

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.

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8
9 New York, N.Y.
10 May 10, 2001
11 1:00 p.m.

12 Before:

13 HON. LEONARD B. SAND,
14 District Judge

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1 (In open court)

2 THE COURT: Please be seated and inquire: Somebody
3 wanted to call something to my attention?

4 MR. COHN: It had nothing to do with the cases.

5 THE COURT: It had nothing to do with the case.

6 MR. COHN: We'll wait until you have a more opportune
7 moment.

8 THE COURT: We'll pick a more opportune moment.

9 Comparing the charge and the transcript and what
10 people have told me, there are one or two corrections that
11 I'll have to make or possible ambiguities that I will have to
12 clarify, which I will do.

13 Apparently, in the transcript in the standard
14 "reasonable doubt" which says "cause a reasonable person to
15 hesitate to act," "to hesitate" was left out. I'm sure I said
16 it. I say it in my sleep. Okay.

17 MR. COHN: We've already had one case in the circuit
18 about the transcript in reality.

19 THE COURT: I have that very much in mind, which is
20 why I will resolve any possible doubts that I'm aware of.

21 This motion in limine on behalf of Al-'Owhali, I take
22 it it has been served on the government.

23 MR. COHN: It should have been. I don't know which
24 one it is, whether those are the ones Mr. Baugh filed or
25 whether the one we're filing.

1 THE COURT: Introduction of photographs.

2 MR. FITZGERALD: Yes, we just received it.

3 THE COURT: There is a slight delay in the jury
4 coming out. Nothing serious.

5 MR. HERMAN: Judge, there's a request that the first
6 break be a prayer break this afternoon, if that's convenient.

7 THE COURT: Yes.

8 MR. HERMAN: Thank you.

9 (Jury present)

10 THE COURT: Good afternoon.

11 I have been reviewing what I said yesterday, what I
12 intended to say yesterday and with the transcript, and there
13 are one or two instances in which there is some variation.
14 And of course, I don't know whether I misspoke, which is
15 highly possible, or whether there was an error in
16 transcription, but in any event, the simplest thing is to
17 clear it up.

18 When I talked to you about reasonable doubt, and
19 that's on page 11 of the charge, I said, "Proof beyond a
20 reasonable doubt must, therefore, be proof of such a
21 convincing character that a reasonable person would not
22 hesitate to rely and act on it in the most important of his
23 own affairs." I said earlier, talking about a reasonable
24 doubt, "It is a doubt that would cause a reasonable person to
25 hesitate to act in a matter of importance in his or her

1 personal life."

2 Some words were omitted in the transcript, which is
3 on page 6048 for those who have a transcript. I think the
4 meaning was clear, but in case there is any question about it,
5 understand that it is a doubt that would cause a person to
6 hesitate to act in a matter of importance.

7 And then on page 21 when I was talking about the fact
8 that some witnesses who have testified have pleaded guilty, I
9 meant to say, "The decision of that witness to plead guilty
10 was based on a personal decision of his concerning his own
11 guilt, and in light of the benefits afforded by the government
12 to a cooperating witness." And if in fact I said anything
13 else, understand that that's what I intended to say.

14 And finally, along these lines, on page 37, talking
15 about multiple conspiracies and talking about what the
16 defendants claim, let me read the whole paragraph.

17 "Here, some of the defendants contend that the
18 government's proof fails to show under any of the four
19 conspiracy counts that there existed only one overall
20 conspiracy. Rather, they claim that, as to each of the four
21 conspiracy counts, to the extent the government has proven the
22 existence of any conspiracy, there are actually several
23 separate and independent conspiracies with various groups of
24 members."

25 When we left off yesterday, I drew your attention to

1 the page in the special verdict form, which is page 28,
2 regarding Counts 222 through 232, and that special verdict
3 form is similar to the verdict form with respect to the
4 preceding counts except it relates to K.K. Mohamed and the
5 embassy in Dar es Salaam, Tanzania, and calls upon you to
6 indicate whether you find K.K. Mohamed guilty or not guilty
7 with respect to each of those counts and whether, if you find
8 him guilty, whether you find that he himself killed the victim
9 or whether he aided and abetted another to kill the victim.

10 With respect to Counts Nine through 221, there is a
11 stipulation marked Government Exhibit 39 which lists the
12 persons who were allegedly killed during the bombing in
13 Nairobi, Kenya, and there is a similar stipulation marked
14 Government Exhibit 54 which is relevant to Counts 222 through
15 232 and which indicates those persons who were allegedly
16 killed during the bombing in Dar es Salaam, Tanzania, all of
17 which brings us to page 92 of my charge.

18 And there are going to be, on a few occasions, some
19 changes in stipulation numbers. Apparently there was some
20 confusion with respect to stipulation numbers. So that if you
21 are taking notes or if you have a writing instrument, you may
22 want to note the changed stipulation numbers.

23 Counts 233 through 273 of the indictment charge
24 defendants Mohamed Odeh and Mohamed Rashid Daoud Al-'Owhali
25 with the murder of officers and employees of the United States

1 in Nairobi, Kenya. Specifically, Counts 233 through 273
2 charge that:

3 On or about August 7, 1998, in Nairobi, Kenya, and
4 outside the jurisdiction of any particular state or
5 district, ... defendants Odeh and Al-'Owhali, ... at least one
6 of whom was first brought to and arrested in the Southern
7 District of New York, and others known and unknown,
8 unlawfully, willfully, deliberately, and maliciously, and with
9 a malice aforethought and with premeditation, did murder
10 officers and employees of the United States Government, while
11 such officers and employees were engaged in and on account of
12 the performance of their official duties, and persons
13 assisting such United States Government officers and employees
14 in the performance of their duties, on account of that
15 assistance.

16 These counts appear in paragraph 38 of the
17 indictment, and each count corresponds to an employee of the
18 United States killed in the explosion at the United States
19 Embassy in Nairobi, Kenya, on August 7, 1998. In this regard,
20 the stipulation marked Government Exhibit 42 -- not 39, as
21 appears there, 42 -- is relevant.

22 Counts 275 and 276 of the indictment charge defendant
23 K.K. Mohamed with the murder of officers and employees of the
24 United States in Dar es Salaam, Tanzania. Specifically,
25 Counts 275 and 276 charge:

1 On or about August 7, 1998, in Dar es Salaam,
2 Tanzania, and outside the jurisdiction of any particular state
3 or district, ... K.K. Mohamed ... [who] was first brought to
4 and arrested in the Southern District of New York, and others
5 known and unknown, unlawfully, deliberately, and maliciously,
6 and with malice aforethought and with premeditation, did
7 murder officers and employees of the United States Government,
8 while such officers and employees were engaged in and on
9 account of their official duties, and the persons assisting
10 such United States Government officers and employees in the
11 performance of their duties, on account of that assistance.

12 These Counts appear in paragraph 42 of the
13 indictment, and each count corresponds to an employee of the
14 United States killed in the explosion at the United States
15 Embassy in Dar es Salaam, Tanzania on August 7, 1998. And in
16 this regard, the stipulation marked Government Exhibit 55 --
17 55 -- is relevant.

18 The statute that the defendants are charged with
19 violating in these Counts provides:

20 Whoever kills ... any officer or employee of the
21 United States or of any agency in any branch of the United
22 States Government (including any member of the uniformed
23 services) while such officer or employee is engaged in or on
24 account of the performance of official duties, or any person
25 assisting such an officer or employee in the performance of

1 such duties or on account of that assistance is guilty of a
2 crime.

3 In these counts, the government further alleges that
4 the defendants committed the killings with malice aforethought
5 and with premeditation.

6 To satisfy its burden of proof as to Counts 233
7 through 273 and Counts 275 and 276, the government must prove
8 each of the following elements beyond a reasonable doubt:

9 First, that the defendant you are considering killed,
10 or aided and abetted the killing of, the victim charged in the
11 that count;

12 Second, that the victim was an officer or employee of
13 the United States Government or of any agency in any branch of
14 the United States Government and was engaged in or killed on
15 account of the performance of his official duties at the time
16 in question;

17 Third, that the defendant acted unlawfully;

18 Fourth, that the defendant acted with malice
19 aforethought; and

20 Fifth, that the defendant acted with premeditation.

21 The first element of these counts that the government
22 must prove beyond a reasonable doubt is that the defendant you
23 are considering killed, or aided and abetted the killing of,
24 the victim charged in that count of the indictment.

25 As I explained to you earlier, it is the government's

1 burden to prove that the defendant's conduct was the direct
2 cause of the victim's death. That means simply that the
3 government must prove that the defendant inflicted an injury
4 or injures upon the victim from which the victim died, or
5 aided and abetted another to inflict such injures. The
6 definition of "aiding and abetting" provided in Counts Five
7 and Six is applicable to this element of these counts, as
8 well. Recall that with respect to the defendant Odeh, the
9 government's theory is that he aided and abetted the
10 commission of the crime. The government does not allege that
11 defendant Odeh physically carried out the crimes charged in
12 Counts 233 through 273.

13 The second element of these counts that the
14 government must prove beyond a reasonable doubt is that the
15 victim in the count you are considering was an officer or
16 employee of the United States Government or any agency or
17 branch of the United States Government and was engaged in or
18 killed on account of the performance of official duties at the
19 time in question. The law criminalizing the murder of
20 officers and employees of the United States is designed to
21 protect federal employees and federal functions. I instruct
22 you that individuals employed by United States embassies are
23 officers and employees of the United States.

24 This element may be satisfied in one of two ways.
25 First, it is sufficient to satisfy this element for the

1 government to show you that, at the time in question, the
2 victim you are considering was in fact an officer or employee
3 of the United States engaged in the performance of his or her
4 official duties. Here, the government does not have to prove
5 that the defendant you are considering knew that the victim
6 was an officer or employee of the United States Government;
7 nor must the government show that the defendant knew that the
8 victim was engaged in the performance of his or her official
9 duties.

