direct

1 Q. And can you tell us why you decided then to tell them
2 about the money you stole?

3 A. Because they keep saying we know something about you
4 personally did it in Sudan, something, you did something in
5 Sudan and you have to tell us because if you don't tell us,
6 we're not going to trust you.

7 Q. Just answer yes or no: Did you think at the time you told
8 them about the money that they already knew that?

9 A. Yes.

10 Q. Did there come a time when you left that country to go
11 someplace else?

12 A. Yes.

13 Q. Just without describing the country, can you tell us
14 generally where you went?

15 A. Europe.

16 Q. And did you meet with other people from the American
17 government in Europe?

18 A. Yes.

19 Q. Did that eventually include people from the FBI and the
20 Department of Justice?

21 A. Right.

22 Q. Did there come a time when you left Europe?

23 A. Yes.

24 Q. Can you tell us where you went next?

25 A. To United States, New York.

1271bin2

al-Fadh1 - direct

1 Q. And did you reach an agreement with the United States
2 Government once you arrived in America?

3 A. Yes.

4 Q. And can you tell us what your understanding of the
5 agreement was?

6 A. Would you repeat?

7 Q. Yes. What was the agreement you reached? What did you
8 agree to do and what did the government agree to do?

9 A. I agreed to plead guilty and I agreed to help the
10 government whatever they ask me and outstanding for anything
11 they ask me.

12 Q. And can you just give the interpreter the Arabic word you
13 used for outstanding?

14 A. (Through the interpreter) That I will always be ready for
15 the question and that I will answer them.

16 Q. And anything else that you agreed to do?

17 A. Also, they say we want to give you sentence up to 15
18 years.

19 Q. Did you actually plead guilty to a crime?

20 A. Yes.

21 Q. What is your understanding of the crime or crimes that you
22 pleaded guilty to?

23 A. Work with the people and group who want to make war
24 against the United States.

25 Q. And any other charge that you recall pleading guilty to?

1271bin2

al-Fadh1 - direct

1 A. Move weapons and explosives.

2 Q. And what is your understanding of what the biggest
3 sentence is that you could received as result of that guilty
4 plea?

5 A. Up to 15 years.

6 Q. And what is your understanding of the smallest sentence
7 you could receive?

8 A. It could be mid of 15 years, it could be 15, it could be 5
9 years. This is up to the judge.

10 Q. Could it be as low as zero?

11 A. It could be.

12 Q. Now, when you first came to the United States, who were
13 you staying with?

14 A. With FBI.

15 Q. Were you in FBI custody 24 hours per day?

16 A. Yes.

17 Q. For how long did you stay in the FBI custody 24 hours per
18 day?

19 A. Between 18 months and two years, I think.

20 Q. Did there come a time when you left FBI custody?

21 A. Yes.

22 Q. Where did you generally go there?

23 A. If she help me?

24 (Through the interpreter) The witness program.

25 Q. Is that the Witness Protection Program?

1271bin2

al-Fadh1 - direct

1 A. Yes.

2 Q. Without telling us where you are, are you now in the
3 Witness Protection Program?

4 A. Yes.

5 Q. When you left the Sudan and approached the United States
6 overseas, where was your family?

7 A. In Sudan.

8 Q. After you pleaded guilty did the government do anything
9 for your family, your immediate family in Sudan?

10 A. Yes.

11 Q. What did the government do?

12 A. Bring them here to United States.

13 Q. Did you ever ask the government if you were eligible for a
14 reward from the State Department for providing information
15 about terrorism?

16 A. They say no.

17 MR. BAUGH: Objection, your Honor. That was
18 non-responsive.

19 THE COURT: Yes.

20 Restate the question.

21 BY MR. FITZGERALD:

22 Q. Focus on my question: Did you ask the government whether
23 or not you could get a reward from the State Department for
24 providing information about terrorism? Yes or no, did you
25 ask?

1271bin2

al-Fadh1 - direct

1 A. Yes.

2 Q. And what were you told?

3 A. They say we help you, but there is no reward.

4 Q. Were you told why you could not get a reward?

5 A. They say you work with a group against the government and
6 we can't give you money. There is no reward for somebody who
7 work against the government.

8 Q. And as part of your plea agreement did the government
9 agree to give or loan you any money?

10 A. Yes.

11 Q. Can you tell the jury what it is that you understand you
12 should receive?

13 A. They told me, we give you 20,000 loan to start your life
14 and you have to bring it back.

15 Q. The money, what do you mean by "you have to bring it
16 back"?

17 A. This loan, as a loan, the loan is not gift.

18 Q. What is your understanding of what if anything the
19 government will do at the time -- strike that.

20 Have you been sentenced yet by a judge?

21 A. Not yet.

22 Q. What is your understanding of what it is that the
23 government may do at the time that you are sentenced by a
24 judge?

