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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA

4 v. S(7) 98 Cr. 1023

5 USAMA BIN LADEN, et al.,
6 Defendants.

7 -----x

New York, N.Y.
February 13, 2001
9:50 a.m.

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Before:

HON. LEONARD B. SAND,
District Judge

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1 APPEARANCES

2 MARY JO WHITE
United States Attorney for the
3 Southern District of New York
BY: PATRICK FITZGERALD
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12 FREDRICK H. COHN
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13 Attorneys for defendant Mohamed Rashed Daoud Al-'Owhali

14 JEREMY SCHNEIDER
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1 (Trial resumes; jury not present)

2 THE COURT: Let me make some logistic announcements.

3 I have signed this morning, and they are presently
4 being filed under seal, two opinions which I believe dispose
5 of all motions presently fully submitted before the Court.
6 The opinions include the Court's reasoning on its previously
7 announced decision to permit the admission of the statements
8 made in Kenya and South Africa, except for the statements made
9 by Mr. al-'Owhali prior to his receipt of oral Miranda rights.

10 Also included in those opinions are the Court's
11 reasoning with respect to issues relating to presentment, the
12 identification parade, and other miscellaneous matters. They
13 are in two separate opinions, and a classified appendix filed
14 under seal. The two opinions will be unsealed on the 16th and
15 counsel are to advise the Court in writing prior to that time
16 whether any redactions are appropriate prior to that being
17 unsealed.

18 The classified appendix, which deals with matters
19 relating to the transportation of the defendant Odeh from
20 Pakistan to Kenya, will remain classified and sealed until
21 such time as the government advises that that classification
22 is no longer required.

23 We learned over the weekend that Mr. Schmidt, who had
24 prepared the cross-examination of al-Fadl, has the flu, and
25 although he has all confidence in Mr. Dratel, since he had

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1 prepared that cross-examination, he asked that it be deferred.
2 And so what we will do this morning is we'll have the
3 cross-examination by the counsel for the three other
4 defendants, whereupon we will adjourn for today.

5 Tomorrow if Mr. Schmidt is not recovered sufficiently
6 to cross-examine, we will proceed with the next government
7 witness, with the understanding that al-Fadl will be recalled
8 for purposes of further cross-examination and redirect.

9 In what sequence will the defendants cross-examine
10 the witness?

11 MR. HERMAN: Mr. Odeh will go first, your Honor.

12 MR. BAUGH: Mr. al-'Owhali will go second, your
13 Honor.

14 MR. RUHNKE: We'll finish, your Honor.

15 THE COURT: And am I correct that we will complete
16 before the lunch break?

17 MR. COHN: Certainly if the government is deferring
18 any of its redirect until after cross-examination.

19 THE COURT: There's no point in having redirect until
20 after all cross-examinations.

21 MR. COHN: Then the answer is yes.

22 THE COURT: That's a very important logistical
23 question because we haven't ordered lunch for the jurors.
24 That's a matter of great concern.

25 MR. FITZGERALD: I had about ten minutes more with

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1 the witness to start.

2 THE COURT: Ten minutes more of direct?

3 MR. FITZGERALD: Direct.

4 THE COURT: Of direct of the witness. Very well.

5 Mr. Dratel, do you want me to tell the jury that
6 Mr. Schmidt is ill, or should I not say anything? Maybe not
7 saying anything would be best.

8 MR. DRATEL: I think the Court should say that the
9 cross-examination of Mr. al-Fadl by Mr. El Hage is being
10 deferred because of Mr. Schmidt's illness, so they don't think
11 that he will not cross-examine, it's coming.

12 THE COURT: I don't think they have any sense what
13 the normal sequence would be. We had a sense as to what the
14 sequence will be, but I don't think they will.

15 MR. DRATEL: Maybe if you proceed with other
16 witnesses tomorrow, if we don't go forward tomorrow, maybe
17 that would be appropriate.

18 THE COURT: That would be the time, all right.

19 I certainly encourage the defense teams to arrange so
20 that there is not this huge array of defense counsel sitting
21 here. That's a decision that defense counsel have made for
22 themselves, but it is not -- I just want to be clear that it
23 isn't a requirement of the Court that there be three counsel
24 present for each defendant at all times.

25 We're now just awaiting the defendants, then we'll

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al-Fadl - direct

1 bring in the jury, then we'll have ten minutes or more of
2 redirect and then we'll proceed with the cross-examination by
3 Odeh, Al-'Owhali, and K.K. Mohamed, in that sequence, and then
4 we'll adjourn.

5 Is there anything else anybody wants to take up?

6 Very well.

7 (Brief recess)

8 (Jury present)

9 THE COURT: Good morning, ladies and gentlemen.

10 THE JURY: Good morning.

11 THE COURT: I hope everyone had a pleasant weekend,
12 and we will resume with the continued direct examination by
13 the government of the government's first witness, al-Fadl, and
14 he may take the stand.

15 And I understand we have a new interpreter.

16 Mr. Kenneally, will you swear the interpreter.

17 (Interpreter sworn)

18 DEPUTY CLERK: Please state your full name.

19 THE INTERPRETER: My name is Seham Susan Laraby,

20 L-A-R-A-B-Y.

21 DEPUTY CLERK: Thank you.

22 JAMAL AHMED MOHAMED AL-FADL, Resumes

23 THE COURT: Mr. al-Fadl, the Court advises you that
24 you are still under oath.

25 THE WITNESS: Okay.

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al-Fadl - direct

1 THE COURT: Mr. Fitzgerald.

2 MR. FITZGERALD: Thank you, Judge.

3 DIRECT EXAMINATION (continued)

4 BY MR. FITZGERALD:

5 Q. Mr. Fadl, if you would continue to try to talk slowly and
6 clearly into the microphone in front of you.

7 Now, when we ended last week you mentioned that as
8 part of your agreement with the government you were to receive
9 a \$20,000 loan. Do you recall that testimony?

10 A. Correct.

11 Q. Have you received that loan yet?

12 A. Not yet.

13 Q. During the time that you have been living in the United
14 States, first by yourself and then joined by your family, who
15 was it that has paid your housing, living and medical
16 expenses?

17 A. When I was in New York, it was the FBI.

18 Q. And after you left the FBI's custody, who paid for your
19 special housing, food, medical, etc.?

20 A. The Witness Protection.

21 Q. And you mentioned last week that you did not tell the
22 first team of U.S. government interviewers about the money you
23 stole from Bin Laden, and you mentioned the word "two days."
24 Do you recall that testimony?

25 A. Correct.

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al-Fadl - direct

1 Q. When during the three-week period that you were
2 interviewed, approximately three-week period, did you tell the
3 government people that you had stolen Bin Laden's money?

4 A. The last two days.

5 Q. And why did you say you told them over two days or after
6 two days?

7 A. When they asked me on the -- they say we ask you all the
8 questions, but something you have to tell us about yourself,
9 and I try to don't tell them but they say if you don't tell,
10 we not going to trust you and because we know you hide
11 something.

12 Q. So it was two days it took you to tell them, not the
13 second day of the interview?

14 A. The second day, yes, end of the second day.

15 Q. And in the three-week period, which two days were they?

16 A. The last two days.

17 Q. Last week you described the offices of the al Qaeda
18 businesses on McNimr Street. Do you recall that testimony?

19 A. Yes.

20 Q. Was there ever a time that Wadih El Hage had an office in
21 McNimr Street?

22 A. Yes.

23 Q. Where was the office that he worked in?

24 A. When you enter the first, the secretary, and after that,
25 hall, and his office on the right side.

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al-Fadl - direct

1 Q. Did he share it with anyone at that time?

2 A. No, he's only by himself.

3 Q. How many floors are at the McNimr Street office?

4 A. It's one floor.

5 Q. You also described last week how you participated in
6 paying the salaries of the al Qaeda people at McNimr Street.
7 Do you recall that testimony?

8 A. Yes.

9 Q. Did you pay all the al Qaeda people salaries at the McNimr
10 Street office or just the al Qaeda people who were working at
11 that building?

12 A. No, the people working, the companies in that building,
13 Ladin International Company, Taba Investments, Qudurat
14 Transportation and Themar al Mubarak company.

15 Q. Let me stop you. You say Ladin International, Taba?

16 A. Investment, Themar Mubarak, and Qudurat Transportation.

17 Q. Let me try to make it clear. If you worked for al Qaeda
18 but did not work in the McNimr Street office, did you get paid
19 at the McNimr Street office?

20 A. No.

21 Q. You mentioned the office of Wadi al Aqiq, the Wadi al Aqiq
22 offices, where were they located?

23 A. They are in Riyadh City in Khartoum and near the Riyadh
24 Street.

25 Q. And can you tell us the type of neighborhood that the Wadi

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al-Fadl - direct

1 al Aqiq office was located in?

2 A. It's residential area but they got some offices for
3 organization, relief organization like al Barr International
4 Organization and Islamic Relief Organization.

5 Q. If you could just describe how you would walk into the
6 offices at Wadi al Aqiq in that neighborhood, how you would
7 get to the business space that belonged to Wadi al Aqiq.

8 A. It's two floor, and when you go, first, the secretary, and
9 after that, Themar al Mubaraka, they move from McNimr Street
10 to the building and they got the right office.

11 Q. You mentioned there were two floors?

12 A. Yes.

13 Q. The offices for al Qaeda, on which floor were they?

14 A. Bin Laden, he got office in the second floor, and Sharif
15 al Din Ali Mukhtar, he got also office upstairs, and
16 Dr. Mubarak al Doori in the first floor, right of the
17 secretary hall.

18 Q. How did you get from the ground floor to the office of Bin
19 Laden on the second floor?

20 A. As soon as the secretary, you pass the secretary and you
21 got the stair.

22 Q. You mentioned a person by the name of Abu Hajer al Iraqi.
23 How did you know when a person was a member of al Qaeda?

24 A. If you see him make bayat or somebody tell you or he do al
25 Qaeda agenda or duty.

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al-Fadl - direct

1 Q. For Abu Hajer al Iraqi, did you actually see him make the
2 bayat?

3 A. No.

4 Q. Did you actually see him sign the contract?

5 A. No.

6 Q. Did you see him work at al Qaeda business?

7 A. Yes.

8 Q. Did anyone at al Qaeda ever tell you that Abu Hajer was
9 not a member of al Qaeda?

10 A. Some people say that.

11 Q. Do you recall anyone in particular who told you that Abu
12 Hajer was not a sworn member of al Qaeda?

13 A. I remember Abu Habib Tunisi.

14 Q. What did a Abu Habib Tunisi tell you?

15 A. He say Abu Hajer, he's not al Qaeda member and he just
16 work but he's not member, he's not al Qaeda.

17 Q. Did you see Abu Hajer among the al Qaeda people?

18 A. Yes.

19 Q. Were you ever told that there was anything you could not
20 discuss in front of Abu Hajer?

21 A. No.

22 Q. You mentioned last week that there came a time when Abu
23 Hafs el Masry returned to Khartoum from a trip to Somalia. Do
24 you recall that testimony?

25 A. Yes.

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al-Fadl - direct

1 Q. How many trips did you know Abu Hafs to take to Somalia?

2 A. I remember two.

3 Q. Would you tell us what the first trip was?

4 A. I remember after that they make fatwah and they say the
5 American people come to the horn of Africa. They sent Abu
6 Hafs el Masry to Somalia to Mogadishu and he went to see about
7 report, about if they can do something over there or how the
8 training going to be, how the people get over there, and he
9 came back with a report.

10 Q. And how did you learn about the report he brought back
11 from Somalia?

12 A. Well, Abu Sudani, he told me about that and I remember we
13 got meeting in the big guesthouse on Riyadh Street and in
14 front yard and the people talk about that.

15 Q. Did you hear Abu Hafs give the report about what he found?

16 A. I remember in his house he say it is not going to be easy,
17 but we have to start a little bit, if it's getting bigger.

18 MR. HERMAN: Can we have a time frame.

19 BY MR. FITZGERALD:

20 Q. Can you tell us approximately when this was that you heard
21 the report from Abu Hafs?

22 A. It could be during '93.

23 Q. Do you recall what time in 1993?

24 A. No, I don't remember.

25 Q. What did he say about -- you said it could be, it won't be

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al-Fadl - direct

1 easy. What did he say beyond that?

2 A. He said it is not easy to start because different tribe,
3 different groups, there's nobody control going on over there,
4 but we try to start a little bit and if go good, we go bigger.

5 Q. Now, prior to coming to court today did you listen to a
6 tape recording with a CD?

7 A. Yes.

8 MR. FITZGERALD: Your Honor, I'll just refer to
9 Government Exhibit 200A for identification purposes only at
10 this time.

11 Q. In listening to that recording, I just have a couple of
12 brief questions.

13 Did you recognize any of the voices on that recording
14 that you heard before coming to court?

15 A. One.

16 Q. Can you tell us the voice of the person whose voice you
17 recognized?

18 A. Dr. Abdel Moez Ayman al Zawahiri.

19 Q. Just so we're clear, is that one person or two?

20 A. One person.

21 MR. FITZGERALD: Thank you.

22 I have nothing further, Judge.

23 THE COURT: Very well. All right, we'll now proceed
24 with the cross-examination. The first cross-examination is by
25 counsel for defendant Odeh. Mr. Herman.

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al-Fadl - cross

1 MR. HERMAN: Thank you, Judge.

2 CROSS-EXAMINATION

3 BY MR. HERMAN:

4 Q. Good morning, Mr. al-Fadl.

5 A. Good morning.

6 Q. Mr. al-Fadl, I'm going to take you back to 1988 when you
7 went to Afghanistan.

8 A. Okay.

9 Q. And before that you had been residing in the United
10 States?

11 A. Yes.

12 Q. And you had been supporting the fight in Afghanistan; is
13 that correct?

14 A. Yes.

15 Q. And the situation in Afghanistan was that the Soviet Union
16 had invaded the country of Afghanistan; is that correct?

17 A. Correct.

18 Q. And that was about 1979?

19 A. Yes.

20 Q. And the Afghani people were resisting the Soviet Union; is
21 that correct?

22 A. I understand, but I don't understand "resisting."

23 Q. Okay. I'll rephrase it.

24 There was a war?

25 A. Yes.

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al-Fadl - cross

1 Q. And the Afghani people were fighting the war against the
2 Russians?

3 A. Correct.

4 Q. And the Afghani people were a Muslim people?

5 A. Yes.

6 Q. And the Russians believed in communism?

7 A. Yes.

8 Q. And at some point, young Muslims from around the world
9 started coming to Afghanistan; is that correct?

10 A. Correct.

11 Q. To participate in this war?

12 A. Correct.

13 Q. And to help the Muslim people fight against the Russians?

14 A. Correct.

15 Q. And they came from many parts of the world; is that right?

16 A. Correct.

17 Q. And they were often students, is that true?

18 A. Yes.

19 Q. Young people?

20 A. Yes.

21 Q. Who had a desire to participate with other young Muslim
22 men in this war; is that right?

23 A. Yes.

24 Q. And many of them had very high ideals or aspirations? Bad
25 word.

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al-Fadl - cross

- 1 Many of them wanted to be involved with a Muslim
2 cause?
- 3 A. Yes, they want to help the Afghani people.
- 4 Q. Help the Afghani people?
- 5 A. Yes.
- 6 Q. Even though they themselves were not from Afghanistan?
- 7 A. Yes.
- 8 Q. And a call went out to many parts of the world for young
9 men to come to Afghanistan and to assist in the struggle; is
10 that right?
- 11 A. Actually, it's not call, it's a fatwah.
- 12 Q. And you came to Afghanistan?
- 13 A. Yes.
- 14 Q. And you participated in the struggle at that time?
- 15 A. Yes.
- 16 Q. And you met young men from many other countries; is that
17 right?
- 18 A. Young and older.
- 19 Q. I'm sorry?
- 20 A. Young men and older men.
- 21 Q. Okay. Some people came from Syria; is that right?
- 22 A. Yes.
- 23 Q. From Lebanon, yes?
- 24 A. Yes.
- 25 Q. From Sudan?