10 The second and alternative way for the government to
11 satisfy this element is by showing that, at the time in
12 question, the victim you are considering was an officer or
13 employee of the United States who was killed on account of the
14 performance of his or her official duties. I instruct you
15 that a person performs an "official duty" when acting within
16 the scope of what he or she is employed to do. Here, the
17 government must prove that the defendant you are considering
18 was motivated to kill the victim by that victim's performance
19 of his or her official duties.

20 The third element of these counts that the government
21 must prove beyond a reasonable doubt is that the defendant you
22 are considering acted unlawfully.

23 As I told you earlier, an act is done unlawfully if
24 it is done without valid justification or excuse. While the
25 taking of a human life is a most serious matter, not all

1 killing, even when intentional, is unlawful. In the context
2 of Counts 233 through 273, and Counts 275 and 276, the law
3 forbids killings done without valid justification or excuse.
4 If you find that the defendant you are considering committed a
5 killing without valid justification or excuse, this element is
6 satisfied.

7 The fourth element of these counts that the
8 government must prove beyond a reasonable doubt is that the
9 defendant you are considering acted with malice aforethought.
10 As I instructed you earlier when explaining the elements of
11 Counts Nine through 232, malice is a state of mind that would
12 cause a person to act without regard to the life of another.
13 To satisfy this element, the defendant must have acted
14 consciously, with the intent to kill another person.

15 To show malice, the government must prove that the
16 defendant acted willfully, with a bad or evil purpose to break
17 the law. However, the government need not prove spite,
18 malevolence, hatred, or ill will to the victim.

19 The fifth and final element of these counts that the
20 government must prove beyond a reasonable doubt is that the
21 defendant you are considering acted with premeditation.

22 Again, I defined "premeditation" for you earlier, but
23 I will reiterate it here. An act is done with premeditation
24 if it is done upon deliberation. The government, to show
25 premeditation, must show that the defendant killed the victim

1 only after thinking the matter over, deliberately,
2 deliberating whether to act before committing the crime.
3 There is no requirement that the government prove that the
4 defendant deliberated for any particular period of time. It
5 is sufficient to satisfy this element if you find that before
6 he acted, the defendant had a period of time to become fully
7 aware of what he intended to do and to think it over.

8 If you find that the defendant killed a victim, or
9 aided and abetted the killing of a victim, as a result of a
10 premeditated design to effect the death of a different person,
11 then the requirement of premeditation as to the victim you are
12 considering is satisfied.

13 On the special verdict form, you must indicate your
14 unanimous verdict as to each defendant for each of these
15 counts.

16 And if we look at page 29 of the special verdict
17 form, you will see it says Counts 233 through 273 charge
18 defendants Odeh and Al-'Owhali with the murder of officers and
19 employees of the United States in Nairobi, Kenya.

20 And then again, it goes on to explain that you are to
21 find the defendant guilty or not guilty, and that with respect
22 to the defendant Al-'Owhali, if you find him guilty, you are
23 also to indicate whether your finding of guilt was based on
24 your determination that he himself killed the victim or
25 whether he aided and abetted another to kill the victim.

1 Counts 274 and 277, also, if you look at page 34 of
2 the special verdict form, that covers Counts 275 and 276, the
3 defendant K.K. Mohamed, the victims as listed there, and the
4 places for you to indicate your finding as to guilt or not
5 guilt; and if your finding is one of guilty, a finding as to
6 whether you find it based on a finding that he himself killed
7 or whether he aided and abetted in the killing.

8 Counts 274 and 277, which we begin to address on page
9 98, charge defendants Odeh and Al-'Owhali with the attempted
10 murder of officers and employees of the United States by
11 bombing the United States Embassy in Nairobi, Kenya, on August
12 7, 1998.

13 Specifically, Count 274 and alleges that they, and
14 others known and unknown, unlawfully, willfully, deliberately
15 and maliciously and with malice aforethought and premeditation
16 did attempt to murder officers and employees of the United
17 States Government, while such officers and employees were
18 engaged in and on account of the performance of their official
19 duties, and persons assisting such United States Government
20 officers and employees in the performance of their duties by
21 bombing the United States Embassy in Nairobi, Kenya.

22 Count 277 similarly charges defendant K.K. Mohamed
23 with the attempted murder of officers and employees of the
24 United States by bombing the United States Embassy in Dar es
25 Salaam, Tanzania. And the language in 277 parallels that in

1 274, except the name of the defendant and the identification
2 of the embassy.

3 The statute that the defendants are charged with
4 violating in Counts 274 and 277 provides:

5 Whoever... attempts to kill any officer or employee
6 of the United States or of any agency in any branch of the
7 United States Government ... while such officer or employee is
8 engaged in or on account of the performance of official
9 duties, or any person assisting such an officer or employee in
10 the performance of such duties or on account of that
11 assistance is guilty of a crime.

12 To satisfy its burden of proof as to Counts 274 and
13 277, the government must prove each of the following elements
14 beyond a reasonable doubt:

15 First, that on or about August 7, 1998, the defendant
16 you are considering unlawfully, with malice aforethought, and
17 with premeditation attempted to murder officers or employees
18 of the United States, or that he unlawfully, with malice
19 aforethought, and with premeditation, aided and abetted
20 another to do so; and

21 Second, that the officers or employees of the United
22 States whom the defendant attempted to murder were engaged in
23 or were targeted because of the performance of their official
24 duties at the time in question.

25 The first element that the government must prove

1 beyond a reasonable doubt is that on or about August 7, 1998,
2 the defendant you are considering unlawfully, with malice
3 aforethought, and with premeditation attempted to murder
4 officers or employees of the United States in Nairobi, Kenya
5 (as to Count 274), or Dar es Salaam, Tanzania (as to Count
6 277), or that he, unlawfully, with malice aforethought, and
7 with premeditation, aided and abetted another person to do so.
8 Recall, again, that the government's theory with respect to
9 defendant Odeh is that he aided and abetted the commission of
10 the offense. The government does not allege that defendant
11 Odeh physically carried out the crime charged in Count 274.
12 The definition of "aiding and abetting" that I gave you
13 earlier applies to this element of these counts.

14 To satisfy the first element of Counts 274 and 277,
15 you must find that the government has proven beyond a
16 reasonable doubt both of the following two sub-elements:

17 First, that on or about August 7, 1998, the defendant
18 unlawfully, with malice aforethought, and with premeditation
19 intended to cause the death of United States officers or
20 employees; and

21 Second, that on or about August 7, 1998, the
22 defendant willfully took some action that was a substantial
23 step in an effort to bring about or accomplish the murder.

24 And you should refer to my previous instructions as
25 to what it means to act "unlawfully," "with malice

1 aforethought," and "with premeditation," and those definitions
2 apply here.

3 A person intends to cause the death of another person
4 when his conscious objective is to cause the death of that
5 person. He need not know who the person is to have such an
6 intent.

7 Mere intention to commit a serious crime does not
8 amount to an attempt. To convict a defendant of an attempt,
9 you must find beyond a reasonable doubt that the defendant
10 intended to commit the crime charged, and that he took some
11 steps, some action that was a "substantial step" toward the
12 commission of that crime.

13 In determining whether the defendant's actions
14 amounted to a substantial step toward the commission of the
15 crime, you must distinguish between mere preparation on the
16 one hand, and the actual doing of the criminal deed on the
17 other. Mere preparation, which may consist of planning or of
18 devising, obtaining or arranging a means for its commission,
19 is not an attempt, although some preparations may amount to an
20 attempt. The acts of a person who intends to commit a crime
21 will constitute an attempt where the acts themselves clearly
22 indicate an intent to willfully commit the crime, and the acts
23 are a substantial step in a course of conduct planned to
24 culminate in the commission of the crime.

25 The second element of Counts 274 and 277 that the

1 government must prove beyond a reasonable doubt is that on or
2 about August 7, 1998, individuals present in the United States
3 embassies in Nairobi, Kenya and Dar es Salaam, Tanzania were
4 officers or employees of the United States and were engaged in
5 or targeted on account of the performance of official duties.
6 Again, I instruct you that individuals employed by United
7 States embassies are officers or employees of the United
8 States.

9 Please note, however, that to satisfy this element of
10 Count 274, the government must prove that any persons that you
11 find to be officers or employees of the United States for
12 purposes of Count 274 are persons other than those persons
13 identified in Counts 233 to 273. Likewise, to satisfy this
14 element for Count 277, the government must prove that any
15 persons that you find to be officers or employees of the
16 United States for purposes of Count 277 must be persons other
17 than those persons identified in Counts 275 and 276. This is
18 because the offense of attempted murder does not apply to
19 victims who were actually killed.

20 So if the victim was actually killed, it is dealt
21 with in the earlier Count. These Counts deal with persons who
22 were not actually killed.

23 This element may be satisfied in one of two ways.
24 First, it is sufficient to satisfy this element for the
25 government to show that, at the time in question, the

1 individuals were in fact officers or employees of the United
2 States engaged in the performance of their official duties.
3 Here, the government does not have to prove that the defendant
4 you are considering knew that the individuals were officers or
5 employees of the United States Government; nor must the
6 government show that the defendant knew that the individuals
7 were engaged in the performance of their official duties.

8 The second and alternative way for the government to
9 satisfy this element is by showing that, at the time in
10 question, the individuals were officers or employees of the
11 United States who were targeted on account of the performance
12 of official duties. I instruct you that a person performs an
13 "official duty" when acting within the scope of what he or she
14 is employed to do. Here, the government must prove that the
15 defendant you are considering was motivated to target the
16 individuals by their performance of their official duties.

17 On the special verdict form, you must indicate your
18 unanimous verdict as to these counts, with respect to the
19 defendants you are considering.