25 A. I remember they say they going to give the judge something

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al-Fadh1 - direct

1 called 5K.

2 Q. And 5K, can you tell the jury your understanding of what a
3 5K is?

4 A. 5K, it's about what I did for the government, what I did
5 in the past, what I did now, and this is going to the judge.

6 Q. And what is your understanding of what can happen as a
7 result if the government gives a 5K to the judge?

8 A. It could be, it could be the judge, he say, because what
9 he did bad, but he did good, we give him a little lower than
10 15 years.

11 Q. Could the judge give you zero?

12 A. Yes.

13 Q. Is it your understanding that the 5K can help the judge if
14 he wishes to give you a lesser sentence?

15 A. Yes.

16 Q. Have you been promised what your sentence will be?

17 A. No.

18 MR. FITZGERALD: Your Honor, at this time, subject to
19 the one small matter I made a reservation on, the government
20 has no further questions.

21 THE COURT: Very well. All right.

22 Ladies and gentlemen, you just heard the direct
23 testimony of this witness. We're going to adjourn. As you
24 know, we're adjourning until Tuesday, at which time defense
25 counsel will be given an opportunity to cross-examine the

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al-Fadhil - direct

1 witness. So please take your binders, please have a nice
2 holiday, and please remember not to read, watch, listen or
3 talk to anybody about anything about this case. We'll see you
4 on Tuesday morning.

5 (Jury excused)

6 THE COURT: We've got a conference set for 2:30
7 tomorrow. Is that still convenient? You want to do it
8 earlier?

9 MR. SCHMIDT: 2:30 is fine.

10 THE COURT: 2:30 is fine. Anything else on the
11 agenda for Thursday?

12 MR. SCHMIDT: We have to deal with the issue
13 concerning the testimony yesterday about the explosives.

14 THE COURT: About?

15 MR. SCHMIDT: The explosives. We got the transcript
16 today as to what the witness said and what his thought -- what
17 his speculation was.

18 THE COURT: Yes. Can we deal with that now?

19 MR. SCHMIDT: I guess we can.

20 THE COURT: We'll deal with it Thursday. We'll deal
21 with it Thursday. The question of --

22 MR. SCHMIDT: The question where the government asked
23 for this witness's speculation as to really where he thought
24 the --

25 THE COURT: This was to Somalia?

1271bin2

al-Fadh1 - direct

1 MR. SCHMIDT: No, this is Yemen.

2 THE COURT: Yemen.

3 MR. SCHMIDT: I think it's 340, 341.

4 THE COURT: Page 341, line 13: "Do you know in fact
5 whether or not anything in those boxes or crates was ever used
6 against the American military in Saudi Arabia?"

7 MR. SCHMIDT: Before that, your Honor, he testified
8 that that was going to help the Yemeni people because the
9 communists were trying to take over the government. That's at
10 page 17. And then he was told that "some of the box it's
11 explosives to Ibn al Mubarak al Sharqawi."

12 THE COURT: Where are you?

13 MR. SCHMIDT: Line 22 on page 340.

14 THE COURT: Page 340, line 22.

15 MR. SCHMIDT: Then the question was:

16 "Q. You mentioned that Ibn Mubarak was in Saudi Arabia?

17 "A. Yes.

18 "Q. Was he a member of the al Qaeda?

19 "A. Yes."

20 Then they asked the question which we have the
21 problem with.

22 THE COURT: But there's no answer.

23 MR. SCHMIDT: No, he says: "What was your
24 understanding at the time --"

25 That's on page 341, line 7. I object.

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al-Fadh1 - direct

1 "-- what the weapons were to be used for?"

2 Your Honor overruled. He said, "What I believe at
3 that time, they want to use it against foreign army and
4 American army in east Saudi Arabia."

5 There is no testimony in there that he was told that.
6 He was never told that. That's the operation of his mind
7 without the base -- based on no facts to back it up. In fact,
8 most of this is told that he's going to Yemeni to fight the
9 communists. There is no basis for the witness to make that
10 statement. That is, of course, very prejudicial without the
11 basis of fact.

12 THE COURT: So your motion is to strike lines 11 and
13 12 on page 341?

14 MR. SCHMIDT: My motion is to strike those, your
15 Honor. And I will forward a request of a curative instruction
16 to the Court so the jury is not under the mistaken belief that
17 this witness had any clue that those explosives were going to
18 be used against Americans.