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al-Fadl - cross

- 1 A. Everywhere.
- 2 Q. Philippines?
- 3 A. (Nods head)
- 4 Q. United States, correct?
- 5 A. Yes.
- 6 Q. And there was an organization which was established to
7 help them get involved in the situation in Afghanistan; is
8 that correct?
- 9 A. Yes.
- 10 Q. Which you described to us last week, right?
- 11 A. Right.
- 12 Q. Now, the men who came to fight in Afghanistan, many of
13 them had not been trained as fighters; is that right?
- 14 A. Could you repeat the question?
- 15 Q. Okay. Many of the men who came to Afghanistan to help the
16 Afghani people fight against the Russians were not trained or
17 had not been trained to fight?
- 18 A. No, they trained.
- 19 Q. Okay. When they got to Afghanistan, did they know how to
20 fight?
- 21 A. No.
- 22 Q. And Afghanistan is a very rugged country, is that true?
- 23 A. I don't understand "rugged."
- 24 Q. Okay, Afghanistan has many mountains?
- 25 A. Yes.

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al-Fadl - cross

1 Q. And it's difficult to get around the country?

2 A. Yes.

3 Q. It's a very harsh climate? It's a difficult geography and
4 climate?

5 A. Yes.

6 Q. And these young men were called Mujahadeen; is that right?

7 A. Yes.

8 Q. And many of them took a name for themselves when they
9 participated in the fighting in Afghanistan; is that right?

10 A. Yes.

11 Q. They wouldn't use their given name, they would take a name
12 which they would be called when they were in Afghanistan; is
13 that right?

14 A. Yes, they call it for security purpose.

15 Q. And also, as I understand it, many Islamic-trained
16 scholars also came to Afghanistan?

17 A. Correct.

18 Q. And part of what was taking place was a feeling on behalf
19 of many people that Afghanistan would become a true Islamic
20 country; is that right?

21 A. Some people, yes, they think that.

22 Q. And that attracted some of these Muslim men from other
23 parts of the country to come to Afghanistan; is that right?

24 A. Yes.

25 Q. And in Afghanistan they learned how to fight; is that

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al-Fadl - cross

1 correct?

2 A. Yes.

3 Q. They learned more about Islam and their religion?

4 A. Yes.

5 Q. I mean, that part of the program at these camps that you
6 described was religious teachings?

7 A. Yes.

8 Q. Because many of the young men did not have a very good
9 background in Islam; is that right?

10 A. Yes, but if you let me explain a little bit.

11 Q. Well, let me just ask you some questions and another
12 lawyer may want you to explain, but I just had some other
13 areas I want to cover with you, if that's all right.

14 A. Okay.

15 Q. Would it be fair to say that some of the men who came to
16 Afghanistan really didn't have a very strong background in
17 Islam?

18 A. Yes.

19 Q. And they were taught the fundamentals of the religion in
20 these camps; is that correct?

21 A. Some of them, they have background religion, some of them
22 not.

23 Q. So there were a variety of types of backgrounds of people?

24 A. Yes.

25 Q. And some of them are coming to Afghanistan and with the

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al-Fadl - cross

- 1 desire to learn about Islam?
- 2 A. They focus on Jihad.
- 3 Q. And they would use religious studies to learn how to live
- 4 a better life; is that right?
- 5 A. Yes.
- 6 Q. And there was a lot of good feelings among the men who
- 7 came to Afghanistan; is that correct?
- 8 A. Good relationship?
- 9 Q. Yes.
- 10 A. Yes.
- 11 Q. And they would greet each other warmly?
- 12 A. Yes.
- 13 Q. And they would embrace each other when they would meet?
- 14 A. Yes, they very nice to each other.
- 15 Q. A sign of brotherhood?
- 16 A. Yes.
- 17 Q. And at that point the enemy was the Soviet Union?
- 18 A. Yes.
- 19 Q. And the men who came were encouraged to study and to pray;
- 20 is that right?
- 21 A. Could you repeat the question?
- 22 Q. The young men who came to Afghanistan were encouraged,
- 23 were taught to study Koran and to pray?
- 24 A. Yes.
- 25 Q. Now, there came a time when Usama Bin Laden came to

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al-Fadl - cross

- 1 Afghanistan?
- 2 A. Yes.
- 3 Q. And that would have been about 1985?
- 4 A. He one of the first three of the people come to
- 5 Afghanistan.
- 6 Q. He was one of the first Arab people?
- 7 A. The first three, the first three of people. A lot of
- 8 people go to Afghanistan.
- 9 Q. So he was one of the very first?
- 10 A. Yes.
- 11 Q. And he was originally from Saudi Arabia; is that right?
- 12 A. He's Yemen roots.
- 13 Q. Okay. And his father was a very successful builder in
- 14 Saudi Arabia; is that right?
- 15 A. Yes.
- 16 Q. And you've described Usama Bin Laden as a billionaire,
- 17 with a B; is that right?
- 18 A. Yes.
- 19 Q. And he came to Afghanistan, as you said, with other, two
- 20 other people?
- 21 A. Yes.
- 22 Q. And he became involved in the war in Afghanistan; is that
- 23 correct?
- 24 A. Yes.
- 25 Q. And he contributed some of his money to the war efforts on

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al-Fadl - cross

1 behalf of the Afghani people; is that right?

2 A. Correct.

3 Q. In approximately 1987 Usama Bin Laden and Abdallah Azzam
4 established the service office; is that correct?

5 A. Yeah, the Mektab al Khidemat Service.

6 Q. Mektab al Khidemat?

7 A. Yes.

8 Q. And that was designed to assist the young men or the men
9 who were coming to Afghanistan to fight; is that correct?

10 A. Help them.

11 Q. Help them, provide them with documentation?

12 A. Everything.

13 Q. Because these young men, most of them had never been to
14 Afghanistan; is that correct?

15 A. Young men and older men.

16 Q. Okay. How old were you when you came to Afghanistan?

17 A. Maybe around 20s.

18 Q. In your 20s?

19 A. Yes.

20 Q. Most of the men, young or old, had not been to Afghanistan
21 before; is that right?

22 A. Yes.

23 Q. And in fact, what they had to do was to go through
24 Pakistan to get into Afghanistan, is that what happened?

25 A. Correct.

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al-Fadl - cross

1 Q. Because it was not possible to go directly, to fly
2 directly into Afghanistan?

3 A. No, because 15 year they -- because the Russia, they
4 control most of Afghanistan then that time.

5 Q. All right. The Russians were in control of certain areas?

6 A. Most of it.

7 Q. Most of the country?

8 A. Yes.

9 Q. So a base was established in Peshawar in Pakistan to
10 permit these men to enter into Afghanistan?

11 A. Yes.

12 Q. Now, over the course of years Usama Bin Laden became more
13 involved in the efforts in Afghanistan; is that correct?

14 A. Yes.

15 Q. And he actually got involved with building roads in
16 Afghanistan?

17 A. Not at that time.

18 Q. Okay. Was that later on?

19 A. I don't know about that.

20 Q. Okay. Do you know anything about him -- did he bring
21 equipment in from Saudi Arabia to aid in the war efforts?

22 A. Yeah, but for camps.

23 Q. For camps?

24 A. Yes.

25 Q. Bulldozers and that type of heavy equipment?

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al-Fadl - cross

- 1 A. Yes.
- 2 Q. Because his family was in that business; is that right?
- 3 A. It could be.
- 4 Q. And this was before al Qaeda was ever formed; is that
- 5 correct?
- 6 A. Yes, because everybody work for him before even al Qaeda
- 7 established.
- 8 Q. And al Qaeda, I think you told us, wasn't actually
- 9 established until 1989?
- 10 A. Yes.
- 11 Q. And so it was -- Bin Laden had been in Afghanistan for at
- 12 least four years before al Qaeda was formed; is that right?
- 13 A. Yes.
- 14 Q. Again, at this point the Russians are the enemy; is that
- 15 correct?
- 16 A. Soviet Union.
- 17 Q. Okay. The Soviet Union?
- 18 A. Yes.
- 19 Q. As it existed back then was the enemy?
- 20 A. Yes.
- 21 Q. And there really wasn't any talk or conversation about the
- 22 United States as being the enemy; is that correct?
- 23 A. At what time?
- 24 Q. Before 1989.
- 25 A. Yes, you're right.

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al-Fadl - cross

1 Q. Okay. In fact, it really wasn't until 1991 when the
2 headquarters was moved to Sudan that there began to be
3 discussions about the United States being the enemy?

4 A. It's before we move to Sudan the people start talking
5 about that.

6 Q. The war with the Soviet Union ended in 1989; is that
7 right?

8 A. Yes.

9 Q. But fighting continued in Afghanistan; is that correct?

10 A. Yes, because the president of Afghanistan, he got support
11 from the Soviet Union.

12 Q. The Soviet union continued to support?

13 A. That Najibullah.

14 Q. Some communist elements in Afghanistan?

15 A. Yes.

16 Q. So even though the Muslim people had defeated the Soviet
17 Union, there was still fighting taking place in Afghanistan?

18 A. Correct.

19 Q. And the Muslim people were fighting the communists because
20 they wanted to have Muslim control over Afghanistan?

21 A. Correct.

22 Q. And to have a government which was based on Islamic law?

23 A. Correct.

24 Q. And men, young and old, continued to come to Afghanistan
25 to participate in the continuing struggle; is that right?

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al-Fadl - cross

- 1 A. At what time?
- 2 Q. Even after 1989.
- 3 A. Yes.
- 4 Q. 1990, yes?
- 5 A. No, it's change.
- 6 Q. They weren't coming to Afghanistan in 1990 or they were?
- 7 A. Not to help Afghani, Soviet Union.
- 8 Q. I'm sorry?
- 9 A. They came because the al Qaeda established that time and
- 10 some people, they want to come to join it.
- 11 Q. To join al Qaeda?
- 12 A. Yes.
- 13 Q. And to be part of the group which was trying to make
- 14 Afghanistan into a pure Muslim country?
- 15 A. No, that time they start different agenda.
- 16 Q. They start what?
- 17 A. Different agenda.
- 18 Q. All right. The agenda began to change when Usama Bin
- 19 Laden became interested in moving to the Sudan; is that right?
- 20 A. Yes.
- 21 Q. Now, Mr. al-Fadl, you grew up in the Sudan; is that
- 22 correct?
- 23 A. Correct.
- 24 Q. And your father was a successful businessman in the Sudan,
- 25 is that accurate?

12dlbinf

al-Fadl - cross

1 A. Correct.

2 Q. And you were very familiar with the political situation in
3 the Sudan; is that correct?

4 A. When I'm younger, a little, not too much.

5 Q. But by the time that Bin Laden began to move al Qaeda to
6 the Sudan, you were pretty familiar with the political
7 situation, is that fair to say?

8 A. Yes.

9 Q. And there had been a change in the political situation in
10 the Sudan in June of 1989; is that right?

11 A. Correct.

12 Q. And what happened in June of 1989?

13 A. I remember that time I was in Peshawar and they say Muslim
14 group change the government of Sudan, they say Islamic
15 National Front, they took the government in Sudan.

16 Q. Are you finished? I'm sorry.

17 A. Yes.

18 Q. The prime minister had been a man named Sadiq al-Mahdi,
19 correct?

20 A. Yes.

21 Q. Who was related to the individual who had first liberated
22 Sudan in the 19th century?

23 A. Correct.

24 Q. And he was deposed?

25 A. What does that mean?

12dlbinf

al-Fadl - cross

1 Q. Okay. He no longer was the prime minister in June of
2 1989?

3 A. Yeah, right.

4 Q. In fact, he went to jail?

5 A. You're right.

6 Q. And the National Islamic Front was then running the
7 country?

8 A. Correct. Yes.

9 Q. Now, between 1989 and 1991, the organization of al Qaeda
10 was gradually moving to the Sudan; is that right?

11 A. Yes.

12 Q. And during that time you were a member of al Qaeda; is
13 that right?

14 A. Yes.

15 Q. You had taken an oath to obey the rules of the
16 organization; is that correct?

17 A. Correct.

18 Q. And various specialties were developing within al Qaeda,
19 is that correct, in terms of people who had various jobs?

20 A. Could you repeat, please?

21 Q. Yes. You told --

22 (Witness consults with interpreter)

23 A. Yes, you're right.

24 Q. Okay. For example, you told us last week that some
25 individuals became involved with the business interests of al

12dlbinf

al-Fadl - cross

1 Qaeda; is that correct?

2 A. Yes.

3 Q. Some individuals got involved with the financial dealings
4 of al Qaeda?

5 A. Correct.

6 Q. Is that right?

7 A. Yes.

8 Q. In terms of bank accounts and payroll; is that right?

9 A. Yes.

10 Q. And there were individuals who were involved with the
11 publicity with regard -- or information regarding the
12 organization?

13 (Witness consults with interpreter)

14 A. Yes, you're right.

15 Q. Okay. And I also gather that there were people who
16 specialized in obtaining travel documents for members of al
17 Qaeda who wished to travel to foreign countries?

18 A. Yes.

19 Q. And this actually had started in Afghanistan where they
20 would use the documents of Muslims who had died in the
21 struggle and used them to help other people travel?

22 A. Yes.

23 Q. And in fact, in Afghanistan they taught classes to some of
24 the men about how to obtain documents, false passports
25 documents; is that right?

12dlbinf

al-Fadl - cross

1 A. Yes.

2 Q. So this was a specialty within the organization of al
3 Qaeda; is that correct?

4 A. Yes, but it is changed when we went to Sudan.

5 Q. All right. I'm now talking about before you got to Sudan.

6 A. Okay.

7 Q. You yourself would travel to many places for al Qaeda; is
8 that right?

9 A. Yes.

10 Q. And you used different names or aliases?

11 A. Yes.

12 Q. And I think you mentioned that maybe even nine or ten
13 different names; is that right?

14 A. Yeah.

15 Q. In fact, even Usama Bin Laden was able to travel under a
16 false name; is that right?

17 A. Yes.

18 Q. Even though he was a fairly well-known person at that
19 time?

20 A. Yes.

21 THE COURT: Is there an answer?

22 THE WITNESS: I say yes.

23 Q. And the people who were preparing the false passports
24 would try to match the description of the person with the
25 false passport, is that your understanding?

12dlbinf

al-Fadl - cross

1 A. Yes.

2 Q. And sometimes they would take a photograph of the person
3 who wished to travel and put it into the passport?

4 A. Yes.

5 Q. Sometimes they would actually create an entirely new false
6 passport?

7 A. Yes.

8 Q. Sometimes they would use an existing passport from one
9 country to have a person travel to a different country?

10 A. I don't know what "existing."

11 Q. I'll withdraw it.

12 (Witness consults with interpreter)

13 A. Yes.

14 Q. And I gather now when you got to Sudan -- and I'm talking
15 now after 1991 -- you were even able to obtain passports from
16 the Sudanese government; is that correct?

17 A. Yes, we got a couple hundred.

18 Q. Okay, for your members of al Qaeda so they could travel
19 outside the Sudan; is that right?

20 A. Yes.

21 Q. And these were again false passports; is that right?

22 A. No.

23 Q. All right, they were real passports?

24 A. Yes, real passport.

25 Q. For real people?

12dlbinf

al-Fadl - cross

1 A. Yes, and making Sudanese citizenships.

2 Q. And giving them Sudanese citizenship?

3 A. Yes.

4 Q. Were these people, were all these people actually citizens
5 of Sudan?

6 A. No.

7 Q. And also, al Qaeda developed ways of hiding the fact that
8 their members were traveling, is that true?

9 A. I don't understand that.

10 Q. When al Qaeda members would travel and they did not want
11 to be shown to be a member of al Qaeda or even a Muslim, they
12 would -- they might shave their beard?