20 And you will see that Count 274 calls for you to
21 indicate whether you find the defendant Odeh guilty or not
22 guilty, reminds you that as to him the charge is only that he
23 aided and abetted, that with respect to Al-'Owhali, you are to
24 find whether he is guilty or not guilty; and if you find him
25 guilty, you are to answer whether you find that he himself

1 committed the offense in Count 274 or aided and abetted the
2 commission of the offense in Count 274. And I remind you, you
3 answer one, but not both. If you find that somebody himself
4 committed the offense, you need not consider whether he aided
5 or abetted another in the commission of the offense.

6 We turn then to Counts 278 and 279, which charge the
7 defendants Odeh and Al-'Owhali with the murder of
8 internationally protected persons by bombing the United States
9 Embassy in Nairobi, Kenya, on August 7, 1998. The Count
10 charges that on or about August 7, 1998, in Nairobi, Kenya,
11 and outside the jurisdiction of any particular state or
12 district, ... defendants Odeh and Al-'Owhali -- skipping the
13 jurisdictional language which we'll talk about later -- and
14 others known and unknown, unlawfully, willfully, knowingly,
15 deliberately, and maliciously, and with malice aforethought
16 and with premeditation, did murder representatives, officers,
17 employees and agents of the United States Government, who at
18 the time and place concerned were entitled pursuant to
19 international law to special protection against attack upon
20 their persons, freedom and dignity.

21 The statute in question provides "[w]hoever
22 kills ... [an] internationally protected person" is guilty of
23 a crime. As I have previously explained, an "internationally
24 protected person" is defined to include a "representative,
25 officer, employee, or agent of the United States Government

1 ... who at the time and place concerned is entitled pursuant
2 to international law to special protection against attack upon
3 his person, freedom or dignity."

4 In these counts, the government further alleges that
5 the defendants committed the killings with malice aforethought
6 and with premeditation.

7 To satisfy its burden of proof as to Counts 278 and
8 279 with respect to the defendant you are considering, the
9 government must prove each of the following elements beyond a
10 reasonable doubt:

11 First, that the defendant killed, or aided and
12 abetted the killing of, the victim as charged;

13 Second, that the victim was a representative,
14 officer, employee, or agent of the United States Government
15 who at the time and place concerned was entitled pursuant to
16 international law to special protection against attack upon
17 his person, freedom, or dignity;

18 Third, that the defendant acted unlawfully;

19 Fourth, that the defendant acted with malice
20 aforethought; and

21 Fifth, that the defendant acted with premeditation.

22 The first element of Counts 278 and 279 that the
23 government must prove beyond a reasonable doubt is that the
24 defendant you are considering killed, or aided and abetted the
25 killing of, the victim charged in that count of the

1 indictment.

2 As I explained to you earlier, it is the government's
3 burden to prove that the defendant's conduct was the direct
4 cause of the victim's death. That means simply that the
5 government must prove that the defendant inflicted an injury
6 or injuries upon the victim from which the victim died, or
7 aided and abetted another to inflict such injuries.

8 The definition of "aiding and abetting" provided
9 earlier applies to this element of these counts. Recall that
10 with respect to these counts and defendant Odeh, the
11 government's theory is that he aided and abetted the
12 commission of the offenses charged. The government does not
13 allege that defendant Odeh physically carried out the crimes
14 charged in Counts 278 and 279.

15 The second element of these counts that the
16 government must prove beyond a reasonable doubt is that the
17 victim was a representative, officer, employee, or agent of
18 the United States Government who at the time and place
19 concerned was entitled pursuant to international law to
20 special protection against attack upon his person, freedom, or
21 dignity.

22 The parties have stipulated -- and it's not in the
23 text, but the stipulation is Government Exhibit 40, 4-0 -- the
24 parties have stipulated in Government Exhibit 40 that Julian
25 Leotis Bartley, Sr., and Prabhi Gutpara Kavalier, were

1 employees of the United States Government entitled to such
2 special protection under international law on August 7, 1998.
3 As I have already instructed you, the government does not have
4 to prove that the defendants knew the identity of these
5 internationally protected persons, or that the defendants knew
6 that these individuals were internationally protected persons.

7 The third element of Counts 278 and 279 that the
8 government must prove beyond a reasonable doubt is that the
9 defendant you are considering acted unlawfully.

10 As I told you earlier, an act is done unlawfully if
11 it was done without justification or excuse. While the taking
12 of a human life is a most serious matter, not all killing,
13 even when intentional, is unlawful. In the context of Counts
14 278 and 279, the law forbids killings done without valid
15 justification or excuse. And if you find that the defendant
16 you are considering committed a killing without valid
17 justification or excuse, this element is satisfied.

18 The fourth element that the government must prove
19 beyond a reasonable doubt is that the defendant you are
20 considering acted with malice aforethought.

21 As I instructed you earlier, malice is a state of
22 mind that would cause a person to act without regard to the
23 life of another. To satisfy this element, the defendant must
24 have acted consciously, with the intent to kill another
25 person.

1 To establish this element, the government must prove
2 that the defendant acted willfully, with a bad or evil purpose
3 to break the law. However, the government need not prove
4 spite, malevolence, hatred, or ill will to the victim.

5 And the fifth element as to these two counts, 278 and
6 279, is that the government must prove beyond a reasonable
7 doubt that the defendant you are considering acted with
8 premeditation.

9 I defined that earlier, but I'll repeat it. An act
10 is done with premeditation if it is done upon deliberation.
11 To satisfy this element, the government must prove the
12 defendant killed the victim, or aided and abetted the killing
13 of the victim, only after thinking the matter over,
14 deliberating whether to act before committing the crime.
15 There is no requirement that the government prove that the
16 defendant deliberated for any particular period of time. It
17 is sufficient to satisfy this element if you find that before
18 he acted, the defendant had a period of time to become fully
19 aware of what he intended to do and to think it over.

20 With respect to each of the defendants you are
21 considering, you must indicate your unanimous verdict for
22 Counts 278 and 279 on the special verdict form, which appears
23 on page 36.

24 While we're looking at the special verdict form, if
25 you turn back to Count 277 and to the previous page, you will

1 see that there is a provision for your findings with respect
2 to Count 277 and the defendant K.K. Mohamed, which asks the
3 question of whether you find him guilty or not guilty; and if
4 you find him guilty, whether you find that he himself
5 committed the offense or aided and abetted the commission of
6 the offense.

7 For Counts 278 and 279, you will see there is a
8 provision for you to find with respect to Odeh whether he is
9 guilty or not guilty, that the other two boxes are blacked out
10 because there is no claim that he himself caused the death,
11 killed the victim. The only allegation with respect to Odeh
12 is that he aided and abetted the commission of that crime.

13 With respect to Al-'Owhali, the government contends
14 that he is guilty because he himself killed the victim or,
15 alternatively, that he aided and abetted another in the
16 killing of the victim.

17 Now, Counts 280 and 281 deal with attempted murder of
18 internationally protected persons. And again, I'm sure you
19 realize the pattern here, beginning in the earlier counts,
20 which were the conspiracy counts, and then the substantive
21 counts, which deal with the allegations of the actual
22 commission of the crime, and now we have this count and other
23 counts that deal with attempt, attempted murder, where the
24 intended victim was not actually killed, but there was an
25 attempt to do so.

1 So I'm sure you're aware of the repetition, there is
2 a similarity with respect to these counts, but the differences
3 are what the status of the victim was, whether the victim
4 actually died or not, or whether there was an attempt to kill
5 the victim.

6 And Counts 280 and 281 deal with attempted murder of
7 internationally protected persons.

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9 (Continued on next page)

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1 THE COURT: (Continuing) Count 280 of the indictment
2 charges the defendants Odeh and Al-'Owhali with the attempted
3 murder of the ambassador of the United States to Kenya, and
4 other representatives, officers, employees, and agents of the
5 United States government by bombing the United States Embassy
6 in Nairobi, Kenya, on August 7, 1998, and charges that they,
7 and others known and unknown, unlawfully, willfully,
8 knowingly, deliberately and maliciously, and with malice
9 aforethought and with premeditation, did attempt to murder the
10 ambassador of the United States to Kenya and other
11 representatives, officers, employees and agents of the United
12 States government, who at the time and place concerned were
13 entitled pursuant to international law to special protection
14 against attack upon their persons, freedom and dignity, by
15 bombing the United States Embassy in Nairobi, Kenya.

16 Count 281 of the indictment charges defendant K.K.
17 Mohamed with the attempted murder of the ambassador of the
18 United States to Tanzania and other representatives, officers,
19 employees, and agents of the United States government by
20 bombing the United States Embassy in Dar es Salaam, Tanzania,
21 on August 7, 1998. And you have the language of the count of
22 the indictment there before you, and of course you understand
23 with all of these excerpts from the indictment, you have the
24 indictment itself before you during your deliberations.

25 The statute that the defendants are charged with

1 violating in Counts 280 and 281 provides that: Whoever
2 attempts to kill ... an internationally protected is guilty of
3 a crime. "Internationally protected person" has the same
4 definition that I gave you earlier.

5 To satisfy its burden of proof as to Counts 280 and
6 281, the government must prove each of the following elements
7 beyond a reasonable doubt:

8 First, that on or about August 7, 1998, the defendant
9 you are considering unlawfully, with malice aforethought and
10 with premeditation, attempted to murder internationally
11 protected persons or that he unlawfully, with malice
12 aforethought and with premeditation, aided and abetted another
13 to do so;

14 Second, that the individuals whom the defendant
15 attempted to murder were internationally protected persons.

16 The first element the government must prove beyond a
17 reasonable doubt is that on or about August 7, 1998, the
18 defendant you are considering unlawfully, with malice
19 aforethought and with premeditation, attempted to murder
20 internationally protected persons at the United States Embassy
21 in Nairobi, Kenya (as to Count 280), and Dar es Salaam,
22 Tanzania (as to Count 281), or that he, unlawfully, with
23 malice aforethought and with premeditation, aided and abetted
24 another person to do so. The definition of "aiding and
25 abetting" which was provided earlier is applicable to this

1 element. Recall that with respect to these counts and the
2 defendant Odeh, the government's theory is that he aided and
3 abetted the commission of the offense charged. The government
4 does not allege that he physically carried out the crimes
5 charged in Counts 280 and 281.