19 MR. FITZGERALD: Your Honor, this was in the robing
20 conference where there are certain matters that the defense
21 did not want put before the jury. This witness had an
22 understanding from conversations that the explosives might be
23 used against the troops in Saudi Arabia. His understanding
24 was so clear that he pled guilty to a charge for moving those
25 explosives in the belief that that was in furtherance of the

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al-Fadh1 - direct

1 conspiracy against the American military. He pled guilty
2 before Judge Koeltl regarding that.

3 Now, to take out any inference that al Qaeda is
4 charged or that this case is about the Riyadh or Khobar
5 bombings, what we sought to do was to elicit the impeachment
6 material that the witness took actions thinking they were
7 against the American military, and then we stipulated, as
8 provided, that there is no belief or contention that those
9 explosives were actually used for the purpose.

10 I think we cut a fair balance of not misleading the
11 jury as to what his intentions and motives were, particularly
12 where he pled guilty, but not leading the jury to believe that
13 anybody in this room is responsible for those acts.

14 THE COURT: I think this is a fair example of no good
15 deed goes unpunished, because it seems to me that that's what
16 happened -- that there was this conference and an agreement
17 reached as to how the jury would be told that there is no
18 government contention that anything in these crates was ever
19 used against the American military, but that this is what the
20 witness believed, believed to the point that he pled guilty to
21 it.

22 MR. SCHMIDT: Your Honor, the only problem, the
23 government says they elicited this because it's Giglio
24 material, bad act, and they are saying, well, they're allowed
25 to, and only allowed to bring out the bad acts before we have

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al-Fadh1 - direct

1 a chance. However, under these circumstances, there's no way
2 that we would ever on cross-examination elicit this bad act
3 from the witness.

4 THE COURT: The thing we have to look at -- does
5 somebody have it -- is the robing room conference at which
6 this agreement was reached. When was that?

7 MR. FITZGERALD: The day before yesterday. That
8 would be Monday.

9 THE COURT: That would be February 5.

10 MR. FITZGERALD: Yes.

11 THE COURT: Let's do this tomorrow. There's no need
12 to do all this in open court. We'll take this up at our 2:30
13 conference tomorrow.

14 MR. RICCO: Your Honor, given the briefing schedule
15 that the Court set out this morning --

16 THE COURT: Yes.

17 MR. RICCO: -- there's no need for us to be present
18 at that conference tomorrow on the issues that we had
19 intended.

20 THE COURT: We're dealing tomorrow with discovery?
21 What are we dealing with tomorrow, the matter that we were
22 dealing with yesterday?

23 MR. SCHMIDT: Yes.

24 THE COURT: And you have furnished your materials?

25 MR. SCHMIDT: Yes.

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al-Fadh1 - direct

1 THE COURT: All right.

2 MR. COHN: That covers us as well, your Honor. I
3 suspect that we don't have to be here tomorrow. Those issues
4 were eventually --

5 THE COURT: My understanding of the subject is that
6 it deals with discovery requests and ongoing CIPA matter with
7 respect to El Hage. Anybody aware of anything else they want
8 to take up?

9 MR. BAUGH: Is that going to be open?

10 THE COURT: No.

11 MR. BAUGH: The press wanted to know about whether
12 it's going to be an open proceeding.

13 THE COURT: That will be a closed proceeding. The
14 press has time off, also.

15 The court security officer has requested meeting with
16 all defense counsel tomorrow to discuss CIPA procedures. So
17 we can do that tomorrow at 2:30, also. So all defense
18 counsel, I think one representative should be adequate.

19 MR. COHN: Okay.

20 MR. RUHNKE: Your Honor, just on that issue?

21 THE COURT: Yes.

22 MR. RUHNKE: Our defense team, for what it's worth,
23 has made other plans tomorrow. There isn't a CIPA document, I
24 think I can say that, that is relevant to our client, and we
25 ask to be excused from meeting with the Court security officer

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al-Fadh1 - direct

1 tomorrow.

2 THE COURT: You would ask to be what?

3 MR. RUHNKE: Excused from meeting with the court
4 security officer tomorrow on procedures that have nothing to
5 do with us.

6 THE COURT: I'm told that's all right. That's all
7 right.

8 MR. RUHNKE: Thank you.

9 THE COURT: We're adjourned, then, for a conference
10 with counsel, except for counsel for K.K. Mohamed, at 2:30
11 tomorrow, and the trial will resume on Tuesday at 10 a.m.

12 MR. SCHMIDT: Your Honor, where will we conference?

13 THE COURT: I think in the robing room here. Robing
14 room of 318.

15 All right. We're adjourned.

16 (Adjourned to 2:30 p.m. on February 8, 2001)

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