13 A. Yes.

14 Q. They might take magazines which a Muslim would not
15 ordinarily read?

16 A. Yes.

17 Q. Is that correct?

18 A. Yes.

19 Q. They might carry, as you mentioned, cigarettes, even
20 though it was prohibited to smoke?

21 A. Yes.

22 Q. As a means of escaping detection when they went through
23 Customs; is that right?

24 A. Yes.

25 Q. And another technique that was taught to the members of al

12dlbinf

al-Fadl - cross

1 Qaeda, especially in Pakistan, was to use bribes?

2 A. I don't understand that.

3 (Witness consults with interpreter)

4 A. Yes, sometimes we use that.

5 Q. Another feature of the al Qaeda organization or another
6 aspect of the organization was that not everybody in the
7 organization always knew everything that the organization was
8 doing, is that true?

9 A. Not exactly.

10 Q. People in the organization had various specialties; is
11 that right?

12 A. Yes.

13 Q. And if someone didn't have a specialty and was not
14 involved, let's say, in a mission, a particular project, that
15 person wouldn't necessarily know about what the mission was;
16 is that correct?

17 A. Not exactly.

18 Q. You were the third person to join al Qaeda; is that right?

19 A. Sign, at that time.

20 Q. To sign the contract with al Qaeda; is that right?

21 A. Yes.

22 Q. And you were in a high position in al Qaeda; is that
23 correct?

24 A. The shura council up to me, so I'm under them.

25 Q. You were under the shura council?

12dlbinf

al-Fadl - cross

1 A. Yes.

2 Q. And al Qaeda trusted you with large amounts of money?

3 A. Yes.

4 Q. There were times when you would be carrying \$50,000 in
5 American dollars in cash; is that right?

6 A. Yes.

7 Q. Or even more?

8 A. Yes.

9 Q. And you also were involved when al Qaeda went to the Sudan
10 of purchasing property in the Sudan; is that correct?

11 A. Yes.

12 Q. And that was over \$200,000; is that right?

13 A. 250, yes.

14 Q. \$250,000?

15 A. Yes.

16 Q. So you were in a position of trust with regard to al
17 Qaeda; is that right?

18 A. Yes.

19 Q. And you were in a position of responsibility?

20 A. Yes.

21 Q. And you knew many of the areas that al Qaeda was involved
22 with; is that right?

23 A. Yes.

24 Q. But in 1991 how many members did al Qaeda have?

25 A. I don't know exactly the number, but could be thousand,

12dlbinf

al-Fadl - cross

1 could be less. I don't know exactly the number.

2 Q. Okay, approximately?

3 A. Could be around 2,000 or a little less.

4 Q. Around 2,000 people?

5 A. Or less.

6 Q. Did you know every member of al Qaeda?

7 A. No.

8 Q. And did you ever describe the structure of al Qaeda like a
9 pyramid?

10 A. Could she help me?

11 (Witness consults with interpreter)

12 A. Sometimes, yes.

13 Q. Okay. In fact, after you began talking to the American
14 authorities, you spent a lot of time with them telling them
15 about yourself and about al Qaeda; is that right?

16 A. Yes.

17 Q. And you met with them on many occasions?

18 A. Yes.

19 Q. And they asked you -- withdrawn. And it was over a period
20 of over five years?

21 A. Yes.

22 Q. Correct?

23 A. Yes.

24 Q. And they would ask you questions about who was in al
25 Qaeda; is that right?

12dlbinf

al-Fadl - cross

- 1 A. Yes.
- 2 Q. Who was in the shura council?
- 3 A. Yes.
- 4 Q. What you did?
- 5 A. Yes.
- 6 Q. What other people did, right?
- 7 A. Yes.
- 8 Q. And similar types of questions to what I asked you today
- 9 about businesses, finance, banks, money, that type of thing?
- 10 A. Yes.
- 11 Q. Right? And when they were talking to you they were taking
- 12 down notes or they were doing reports; is that right?
- 13 A. Yes.
- 14 Q. Did you ever read all of the reports that were prepared
- 15 about you?
- 16 A. Not all of it, maybe.
- 17 Q. It's pretty, pretty large number of reports, right?
- 18 A. Yes.
- 19 Q. What it seems that you told American officials, at least
- 20 on one occasion, is that the security and the Jihad activities
- 21 which were adopted by the Islamic movements are built in a
- 22 pyramidal -- a shape of a pyramid?
- 23 A. Yes.
- 24 Q. Do you remember saying something like that?
- 25 A. Yes.

12dlbinf

al-Fadl - cross

1 Q. And then you said, "So if one level of activity is
2 discovered, the discovery is contained to that level in the
3 organization." Now those -- you may not have said those
4 words, but was that the idea that you were telling them?

5 A. I don't understand.

6 (Witness consults with interpreter)

7 A. Yes.

8 Q. So if we think of al Qaeda as a pyramid, the people at the
9 top knew everything that was happening in the organization; is
10 that right?

11 A. Correct.

12 Q. But there were lines along the pyramid, right?

13 A. Yes, and the new people.

14 Q. The new people?

15 A. Yes.

16 Q. The new people would not necessarily be told everything;
17 is that right?

18 A. Sometime if they involved with something, they know.

19 Sometimes no.

20 Q. But Mr. Al-Fadl, if they were not involved, if they had no
21 role in a particular mission, there would be no need to tell
22 them?

23 A. I don't know what you mean about "mission."

24 Q. Okay. If al Qaeda was involved in a particular activity
25 and a person at the bottom of the pyramid had no participation

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al-Fadl - cross

1 in that activity, that person would not have to know about the
2 activity; is that correct?

3 A. Official, yes, but if the people talk in a guesthouse,
4 maybe he know.

5 Q. But as far as the organization was concerned, for security
6 purposes some activities that al Qaeda engaged in were not
7 told to everybody on the pyramid?

8 A. You're right, that's correct, but sometimes they talk.

9 MR. FITZGERALD: Judge, a juror --

10 A JUROR: I need to use the bathroom.

11 THE COURT: Yes, all right. We'll take a brief
12 recess.

13 (Jury not present)

14 THE COURT: I'm beginning to get concerned about my
15 not having lunch ordered. Are you on schedule?

16 MR. HERMAN: I think I am, Judge.

17 THE COURT: Okay. All right. We'll take a
18 five-minute recess.

19 The opinions I referred to earlier are available.

20 (Recess)

21

22

23

24

25

12D1BIN2

Al Fadl - cross/Herman

1 (In open court; jury not present)

2 THE COURT: All right, let's resume. The jurors have
3 ordered lunch so, Mr. Herman, you don't have to have concern.

4 MR. HERMAN: Thank you, Judge.

5 THE COURT: Counsel, please pick up the classified
6 appendix when you leave for lunch.

7 (Jury present)

8 THE COURT: The witness may resume the stand.

9 (Witness resumed)

10 THE COURT: Mr. Herman, you may continue.

11 MR. HERMAN: Thank you, your Honor.

12 Q. Mr. Al Fadl, before we took the break I was asking you
13 questions about whether all members of the al Qaeda knew about
14 all activities of al Qaeda?

15 A. Yes.

16 Q. That's the subject we're talking about. And I'm going to
17 use an example that you gave us last week about when you were
18 told that you were going to have to move to Kenya, remember?

19 A. Yes.

20 Q. You were living in the Sudan, right?

21 A. Yes.

22 Q. With your wife?

23 A. Yes.

24 Q. And you were working for al Qaeda in the Sudan, correct?

25 A. Yes.

12D1BIN2

Al Fadl - cross/Herman

- 1 Q. And you were earning money from al Qaeda, is that right?
- 2 A. Yes.
- 3 Q. And you had grown up in the Sudan, right?
- 4 A. Yes.
- 5 Q. And you are told that you're going to have to move to
- 6 Kenya?
- 7 A. Yes.
- 8 Q. Right?
- 9 A. Yes.
- 10 Q. And you're not told what you're supposed to do, right?
- 11 A. No, I, they told me.
- 12 Q. You weren't told why you were going to Kenya, were you?
- 13 A. No, they give me something I have to take it over there.
- 14 Q. You have to take an envelope to Kenya, right?
- 15 A. With documents, yes.
- 16 Q. With documents. You thought you were moving to Kenya,
- 17 didn't you?
- 18 A. Yeah, he tell me that, yes, right.
- 19 Q. You were ready to move from Sudan with your wife to Kenya,
- 20 right?
- 21 A. Correct.
- 22 Q. And that's what they told you?
- 23 A. Yes.
- 24 Q. When you get to Kenya you're at the airport, right?
- 25 A. Yes.

12D1BIN2

Al Fadl - cross/Herman

- 1 Q. And then they take you to another location?
- 2 A. Yes.
- 3 Q. And you deliver the documents?
- 4 A. Yes.
- 5 Q. And then they said to you: You're not moving to Kenya any
6 more, right?
- 7 A. Right.
- 8 Q. You're moving to Pakistan?
- 9 A. That's right.
- 10 Q. And that was the first that you knew that you were weren't
11 going to be living in Kenya, right?
- 12 A. Yes.
- 13 Q. And you and your wife then flew to Pakistan, right?
- 14 A. Correct.
- 15 Q. And she stayed there for a number of months, right?
- 16 A. Correct.
- 17 Q. And you came back to the Sudan, right?
- 18 A. Correct.
- 19 Q. And then did she join you in the Sudan?
- 20 A. Later, yes.
- 21 Q. Later on?
- 22 A. Yeah.
- 23 Q. So this was an example of a mission where you didn't even
24 know, and you were involved, but you didn't even know that you
25 weren't going to stay in Kenya, right?

12D1BIN2

Al Fadl - cross/Herman

- 1 A. Correct.
- 2 Q. Do you know the name, I'll spell it A-B-U M-U-S-A-B-A-L
- 3 S-U-R-R-E O-M-A-R A-B-D-E-L H-A-K-E-E-M. Do you know that
- 4 name?
- 5 A. Abu Musabal, yes.
- 6 Q. The name that I said, is that his whole name?
- 7 A. Abu Musabal Surre, yes.
- 8 Q. And was he a member of the Shura Council?
- 9 A. Yes.
- 10 Q. And did he write any books?
- 11 A. I don't remember his books, but he got notes about his
- 12 time during the present, Surre.
- 13 Q. Do you remember a group of writings called Alta --
- 14 A. Riba, yes.
- 15 Q. I'll say the word. Then I'll spell the title, Alta Ribaal
- 16 Sooriyah?
- 17 A. Correct.
- 18 Q. A-L-T-A R-I-B-A-A-L S-O-O-R-I-Y-A-H. Was that a book
- 19 that he wrote?
- 20 A. Yes.
- 21 Q. Okay. And do you know the name Dr. F-A-D-E-L?
- 22 A. Yes.
- 23 Q. And did he write a book called Al jama fat al elm? I'll
- 24 spell it in a second.
- 25 A. Could you repeat it again?

12D1BIN2

Al Fadl - cross/Herman

1 Q. I'll try, did you know, now Dr. Fadl, did you know him to
2 write any books?

3 A. I remember, yes, he write a couple books.

4 Q. Was there a book that they called Al Jame?

5 A. Jame? I don't remember.

6 Q. A book about a collection or composition seeking the
7 truth? Does that ring a bell?

8 A. I don't remember, but could be, yes.

9 Q. Okay. Now, do you know the name last name Asmari?

10 A. Could you repeat?

11 Q. Last name Asmari, A-S-M-A-R-I?

12 A. No.

13 Q. I may be mispronouncing it?

14 MR. FITZGERALD: One moment, your Honor.

15 (Pause)

16 Q. I am mispronouncing it. I apologize. Okay. I should
17 have said Azmarai.

18 A. Azmarai, yes.

19 Q. Okay, A-Z-M-A-R-A-I, his last name is Al Sudi, yes?

20 A. We know him, yes, Azmarai.

21 Q. Was he on the Shura Council?

22 A. I don't remember that.

23 Q. Okay. When you were talking to the American officials
24 they asked you about who was on the Shura Council, you
25 remember that?

12D1BIN2

Al Fadl - cross/Herman

1 A. Yes.

2 Q. Okay. And you told them that there were thirty-one
3 members?

4 A. Yes.

5 Q. Okay. And I have it here that number 23 is Azmarai Alsui.
6 Does that refresh your recollection?

7 A. If I told them, yeah, yes.

8 Q. But I don't remember now.

9 Q. Part of -- withdrawn. Al Qaeda had many means of
10 communication amongst its members, is that correct?

11 A. Committee, yes.

12 Q. Let me -- all right. What I'm talking about are
13 telephones, radios?

14 A. Oh, okay, yes.

15 (Witness consults with interpreter)

16 A. Yes.

17 Q. I see you're consulting with the interpreter. Do you
18 understand my question?

19 A. Yes.

20 Q. They had radios, telephones?

21 A. Yes.

22 Q. Correct? They had cell phones?

23 A. Yes.

24 Q. Apparently Usama Bin Laden had a satellite phone?

25 A. Yes.

12D1BIN2

Al Fadl - cross/Herman

1 Q. A very expensive phone from Germany?

2 A. Yeah, I remember he buy some equipment from Germany.

3 Q. And I think you told the agents that the phone might have
4 cost \$80,000?

5 A. Yes.

6 Q. And that at some point when they were in the Sudan they
7 had radios that were, had belonged to the Sudanese Army, is
8 that correct?

9 A. It's a group radio, but we buy it through the Army.

10 Q. Okay. And then you had hand-held radios as well, is that
11 right?

12 A. Yes.

13 Q. So al Qaeda had, at least when they got to the Sudan,
14 pretty sophisticated means of speaking with each other. Is
15 that fair to say?

16 A. Yes, officers, yes.

17 Q. Now, you told us last week, Mr. Al Fadl, that at some
18 point you were ordered to kill the former president of the
19 Sudan; is that right?

20 A. Yes.

21 Q. And that was Sadiq al-Mahdi?

22 A. Al-Mahdi, yes.

23 Q. S-A-D-I-Q AL-M-A-H-D-I?

24 A. Correct.

25 Q. This was the person who had been the Prime Minister of the

12D1BIN2

Al Fadl - cross/Herman

1 Sudan until 1989, right?

2 A. Correct.

3 Q. And you received an order that he should be killed by, on
4 behalf of al Qaeda, is that right?

5 A. National front.

6 Q. And was there any doubt in your mind that you were
7 supposed to kill him?

8 A. Well, they asked me but I didn't do it.

9 Q. Okay. You didn't do it because you determined that there
10 was no religious basis to do it, right?

11 A. It's not easy that time.

12 Q. What?

13 A. It's not easy.

14 Q. It wasn't easy to kill him, right?

15 A. Yes.

16 Q. You were supposed to poison him, right?

17 A. No, they asked me and I tell them it's going to be hard.

18 Q. Well, they did more than ask you, didn't they, Mr. Al
19 Fadl?

20 A. Could you repeat the question?

21 Q. It was more than they just asked you. Did you want to do
22 it, right?

23 A. Yeah, it's order, but --

24 Q. Or, right?

25 A. Yes.

12D1BIN2

Al Fadl - cross/Herman

1 Q. Fatwa?

2 A. Yes.

3 Q. But you didn't do it, did you?

4 A. No.

5 Q. And you also told the agents that there had been
6 discussions in 1994 some officers in Bin Laden's Islamic Army
7 presented a proposal to blow up the American embassy in
8 Riyadh. Remember that?

9 A. Yeah, we have some talk about that.

10 Q. And the Saudi component of the Islamic Army rejected the
11 proposal, right?

12 A. I don't understand what you said.

13 Q. Okay. There was a discussion back in 1994, of blowing up
14 an American embassy, right?

15 A. In Riyadh City.

16 Q. In Riyadh City?

17 A. Yes.

18 Q. And it was discussed by individuals in al Qaeda, right?

19 A. Abu Hahs Al-Masri.

20 Q. But the idea of blowing up an American embassy was, it was
21 decided that that would not be done, correct?

22 A. I don't know why, but what I gain from the meeting they
23 tried to do that.

24 Q. Well, they didn't tell you why, right?

25 A. I don't know why.

12D1BIN2

Al Fadl - cross/Herman

1 Q. You don't know why?

2 A. Yes.

3 Q. But they didn't do it?

4 A. No.

5 Q. Now, you told the agents when they asked you about Usama
6 Bin Laden, you told the agents that Usama Bin Laden
7 misinterprets certain portions of the Koran to justify violent
8 action. Do you remember saying that?