6 The government, to satisfy the first element of
7 Counts 280 and 281, must prove beyond a reasonable doubt both
8 of the following two sub-elements:

9 First, that on or about August 7, 1998, the defendant
10 unlawfully, with malice aforethought and with premeditation,
11 intended to cause the death of internationally protected
12 persons;

13 Second, that on or about August 7, 1998, the
14 defendant willfully took some action that was a substantial
15 step in an effort to bring about or accomplish the murder.

16 As I have previously instructed you, a person intends
17 to cause the death of another person when his conscious
18 objective is to cause the death of that person. He need not
19 know who the person is to have such an intent. You should
20 refer to my previous instructions as to what it means to act
21 "unlawfully," "with malice aforethought," and "with
22 premeditation," and apply those definitions here.

23 In the instructions to Counts 274 and 277, I provided
24 you with a definition of "substantial step," and you should
25 apply those instructions to this element of these counts as

1 well.

2 The second element of Counts 280 and 281 the
3 government must prove beyond a reasonable doubt is that on or
4 about August 7, 1998, individuals present in the United States
5 embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, were
6 internationally protected persons. The term "internationally
7 protected person" was defined in the instructions on Counts
8 278 and 279.

9 The crime of attempted murder of internationally
10 protected persons is designed, in part, to protect federal
11 employees and federal functions, and therefore it is
12 sufficient for the government to show that the defendants
13 intended to perform the acts which are charged upon
14 individuals who in fact were internationally protected
15 persons. The government does not have to prove that the
16 defendant you are considering knew the identity of these
17 internationally protected persons, or that the defendant knew
18 that these individuals were internationally protected persons.

19 The parties have stipulated that the United States
20 ambassador to Kenya and the acting United States ambassador to
21 Tanzania, as well as other employees of the United States
22 government present at the United States embassies in Nairobi,
23 Kenya, and Dar es Salaam, Tanzania, were internationally
24 protected persons on August 7, 1998. Whether the defendants
25 knew that these individuals were internationally protected

1 persons at the time of the alleged attempted murder is
2 irrelevant to your determination as to this element of these
3 counts.

4 Please note, however, that to satisfy this element
5 for Count 280, any persons that you find to be internationally
6 protected persons for the purposes of Count 280 must be
7 persons other than those identified in Counts 278 and 279,
8 that is, Julian Leotis Bartley, Sr., and Prabhi Gutpara
9 Kavalier, who were actually killed. Again, this is because the
10 offenses of attempted murder do not apply to victims who were
11 actually killed.

12 You will see that the verdict form for Count 280 is
13 contained on page 37.

14 I want to go back and correct something I said a
15 little earlier when I was talking about defendant Odeh and the
16 definition of "aiding and abetting." I made reference to two
17 counts, and what I meant to say is, recall that with respect
18 to Count 280 the government's theory is that he aided and
19 abetted the commission of the offense. The government does
20 not allege that the defendant Odeh physically carried out the
21 crime charged in Count 280. The reference to Count 281 and
22 Odeh should be stricken.

23 The special verdict form, as I say, is the road map.
24 I hesitate to say the bible but some people may characterize
25 it as that. It is all very important, but certainly the

1 instructions contained in the charge are the critical
2 instructions that you must follow, not the summary here. But
3 as to what it is that you are to decide, what are the issues
4 as to which you should deliberate and reach your verdict, the
5 special verdict form is the road map.

6 There you will see Count 280 calls for you to make
7 your finding as to guilt or not guilty as to the defendant
8 Odeh and defendant Al-'Owhali, and with Odeh on the theory of
9 aiding and abetting only, and with respect to Al-'Owhali to
10 indicate, if you have found him guilty, whether you found that
11 he himself committed the offense or whether you find he aided
12 and abetted the commission of the offense, and only one of
13 those is to be checked.

14 Count 281 on the next page follows the same pattern.

15 We will take a breather, a standing stretch.

16 (Pause)

17 THE COURT: Ladies and gentlemen, there is some
18 question about whether on page 101 when I was talking about
19 attempt I said mere intention to commit a specific crime does
20 not amount to an attempt. If I said something else, it was
21 unintentional.

22 We are on page 114 and Count 282 of the indictment,
23 which charges the defendants Odeh, Al-'Owhali and K.K. Mohamed
24 with using and carrying an explosive during the commission of
25 the crime of conspiracy to murder United States nationals as

1 charged in Count 1. Count 282 charges:

2 From at least 1991 until the date of the filing of
3 this indictment, May 8, 2000, in the various countries listed
4 there, defendants Odeh, Al-'Owhali and K.K. Mohammed -- I am
5 skipping the jurisdictional matters that we will talk about
6 later -- together with other members of Al Qaeda, Egyptian
7 Islamic Jihad, and others known and unknown to the grand jury,
8 unlawfully, willfully and knowingly did use and carry an
9 explosive, as that term is defined in the relevant statute,
10 during the commission of a felony for which they might be
11 prosecuted in a court of the United States, namely, the
12 conspiracy to murder United States nationals, in violation of
13 the relevant statute, as set forth in Count 1 of this
14 indictment ... to wit, the defendants used and carried bombs
15 in connection with the attacks on the United States embassies
16 in Nairobi, Kenya, and Dar es Salaam, Tanzania.

17 The statute relevant here provides:

18 Whoever uses fire or an explosive to commit any
19 felony which may be prosecuted in a court of the United
20 States, or carries an explosive during the commission of any
21 felony which may be prosecuted in a court of the United
22 States, is guilty of a crime.

23 To satisfy its burden of proof as to Count 282, the
24 government must prove each of the following elements beyond a
25 reasonable doubt:

1 First, that the defendant you are considering
2 committed a felony for which he may be prosecuted in a court
3 of the United States; and

4 Second, that the defendant used an explosive to
5 commit that felony or carried an explosive, or aided and
6 abetted another person to do so, during the commission of that
7 felony.

8 The first element the government must prove beyond a
9 reasonable doubt is that the defendant you are considering
10 committed a felony for which he may be prosecuted in a court
11 of the United States.

12 Defendants Odeh, Al-'Owhali and Mohamed are charged
13 in Count 1 with committing the crime of conspiracy to murder
14 United States nationals. I instruct you that the crime of
15 conspiracy to murder United States nationals is a felony for
16 which the defendants might be prosecuted in a court of the
17 United States. However, it is for you to determine that the
18 government has proven beyond a reasonable doubt that the
19 defendants you are considering committed the crime of
20 conspiracy to murder United States nationals as charged.

21 If upon all the evidence you find that the government
22 has failed to prove Count 1 beyond a reasonable doubt as to a
23 particular defendant, then you are not to consider Count 282
24 as to that defendant. Count 282 is to be considered as to a
25 defendant only if you first find him guilty under Count 1 as

1 charged.

2 The second element the government must prove beyond a
3 reasonable doubt is that the defendant you are considering
4 used an explosive to commit the crime charged in Count 1, or
5 carried an explosive during the -- let me start that again.

6 The second element the government must prove beyond a
7 reasonable doubt is that the defendant you are considering
8 used an explosive to commit the crime charged in Count 1, or
9 carried an explosive during the commission of the crime
10 charged in Count 1, or aided and abetted another person to do
11 so. Where, as here, the indictment charges the defendant with
12 both using and carrying an explosive, the government need only
13 prove one or the other, not both.

14 To use an explosive to commit a crime means to use it
15 in such a way that it was an integral part of the commission
16 of the crime. To establish that the defendant you are
17 considering used an explosive to commit a felony, the
18 government must prove beyond a reasonable doubt that the
19 defendant actively employed the explosive during and in
20 relation to the commission of the underlying felony. Mere
21 possession of an explosive, even with intent to use it later,
22 is insufficient to establish active employment or use of an
23 explosive.

24 The term "explosive" is defined by the statute. I
25 gave you that definition in connection with Count 4 and I will

1 not repeat it here.

2 To carry an explosive means to have it within your
3 control so that it was available in such a way that it could
4 further the commission of the crime. The defendant did not
5 necessarily have to hold the explosive physically, that is,
6 have actual possession of it on his person. If you find that
7 the defendant had dominion and control over the place where
8 the explosive was located, and had the power and intention to
9 exercise control over the explosive, you may find that the
10 government has proven that the defendant carried the
11 explosives.

12 To satisfy this element, you must also find that the
13 defendant you are considering knowingly used or carried the
14 explosive. This means he used or carried the explosive
15 purposely and voluntarily, and not by accident or mistake.

16 With respect to this element of the count, the
17 principle of aiding and abetting that I described earlier
18 applies. Thus, if you find that some other person actually
19 committed the crime of using an explosive to commit a felony
20 or carrying an explosive during a felony, you may convict the
21 defendant you are considering of that same offense if you find
22 that he aided and abetted that other person's commission of
23 the crime. To convict the defendant as an aider and abettor
24 on Count 282, the government must establish that he aided and
25 abetted another person's use or carrying of the explosive in

1 connection with the attacks on the United States embassies in
2 Nairobi, Kenya, and Dar es Salaam, Tanzania. I caution you,
3 however, that to convict the defendant as an aider and
4 abettor, it is not sufficient that you find him to have aided
5 and abetted the underlying felony, that is, the conspiracy to
6 murder United States nationals alleged in Count 1. The
7 government must prove that he aided and abetted another
8 person's use or carrying of the explosive.

9 The government may prove the defendant's commission
10 of the crime charged in Count 282 by showing either that he
11 actually committed the crime himself or that he aided and
12 abetted another person's commission. It is not required that
13 both be established, but neither may be established unless the
14 government has proven the required elements beyond a
15 reasonable doubt. However, let me remind you that the
16 government's theory under Count 282 with respect to Odeh is
17 not that he himself used or carried an explosive in connection
18 with the felony charged in Count 1, but that he aided and
19 abetted another in doing so. Therefore, you need not consider
20 whether Odeh personally used or carried an explosive in
21 connection with the felony in Count 1.

22 On the special verdict form, you must indicate your
23 unanimous verdict as to Count 282 with respect to the
24 defendants you are considering. Count 282 spells out the
25 questions that you are called upon to answer with respect to

1 that count as to each of those defendants, that is, guilty or
2 not guilty, and then with respect to Al-'Owhali and Mohamed,
3 whether your finding of guilt, if you have found guilt, is
4 based on himself used or carried or aided and abetted another
5 to do so.

6 Which takes us to Counts 283 and 284. Count 283 of
7 the indictment charges Odeh and Al-'Owhali with using and
8 carrying a firearm during the commission of a crime of
9 violence in connection with the bombing of the American
10 Embassy in Nairobi, and the language of Count 283 is set
11 forth, and the critical language is unlawfully, willfully and
12 knowingly, in and during and in relation to a crime of
13 violence for which they may be prosecuted in a court of the
14 United States, namely, the bombing of the United States
15 Embassy in Nairobi, Kenya, as set forth in Count 5 of this
16 indictment, did use and carry a firearm as that term is
17 defined to include any destructive device, to wit, the
18 defendants did use and carry an explosive device during and in
19 relation to the bombing of the United States Embassy in
20 Nairobi, Kenya, set forth in Count 5 of this indictment.

21 Count 284 similarly charges the defendant K.K.
22 Mohammed in relation to the bombing of the United States
23 Embassy in Dar es Salaam, Tanzania, as set forth in Count 6 of
24 the indictment.

25 The statute that the defendants are charged with

1 violating in Counts 283 and 284 provides in relevant part:

2 Any person, who, during and in relation to any crime
3 of violence ... for which the person may be prosecuted in a
4 court of the United States, uses or carries a firearm is
5 guilty of a crime.

6 To satisfy its burden of proof as to Counts 283 and
7 284, the government must prove each of the following elements
8 beyond a reasonable doubt:

9 First, that the defendant you are considering
10 committed a crime of violence for which he may be prosecuted
11 in a court of the United States; and

12 Second, that the defendant knowingly used or carried
13 a firearm, that is, a destructive device, during and in
14 relation to the commission of that crime of violence, or that
15 he knowingly aided and abetted another person to do so.

16 The first element the government must prove beyond a
17 reasonable doubt is that the defendant you are considering
18 committed a crime of violence for which he might be prosecuted
19 in a court of the United States.

20 Defendants Odeh and Al-'Owhali are charged in Count
21 283 with using and carrying a firearm during the commission of
22 the crime of explosive damage or destruction of federal
23 property charged in Count 5. Defendant K.K. Mohammed is
24 charged in Count 284 with using and carrying a firearm during
25 the commission of the crime of explosive damage or destruction

1 of federal property charged in Count 6. I instruct you that
2 explosive damage or destruction of federal property is a crime
3 of violence. However, it is for you to determine whether the
4 government has proven beyond a reasonable doubt that the
5 defendant you are considering committed that crime as charged.

6 If upon all of the evidence you find, with respect to
7 the defendant you are considering, that the government has
8 failed to prove Count 5 beyond a reasonable doubt, then you
9 are not to decide Count 283 as to that defendant. Likewise,
10 if you find with respect to defendant K.K. Mohamed that the
11 government has failed to prove Count 6 beyond a reasonable
12 doubt, then you are not to decide Count 284. In other words,
13 Count 283 is to be considered as to a particular defendant
14 only if you first find him guilty under Count 5, and Count 284
15 is to be considered only if you find the defendant guilty
16 under Count 6.

17 In reaching your verdict on Count 283, you may
18 consider the evidence of Count 5 only for the purpose of
19 determining whether the elements of Count 283 have been
20 satisfied. Similarly, as to Count 284, you may consider the
21 evidence of Count 6 only for the purpose of determining
22 whether the elements of Count 284 have been established.

23 The second element the government must prove beyond a
24 reasonable doubt is that the defendant you are considering
25 knowingly used or carried a firearm during and in relation to

1 the commission of the underlying crime of violence, or that he
2 knowingly aided and abetted another person to do so. The
3 statutory definition of "firearm" includes a "destructive
4 device." To satisfy this element, the government must prove
5 beyond a reasonable doubt that the firearm used or carried
6 during the commission of the crime of violence was a
7 destructive device. As I told you earlier, a "destructive
8 device" is defined in the statute to include an explosive,
9 incendiary or poison gas bomb, an explosive, incendiary or
10 poison gas grenade, an explosive, incendiary or poison gas
11 rocket, an explosive, incendiary or poison gas mine, or any
12 similar device.

13 Counts 283 and 284 allege that the defendants did
14 "use and carry" a destructive device. Where, as here, both
15 using and carrying are charged, the government need only prove
16 one or the other, not both.

17 To prove that the defendant you are considering used
18 a destructive device, the government must prove beyond a
19 reasonable doubt that the defendant actively employed the
20 destructive device during and in relation to the commission of
21 the crime of violence. Mere possession of the destructive
22 device, even with an intent to use it later, is insufficient
23 to establish active employment or use of a destructive device.

24 To prove that the defendant you are considering
25 carried a destructive device, the government must prove beyond

1 a reasonable doubt that the defendant had the device within
2 his control in such a way that it furthered the commission of
3 the crime of violence or was an integral part of the
4 commission of the crime of violence. The defendant need not
5 necessarily have to hold the device physically, that is, have
6 actual possession of it on his person. If you find that the
7 defendant had dominion and control over the place where the
8 destructive device was located, and had the power and the
9 intention to exercise control over the destructive device in
10 such a way that it furthered the commission of the crime of
11 violence, you may find that the government has proven that the
12 defendant carried the destructive device.

13 It is not sufficient to prove carrying if all the
14 government has proven is that the destructive device was
15 transported in a vehicle in which the defendant was riding.
16 There must be proof that the defendant knew of the device's
17 presence and had the power and intention to exercise control
18 over the destructive device so that it was available for his
19 use in the commission of the crime if the need arose.

20 To satisfy this element, you must also find that the
21 defendant acted knowingly, that is, that he used or carried
22 the destructive device purposely and voluntarily, and not by
23 accident or mistake. It also means that he knew that the
24 weapon was a destructive device. However, the government is
25 not required to prove that the defendant knew that he was

1 breaking the law.

2 As before, the principles of aiding and abetting that
3 I have previously defined, described, apply to this element.
4 Thus, if you find that some other person actually committed
5 the crime of using or carrying a destructive device during and
6 in relation to a crime of violence, you may convict the
7 defendant of that same offense if you find that he aided and
8 abetted that other person's use or carrying of the destructive
9 device. To convict the defendant you are considering as an
10 aider and abettor on Count 283 or 284, the government must
11 establish that he aided and abetted another person's use or
12 carrying of the destructive device during and in relation to
13 the bombing of the United States Embassy in Nairobi, Kenya,
14 Count 283, or in relation to the bombing of the United States
15 Embassy in Dar es Salaam, Tanzania, Count 284.

16 I caution you, however, that to convict the defendant
17 as an aider and abettor it is not sufficient that you find him
18 to have aided and abetted the underlying violent crime, that
19 is, explosive destruction of federal property.

20 The government may prove the defendant's commission
21 of the crime charged in Count 283 or 284 by showing either he
22 actually committed the crime himself or that he aided and
23 abetted another person's commission of the crime. It is not
24 required that both be established, but neither may be
25 established unless the government has proved the required

1 elements beyond a reasonable doubt. However, with respect to
2 Count 283, the government only alleges that defendant Odeh
3 acted as an aider and abettor. Therefore, you need not
4 consider whether he personally used or carried a destructive
5 device in connection with Count 5.

6 The special verdict form for Counts 283 and 284
7 appears on pages 41, 42 and 43, and they follow the pattern
8 which we have used with respect to the preceding counts.

9 Ladies and gentlemen, I have now completed my
10 instructions to you concerning the substantive offenses of the
11 indictment arising out of the embassy bombings in Kenya and
12 Tanzania. But before I move on to the third and final group
13 of counts in the indictment, that is, the counts involving
14 alleged perjury by defendant Wadih El Hage, I have to mention
15 a word about venue.

16 Federal law provides certain rules that govern the
17 location where a criminal prosecution may be brought by the
18 United States government, and these are known as venue rules.
19 As you have heard throughout this trial, many of the acts
20 alleged to have taken place occurred overseas, in Africa and
21 in the Middle East. Nevertheless, American law provides that
22 the defendants charged with committing those acts may be
23 prosecuted here in the Southern District of New York, so long
24 as you the jury find certain facts to be true.

25 In other words, as to each of the counts of the

1 indictment I have discussed with you thus far -- that is,
2 Counts 1 through 284 -- you the jury must find that venue
3 properly existed in the Southern District of New York. Venue
4 is just a fancy word for the place where somebody may be
5 tried.

6 The government's burden of proof with respect to
7 establishing venue under each count of the indictment where
8 venue is at issue is by a preponderance of the evidence. To
9 prove something by a preponderance of the evidence means to
10 prove that something is more likely true than not true. It is
11 determined by considering all the evidence and deciding which
12 evidence is more convincing. If the evidence appears to be
13 equally balanced, or if you cannot say on which side it weighs
14 heavier, you resolve the question of venue against the
15 government.

16 Now, as to Counts 1 through 284 of the indictment,
17 venue will be established with respect to a particular count
18 if you find, by a preponderance of the evidence, that at least
19 one of the defendants charged in the count you are considering
20 was first brought to or arrested in the Southern District of
21 New York in connection with that count. In other words, the
22 government must prove, by a preponderance of the evidence,
23 that when one or more of the defendants charged in the count
24 you are considering was first brought to or arrested in the
25 United States in connection with that count, that event took

1 place within the Southern District of New York.