9 A. I don't understand what you say.

10 (Witness consults with interpreter)

11 A. No, not exactly like what you say.

12 Q. You spoke to the agents a lot, didn't you?

13 A. Yes.

14 Q. And you remember everything that you said?

15 A. Yes.

16 Q. And they were taking down notes at the time?

17 A. Yes.

18 Q. And is it your position today that you never told the
19 agents that Usama Bin Laden misinterpreted certain portions of
20 the Koran to justify violent actions?

21 A. Well, when we talk about which scholar we follow in al
22 Qaeda because there are so many scholars. Some people they
23 follow scholar, he talk about something. Some people they say
24 no, no this scholar, but we follow another scholar.

25 Q. Here's my question, and if you don't understand it I'll

12D1BIN2

Al Fadl - cross/Herman

1 either rephrase it or ask the interpreter.

2 A. Okay.

3 Q. Did you tell American agents that Bin Laden misinterprets
4 certain portions of the Koran to justify violent action?

5 A. I really, I don't remember exactly like this.

6 Q. Does it sound like something that you said?

7 A. It's similar like when we talk about who's scholar in our
8 group.

9 Q. Do you understand my question?

10 A. Yes.

11 Q. Did you say that?

12 A. If they wrote it, yes.

13 MR. HERMAN: That's all I have, Judge. Thank you.

14 THE COURT: Mr. Baugh on behalf of Al-'Owhali.

15 CROSS-EXAMINATION

16 BY MR. BAUGH:

17 Q. Good morning, sir. My name is David Baugh and I represent
18 along with my co-counsel, Mr. Al-'Owhali. If at any time you
19 do not understand my question feel free to talk to Ms. Laraby,
20 all right?

21 A. Okay.

22 Q. Now, sir, first, you entered into a plea agreement with
23 the United States of America, did you not?

24 A. Yes.

25 Q. And you were given a copy of that plea agreement in

12D1BIN2

Al Fadl-cross/Baugh

1 Arabic?

2 A. Yes.

3 Q. If you saw that agreement could you recognize it and
4 identify it?

5 A. Yes.

6 MR. BAUGH: May I approach and show the United
7 States, your Honor?

8 (Pause)

9 Q. This is the agreement you brought to the United States
10 with the government, didn't you?

11 A. Yes.

12 Q. At this time we will show what has been previously shown
13 to the United States. It is Bates stamped as 3501-41. And
14 ask him, is this the agreement that you recognize?

15 A. Yes.

16 Q. That's your signature on the back page?

17 A. Yes.

18 MR. BAUGH: At this time, your Honor, we offer that
19 as Defendant's Exhibit 1 for today.

20 MR. FITZGERALD: Judge, may I have just a short
21 moment with Mr. Baugh?

22 THE COURT: Surely.

23 (Pause)

24 Q. So that we have this correct, how would you describe that
25 agreement? What would you say its purpose is?

12D1BIN2

Al Fadl-cross/Baugh

1 THE COURT: Two agreements. Which one are you
2 referring to?

3 MR. BAUGH: I'm going to ask him right now.

4 Q. This agreement right here, is an agreement to do what,
5 sir? Do you understand my question?

6 A. Yes.

7 Q. All right.

8 A. I think this is a finished one.

9 Q. It is to do what?

10 A. To start talking with them.

11 Q. To start talking with them and that's the agreement you
12 signed?

13 A. Yes.

14 MR. FITZGERALD: Objection, your Honor, to the
15 receipt of that 3501-41.

16 THE COURT: 3501-41 is received.

17 MR. BAUGH: I'm sorry. It should be Defendant's
18 Exhibit A, your Honor.

19 THE COURT: As Defendant's Exhibit A.

20 (Defendant's Exhibit A received in evidence)

21 MR. BAUGH: That's right, your Honor.

22 THE COURT: What is the date of that agreement?

23 MR. BAUGH: It is only in Arabic.

24 Q. What is the date of that agreement?

25 A. November 6, '96.

12D1BIN2

Al Fadl-cross/Baugh

1 Q. Now, sir, when you took the bayat, you agreed to follow
2 whatever orders you were given by al Qaeda, am I correct?

3 A. Correct.

4 Q. And so that the people will understand, what is the full
5 name for al Qaeda?

6 A. Al Qaeda.

7 Q. Al Qaeda, the faith of what?

8 A. The name is only al Qaeda.

9 Q. There is no further name to it?

10 A. No.

11 Q. So you took a promise that you would, if asked, kill
12 people?

13 A. Yes.

14 Q. You would set off bombs and kill many people, if asked?

15 A. Correct.

16 Q. And you also agreed that, if necessary, you would die?

17 A. Correct.

18 Q. And before you made that agreement I assume you thought
19 about it?

20 A. Yes.

21 Q. And had you actually thought in your mind and were you
22 prepared --

23 A. Yes.

24 Q. -- to die, if necessary?

25 A. Yes.

12D1BIN2

Al Fadl-cross/Baugh

1 Q. And you were prepared to kill innocents, if necessary?

2 A. Yes.

3 Q. Now, was this agreement based upon, do you understand the
4 word patriotism?

5 A. No.

6 MR. BAUGH: Ms. Laraby, is there an equivalent word
7 for patriotism.

8 (Witness consults with interpreter)

9 A. Yes.

10 Q. Was it loyalty to a country or loyalty to a religion?

11 A. Country.

12 Q. Loyalty to a country. And what country is that?

13 A. I don't understand the question.

14 (Witness consults with interpreter)

15 A. Country.

16 Q. To what country do you have that loyalty.

17 Ms. Laraby, could you translate?

18 (Witness consults with interpreter)

19 A. I'm from Sudan.

20 Q. So you took this oath to help Sudan?

21 A. No, al Qaeda.

22 Q. Did you take it to help Islam or to help Sudan?

23 A. When I was in al Qaeda, Islam.

24 Q. Islam. Now, in 1996 after you had taken your bayat you
25 were told that al Qaeda was contemplating or thinking about

12D1BIN2

Al Fadl-cross/Baugh

1 bombing embassies, weren't you?

2 A. What year?

3 Q. In 1996, before you left the organization?

4 A. Yes. What do you say?

5 MR. BAUGH: Ms. Laraby could you translate, please?

6 Q. Before you left in 1996 were you told that al Qaeda was
7 thinking about blowing up embassies?

8 (Witness consults with interpreter)

9 A. I think in '94 I heard that.

10 Q. And you also were told is -- that you in fact, you
11 participated in trying to buy uranium to make a bomb?

12 A. Yes, in '94.

13 Q. In '94. Now, al Qaeda, am I correct, told you why this
14 had to be done, didn't they?

15 A. Which be done?

16 Q. Well, for instance, did al Qaeda tell you that the United
17 States was killing Iraqis with their sanction?

18 A. Yes, that, they got different fatwa.

19 Q. I'm sorry?

20 A. They got different fatwa.

21 Q. Yes. No, no. The question is this. Did anyone in al
22 Qaeda tell you that Americans had killed over a million Iraqis
23 with their sanction?

24 A. Yes, they talk about that.

25 Q. And you know that to be true, don't you?

12D1BIN2

Al Fadl-cross/Baugh

1 A. Yes.

2 Q. All right. Did al Qaeda tell you that one of the reasons
3 that America was wrong was because America allowed Saddam
4 Hussein to remain in control of Iraq?

5 A. I don't understand that.

6 Q. Well, is Saddam Hussein liked or disliked by al Qaeda?

7 A. They don't think he's real government Muslim.

8 Q. Do they like him or dislike him?

9 A. It's hard to say yes or no.

10 Q. All right. Did al Qaeda tell you that one of the reasons
11 America was wrong was because of its treatment of the Kurds?

12 A. What mean Kurds?

13 (Witness consults with interpreter)

14 A. Could you repeat the question?

15 Q. Of course. Could I --

16 Ms. Laraby. Did al Qaeda tell you that one of the
17 reasons America was bad was because of its treatment of the
18 Kurds?

19 (Witness consults with interpreter)

20 A. I don't remember.

21 Q. Well, did you ever hear that America had promised the
22 Kurds certain thing after the Gulf War?

23 A. Yes.

24 Q. And that one of the things America promised the Kurds if
25 they rose up and overthrow Saddam Hussein, we'd help them, the

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Al Fadl-cross/Baugh

1 Americans would help them? Did you hear that before.

2 Ms. Laraby.

3 (Witness consults with interpreter)

4 THE COURT: Mr. Baugh.

5 MR. BAUGH: Yes, sir.

6 THE COURT: Use the microphone, sir.

7 MR. BAUGH: Yes, sir.

8 A. I don't remember that.

9 Q. Well, then you don't remember whether you were told that,
10 or you don't remember if that is true?

11 A. I don't remember is that true or not true.

12 Q. All right. Were you told that America was wrong
13 because --

14 THE COURT: Can you be a little more specific as to
15 who was doing the telling here?

16 MR. BAUGH: Okay, forgive me. Yes, sir.

17 As part of your involvement in al Qaeda would you as
18 a group get together and have meetings and talk about things?

19 A. A lot.

20 Q. And during these meetings would members of this group talk
21 about why your acts had to be done?

22 A. What mean acts?

23 (Witness consults with interpreter)

24 A. Yes.

25 Q. And the people in this conversation would be members of al

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Al Fadl-cross/Baugh

1 Qaeda?

2 A. They have to.

3 Q. They have to be in order to be. And sometimes it would be
4 Mr. Bin Laden, and sometimes other people whose names we have
5 spelled all day?

6 A. Yes, you're right.

7 Q. And some of these people would talk about the death of a
8 million Iraqis?

9 A. Yes, you're right.

10 Q. And that over one half million of those people who have
11 been killed since 1991 are children under the age of 5?

12 A. Yes.

13 Q. And that America sends troops to the Arab countries but
14 they don't pull them out?

15 A. Right.

16 Q. In fact, there are still troops in Saudi Arabia?

17 A. Yes.

18 Q. And that when troops went in, in Somalia there was a
19 concern the troops would stay there?

20 A. Yes.

21 Q. And colonize Somalia?

22 A. What mean colonize?

23 (Witness consults with interpreter)

24 A. Occupation, maybe.

25 Q. What?

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Al Fadl-cross/Baugh

1 THE INTERPRETER: Occupation.

2 Q. That they occupy the country. Thank you.

3 Sir, I want to tell you if I use the incorrect term,
4 you feel free to correct me, okay?

5 A. Okay.

6 Q. Thank you.

7 In these discussions would they talk about how
8 America was controlling certain Arab governments?

9 A. You're right.

10 Q. Now, these are things that Bin Laden and other people told
11 you?

12 A. Yes.

13 Q. And you know that all of those things are true, don't you?

14 A. Yes.

15 Q. Did they tell you in these meetings that you couldn't
16 trust America because they always break their treaties?

17 Translation, please.

18 (Witness consults with interpreter)

19 A. They say that, yes.

20 Q. All right. And did they tell you that historically
21 westerners always break their treaties with Arab countries?

22 (Witness consults with interpreter)

23 A. Yes, they say that.

24 Q. Did they talk about the great betrayal of 1916?

25 (Witness consults with interpreter)

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Al Fadl-cross/Baugh

1 A. What is that?

2 Q. The Sykes Pocoot agreement. Did they tell you about that?

3 (Witness consults with interpreter)

4 A. No, I don't know. I don't remember.

5 Q. What about the Balfour Accord?

6 A. Yes.

7 Q. The Kissinger promise?

8 (Witness consults with interpreter)

9 A. I don't remember.

10 Q. In fact, did you ever hear about a tape recording of

11 Madeline Albright stating that she knew the United States had

12 killed a half million children in Iraq?

13 A. No.

14 Q. Now, during the time appeared, we're talking about 1991 to
15 1996, America was continuing to bomb Iraq, weren't they?

16 A. Yes.

17 Q. And you as a Muslim never knew what day America was going
18 to bomb Iraqis and kill them, am I correct?

19 A. Could you repeat?

20 Q. You never knew what days America was going to kill
21 Americans -- strike that.

22 MR. FITZGERALD: Objection. Relevance grounds.

23 THE COURT: Overruled.

24 MR. BAUGH: Thank you.

25 Q. You never knew when the Americans were going to bomb

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Al Fadl-cross/Baugh

1 Iraqis and kill them, did you?

2 A. I don't know.

3 Q. Okay. It could have been the next day and you wouldn't
4 have known it?

5 A. I don't know.

6 Q. All right. And was one of the reasons for al Qaeda hating
7 Americans to stop that bombing?

8 A. Yes, they talk about that.

9 Q. And was it reasonable to you --

10 Translation, please.

11 A. I understand reasonable.

12 Q. Oh, forgive me. Was it reasonable for you to believe
13 that?

14 A. It was substantiated.

15 Q. I'm sorry. I could not understand you?

16 A. I understand what you say, but with some explaining.

17 Q. Explain please, go ahead.

18 A. Because some Muslims they see American troops, they don't
19 go in the Gulf area by themselves. The government --

20 Q. Slow down just a little bit, just a little bit. Could you
21 start over again?

22 A. Some people in other group they say the American troops
23 they don't go to Gulf area by themselves. The Saudi government,
24 the Kuwait government, they bring them to Gulf area to stop
25 Iraq because Iraqi tried to take all the Arab countries.

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Al Fadl-cross/Baugh

1 Q. All right. And was it reasonable for you to believe that
2 the only way to stop the Americans from killing Iraqis was to
3 get them out of Saudi Arabia?

4 A. Well, the al Qaeda people they talk about that.

5 Q. Al Qaeda did. No, no. Did you believe that?

6 A. No.

7 Q. You didn't believe that?

8 A. It was explained, you know, it's hard for group, you know,
9 but those Americans they have agreement with Saudi government
10 and Kuwait and Gulf countries.

11 Q. But am I correct, sir, that it was your position
12 personally and al Qaeda's position that if enough Americans
13 were killed they would stop bombing Iraq?

14 A. Well, al Qaeda believe, yes, they believe that.

15 MR. BAUGH: If he stands up you have to be quiet,
16 okay. That's one of the rules.

17 A. The al Qaeda people, yeah, they believed that.

18 Q. Now, would you agree -- well, first, there's a difference
19 between Arabs and Muslims, right?

20 A. Right.

21 Q. All Arabs are not Muslims?

22 A. You're right.

23 Q. And all Muslims are not Arabs?

24 A. We got Arab Jews, we got Arab Christian. We have Arab --

25 Q. You have Philippino Muslims and Pakistan Muslims?

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Al Fadl-cross/Baugh

1 A. You're right.

2 Q. Now, am I correct that to understand al Qaeda you must
3 understand Islam?

4 A. They teach you about Islam.

5 Q. And you've lived in the United States, haven't you?

6 A. Yes.

7 Q. And based on your experience Americans don't know a lot
8 about Islam, do they?

9 A. It's hard to say that because a lot, some Americans they
10 know very much Islam.

11 Q. Well, and believe me I mean no disrespect to -- you are
12 Muslim, right?

13 A. Yeah, but it's thousand of mosque in United States.

14 Q. I understand. And I'm going to ask you for some
15 explanations about Islam as you understand them, all right?

16 A. Okay.

17 Q. And do you understand that when I ask you these questions
18 I don't mean to offend you, because I'm a Baptist from
19 Virginia, and this is all knew to me.

20 A. All right. You know I be honest with you and I try my
21 best to give you honest answer.

22 Q. But am I correct that Islam is very important to
23 understanding al Qaeda?

24 A. If you be member, yes, you have to be know about Islam,
25 but you focus on jihad.

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Al Fadl-cross/Baugh

1 Q. We're going to talk about jihad in just a moment.

2 A. They going to teach you about jihad there.

3 Q. What's the last word?

4 A. They going to teach you, they focus on jihad.

5 Q. Now, first a couple of things about Islam that I just
6 learned. In Islam yo'all believe in Adam and Eve, don't you?