2 Of course, in those counts between Count 1 and Count
3 284 where only one defendant is charged, you must find that
4 the government has proven venue as to that one defendant.

5 This requirement is met as long as at least one
6 defendant -- not necessarily all the defendants -- named in
7 the count you are considering was first brought into or
8 arrested in the United States within the Southern District of
9 New York.

10 I instruct you that Newburgh, New York, where Stewart
11 Air Force Base is located, is in Orange County, New York,
12 which is within the Southern District of New York. So too is
13 New York County, better known as Manhattan, which contains
14 both the United States Courthouse and the Metropolitan
15 Correctional Center.

16 Understand that venue must be independently proven by
17 a preponderance of the evidence for each of the 284 counts in
18 the indictment, from Counts 1 through 284. And whatever it is
19 you find to be the basis for venue in the Southern District of
20 New York, you the jury must unanimously agree on the specific
21 basis for your finding as to each count of the indictment
22 where venue is at issue. But if you find, as to any defendant
23 and as to any counts where venue is an issue, that venue has
24 not been proven, then you must find the defendant you are
25 considering not guilty as to that count.

1 As for the remaining counts of the indictment, that
2 is, Counts 285 to 302, the offense elements of which I will
3 tell you after we take our midafternoon break, venue is not an
4 issue separately before you.

5 We will take our midafternoon break at this point.

6 (Recess)

7 (Continued on next page)

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1 (In open court)

2 MR. COHN: Your Honor, was I mistaken or did you
3 allow them to take the materials home with them last night?

4 THE COURT: I did not allow them.

5 MR. COHN: Pardon?

6 THE COURT: I did not allow them.

7 MR. COHN: I thought I heard you say take them home,
8 and I probably missed the "don't."

9 (Pause)

10 (Jury present)

11 THE COURT: We're in the home stretch.

12 And we turn to the perjury counts with respect to
13 defendant Al-'Owhali. And yesterday I think I suggested that
14 you put the indictment aside, but do you have it with you?
15 Because with respect to these counts, we may want to refer to
16 the actual indictment itself. And if you're reading along
17 with me, I'm on page 128.

18 The third category of charges in the indictment --
19 the first is conspiracy, the second is the substantive
20 offenses -- the third category of charges in the indictment
21 are the perjury charges against the defendant Wadih El Hage
22 which are included in Counts 285 through 302. And defendant
23 El Hage has denied that he is guilty of these charges.

24 Counts 285 through 302 charge defendant Wadih El Hage
25 with making false declarations before a federal Grand Jury,

1 that is, with perjury. Simply stated, perjury is the willful
2 giving of false testimony, before a competent tribunal while
3 under oath, knowing the testimony is false as to a material
4 matter.

5 The indictment charges El Hage with 18 counts of
6 committing perjury before a federal Grand Jury, in violation
7 of a statute that provides in pertinent part, "[w]hoever under
8 oath ... in any proceeding before ... any ... Grand Jury of
9 the United States knowingly makes any false material
10 declaration" is guilty of a crime.

11 The administration of justice depends upon respect
12 for the sanctity of an oath. It is essential to the
13 administration of justice and the enforcement of the laws that
14 those called upon to testify before competent tribunals
15 empowered by law to administer oaths give truthful testimony.

16 This federal court is such a tribunal, and there are
17 other such bodies, such as a Grand Jury or a regular jury,
18 like yours. Witnesses appearing before such bodies, whether
19 voluntarily or under the compulsion of the subpoena, take an
20 oath or affirm that they will tell the truth, the whole truth,
21 and nothing but the truth, just as you have heard that oath or
22 affirmation administered in this courtroom to every witness
23 who testified before you.

24 Once under such an oath or affirmation, the witness
25 is bound to tell what he knows in answer to the questions

1 asked, for the purpose of bringing out the truth of the matter
2 under inquiry.

3 Now, please turn to Counts 285 and 302 of the
4 indictment. Actually, turn to page 70 of the indictment.

5 The government's allegations as to the background of
6 the investigation in connection with which defendant El Hage
7 testified and the alleged testimony he gave are detailed from
8 paragraphs 57 to 82 of the indictment.

9 I remind you that the indictment is not evidence, and
10 is just an accusation.

11 These counts charge that on or about September 24,
12 1997 and September 16, 1998, defendant El Hage committed
13 perjury by testifying falsely before a Grand Jury sitting in
14 this district. In the indictment, the underlined responses
15 are those which the government alleges are false material
16 declarations.

17 Now, you notice that on beginning on page 70,
18 paragraphs 57 and 58, and 59, 60, 61, 62, going on to
19 paragraph 64 on page 76, the indictment sets forth the
20 background of the alleged perjury, just as it has a background
21 prior to Count One, and this sets forth the government's
22 version of the context in which the alleged perjuries took
23 place. And you should read them. You should read those,
24 understanding that that is not evidence; that is part of the
25 indictment, which is an accusation, not evidence.

1 And then I am not going to read all of these, but I
2 will read 285, page 76, which says that, "On or about
3 September 24, 1997" -- and let me stop there, because you will
4 see some counts relate to the appearance before the Grand Jury
5 on that date and some relate to the appearance on September
6 16, 1998, and the first line of each count will tell you which
7 date is involved -- "in the Southern District of New York, the
8 defendant Wadih El Hage," and then it lists his aliases or
9 other names by which he is known, "having taken an oath to
10 testify truthfully in a proceeding before a Grand Jury sitting
11 in the Southern District of New York, unlawfully, willfully,
12 knowingly, and contrary to such oath, did make false material
13 declarations, to wit, he gave the following underlined
14 testimony."

15 And then you see the questions asked and the answers
16 given, and you will see that there is a letter in the margin,
17 A:

18 "Q. When was the last time you saw Usama Bin Laden in person?

19 "A. In '94."

20 And that's underlined. And as we have just said, in
21 the indictment the underlined responses are those which the
22 government alleges are false material declarations. And then
23 it continues, and you will see wherever there is an underlined
24 passage, that is the answer which the government contends is a
25 material false statement, and the initial in the margin

1 identifies which false statement is referred to and that
2 becomes important later when we turn to the special verdict
3 form.

4 To satisfy its burden of proof -- I'm on 129 -- as to
5 Counts 285 to 302, the government must prove beyond a
6 reasonable doubt each of the following elements, or parts, of
7 the crime of perjury.

8 First, that the testimony before the Grand Jury was
9 given while the defendant was under oath;

10 Second, that such testimony was false as set forth in
11 the indictment;

12 Third, that the matters as to which it is charged
13 that the defendant gave false testimony were material to the
14 issues under inquiry by the Grand Jury; and

15 Fourth, that such false testimony was given
16 knowingly.

17 These elements apply individually to each of Counts
18 285 to 302. Therefore, in order to sustain its burden of
19 proof as to any one of those counts, the government must
20 establish beyond a reasonable doubt each of these four
21 elements as to that count -- each of these four elements as to
22 that Count.

23 The first element of the offense that the government
24 must prove beyond a reasonable doubt is that the testimony
25 before the Grand Jury was given while the defendant was under

1 oath. With respect to the oath element -- that defendant El
2 Hage took an oath to testify truthfully -- the parties here
3 have stipulated -- and that's in the stipulation marked
4 Government Exhibit 189 -- that on or about September 24, 1997
5 and September 16, 1998, the defendant appeared before a Grand
6 Jury (impaneled in the Southern District of New York) and took
7 an oath to testify truthfully.

8 The second element that the government must prove
9 beyond a reasonable doubt is that the defendant testified
10 falsely. To satisfy this element, the government must prove
11 that a part of the testimony given by the defendant, as set
12 forth in each count of the indictment, was false. Remember
13 that the responses alleged by the government to be false are
14 underlined in the indictment.

15 An answer to a question is false when it is contrary
16 to the facts; that is, when it is not true. The truth or
17 falsity of an answer must be determined by the facts existing
18 at the time the answer was made.

19 In reviewing the testimony that is alleged to have
20 been false, you should consider such testimony in the context
21 of the sequence of questions asked and answers given. The
22 words used should be given their common and ordinary meaning
23 unless the context clearly indicates that a different meaning
24 was understood by both the questioner and the witness.

25 The burden is upon the government to establish beyond

1 a reasonable doubt that the declarations made or answers given
2 by defendant El Hage were in fact false.

3 Many of these counts contain answers given by the
4 defendant reciting more than one fact. It is not necessary
5 that the government prove that each of the factual statements
6 in a particular count were false. The government satisfies
7 its burden of proving falsity if it proves beyond a reasonable
8 doubt that any of the factual statements recited in the Count
9 are false.

10 However -- and this is important -- you may not find
11 defendant El Hage guilty of the count you are considering
12 unless you all agree, unanimously, that one particular answer
13 is false. It is not enough that you all believe that some
14 answer given by the defendant is false; that is, you cannot
15 find the defendant guilty if some of you think that only
16 answer A is false and the rest of you think that only answer B
17 is false. There must be at least one specific answer in the
18 count you are considering that all of you believe beyond a
19 reasonable doubt is false before you may find the defendant
20 guilty on that count. Your unanimous finding must, for each
21 count, be indicated in the appropriate place on the special
22 verdict form.

23 If you find that a particular question was imprecise
24 or ambiguous -- that is, subject to more than one
25 interpretation -- and that the defendant truthfully answered

1 one reasonable interpretation of the question under the
2 circumstances presented, then such answer would not be false.
3 Similarly, if you find that the question was clear but the
4 answer was imprecise or ambiguous, and one reasonable
5 interpretation of such answer would be truthful, then such
6 answer would not be false.

7 In deciding whether or not the defendant's answers
8 are false, the answer must be given their natural meaning in
9 the context in which the words were used. If you find that an
10 answer given by the defendant was literally true, but
11 unresponsive to the question asked, you may not find the
12 answer false or find the defendant guilty because of it. As
13 long as a statement, or a reasonable interpretation of a
14 statement, is narrowly or literally true, there can be no
15 finding of guilt on that count. This is so even if you find
16 that the answer was intentionally misleading.

17 Defendant El Hage does not have the burden of proving
18 imprecision or ambiguity; nor does he have the burden of
19 establishing that an answer was literally true. Rather, the
20 government always has the burden of proving beyond a
21 reasonable doubt that the defendant's answers were false, and
22 intentionally so.

23 The third element that the government must establish
24 beyond a reasonable doubt is that the matters as to which it
25 is charged that defendant El Hage made false statements were

1 material to the issues under inquiry by the Grand Jury.

2 A false statement is material if it had the natural
3 or probable effect or tendency to impede or dissuade the Grand
4 Jury from pursuing its investigation. To find that the
5 testimony was material you need not find that it did in fact
6 influence the decision of the Grand Jury. You need only find
7 that it was capable of influencing that decision.

8 The fourth and final element that the government must
9 prove beyond a reasonable doubt is that the defendant gave
10 those false answers knowingly. That is, the government must
11 prove beyond a reasonable doubt that at the time the false
12 answers were given, the defendant knew and believed that his
13 answers were false and that he purposely or intentionally gave
14 the false answers, and that the false answers were not given
15 because of confusion, mistake, or faulty memory.

16 The requirement that you find that the defendant
17 acted knowingly means that you may not find the defendant
18 guilty of perjury simply because the defendant gave testimony
19 which is factually incorrect. A person may give incorrect
20 testimony because of an honest mistake of fact, confusion,
21 haste, oversight, or carelessness. If the defendant made an
22 erroneous and incorrect statement due to a slip of the tongue
23 or bad memory or through misunderstanding, he would not be
24 guilty of making the false statement knowingly. It is not the
25 defendant's burden to establish mistake or error; rather, the

1 government must prove beyond a reasonable doubt that the
2 defendant intentionally made false statements. If, however,
3 you find that the government has proven beyond a reasonable
4 doubt that the defendant intentionally made false statements,
5 then this element is satisfied.

6 Your decision whether the defendant acted knowingly
7 in making any statements you find to be false involves a
8 decision about the defendant's state of mind at the time the
9 statements were made. As I explained earlier, it is obviously
10 impossible to ascertain or prove directly what the operation
11 of the defendant's mind was. But a wise and intelligent
12 consideration of all the facts and circumstances shown by the
13 evidence and the exhibits in the case may enable you to infer
14 with a reasonable degree of accuracy what the defendant's
15 state of mind was.

16 In our everyday affairs, we are continuously called
17 upon to decide from the actions of others what their state of
18 mind is. Therefore, you may rely in part on circumstantial
19 evidence in determining the defendant's state of mind.

20 Proof of the circumstances surrounding the
21 defendant's actions can supply an adequate basis for finding
22 that the defendant acted knowingly. The actions of an
23 individual must be set in their time and place. The meaning
24 of a particular act may depend on the circumstances
25 surrounding it. Thus, you may consider evidence which you

1 recall and believe about the defendant's actual knowledge of
2 certain facts and occurrences, the extent to which statements
3 may have been made to conceal facts or events, and, in
4 general, the manner in which certain actions were undertaken
5 by the defendant and by others with his knowledge.

6 You may consider whether the defendant had a motive
7 to lie or conceal the facts. The government is not required
8 to prove the existence of such a motive, let alone exactly
9 what the motive was. On the other hand, the absence of any
10 motive may be relevant as well to your determination whether
11 the government has proven beyond a reasonable doubt that the
12 defendant committed perjury. The government's failure to
13 prove a motive does not establish lack of guilt. But if you
14 do find evidence of a motive, that may help you decide what
15 the defendant's state of mind was. Therefore, you may ask
16 yourselves whether the defendant stood to further any purpose
17 by concealing the truth.

18 Your unanimous verdict as to each of the perjury
19 counts must be indicated on the special verdict form.

20 And let's have before us the indictment, Count 285,
21 page 76, and the special verdict form, page 44.

22 The special verdict form says: Do you find that
23 defendant Wadih El Hage is guilty or not guilty of this
24 offense? And check whichever box you unanimously find to be
25 the case.

1 If you find defendant El Hage not guilty as to Count
2 285, skip the following question. If you find defendant El
3 Hage guilty as to Count 285, you must answer the following
4 question because there must be at least one specific answer
5 that all of you believe beyond a reasonable doubt is false
6 before you may find defendant El Hage guilty of Count 285.

7 Then it says: The following letters correspond to
8 the statements or answers set forth in the indictment. Of
9 these seven statements or answers, indicate all as to which
10 you unanimously have found falsity beyond a reasonable doubt.

11 So if you look at page 76, the first question under A
12 in the margin: "When was the last time you saw Usama Bin
13 Laden in person? Answer: "In '94." And if you unanimously
14 find that answer to be false, then you check in the A.

15 And then go on to B, and you see the answer there.

16 The question is B:

17 "Q. Are you positive?

18 "A. Yes.

19 "Q. Under oath your testimony is that you have not seen Usama
20 Bin Laden in 1995, 1996 or 1997; is that correct?

21 "A. Yes."

22 And if you unanimously find that to be false, then
23 you check B, and so on with respect to each of the initialed
24 and underlined answers. If there is no answer which you
25 unanimously find to be false, then you must find defendant El

1 Hage not guilty on Count 285. And that you will see is the
2 pattern with respect to each of the remaining counts of the
3 indictment going through Count 302, and the instructions that
4 I gave you and as to the elements of the crime and how you are
5 to complete the jury form applies to all of those. And I'm
6 finished except to talk about how we proceed from here on.

7 First let's talk about seeing exhibits and hearing
8 testimony.

9 If during your deliberations you want to see any of
10 the exhibits, they will be sent to you in the jury room upon
11 request. If you want any of the testimony read, that can also
12 be done. But, please remember that it is not always easy to
13 locate what you are requesting, so try to be as specific as
14 possible when asking for an exhibit or portions of testimony
15 you may want to hear.

16 Your requests for exhibits and testimony -- in fact,
17 any communication with the Court -- should be in writing,
18 signed by the foreperson, and given to one of the marshals. I
19 will respond to any questions or requests you have as promptly
20 as possible, either in writing or by having you return to the
21 courtroom so that I can speak to you in person. In any event,
22 do not tell me or anyone else how the jury stands on the issue
23 of any defendant's guilt as to any count until after a
24 unanimous verdict is reached on all counts.

25 Let me deviate from the text. Occasionally one gets

1 a note from a jury and which says, "We're nine to three on
2 Count Four and what we would like to know is ..." Until you
3 have reached a unanimous verdict, the status of your
4 deliberations in the jury room are for you and you alone.

5 Now, each of you has been provided with a copy of the
6 indictment to use during your deliberations. I remind you
7 that the indictment itself is not evidence. It merely
8 describes the charges made against each defendant and is the
9 means by which each defendant was formally notified of the
10 charges against him. It may not be considered by you as
11 evidence of the guilt of a defendant. Only the evidence or
12 lack of evidence decides that issue.

13 Moreover, you should rely upon my instructions, not
14 the indictment, in determining whether or not the government
15 has proven a charge beyond a reasonable doubt. If you find a
16 conflict between the language of the indictment and my
17 instructions, you are to rely on my instructions.

18 Many of you have, to my encouragement, taken notes
19 periodically throughout this trial. I want to emphasize to
20 you, as you are about to begin your deliberations, the notes
21 are simply an aid to memory. Notes that any of you may have
22 made are solely for the use of the note taker and are not to
23 be given any greater weight or influence in determination of
24 the case than the recollections or impressions of other
25 jurors, whether from notes or memory, that is, with respect to

1 the evidence presented or what conclusions, if any, should be
2 drawn from such evidence. Any difference among the jurors as
3 to what the record contains should be settled by asking the
4 court reporter back to read the transcript, for it is the
5 court record, rather than any juror's notes, upon which you,
6 the jury, must base your determination of the facts in your
7 verdict.

8 Let me reiterate a point I emphasized at the outset
9 of these instructions. Your function now is to weigh the
10 evidence in the case and to determine whether the government
11 has proven each defendant guilty beyond a reasonable doubt,
12 solely on the basis of such evidence or lack thereof.
13 Punishment should not, in any sense, enter into or influence
14 your deliberations. Under your oath as jurors, you cannot
15 allow a consideration of the punishment which may be imposed
16 upon the defendants, if they are convicted, to influence your
17 verdict in any way or, in any sense, to enter into your
18 upcoming deliberations.

19 To prevail, the government must prove the essential
20 elements by the required degree of proof, as already explained
21 in these instructions. If it succeeds, your verdict should be
22 guilty; if it fails, it should be not guilty. To report a
23 verdict, it must be unanimous.

24 Your function is to weigh the evidence in this case
25 and determine whether or not each defendant is guilty, solely

1 on the basis of such evidence.

2 Each juror is entitled to his or her opinion; each
3 should, however, exchange views with his or her fellow jurors.
4 That is the very purpose of jury deliberations -- to discuss
5 and consider the evidence, to listen to the arguments of
6 fellow jurors, to present your individual views, to consult
7 with one another, and to reach an agreement based solely and
8 wholly on the evidence or lack of evidence -- if you can do so
9 without violence to your own individual judgment.

10 Each of you must decide the case for yourself, after
11 consideration with your fellow jurors, of the evidence in this
12 case. But you should not hesitate to change an opinion which,
13 after discussion with your fellow jurors, appears erroneous.
14 However, if, after carefully considering all the evidence and
15 the arguments of your fellow jurors, you entertain a
16 conscientious view that differs from the others, you are not
17 to yield your conviction simply because you are outnumbered.