7 A. Adam?

8 Q. Adam and Eve, the first man?

9 (Witness consults with interpreter)?

10 A. The first prophet, yes.

11 Q. And you believe that there are prophets who speak, who
12 have been spoken to by God, Allah?

13 A. Yes.

14 Q. And when you say Allah, you say praise be unto his name
15 Allah?

16 A. Yes.

17 Q. And if I don't say that, you won't be offended, will you?

18 A. I don't understand what you --

19 Q. Okay. If I don't say Allah, praise be unto his name, is
20 that disrespect on my part?

21 (Witness consults with interpreter)

22 A. No.

23 Q. Okay. And you understand I'm not asking you to be a
24 religious expert. I just want to know your views or your
25 understanding, all right?

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Al Fadl-cross/Baugh

- 1 A. Yes.
- 2 Q. Okay. Now, you took instruction in Islam, am I correct?
- 3 A. Yes.
- 4 Q. And you were taught that there were a hundred twenty some
5 thousand prophets before Mohammed?
- 6 A. We have in all the Koran twenty-five.
- 7 Q. Well, there are?
- 8 A. Twenty-five only in Holy Koran.
- 9 Q. Mentioned?
- 10 A. Our book, yes. But other we don't know the names.
- 11 Q. And some of those profits include Moses?
- 12 A. Yes.
- 13 Q. Abraham?
- 14 A. Yes.
- 15 Q. Jesus?
- 16 A. Yes.
- 17 Q. Noah?
- 18 A. Yes.
- 19 Q. And as to Jesus you believe that Jesus was crucified?
- 20 A. What is that?
- 21 (Witness consults with interpreter)
- 22 A. No, we don't believe that.
- 23 Q. Well, you believe he was -- strike that.
- 24 You believe that he did not die on the cross?
- 25 A. We believe when the Jews tried to kill him in Jerusalem

12D1BIN2

Al Fadl-cross/Baugh

1 that God take him up.

2 Q. That God took him to Paradise?

3 A. He bring somebody look like Jesus and the Jews kill the
4 wrong person.

5 Q. And you believe in the virgin birth of Jesus?

6 (Witness consults with interpreter)

7 A. Yes, is special gift from God to the world.

8 Q. Now, and also in Islam suicide is forbidden, it is your
9 understanding?

10 A. Yes.

11 Q. Okay. Because the human body belongs to God?

12 A. Yes, but some scholar they say they make fatwa, it's okay.

13 Q. If they make fatwa. But if they make fatwa it's not
14 suicide any more, it's now martyrdom?

15 A. If they make fatwa that means it's okay.

16 Q. Okay. Now, and I'm going to be very brief and broad with
17 this, but Islam is based on certain principles that its
18 members are supposed to do?

19 A. Five.

20 Q. Five. The same number of points on the star, right, the
21 Five Pillars of Islam?

22 A. Yes, you have to.

23 Q. We'll go over those. The first one is must bear witness,
24 all right?

25 (Witness consults with interpreter)

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Al Fadl-cross/Baugh

- 1 Q. Shahada?
- 2 A. Yes.
- 3 Q. That means you must tell yourself that you are going to be
- 4 Muslim?
- 5 A. Yes.
- 6 Q. And recognize Allah?
- 7 A. Yes.
- 8 Q. The second one is prayer, am I correct?
- 9 (Witness consults with interpreter)
- 10 Q. Shala?
- 11 A. Yes, you're right.
- 12 Q. And you are supposed to pray at least five times a day?
- 13 A. Yes.
- 14 Q. And those five times are determined by the position of the
- 15 sun?
- 16 (Witness consults with interpreter)
- 17 A. Yes.
- 18 Q. And those prayers are done normally as individuals?
- 19 A. With a group.
- 20 Q. Well, the only group prayer that is required is Friday
- 21 afternoon, am I correct?
- 22 A. No, if you can, but the best join group.
- 23 Q. You normally you pray with your group?
- 24 A. No, if you can, you do your best to join people pray with
- 25 people.

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Al Fadl-cross/Baugh

1 Q. You do your best to be with other people, but if you can't
2 you pray by yourself?

3 A. Right.

4 Q. And to not pray five times a day, is the word sin, Shalam?

5 (Witness consults with interpreter)

6 A. No, because some Muslim you don't, you don't have
7 education about Islam, so you don't know how Shalam invoke.
8 They need somebody invoke, but you can't say haram to them.

9 Q. But once they learn, once they are taught about Shala,
10 prayer, then it is haram not to pray in accordance with the
11 dictates of Allah?

12 A. If somebody scholar he tells them, and he gives them
13 kalil, explanation about Shala and how invoke, yes, you right.

14 Q. And also, before I go to the rest of them, these
15 principles were actually given to Mohammed by Allah, am I
16 correct?

17 A. Yes.

18 Q. And Mohammed wrote them down on pieces of paper and pieces
19 of bone so he could remember them?

20 A. Oh, Mohammed he can't write. Somebody wrote it.

21 Q. Somebody wrote them for him?

22 A. Not him.

23 Q. And those writings are what make up the Koran?

24 A. Yes.

25 Q. Now, the third principle is Zaka?

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Al Fadl-cross/Baugh

1 A. Zaka.

2 Q. Which is giving to the poor?

3 A. Yes, it's similar like that.

4 Q. Like that?

5 A. Every year you take some of two or five percent for your
6 money every year.

7 Q. And this is also given to Islam from Mohammed and from
8 Allah?

9 A. Yes, for poor people, for jihad, for mosque, for like
10 that.

11 Q. And failure to do that is a sin?

12 (Witness consults with interpreter)

13 A. Yes.

14 Q. The fourth one is the principle is fasting?

15 A. Yes.

16 Q. Which requires that during the ninth lunar month --
17 believe me I learned this weekend -- the ninth lunar month all
18 true Muslims do not eat or take in water during the daylight
19 hours?

20 A. Yes, sunrise, before sunrise until sunset.

21 Q. And to, and if you know that it is wrong and you do eat
22 during those hours, that is a sin?

23 A. Yeah, but if you look at you say you sick, you can't do
24 it, that's different.

25 Q. That's right. In Islam there are, if you're sick or if

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Al Fadl-cross/Baugh

- 1 you're pregnant, then you don't have to fast?
- 2 A. Or if the woman nurse.
- 3 Q. If the woman is nursing.
- 4 A. Yes.
- 5 Q. And the last principle is Hajj which is to visit Mecca
- 6 once in your life?
- 7 A. You're right, if you have enough money.
- 8 Q. If you have the money. And if you don't have enough
- 9 money?
- 10 A. No problem.
- 11 Q. God forgives you?
- 12 A. Yes.
- 13 Q. And nowadays it's not that expensive, but there was a time
- 14 when it could take months to take hajj?
- 15 A. Yeah, you right.
- 16 Q. Or even years?
- 17 A. Yes.
- 18 Q. To walk to Mecca?
- 19 A. You're right.
- 20 Q. And another principal, if not one of the five though, is
- 21 jihad?
- 22 A. You right.
- 23 Q. Now, these other five principles if someone knows of these
- 24 principles and they refuse to obey them that is a sin, right?
- 25 A. Yes.

12D1BIN2

Al Fadl-cross/Baugh

1 Q. Now, with jihad am I correct that, and correct me if I'm
2 wrong --

3 A. Okay.

4 Q. -- that under jihad, jihad is a duty of Muslims to protect
5 other Muslims from invasion?

6 A. You're right.

7 Q. And if you as a practicing Muslim feel that an invader is
8 invading a Muslim country, then you have a personal duty to
9 aid them?

10 A. If I can answer your question if I --

11 Q. Sure. You want it translated.

12 Ms. Laraby, would you like me to repeat it?

13 (Witness consults with interpreter)

14 A. You're right, you're right.

15 Q. And also very important distinction in Islam, unlike we
16 Christians, you don't have priests and Popes or people who
17 are -- do you understand?

18 (Witness consults with interpreter)

19 Q. You have imams?

20 A. You're right.

21 Q. But imam, he's just someone who knows more about the
22 religion than you?

23 A. Yeah, he's a scholar.

24 Q. He's a what?

25 A. A scholar.

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Al Fadl-cross/Baugh

1 Q. A scholar.

2 A. Yes.

3 Q. But he doesn't -- okay. And the purpose, the most
4 important part of a Muslim's life is to follow Islam, the word
5 of God?

6 A. You're right.

7 Q. Not to follow a man or a priest but to follow Islam,
8 right?

9 A. Yes.

10 Q. Okay. Now, if you believe, you as an individual, believe
11 that a Muslim country is being invaded by a dictator are you
12 supposed to engage in jihad?

13 A. Yes, if the scholar in that country, the --

14 Q. The scholar?

15 A. They all speak together and they make fatwa, the people
16 listen to them.

17 Q. And if you believe that that fatwa is Islamically correct
18 then you have a duty to engage in jihad?

19 A. Yes.

20 Q. And that duty is the same as your duty to pray?

21 A. You're right.

22 Q. And is the same as your duty to make hajj or make the trip
23 to Mecca?

24 A. You're right.

25 Q. Are you familiar with Christianity?

12D1BIN2

Al Fadl-cross/Baugh

1 A. A little bit.

2 Q. It's like Christians are forbidden to steal, all right?

3 So this is like, this would be like stealing if you didn't
4 engage in jihad, if you believed it was necessary?

5 You have to say yes or no or the court reporter gets
6 really mad.

7 A. Yes.

8 Q. Now, as you sit here today you know that when Bin Laden
9 told you that America had killed over a million Iraqis since
10 1991 that is a true statement? You know that, don't you?

11 MR. FITZGERALD: Objection to form.

12 MR. BAUGH: I believe I already laid the predicate.
13 I can rephrase it.

14 THE COURT: I have problems also with the time
15 element.

16 MR. BAUGH: Okay. I'm sorry.

17 Q. Sir, prior to 1996, you already told us that you were told
18 that America was responsible directly for the death of a
19 million Iraqis, right?

20 A. Before '96?

21 Q. Before 1996.

22 A. I don't remember the numbers but they say it's a war it's
23 going on between Iraq and United States.

24 Q. Before 1996, and there was a fatwa issued, Bin Laden told
25 you that America had killed over a million Iraqis, didn't he?

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Al Fadl-cross/Baugh

1 A. What I remember they say, yes, thousand of people they
2 died over there.

3 Q. Do you recollect the number one million?

4 A. I really don't remember.

5 Q. Do you recollect the term one half million children under
6 the age of 5?

7 A. What I remember they say thousand, thousand of children.

8 Q. Okay. And that is true, right?

9 A. Yes.

10 Q. Okay. And you have also found -- Ms. Laraby,
11 verification.

12 You have found verification --

13 (Witness consults with interpreter):

14 MR. FITZGERALD: Objection as to form.

15 THE COURT: I can't tell until there is more of the
16 question.

17 MR. BAUGH: I will.

18 Q. Don't answer the question yet. You have found
19 verification from your own studies other than what al Qaeda
20 told you?

21 Don't answer it. No objection? Yes.

22 MR. FITZGERALD: Object to form.

23 Q. Did you find verification from other studies on your own?

24 A. Yes.

25 Q. Okay. And if that is true and you believe it to be true,

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Al Fadl-cross/Baugh

1 then do you have a duty under jihad to try and stop that
2 killing?

3 A. If you let me explain.

4 MR. FITZGERALD: I object to the form, your Honor, if
5 it's true and you believe it to be true.

6 MR. BAUGH: Rephrase.

7 A. If you let me explain.

8 Q. Please.

9 A. Well, what I believe is going on in Gulf area is it's more
10 political because what Saddam did against Kuwait people also
11 he kill a lot of people, they innocent.

12 Q. Yes.

13 A. And when Saudi government and the Gulf area government
14 Kuwait and Bahrain they bring United States and French and
15 England to help them against Saddam, so it's hard to say it's
16 religion duty to do that. This is for what I believe. Maybe
17 other scholars they believe something different. Because we
18 don't know what Sudam he going to do if nobody stop.

19 Q. And that's important because in Islam religious
20 responsibility is personal responsibility, isn't it?

21 A. You're right, but because Sudam he believe that he don't
22 believe most of Islam. He got something called Bat.

23 Q. Bat is a political party?

24 A. Yes, you right.

25 Q. I understand there is much more to Islam, and I'm not

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Al Fadl-cross/Baugh

1 going to get into all of it.

2 A. Bat is not part of Islam.

3 Q. Bat is not Islam?

4 A. Yes. And if you let me explain more?

5 Q. Of course.

6 A. I remember even Bin Laden by himself --

7 Q. Bin Laden himself yes?

8 A. In '88 he make lecture against Saddam. He say Saddam is a
9 Bat and Saddam one day he going to take all of Gulf area and
10 he give that lecture and a lot of people listen to that
11 lecture.

12 Q. Now, I want to, correct me if I'm wrong, in paraphrasing
13 what you just said.

14 You said that Bin Laden spoke against Saddam Hussein?

15 A. You're right.

16 Q. He has spoken against him for years?

17 A. I remember that in '88.

18 Q. In 1988?

19 A. Yes, he make lecture in Pakistan and everybody listen to
20 that lecture.

21 (Continued on next page)

22

23

24

25

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al-Fadl - cross

1 Q. And that was before Saddam Hussein sent his troops into
2 Kuwait?

3 A. Correct.

4 Q. Now, and those beliefs that we've spoken about here are
5 the beliefs that caused you to take a bayat?

6 (Witness consults with interpreter)

7 MR. FITZGERALD: Objection to form. As to which
8 beliefs?

9 MR. BAUGH: Your Honor, I will rephrase. I will
10 rephrase.

11 A. Okay.

12 Q. Your belief in the death of thousands of Iraqis, your
13 belief that America was sending troops to occupy Arab
14 countries, your belief that many children were dying, those
15 were the reasons you took a bayat?

16 MR. FITZGERALD: Just an objection to form. One
17 reason at a time, Judge.

18 THE COURT: Overruled.

19 BY MR. BAUGH:

20 Q. Were those some of the reasons?

21 A. No, I really, I'm not understand what you try to tell me.

22 Q. Tell me this. What reasons prompted you to take the
23 bayat?

24 A. With al Qaeda group?

25 Q. Yes. What did al Qaeda want to do that caused you to take

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al-Fadl - cross

1 a bayat and offer up your life?

2 A. They want to focus on Jihad.

3 Q. And Jihad is defending Muslims?

4 A. No, Jihad means to bring Islam back, to bring government
5 Muslim.

6 Q. Isn't it true, sir, that Jihad can only be in defense in
7 the cause of Allah? I mean, there are other reasons; that's
8 one of them?

9 A. Jihad is so many different roles. So one of the Jihad to
10 make Jihad, being make the whole country Muslim.

11 Q. Let me ask you, is one of the reasons the defense of the
12 cause of Allah, not for conflict?

13 A. That's one of the Jihad.

14 Q. Is another reason to restore peace and freedom of worship?

15 A. That's part of it.

16 Q. Is another reason for freedom from tyranny? You know
17 tyranny?

18 (Witness consults with interpreter)

19 A. Yes.

20 Q. Is another reason when led by a spiritual leader to
21 accomplish these goals?

22 (Witness consults with interpreter)

23 THE INTERPRETER: Can you please repeat?

24 Q. Is another of these reasons when led by a spiritual leader
25 to accomplish these goals?

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al-Fadl - cross

1 A. Khalifa.

2 Q. Is that correct?

3 A. Yes.

4 MR. BAUGH: And you want to spell khalifa.

5 THE INTERPRETER: K-H-A-L-I-F-A.

6 MR. BAUGH: Thank you.

7 Q. Is it also true with Jihad that Jihad should only be
8 fought until the enemy lays down his arms?

9 (Witness consults with interpreter)

10 A. Yes. Yes.

11 Q. And is it also true that, if possible, women, children,
12 old, sick are not to be harmed?

13 (Witness consults with interpreter)

14 A. You're right.

15 Q. And trees and crops are not to be damaged?

16 THE INTERPRETER: Pardon me?

17 Q. Trees and crops are not to be damaged?

18 THE INTERPRETER: Treason?

19 MR. BAUGH: Trees.

20 (Witness consults with interpreter)

21 A. Yes.

22 Q. But again, this is your understanding, right?

23 A. Yes, this is what Islam.

24 Q. You do not consider yourself to be an Islamic scholar?

25 A. No, I'm not scholar.

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al-Fadl - cross

1 Q. Do you consider yourself to be an imam?

2 A. No.

3 Q. And there are imams in the United States and all over the
4 world?

5 A. Yeah, I don't rise to imam.

6 Q. Of course.

7 Is it also correct that your understanding, Jihad
8 cannot be used for a war of aggression or ambition?

9 (Witness consults with interpreter)

10 A. I don't understand.

11 (Witness consults with interpreter)

12 A. Yes.

13 Q. You cannot use Jihad to oppress other people; is that
14 correct?

15 A. Yes.

16 Q. And you cannot use Jihad to force other people to accept
17 Islam who do not want to accept Islam?

18 A. Yes.

19 Q. That's correct.

20 Now, do you still believe in those things personally?

21 A. Yes.

22 Q. Since you became -- strike that. Would you prefer to
23 consider yourself an informant, a snitch, a turncoat, what?
24 What do you prefer to use?

25 MR. FITZGERALD: Objection.

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al-Fadl - cross

1 THE COURT: Sustained.

2 MR. BAUGH: I'm sorry?

3 THE COURT: Sustained.

4 MR. BAUGH: I'm sorry.

5 Q. Which term, informant --

6 (Witness consults with interpreter)

7 Q. Are you offended by "informant"?

8 A. Like I have to do that?

9 Q. If I call you an informant, a person who gives
10 information, is that -- does that term offend you?

11 (Witness consults with interpreter)

12 A. About Islam?

13 Q. Yes.

14 A. Yes.

15 Q. All right. Well, when you started aiding the government,
16 the United States of America, against al Qaeda, what did you
17 call that as being, an informant?

18 (Witness consults with interpreter)

19 A. Yes, I give them information, you're right.

20 Q. Okay. Since that time has the Witness Protection Program
21 paid you \$794,200.49?

22 A. Could you repeat it?

23 Q. Has the Witness Protection Program since 1999 paid you
24 \$794,200.49, if you know?

25 Don't answer yet.

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al-Fadl - cross

1 MR. FITZGERALD: Objection to form, Judge.

2 THE COURT: Overruled.

3 BY MR. BAUGH:

4 Q. Have they paid you that much money?

5 A. They pay my rent and they give me money for food and my
6 bills.

7 Q. Yes, but all that money combined, has it come to
8 approximately \$794,200.49?

9 A. I didn't count it.

10 Q. Since 1999?

11 A. I never count it. Every month they give me money for my
12 rent, my house, and some money for food and my bills, that's
13 it.

14 Q. Additionally, since 1997 has the FBI paid you \$151,047.02?

15 A. No.

16 Q. They have not paid you that much, or you don't know?

17 A. Where I live, the rent, and they buy food for me, and when
18 I go to store they go with me to buy some stuff for me.

19 Q. Would you disagree if hypothetically the FBI said they
20 paid you since 1997 \$15,047.2?

21 Don't answer.

22 MR. FITZGERALD: Objection to form, "paid you."

23 THE COURT: Yes.

24 BY MR. BAUGH:

25 Q. I'm sorry, not paid direct, that's right.

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al-Fadl - cross

1 THE COURT: Cost to the FBI of? Is that what you
2 want ask him?

3 MR. BAUGH: Excuse me, your Honor?

4 THE COURT: Would you disagree with the estimate of
5 the cost.

6 MR. BAUGH: All right.

7 BY MR. BAUGH:

8 Q. Would you disagree with the FBI's cost to sustain you of
9 being approximately \$151,000?

10 A. I really, I didn't count it, but if they say that, they're
11 right.

12 Q. All right. If an Arab -- or, if a Muslim, forgive me --
13 if a Muslim commits a sin, is it your understanding that that
14 can prevent him from going to paradise?

15 (Witness consults with interpreter)

16 Q. I can rephrase.

17 A. (Through the interpreter) Sins can differ.

18 Q. I can rephrase.

19 Is it a bad thing to refuse to live by the principles
20 of Islam?

21 A. You're right.

22 Q. And is Jihad one of the principles under which you are
23 supposed to live?

24 A. Jihad, it's different kind.

25 Q. But is it a principle?

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al-Fadl - cross

1 A. Yeah, but it's different kind. Some Jihad, you don't have
2 to do it.

3 Q. Right, but -- okay.

4 MR. BAUGH: May I have just one moment, please, your
5 Honor?

6 THE COURT: Yes.

7 (Pause)

8 BY MR. BAUGH:

9 Q. Sir, during the time that you were with al Qaeda, did al
10 Qaeda ever run out of young people or people who were willing
11 to die --

12 A. What mean --

13 Q. -- for the faith?

14 (Witness consults with interpreter)

15 A. Could you repeat the question?

16 Q. Did the organization, the base, ever run out of people who
17 were willing to die for Islam?

18 A. They don't have enough people?

19 Q. Do they have enough people to die or do they have more
20 than enough people to die?

21 A. Yeah, we have a lot of membership.

22 Q. No, no, not membership. Are there lots of people who are
23 willing to die?

24 A. Yes.

25 Q. Okay. So it isn't hard to find recruits who are willing

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al-Fadl - cross

1 to give their lives?

2 A. You're right.

3 MR. BAUGH: Thank you. Pass the witness.

4 THE COURT: The question is whether we take a break
5 or whether we should continue.

6 MR. STERN: If we take a ten-minute break, Judge, I
7 should still finish by 1:00.

8 THE COURT: Yes. All right. We'll take a ten-minute
9 recess.

10 (Jury not present)

11 THE COURT: We'll take a ten-minute morning recess.

12 MR. RICCO: Your Honor, before we take a recess.

13 THE COURT: Yes.

14 MR. RICCO: During the cross-examination of the
15 witness, there were several references made to Islamic law.

16 THE COURT: Yes.

17 MR. RICCO: And I understand that many of the
18 questions were phrased in the context of this witness's
19 belief.

20 THE COURT: Yes, all of them were.

21 MR. RICCO: But the record should be clear that this
22 is not expert testimony. Many of the references that this
23 witness testified to are incorrect.

24 THE COURT: Well, there was a big preamble, a very
25 explicit preamble to the question that, "I'm going to ask you

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al-Fadl - cross

1 certain questions with respect to your understanding of
2 Islam," and the witness has disclaimed being an expert on
3 Islamic law.

4 MR. RICCO: That's fine, your Honor, as long as we're
5 clear about that, because there were several points that were
6 made here on this witness's beliefs.

7 THE COURT: I'm not clear whether you are asking for
8 an instruction to the jury or just inquiring whether the
9 record is clear.

10 MR. RICCO: I was going to ask for an instruction,
11 but given Mr. Baugh's preamble, I don't think an instruction
12 is necessary at this time.

13 THE COURT: Very well. We'll take a ten-minute
14 recess.

15 (Recess)

16 THE COURT: I think we're about ready to resume. If
17 everybody would be seated, please.

18 (Jury present)

19 BY MR. STERN:

20 Q. Good afternoon, Mr. Al-Fadl. I'm David Stern, I'm one of
21 Khalfan Mohamed's attorneys. I want to ask you some questions
22 beginning with 1987 or '88.

23 You were living in the United States at that time,
24 were you not?

25 A. Yes.

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al-Fadl - cross

1 Q. And you were attending a mosque called the Farouq Mosque;
2 is that right?

3 A. Yes, in Brooklyn.

4 Q. Where in Brooklyn was that?

5 A. I don't remember the street now.

6 Q. Was it on Atlantic Avenue?

7 A. I really don't remember.

8 Q. All right. Do you remember who the imam was of that
9 mosque?

10 A. I don't remember.

11 Q. Do you remember someone named Mustafa Shalabi?

12 A. Yes.

13 Q. Who was that?

14 A. He helps the mosque and at that time he tried, got
15 donation to Afghanistan people.

16 Q. When you were attending that mosque, there was talk about
17 what was going on in Afghanistan, wasn't there?

18 A. Yes, they got office over there.

19 Q. And you were told during the time you were attending that
20 mosque that one of the things a good Muslim should do is go to
21 Afghanistan, protect his brothers there, correct?

22 A. You're right.

23 Q. And you yourself are not an Islamic scholar, that's fair
24 to say, isn't it?

25 A. I'm not scholar.

12D1BIN2

al-Fadl - cross

1 Q. And you yourself had never been to Afghanistan, right?

2 A. I been in Afghanistan.

3 Q. At that time, in 1987 or '88, had you been to Afghanistan?

4 A. Yes.

5 Q. When had you gone to Afghanistan before then?

6 A. During '88.

7 Q. Okay. My question is before '88 had you been to
8 Afghanistan?

9 A. No. No.

10 Q. So what you knew about what was going on in Afghanistan
11 was based on what people told you at the mosque and other
12 places you were with Muslims, correct?

13 A. They help Muslim, yes.

14 Q. That's where you learned about what was going on in
15 Afghanistan?

16 A. Yes.

17 Q. And based on what you were told there, what you learned
18 there, you made a decision the appropriate thing for you to do
19 was to travel to Afghanistan, right?

20 A. Yes.

21 Q. And you were traveling to Afghanistan to engage in a
22 Jihad, correct?

23 A. Yes.

24 Q. And that Jihad was to fight enemies of Islam, right?

25 A. Yes.

12D1BIN2

al-Fadl - cross

1 Q. Those enemies were the Soviet Union back then, weren't
2 they?

3 A. You're right.

4 Q. And so after you made that decision, you began what was a
5 fairly long trip to Peshawar, Pakistan, right?

6 A. Yes, we went to Peshawar.

7 Q. In Peshawar you were getting training that would help you
8 fight the Jihad against the Soviet Union?

9 A. Yes.

10 Q. And that training was a camp, and you'll pardon me if I
11 pronounce this wrong, Khalid Ibn Walid; is that the name of
12 the camp?

13 A. Correct.

14 Q. At that camp there would be training on how to use weapons
15 of one sort or another, right?

16 A. Yes.

17 Q. They gave you training on how to use explosives of one
18 sort or another?

19 A. I don't remember explosives in that camp.

20 Q. Do you remember them giving you training --

21 A. Regular weapons.

22 Q. Okay. But do you also remember them giving you training
23 in religion, Islamic religion?

24 A. Yes.

25 Q. And part of that training was explaining to you why this

12D1BIN2

al-Fadl - cross

1 battle, this war taking place in Afghanistan was justified,
2 correct?

3 A. Yes.

4 Q. And while you were in that camp, part of what you were
5 supposed to do as a good Muslim was to follow orders, right?

6 A. Yes, to make Jihad.

7 Q. And so when people higher up told you what to do at the
8 camp, you would do it, right?

9 A. Yes.

10 Q. If people more experienced in Jihad than you told you what
11 to do, you would do it, right?

12 A. Yes.

13 Q. You yourself, before you got this training, had no
14 personal knowledge of how to behave there, did you?

15 A. I don't understand it.

16 Q. Before you got to this camp and received the training, you
17 had no knowledge of how to use these weapons or what to do in
18 the battle?

19 A. You're right, yes.

20 Q. In Pakistan, right?

21 A. Yes.

22 Q. So when you would learn those things, you would learn them
23 in reliance on people above you, correct?

24 A. Yes, the people who got experience about training in that.

25 Q. Right. After your training at this camp, you were sent to

12D1BIN2

al-Fadl - cross

1 what they call a guesthouse, weren't you?

2 A. Yeah, Areen.

3 Q. Areen was the name of the guesthouse and that was in
4 Afghanistan, was it not?

5 A. Yes, Pakhtia State.

6 Q. So, according to you, at that point you had traveled from
7 Peshawar into Afghanistan to this guesthouse, right?

8 A. Peshawar to Khalid camp to Areen camp, over Areen
9 guesthouse.

10 Q. But that guesthouse was the final step before you would go
11 to the front lines of the war in Afghanistan, right?

12 A. Yes, it's before the front line, you're right.

13 Q. And at the Areen guesthouse you received more training and
14 more information, didn't you?

15 A. Yes, we help them over there.

16 Q. And among the things you received were lectures from
17 people more knowledgeable than you, isn't that fair to say?

18 A. Yes.

19 Q. And one of the people you heard lecture, this was back in
20 1988, was someone named Abu Hajer al Iraqi, correct?

21 A. Correct.

22 Q. You know that that person has another name, don't you?

23 A. Not at that time.

24 Q. I'm asking you what you know now.

25 A. Yes.

12D1BIN2

al-Fadl - cross

1 Q. And what is that other name?

2 A. Mamdouh Mahmud Salim.

3 Q. From now on when I refer to Mamdouh Mahmud Salim or

4 Mr. Salim, we'll both know who we're talking about, right?

5 A. Yes.

6 Q. Now, Mr. Salim back in 1988 was already one of those

7 higher people to whom you listened, wasn't he?

8 A. Yes.

9 Q. He was a person with experience in Jihad?

10 A. He's scholar.

11 Q. Pardon?

12 A. He's a scholar.

13 Q. He's a scholar?

14 A. Yes.

15 Q. But he also had himself fought in Afghanistan, hadn't he?

16 A. You're right.

17 Q. You knew from what people told you that he was a valorous

18 warrior in Afghanistan, didn't you?

19 A. What mean "valorous warrior"?

20 Q. He was a good fighter?

21 A. Yes.

22 Q. In addition to being a good fighter, he had expertise in

23 communications, didn't he?

24 (Witness consults with interpreter)

25 A. I think he studied that.

12D1BIN2

al-Fadl - cross

- 1 Q. Studied communications?
- 2 A. Electronic communications, yes.
- 3 Q. So he was an expert in that, wasn't he?
- 4 (Witness confers with interpreter)
- 5 A. Yes.
- 6 Q. And he was also an expert in the Koran, was he not?
- 7 A. He memorize it.
- 8 Q. They call a Koran?
- 9 A. Memorize it.
- 10 Q. What do they call that?
- 11 A. Qaricept.
- 12 Q. Qaricept, right. While you were there at Areen
- 13 guesthouse, you heard Mr. Salim lecture on Jihad, didn't you?
- 14 A. Yes.
- 15 Q. And you heard him talk about something called a Jihad
- 16 fardh al ein, didn't you?
- 17 A. Yes.
- 18 Q. Now, you talked the other day when the government was
- 19 questioning you about there being two different kinds of
- 20 Jihad, didn't you?
- 21 A. Correct.
- 22 Q. One of those you could join in if you chose to, but you
- 23 didn't have to?
- 24 A. You're right.
- 25 Q. But this kind that we're talking about now, Jihad fardh al

12D1BIN2

al-Fadl - cross

1 ein, was mandatory, that is, you must join or you would not be
2 a good Muslim?

3 A. You're right.

4 Q. And that's the kind of battle that they were fighting in
5 Afghanistan, wasn't it?

6 A. Yes.

7 Q. That's why he was telling you that, to convince you and
8 the other people listening that they were doing the right
9 thing as a Muslim, right?

10 A. Yes.

11 Q. And it was their obligation to go and do it as best as
12 they possibly could?

13 A. You're right.

14 Q. That wasn't the last time you saw Mr. Salim, was it?

15 A. No.

16 Q. As a matter of fact, he was a person who was involved with
17 al Qaeda for as long as you were involved in al Qaeda, wasn't
18 he?

19 A. Yes.

20 Q. And even when you left al Qaeda to come and cooperate with
21 the United States Government, he was still involved with al
22 Qaeda as far as you knew, wasn't he?