18 Your final vote must reflect your conscientious
19 conviction as to how the issues should be decided. Your
20 verdict as to each defendant with respect to each count,
21 whether guilty or not guilty, must be unanimous.

22 Although I know that it is not necessary, it is the
23 tradition of this court that the judge advise the jurors they
24 are to be polite and respectful towards each other in the
25 course of their discussions in the jury room so that each

1 juror may have his or her position made clear, and so that
2 when you do reach a verdict, you will know that it is a just
3 one.

4 In addition to rendering a verdict on whether each
5 defendant has or has not been proven guilty, as I have already
6 explained to you, I am asking you to fill out a special
7 verdict form which contains a series of questions. Each of
8 you has a copy of the special verdict form. Please note,
9 however, that the foreperson -- and it's the tradition in this
10 Court that Juror No. 1 serves as the foreperson -- that the
11 foreperson's copy is to be used as the official record of your
12 verdict and findings. After all of you agree on the answers
13 to the questions in the special verdict form, the foreperson
14 should write the answer in the official copy of the verdict
15 form. The foreperson's juror number and the date should be
16 written on each page of the verdict form as it is completed.

17 And again, with respect to the designation of the
18 foreperson, it's the practice of this court that the juror in
19 seat number one serves as the foreperson of the jury. The
20 function of the foreperson is to preside over the
21 deliberations, to take and tally the vote, and report the
22 verdict to the court.

23 I again say, do not, in any note sent prior to
24 reaching a unanimous verdict, say how the jury may be divided
25 at the time the note is sent.

1 When you reach a verdict, the foreperson should then
2 send me a note stating that you have reached a verdict. Do
3 not specify what the verdict is in the note. Instead, the
4 foreperson should retain the verdict form and hand it to us in
5 open court when you are all called in. The verdict must be
6 unanimous.

7 You should be in agreement with the verdict that is
8 announced in court. Once your verdict is announced by the
9 foreperson in open court and officially recorded, it cannot
10 ordinarily be revoked.

11 Now I would ask the -- not knowing names, you will
12 forgive me -- the four people seated in the last row, do you
13 have belongings in the jury room? Would you retire now to the
14 jury room and come back, and then I'll have some special
15 instructions for you. But take whatever it is that you wish
16 to take.

17 Mr. Kenneally, will you swear the marshal, please.

18 (Marshal sworn)

19 MR. SCHMIDT: Your Honor, may we approach for a
20 moment?

21 (Continued on next page)

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1 (At the sidebar)

2 MR. SCHMIDT: I know it's been a long time, but I'm
3 not sure if we have the right first alternate or not.

4 THE COURT: Excuse me?

5 MR. SCHMIDT: I'm not sure if we have the first
6 alternate.

7 MR. KARAS: We do, yes. That is the first alternate.

8 MR. SCHMIDT: Okay. I just wanted to make sure.
9 Okay.

10 THE COURT: I'm following literally the rules, that
11 in the order in which called. Yes.

12 MR. SCHMIDT: Okay.

13 (Continued on next page)

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1 (In open court)

2 THE COURT: So the procedure will be, you will be in
3 what is usually the jury room and there will be a marshal just
4 outside and he will take your notes. And we'll be here
5 awaiting any questions that you have or requests for evidence
6 or anything else that you want to tell us, and we'll respond
7 to them.

8 And as I said to you a while ago, you decide. If it
9 gets to be 4:30 and you think it's time to go home and a good
10 night's sleep is the best thing, that's fine. If you want to
11 stay beyond that a reasonable period of time, that's okay,
12 too.

13 I think that I'm -- if you are aboard a ship, there's
14 a time when the captain turns the command over to the pilot
15 and the pilot then decides. Well, this is the moment when I
16 turn such matters over to you, except that tomorrow we stop at
17 3:30.

18 (Alternates return to the courtroom)

19 THE COURT: All right, ladies and gentlemen, you may
20 then --

21 You may be seated, and you may then retire to the
22 jury room and begin your deliberations.

23 (The jury retired to deliberate upon a verdict at
24 3:45 p.m.)

25 THE COURT: I'm probably going to repeat some of the

1 things that I said to you the other day, but they're very
2 important, so if I am repeating, please forgive me.

3 You are still on this jury, which means that we may
4 call you at any time to tell you that, with respect to the
5 deliberations in which the jurors who have just left are
6 engaged, that one of them has become unavailable, and you will
7 have to step in. And so that you are on call and waiting.
8 The marshal will check that we have your daytime and nighttime
9 telephone number so that we can reach you.

10 Now, after this jury completes its deliberations and
11 renders its verdict, there may be a second trial dealing with
12 issues of punishment, and if and when that happens, we will
13 call on you again and you will sit on that jury. I can't tell
14 you when that will be. I can't tell you if, or when, that
15 will be. And I know that that leaves you somewhat in limbo,
16 and I appreciate that.

17 We will, as you have seen during this trial, we
18 really make efforts to move things as rapidly as justice will
19 permit and the interests of the parties will permit, and we'll
20 continue to do that.

21 But you are excused in the sense that you do not have
22 to come to court tomorrow or again, unless and until you are
23 called. And we will call you if you are no longer on call for
24 any reason; we will let you know.

25 Now, because you are still on the jury, I ask that

1 you adhere to the instructions that I have given to everybody
2 else on the jury, and that is that you not listen to anything,
3 talk to anybody, or do anything which is inconsistent with
4 your being on the jury. And I thank you very much and you are
5 excused.

6 MR. COHN: Your Honor, may I just see you for one
7 second?

8 THE COURT: Yes.

9 (Continued on next page)

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1 (At the sidebar)

2 MR. COHN: I just think because of the nature of
3 what's going on, that you ought to stress to them that they
4 not even express opinions to themselves, between themselves
5 about the case; they're not to sort of pre-deliberate, if you
6 know what I mean. I think there's a tendency they might want
7 to do that.

8 (Continued on next page)

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1 (In open court)

2 THE COURT: I just want to remind you that I told the
3 jurors that they should not discuss the case even amongst
4 themselves until they have heard the charge and began their
5 deliberations, and I would ask you also to refrain from any
6 expression of your views as to how the case should be decided,
7 or anything about the case until we advise you that it is all
8 over and that you are not on all.

9 Thank you very much, and you are excused.

10 You can leave your material in the jury room. Just
11 leave it in the jury room.

12 (Alternates excused)

13 THE COURT: Now, the rules in the Second Circuit are
14 painfully clear that if the judge receives a note from the
15 jury, even on the most routine matters, the court has an
16 obligation to confer with counsel before responding. And
17 nothing is more frustrating than to get a note from the jury
18 and discover that some counsel has wandered to the cafeteria
19 or elsewhere and you can't respond. It's especially
20 frustrating when the note says "we have reached a verdict,"
21 but any such notes.

22 We have an abundance of attorneys around the table,
23 and I do direct that there be one representative of each party
24 in the courtroom at all times when the jury is in session.

25 Anything else?

1 MR. SCHMIDT: Your Honor, we have a room available to
2 counsel on the third floor that's right around the bend and we
3 have our telephone numbers. Would it be possible if we could
4 remain in the counsel's room?

5 THE COURT: And there's a direct line from that to
6 the --

7 MR. SCHMIDT: Yes.

8 THE COURT: And on the assurance that the call comes,
9 somebody will promptly come?

10 MR. SCHMIDT: Absolutely.

11 THE COURT: Yes.

12 MR. SCHMIDT: Thank you.

13 THE COURT: All right. I guess we will await the
14 jury.

15 I received a request from members of the press to
16 meet with me about logistics about the verdict, and I'll be
17 glad to meet with you in the robing room. Otherwise, we're in
18 recess until we hear from the jury.

19 (Recess pending verdict)

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1 (Time noted, 4:30 p.m; defendants and jury not
2 present)

3 THE COURT: I am bringing the jury in to tell them
4 they can go home and just to caution them not to begin
5 deliberating until they are all assembled. Their note
6 requests the following in order to begin deliberations, and
7 lists by exhibit number the 19 exhibits that they want to
8 begin, including the El Hage grand jury testimony,
9 Government's Exhibit 6 -- take a look at it and we will make
10 copies.

11 (Defendants and jury present)

12 THE COURT: Thank you for your note. It was very
13 helpful to us. We will compile all this material and
14 hopefully it will be available to you tomorrow.

15 You ask for the Nike bag and contents. We will send
16 that in. We will also send in a box of rubber gloves so that
17 you will have the rubber gloves.

18 The main reason I brought you back was to tell you
19 that tomorrow morning -- the law is very strict that the jury
20 can't deliberate unless all of the jurors are present. We
21 don't want to have little groups. Therefore, tomorrow morning
22 when you arrive -- you all arrive together, don't you, so it
23 really isn't a problem. If for any reason you are not all
24 together, let me know, and don't deliberate, don't discuss the
25 case unless you are all present.

1 Have a good evening. We are adjourned until 10:00
2 a.m. tomorrow.

3 I just say, if at some point you would like to start
4 earlier, that is up to you also. But don't spend two weeks
5 debating that. Have a good evening.

6 (Jury excused)

7 MR. KARAS: There were some exhibit numbers that were
8 listed that refer to what the exhibit was that don't match.
9 For instance, there was a request for Government's Exhibit
10 257A. There is no 257A. There is a 257, which is a map.

11 THE COURT: I guess we should get together tomorrow
12 to deal with any problems that may arise in complying with the
13 note at 9:30. Will you make sure, Miss Gasiorowski, that Mr.
14 Cohn knows that we are going to meet at 9:30 tomorrow morning
15 to deal with any problems that may arise in connection with
16 responding to it?

17 MS. GASIOROWSKI: Yes, your Honor.

18 THE COURT: Otherwise we are adjourned until 9:30
19 tomorrow morning.

20 (Proceedings adjourned until 9:30 a.m., Friday, May
21 11, 2001)

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