23 A. Yes.

24 Q. After you were at the Areen guesthouse, you actually went
25 to Afghanistan and fought on the front there, right?

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al-Fadl - cross

- 1 A. Yes.
- 2 Q. You went to a place I think you said was called Jaji?
- 3 A. Yes, Jaji.
- 4 Q. And you were there a few months, right?
- 5 A. It could be around two months or a little less.
- 6 Q. And after you were done fighting there, where did you go?
- 7 A. We went back to Peshawar to Bail al Ansar or Ansar
- 8 guesthouse.
- 9 Q. While you were fighting in Afghanistan, you met many, many
- 10 people, didn't you?
- 11 A. A lot.
- 12 Q. And you formed bonds with those people?
- 13 A. What mean "bonds"?
- 14 Q. Bonds means you became close with them.
- 15 A. Yes, some of them.
- 16 Q. And later on in your career with al Qaeda, people would
- 17 ask you, do you know this brother from Afghanistan?
- 18 A. Yes.
- 19 Q. And if you would vouch for that person, if you would say
- 20 yes, I know that person --
- 21 A. Yes.
- 22 Q. -- then they would believe in that person, right?
- 23 A. Yes.
- 24 Q. That was one of the roles that you played for al Qaeda?
- 25 A. Yes.

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al-Fadl - cross

1 Q. Because it was thought that if you fought in Afghanistan,
2 if you cared enough to fight in Afghanistan, then you were
3 trustworthy, right?

4 A. Yes.

5 Q. And then you would accept all of the things that al Qaeda
6 said you should accept, right?

7 A. The rule, yes.

8 Q. Now, you went to a camp in Khost, isn't that right?

9 A. Yes, Khost area.

10 Q. And there again, they talked to you, various people talked
11 to you about religious issues, didn't they?

12 A. Yes, in Farouq camp.

13 Q. And one of the things they talked to you about was
14 something I think you referred to as a khalifa, right?

15 A. Khalifa. Al khalifa, yes.

16 Q. And "khalifa" means that all of the Muslim world should be
17 united into a single -- I'm going to use the word country, but
18 it really means a single entity?

19 A. You're right.

20 Q. And you believed that, didn't you?

21 A. Yes.

22 Q. You believed, for example, that whatever country you were
23 from, in your case, the Sudan, wasn't as important as the
24 unity Muslims should have for one another?

25 A. I don't understand that.

12D1BIN2

al-Fadl - cross

- 1 Q. Well, Sudan is a nation, right?
- 2 A. Yes, it's country.
- 3 Q. Egypt is another nation?
- 4 A. Another country, yes.
- 5 Q. Somalia is another country?
- 6 A. Yes.
- 7 Q. But when you talk about khalifa, what you say is all
- 8 Muslims should be joined together?
- 9 A. You're right, under one man.
- 10 Q. Under one man, a khalifa?
- 11 A. Yes.
- 12 Q. And that was one of the goals of al Qaeda, wasn't it?
- 13 A. Yes.
- 14 Q. And it was a goal you accepted?
- 15 A. Yes.
- 16 Q. So you believed that countries that wouldn't accept that
- 17 idea were in the wrong, didn't you?
- 18 A. Could you repeat?
- 19 Q. Yes.
- 20 (Witness consults with interpreter)
- 21 A. With a little explain more. You right, but with a little
- 22 explanation.
- 23 Q. Okay. Well, I'll ask you if I want the explanation, but
- 24 that's the general idea, isn't it?
- 25 A. Not exactly, but you're right.

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al-Fadl - cross

1 Q. Okay. At some point the Soviet Union was defeated in
2 Afghanistan, were they not?

3 A. Yes.

4 Q. And that was a tremendous victory for Muslims around the
5 world?

6 A. Yes.

7 Q. But after that victory there were a number of men who for
8 years had been fighting in Afghanistan and had no cause left
9 to fight, isn't that right?

10 A. Yes.

11 Q. Those were called the mujahideen?

12 A. Yes.

13 Q. And those people, those mujahideen, had been fighting for
14 so long that that was the only thing they really knew how to
15 do, wasn't it?

16 A. You're right.

17 Q. So it was at that time, at the end of the war in
18 Afghanistan, that Bin Laden decided to start al Qaeda?

19 A. Before him, another people.

20 Q. But it was around the time the war ended in Afghanistan,
21 wasn't it?

22 A. Yes.

23 Q. And he began that in part to work towards this khalifa,
24 correct?

25 A. Yes.

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al-Fadl - cross

1 Q. Now, you were one of the very first people involved with
2 Bin Laden, weren't you?

3 A. Yes.

4 Q. You were or were not?

5 A. No, I work with him, yes, in the beginning.

6 Q. But there were other people before you who decided to
7 start al Qaeda?

8 A. You're right.

9 Q. It was when they first began to sign people up, you were
10 one of the first three people to sign up?

11 A. I'm the third one in Farouq camp, but I don't know if some
12 people to sign in other locations before me or after me.

13 Q. Well, either way, it was very early in the existence of al
14 Qaeda --

15 A. You're right.

16 Q. -- that you signed up, wasn't it?

17 A. Yes. Yes.

18 Q. So you're familiar with the history of al Qaeda from very
19 near the time it began until the time you left to come and
20 cooperate with the United States Government, right?

21 A. Yes. Yes.

22 Q. Now, since the time you fought for those two or three
23 months in Afghanistan, have you been involved in using guns
24 against anyone?

25 A. Could you repeat the question?

12D1BIN2

al-Fadl - cross

- 1 Q. Yes. You fought in Afghanistan for a few months, right?
- 2 Didn't you?
- 3 A. When I went, when I was in Afghanistan.
- 4 Q. When you were on the front in Afghanistan in Jaji?
- 5 A. Yes.
- 6 Q. Did you use guns there?
- 7 A. Small gun?
- 8 Q. Yes.
- 9 A. No.
- 10 Q. Did you use rifles there?
- 11 A. We use big weapons.
- 12 Q. Big weapons?
- 13 A. Yes.
- 14 Q. That you were firing at people to kill them?
- 15 A. Yes.
- 16 Q. Trying to kill your enemies?
- 17 A. Yes.
- 18 Q. Since that time when you were done fighting in Jaji, you
- 19 left and you went to Khost and eventually you joined al Qaeda.
- 20 Since that time when you used those weapons in Jaji have you
- 21 ever fired a weapon, a gun, a cannon, any kind of weapon in at
- 22 any other people?
- 23 A. No, only training.
- 24 Q. Pardon?
- 25 A. Training.

12D1BIN2

al-Fadl - cross

1 Q. Only training, but you've never actually fired a gun at
2 anybody?

3 A. No.

4 Q. You began to move up in al Qaeda, didn't you?

5 A. Yes.

6 Q. Now, you remember that Mr. Herman asked you about al Qaeda
7 having a structure like a pyramid; you remember him asking you
8 that?

9 A. Yes.

10 Q. And you agreed it was structured like that, right?

11 A. Yes.

12 Q. And you know what he meant by that, don't you?

13 A. Yes.

14 Q. At the very tip of the pyramid, who would be there?

15 A. Bin Laden.

16 Q. Who would be right below Bin Laden?

17 A. Different committee, regular committee, financial
18 committee and the media committee and the fatwah committee.

19 Q. And when you talk about the people altogether, what do you
20 call them?

21 A. We got Bin Laden, shura council and the committees.

22 Q. Okay. So it's Bin Laden at the very top?

23 A. Yes. Shura council.

24 Q. Then committees?

25 A. Yes.

12D1BIN2

al-Fadl - cross

1 Q. But below those committees, there are many people involved
2 in al Qaeda, aren't there?

3 A. Yes, lots of. Yes, you're right.

4 Q. There are people who work in al Qaeda factories, for
5 example, right?

6 A. Yes.

7 Q. There are people who worked in the tannery you mentioned
8 where they tan cowhides?

9 A. You're right.

10 Q. There are people who worked in the oil factories, which
11 you were familiar with?

12 A. You're right.

13 Q. And those people weren't involved in making the major
14 decisions about al Qaeda, were they?

15 A. I --

16 (Witness consults with interpreter)

17 A. Yes.

18 Q. They were not?

19 A. Yes.

20 Q. Maybe I'm asking the question poorly.

21 Were those people involved in making the big
22 decisions about what al Qaeda was going to do?

23 A. Which people?

24 Q. The penal working in the tannery, working in the oil
25 factories, things like that?

12D1BIN2

al-Fadl - cross

1 A. The people move. Sometime you are in regular committee,
2 you move to financial committee, you move to business, you
3 move to fatwah.

4 Q. Okay. I'm not asking about the people in any of the
5 committees. In the oil factories, someone had to take sesame
6 seeds and crush them to get oil out of them, right?

7 A. Yes.

8 Q. And someone ran a machine that did that?

9 A. Yes.

10 Q. That person wasn't on the fatwah committee, were they?

11 A. Was what?

12 Q. The person who was crushing the oil seeds in the factory,
13 was he or she on the fatwah committee?

14 A. It could be before he was. It's hard to say now.

15 Q. How about someone driving a truck, delivering that oil,
16 were they on the fatwah committee?

17 A. It's hard to say yes or no.

18 Q. Why don't you tell me.

19 A. Because if you don't specific about person, his name, it
20 could be easy for me to answer.

21 Q. Okay. Well, you tell me the name of the person on the
22 shura committee who was driving a truck, delivering sesame
23 oil.

24 A. And he's a shura council?

25 Q. Yes. Which one of the people do you know of Banshiri, you

12D1BIN2

al-Fadl - cross

1 name someone whose job was delivering oil and they were on the
2 shura.

3 A. It's -- if he's in driving truck and he's a shura council,
4 yes, if the shura council got meeting, they call him and they
5 tell him shura's got a meeting, come talk, you come.

6 Q. I'm asking you which guy that is.

7 A. Banshiri or Abu Hafs.

8 Q. So Banshiri drove a truck delivering oil?

9 A. No, Banshiri, he worked in the military committee.

10 Q. On the military committee.

11 A. Yes.

12 Q. That was his job, right?

13 A. He's head of the military committee, right.

14 Q. So tell me which member of the shura council had a job,
15 for example, driving a truck or taking cowhides and making
16 them --

17 A. Qaricept, Egyptian, he work with financial, he been
18 selling for al Qaeda people, he run some companies and he's in
19 shura council.

20 Q. And he runs companies?

21 A. Yes.

22 Q. Okay. I'm asking about the people who work in that
23 company sweeping the floors, polishing the floors, are any of
24 those people on the shura council?

25 A. I don't remember.

12D1BIN2

al-Fadl - cross

- 1 Q. Well, if you remember one of them, tell me, okay?
- 2 A. Okay.
- 3 Q. Now, you know that Salim was part of the shura council,
4 don't you?
- 5 A. Yes.
- 6 Q. Salim was in charge of communications equipment, right?
- 7 A. Yes.
- 8 Q. And Salim was one of the people on this shura council who
9 helped make --
- 10 A. Fatwah.
- 11 Q. Pardon?
- 12 A. Fatwah council.
- 13 Q. And he helped make the important decisions that guided al
14 Qaeda, didn't he?
- 15 A. Yes.
- 16 Q. Now, there came a time, did there not, when al Qaeda was
17 making a decision whether or not they should move from
18 Afghanistan to Sudan?
- 19 A. Yes.
- 20 Q. And one of the people who went to the Sudan to help make
21 that decision was Salim, right?
- 22 A. Yes, he was discovered.
- 23 Q. And it's fair to say, is it not, that Salim was one of Bin
24 Laden's favorites?
- 25 A. He's best friend.

12D1BIN2

al-Fadl - cross

- 1 Q. Right?
- 2 A. Yes.
- 3 Q. Very close with him?
- 4 A. Yes.
- 5 Q. And he would speak at Bin Laden's side sometimes, right?
- 6 A. Speak?
- 7 Q. Speak next to Bin Laden. Bin Laden would speak and then
- 8 Mr. Salim would speak?
- 9 A. Sometimes.
- 10 Q. And when he had something to say, because he was so
- 11 high-ranking in al Qaeda, Bin Laden would listen to him,
- 12 wouldn't he?
- 13 A. Sometimes, yes.
- 14 Q. So Salim, as far as you know, goes to the Sudan, right?
- 15 A. Yes.
- 16 Q. And he's going to check to see if that's a good place for
- 17 al Qaeda to move to?
- 18 A. You're right.
- 19 Q. Before he went, he didn't have a good feeling about the
- 20 Sudan, did he?
- 21 A. I don't remember.
- 22 Q. Do you remember he didn't really trust the NIF?
- 23 A. Not trust, but agenda.
- 24 Q. I'm sorry?
- 25 A. Not trust, but what al Qaeda agenda and Islamic National

12D1BIN2

al-Fadl - cross

1 Front agenda and what they believe about them.

2 Q. They had different agendas?

3 A. On what scholars they follow.

4 Al Qaeda, we have scholars.

5 MR. STERN: I have interpreters.

6 Q. I understand. I understand.

7 So Salim went there and he went with other people,
8 right?

9 A. Yes.

10 Q. And at some point he came back?

11 A. Yes.

12 Q. Now, he was one of the people who spoke to you and to the
13 other members of al Qaeda to explain whether or not it was a
14 good idea to move to the Sudan, wasn't he?

15 A. Yeah, he make lecture in Farouq camp first. He make a
16 lecture.

17 Q. A lecture?

18 A. In Khost in Farouq camp.

19 Q. And said, it turns out it's okay?

20 A. Yeah.

21 Q. I met with them, they seem like good people?

22 A. And some people ask him questions about his trip.

23 Q. And so, we should go there?

24 A. Yes.

25 Q. And al Qaeda did move there, did they not?

12D1BIN2

al-Fadl - cross

1 A. Yes.

2 Q. After al Qaeda moved there, there was a farm called Soba,
3 wasn't there?

4 A. Repeat question.

5 Q. Was there a farm where there used to be a meeting every
6 Thursday?

7 A. Yes, we have Thursday meeting.

8 Q. Where was that farm where it was?

9 A. The big farm, the farm number one.

10 Q. Farm number one?

11 A. Yes.

12 Q. At those Thursday meetings, Salim would sometimes speak,
13 wouldn't he?

14 A. Yes.

15 Q. And sometimes Bin Laden would speak, right?

16 A. Yes.

17 Q. And Salim would give explanations based on the Koran for
18 why the things al Qaeda was doing were okay, were good, right?

19 A. Yes.

20 Q. And he would quote from the Koran and try to convince
21 people through those quotes that what al Qaeda was doing and
22 what you were being asked to do was something that a good
23 Muslim would do, right?

24 A. Yes.

25 Q. So, for example, at one time Salim gave a speech in which

12D1BIN2

al-Fadl - cross

1 he quoted from the Koran where it said there should be no
2 other religions in our islands, do you remember that?

3 A. In Arab islands.

4 Q. What do you mean by that?

5 A. In Arab islands: Yemen country, Saudi Arabia, Kuwait,
6 Iraq, Bahrain, Qatar, Muscat, Jordan, Palestine, this is Arab
7 islands.

8 Q. And he meant, did he not, that the khalifa should take
9 those Arab countries and make sure that they were completely
10 Muslim, Arab countries for the Muslims, right?

11 A. It's for Prophet Mohamed. He say Prophet Mohamed says
12 they not allowed to let two religions in Arab islands.

13 Q. Okay. Now, you yourself don't know every line of the
14 Koran, do you?

15 A. No.

16 Q. And so when he would talk to you about lines from the
17 Koran, according to you, he would tell you these things and
18 you would accept them as the truth, wouldn't you?

19 A. Yeah.

20 Q. You didn't think that Salim was manipulating the Koran to
21 do things he or Bin Laden wanted to do, did you?

22 A. It's not thinking, it's about different scholars, they
23 understand different opinion from Koran.

24 Q. Well, you yourself don't have the knowledge to make that
25 decision, do you?

12D1BIN2

al-Fadl - cross

- 1 A. No, maybe I read, but not -- you're right, I follow them.
- 2 Q. So, according to you, when Salim would tell you something,
- 3 he was the scholar you chose to accept?
- 4 A. You're right.
- 5 Q. You respected him, right?
- 6 A. Yes.
- 7 Q. Just like you respected Bin Laden?
- 8 A. Yes.
- 9 Q. And so when he would say that quote to you and tell you
- 10 what it meant, you would say okay?
- 11 A. Yes.
- 12 Q. But you also were aware, are you not, that there may be
- 13 other Islamic scholars who think differently?
- 14 A. You're right.
- 15 Q. Now, according to you, on another occasion Mr. Salim gave
- 16 another speech in which he talked about the killing of
- 17 civilians in Jihad, do you remember that that?
- 18 A. Yeah, I remember that.
- 19 Q. Do you know of your own knowledge -- not from what
- 20 Mr. Salim told you, but of your own knowledge -- very much
- 21 about Ibn Tamiyeh?
- 22 A. Yes.
- 23 Q. You do know a lot about him?
- 24 A. No, he got 36 books, so I don't know everything he say,
- 25 but some of them.

12D1BIN2

al-Fadl - cross

1 Q. Out of those 36, how many of them have you read?

2 A. I read a lot about 28 about Jihad, the book 28.

3 Q. You read one book?

4 A. Yes, they call it Jihad book.

5 Q. That's the only book you read out of 36 books he wrote?

6 A. I focus with this more than others.

7 Q. Would the answer be, yes, that that's the only book you
8 read out of the 36 he wrote?

9 A. Yes.

10 Q. Now, when -- by the way, in Islam there's tremendous
11 respect for scholars, right?

12 A. Yes.

13 Q. As a matter of fact, when it comes down to a debate of
14 some kind about what's correct, what's Islamically correct,
15 you look back to scholars and say what do the scholars say
16 about that, right?

17 A. Yes.

18 Q. And so when someone more knowledgeable than you tells you
19 that a scholar said one thing or another, that really
20 influences you, doesn't it?

21 A. Some people, they go different scholars to find which one
22 he got more about that.

23 Q. Well, in his speech, according to you, Mr. Salim talked
24 about -- am I saying this person's name right, Tamiyeh?

25 A. Mohamed Ibn Tamiyeh.

12D1BIN2

al-Fadl - cross

1 Q. Tamiyeh. He told you what Tamiyeh had said back in 17 or
2 1800 about a war with the Tartans, right?

3 A. Yes.

4 Q. And had you read that part for yourself?

5 A. I don't remember.

6 Q. Well, he told you what that part said?

7 A. Yes.

8 Q. Was that sometimes in a war civilians get killed, right?

9 A. Yes.

10 Q. And that that's okay, because if they're good people,
11 they're lucky enough to go to heaven quicker?

12 A. Yes.

13 Q. And if they're bad people, they deserve to go to hell
14 anyway, right?

15 A. Yes.

16 Q. And that was his way of saying to you and everyone else
17 listening, it's okay to kill civilians if you have to because
18 I say it and another scholar says it and that scholar
19 interpreting the Koran says it, right?

20 A. Yes.

21 Q. So that was to mean to say to everybody, it's okay, don't
22 worry if you kill civilians, it's part of what we have to do?

23 A. Yes, under war.

24 Q. And when you heard that, you accepted it, did you not?

25 A. Yes.

12D1BIN2

al-Fadl - cross

1 Q. Now, as you were working with al Qaeda, according to you,
2 you were involved in many businesses, right?

3 A. Yes.

4 Q. And you're quite a good businessman, aren't you?

5 A. Yes.

6 Q. And as a result of your being a good businessperson, you
7 became more and more trusted --

8 A. Yes.

9 Q. -- by the leaders of al Qaeda?

10 A. Yes.

11 Q. And you did your best for them, right?

12 A. Yes.

13 Q. And you knew that what you were doing, that is, making
14 money, would help the rest of al Qaeda do what they were
15 doing, right?

16 A. Yes. Yes.

17 Q. That making money was a critical part of al Qaeda being
18 able to function, didn't you?

19 A. What mean, "function"?

20 Q. To get along, to work.

21 A. Yes.

22 Q. Now, you knew that al Qaeda was involved in fights all
23 over the Arab world, right?

24 A. Yes.

25 Q. You knew that the money you were making would go to buy

12D1BIN2

al-Fadl - cross

1 weapons, didn't you?

2 A. Yes.

3 Q. And you knew that those weapons would be given to soldiers
4 of al Qaeda, right?

5 A. Yes.

6 Q. And you knew that those soldiers would use those weapons
7 to kill people in other countries, right?

8 A. Yes.

9 Q. You knew that those weapons were going to southern Sudan,
10 your own country, right?

11 A. Yes.

12 Q. Southern Yemen?

13 A. Yes.

14 Q. Egypt?

15 A. Yes.

16 Q. Saudi Arabia?

17 A. Yes.

18 Q. United States?

19 A. Yes.

20 Q. Maybe Cyprus?

21 A. Yes.

22 Q. All over the world, right?

23 A. Yes.

24 Q. And wherever they were going, they would be used to kill
25 people in the name of Islam, right?

12D1BIN2

al-Fadl - cross

1 A. Yes.

2 Q. And you were proud to be helping al Qaeda the way you best
3 could by being a businessperson?

4 A. Yes.

5 Q. And on some occasions you were even directly involved with
6 weapons, weren't you?

7 A. Yes.

8 Q. There came a time you talked about when you went to Helat
9 Koko in Khartoum, remember that time?

10 A. Yes.

11 Q. And you went there with Salim, didn't you?

12 A. Yes.

13 Q. And when you went there, you were going to a place where
14 they were making chemical weapons, right?

15 A. Yes, that's what I told -- they told me.

16 Q. And that's what you believed?

17 A. Yes.

18 Q. Do you know what chemical weapons are used for?

19 A. No.

20 Q. Do you know that they're used to kill people?

21 A. They say they use it with regular weapons, that's what I
22 hear.

23 Q. What?

24 A. They use it with regular weapons.

25 Q. With regular weapons?

12D1BIN2

al-Fadl - cross

1 A. Yes.

2 Q. What did they mean when they said they use it with regular
3 weapons?

4 A. I really I have no idea about what they mean.

5 Q. Okay. So I'm asking you, do you know that chemical
6 weapons are used to kill people?

7 A. Yes, that's what I hear from them.

8 Q. You know that, for example, they use gas to kill people,
9 right?

10 A. Yes.

11 Q. And whoever is in the area where that gas goes runs the
12 risk of being killed?

13 A. Yes.

14 Q. And when you went there with Mr. Salim -- by the way, what
15 year was that?

16 A. Maybe during '93.

17 Q. During?

18 A. '93 or early '94.

19 Q. When you went there with Mr. Salim, did you say to him,
20 this is a terrible thing, let's not get involved in chemical
21 weapons production?

22 A. No, I didn't tell him that.

23 Q. Did you say, I refuse to get involved in chemical weapons
24 production, I quit al Qaeda?

25 A. No.

12D1BIN2

al-Fadl - cross

- 1 Q. Just went about your business, right?
- 2 A. Yes.
- 3 Q. You continued to run your businesses?
- 4 A. Yes.
- 5 Q. You continued to have that money from your businesses go
- 6 to do things, including chemical weapons, right?
- 7 A. Yes. Yes.
- 8 Q. Now, Mr. Salim, you've met him, haven't you?
- 9 A. What?
- 10 Q. You've met Mr. Salim personally?
- 11 A. Yes.
- 12 Q. How tall is he?
- 13 A. Maybe he's taller than you or your height.
- 14 Q. About my height?
- 15 A. Could be, or a little taller.
- 16 Q. And in al Qaeda was he a powerful person?
- 17 A. Yes, he's very close to Bin Laden.
- 18 Q. And was he a powerful speaker?
- 19 A. Yes.
- 20 Q. Was he a person who influenced you into believing certain
- 21 things?
- 22 A. What "influence" mean?
- 23 Q. By giving you speeches, by talking with you?
- 24 A. Yes.
- 25 Q. By telling you what your obligation was in al Qaeda?

12D1BIN2

al-Fadl - cross

1 (Witness consults with interpreter)

2 A. Yeah, sometimes he write a speech from him and talk him
3 and meet him.

4 Q. You talked some about a plan to bomb an embassy in Riyadh?

5 A. Yes.

6 Q. Remember that? You know what year that was?

7 A. Maybe during '94.

8 Q. And you knew that when an embassy was bombed, people would
9 be killed, right?

10 A. Yes.

11 Q. Did you say -- by the way, who was talking to you about
12 that?

13 A. Hafs el Masry.

14 Q. Did you say to him, I will not get involved in the bombing
15 of embassies?

16 A. No, I didn't say that.

17 Q. Did you say, let's not bomb embassies, innocent people
18 could be killed?

19 A. No, I didn't say that.

20 Q. You just went about your business, right?

21 A. Yeah, I hear that from him.

22 Q. You just continued running your businesses?

23 A. Yes.

24 Q. To support al Qaeda and whatever wars they wanted to
25 fight, right?

12D1BIN2

al-Fadl - cross

1 A. Yes.

2 Q. Now, I want to talk to you some about 1993 or '94. There
3 came a time when you found out that, according to you, al
4 Qaeda wanted to purchase uranium, correct?

5 A. Yes.

6 Q. Did you know what they want uranium for?

7 A. I remember, yeah, Abu Jaffar al Tayar, he's Egyptian, and
8 he say it's easy to kill more people with uranium.

9 Q. You can make a huge bomb with uranium, right?

10 A. Yes.

11 Q. And you didn't say, I don't want any part of anything that
12 will kill a lot of people, right?

13 A. No.

14 Q. They asked you to go help get uranium, you said yeah?

15 A. Yes.

16 Q. And so you went and you met with someone, right?

17 A. Yes.

18 Q. And you tried to get as much information about the uranium
19 as you could?

20 A. Correct.

21 Q. You tried to find out if it was enriched or not enriched?

22 A. What "enriched"?

23 Q. It was ready to be made into a bomb immediately or had to
24 have something else done to it?

25 A. The quality, yes.

12D1BIN2

al-Fadl - cross

1 Q. Try to find out what country it was from?

2 A. The quality and which land, yes.

3 Q. But you yourself were not an expert --

4 A. No.

5 Q. -- in uranium, were you?

6 A. No, I just, I got the information and I bring it back to
7 somebody.

8 Q. Isn't the somebody you brought it back to Salim?

9 A. Abu Musab al Suri.

10 Q. Did you ever talk to Salim about this bomb?

11 A. I give him the paper.

12 Q. Salim?

13 A. Yes, but we didn't talk about it.

14 Q. But you gave him the paper?

15 A. Just the paper.

16 Q. And according to you, he told you or you were told that he
17 was going to get some kind of machine to test this uranium,
18 right?

19 A. Not Salim, Abu Musab Suri told me machine going to come
20 from Kenya.

21 Q. That was to see if this uranium was good enough to build a
22 bomb to kill a whole lot of people, right?

23 A. Yes.

24 THE COURT: Let me just interrupt, Mr. Stern.

25 Approximately how much longer do you have?

12D1BIN2

al-Fadl - cross

1 MR. STERN: Literally another three minutes.

2 BY MR. STERN:

3 Q. Mr. Al-Fadl, you have been working with the United States
4 Government since 1996, right?

5 A. Correct.

6 Q. And you have given them a lot of information that you
7 gathered through your years of working in al Qaeda, right?

8 A. Yes.

9 Q. Through your years of working as a high-ranking member of
10 al Qaeda, right?

11 A. Yes.

12 Q. And the agreement you reached with them ensures you won't
13 be executed, right?

14 A. What means "execute"?

15 Q. You won't be killed.

16 (Witness consults with interpreter)

17 A. No.

18 Q. It ensures you won't spend the rest of your life in jail,
19 right?

20 A. They say up to 15 years.

21 Q. That's not the rest of your life. You don't expect it to
22 be, do you?

23 A. This is what agreement, is up to 15 years.

24 Q. But with Allah's help, you don't expect that to be the
25 rest of your life, do you?

12D1BIN2

al-Fadl - cross

1 A. Yeah, 15 years a lot.

2 Q. I'm not asking if it's a lot, I'm asking, do you expect to
3 be alive at the end of it?

4 A. No.

5 Q. No, you don't?

6 (Witness consults with interpreter)

7 A. (Through the interpreter) It's all in God's hands.

8 Q. Right. How about this: Do you hope to be alive at the
9 end of 15 years?

10 A. Everybody hope that.

11 Q. How old will you be then?

12 A. 52 or 53.

13 Q. They also brought your family to this country, didn't
14 they?

15 A. Correct.

16 Q. And they have taken care of you and your family since
17 you've been here, right?

18 A. Yes.

19 Q. And your hope is that you will even get less than 15
20 years, isn't it?

21 A. I hope.

22 Q. Your hope is if you do everything the government wants you
23 to do, you might never even go to jail at all, right?

24 A. Yeah, I hope that.

25 Q. Even though you're a high-ranking member of al Qaeda,

12D1BIN2

al-Fadl - cross

1 right?

2 A. Yes.

3 MR. STERN: I have nothing else. Thank you.

4 THE COURT: Anything else for today?

5 MR. HERMAN: No, your Honor.

6 THE COURT: Ladies and gentlemen, your lunch is here
7 and so you are welcome to eat it, and we're going to call it a
8 day. We're doing that because one of the attorneys who would
9 also be cross-examining this witness has the flu and we're
10 hoping he will be better tomorrow, but if he's not, we'll go
11 ahead with something else and I'll explain that tomorrow.

12 And tomorrow we've made arrangements with the
13 marshal. You know we're starting a little later than usual
14 tomorrow. Thank you. Enjoy your lunch. Have a pleasant rest
15 of the day.

16 (Jury not present)

17 THE COURT: Assuming that, although we wish him well,
18 that Mr. Schmidt is not available tomorrow and so the
19 government calls its second witness, are there any matters
20 which we should fruitfully take up prior to that witness
21 taking the stand?

22 MR. DRATEL: Yes, your Honor. There's also a point,
23 if I could make a point about the last cross-examination.

24 THE COURT: Yes.

25 MR. DRATEL: Your Honor, particularly the part about

12D1BIN2

al-Fadl - cross

1 this man going about the business, and this was the type of
2 testimony that was elicited that was anticipated in our
3 severance motion extremely prejudicial to Mr. El Hage in terms
4 of trying to create a question of culpability or levels of
5 culpability, even though obviously our position is that there
6 is no evidence Mr. El Hage knew of any of this conduct going
7 on. I still think it's extremely prejudicial to, in the
8 linkage in the jurors' minds, the type of reason we wanted a
9 severance from the death penalty defendants in the first
10 place. So I renew that motion at this time.

11 THE COURT: Denied.

12 My question is: Are there any matters that we could
13 take up before the witness, assuming the next witness takes
14 the stand?

15 MR. FITZGERALD: Yes, Judge. I was having a
16 discussion with Mr. Dratel about, in particular, two issues.
17 I don't think we have achieved resolution. I don't know if
18 we've given up on achieving resolution yet, but we should
19 probably maybe talk over lunch and then advise your chambers
20 if we should come back or do it now.

21 THE COURT: I'm available all afternoon. And my
22 preference, obviously, is to take up such matters before we
23 have a jury in the jury box or about to come in the jury box,
24 and if there are some matters that the Court can fruitfully
25 deal with this afternoon, simply call chambers.

12D1BIN2

al-Fadl - cross

1 MR. DRATEL: Okay.

2 MR. RUHNKE: One inquiry to the government: We have
3 been given Jencks material on two witnesses. Is it the
4 government's intention to call both witnesses? They both
5 appear not to be lengthy witnesses.

6 MR. FITZGERALD: We will be available to call both
7 witnesses.

8 MR. DRATEL: Will or won't?

9 THE COURT: Both.

10 MR. FITZGERALD: Both. We will have both available
11 and I will tell counsel at the break which order we intend to
12 go in.

13 MR. RUHNKE: Thank you.

14 THE COURT: Subject to a telephone call to chambers,
15 we're adjourned until I think 10:30 tomorrow.

16 (Adjourned to 10:30 a.m. on February 14, 2001)

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al-Fadl - cross

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DEFENDANT EXHIBITS

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