

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

4 v.

S(7) 98 Cr. 1023

5 USAMA BIN LADEN, et al.,

6 Defendants.

7 -----x

8

New York, N.Y.
June 25, 2001
9:40 a.m.

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12 Before:

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HON. LEONARD B. SAND,

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District Judge

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APPEARANCES

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Southern District of New York
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1 (Trial resumed)

2 (Jury not present)

3 MR. GARCIA: Judge, the last witness on Thursday was
4 Charles Quenzer, the chemist. At the end of his cross there
5 is some confusion in the record as to Q numbers he tested
6 versus items that were actually introduced as evidence in the
7 courtroom. It is the impression from reading the transcript,
8 at least it is a fair reading, that the only items that tested
9 positive for hot sauce, to use the shorthand term, were the
10 ones that were seen in the courtroom here, which in fact is
11 not the case. There were a total of 11 items of clothing that
12 tested positive for hot sauce. So the government wants to
13 bring him back, either on redirect or recall, whichever is
14 easiest. He is here this morning to take the stand and clear
15 up that there were other items.

16 THE COURT: Any problem?

17 MR. RUHNKE: No problem as long as the questioning is
18 not set up to make it look like I was misleading the witness.

19 THE COURT: Just ask him.

20 MR. GARCIA: And I may lead him a little.

21 THE COURT: All right.

22 MR. RUHNKE: I gather our requests to charge, I
23 recall that any additional requests to charge were due today
24 in the penalty phase. Frankly, I have not had a chance to
25 even look at it. I don't think there is going to be much

1 controversy on this, but I would like an opportunity to see
2 what the government submits and maybe submit something later
3 in the week, if that's all right.

4 THE COURT: The jury has the Al-'Owhali death penalty
5 charge. I think they physically have that. One thing that we
6 should all wonder is whether one should go through it again,
7 and I am leaning slightly in favor of that, or whether one
8 should just say the law is the same and these are the changes.
9 It is easy to do it either way, but give it some thought.

10 MR. RUHNKE: Our preference is that you instruct the
11 jury fully.

12 THE COURT: So that the charge here would be a
13 self-contained document. I am leaning in that direction.
14 Anybody have a contrary view?

15 MR. FITZGERALD: No. We are leaning to the
16 self-contained new charge.

17 THE COURT: We will do it that way.

18 In terms of timing, I got a message that there is a
19 possibility that the defense may rest on Thursday.

20 MR. RUHNKE: Yes. We are trying to time this out and
21 we think that we should be done with our presentation by
22 Thursday. Depending on rebuttal that the government may or
23 may not bring forward, I see no reason why we shouldn't be
24 summing up to the jury by Monday, a week from today.

25 THE COURT: In any event we will not sit on Friday?

1 MR. RUHNKE: We very much prefer not to, your Honor.

2 THE COURT: All right.

3 MR. FITZGERALD: Just on scheduling, your Honor, the
4 government as always is uncertain about the length of
5 rebuttal. As we noted, we are saving rebuttal to the
6 mitigating factors till later because we don't know what all
7 the proof will be.

8 THE COURT: The only question is whether I should
9 alert the jury to the fact that we might sit on Friday, and I
10 will not do that.

11 Mr. Ruhnke, you wrote concerning the MCC's refusal to
12 allow Mr. Mohamed's in-laws to visit with him, and I checked
13 with Miss Raia, who says that that is a policy in the SAMS
14 themselves, not specially invoked with respect to Mr. Mohamed,
15 and that the MCC sees no reason why there should be a
16 deviation from its uniform rules. Nor do I.

17 MR. RUHNKE: Your Honor, this is a one-time ever
18 deviation that we are asking for with regard to the specific
19 SAM that applies to Mr. Mohamed, based on unique
20 circumstances, unusual circumstances. His family lives
21 thousands of miles from here and we are asking for one
22 opportunity for him to meet not only with his immediate family
23 as defined by the SAM but also the husbands and wives of his
24 siblings. These are people he knows, and, frankly, may never
25 see again.

1 THE COURT: Does the government have any view on the
2 matter?

3 MR. FITZGERALD: We see no reason to vary from the
4 SAMS. We have no authority to vary from the SAMS and don't
5 see a reason to.

6 THE COURT: They are going to be witnesses?

7 MR. RUHNKE: Yes, your Honor.

8 THE COURT: They came here for purposes other than
9 visiting with Mr. Mohamed.

10 MR. RUHNKE: That is right.

11 THE COURT: Does the government have any objection if
12 the day they testify -- and the question really should -- I
13 would like some marshal input on that also -- they meet
14 briefly with him in the cell here?

15 MR. FITZGERALD: May I have a moment.

16 Your Honor, we do have an issue that we may need to
17 see the court about ex parte.

18 THE COURT: Relevant to what we are discussing now?

19 MR. FITZGERALD: Yes.

20 THE COURT: I thought that might be a way of not
21 deviating for many SAMS but allowing relatives to say goodbye
22 to each other. I will see you in the robing room.

23 (Continued on next page)

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1 (Page 8008 sealed)

2 (In open court; not present)

3 MR. FITZGERALD: Your Honor, since it is clear that
4 the government will rest today on its main case for this
5 phase, there is one more stipulation matter that we need to
6 work out with Mr. Ruhnke that requires the court's
7 involvement, so we can deal with that in one of the breaks.

8 (Continued on next page)

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1 (Jury present)

2 THE COURT: The government may call its next witness.

3 MR. GARCIA: The government recalls Charles Quenzer.

4 CHARLES QUENZER, recalled.

5 THE COURT: Mr. Quenzer, the court reminds you you
6 are still under oath. You may be seated.

7 THE WITNESS: Thank you, your Honor.

8 DIRECT EXAMINATION

9 BY MR. GARCIA:

10 Q. Good morning, Mr. Quenzer.

11 A. Good morning.

12 Q. Mr. Quenzer, I wanted to clear something up from your
13 testimony last Thursday. You tested a number of items of
14 clothing for the presence of chemicals consistent with hot
15 sauce; is that correct?

16 A. That is correct.

17 Q. Can you tell us the total number of items of clothing that
18 you tested for that?

19 A. The total number of items of clothing were 19. Eighteen
20 were in one laboratory submission, the other one was in
21 another laboratory submission.

22 Q. Of those 18 plus 1, the 19 items of clothing, how many in
23 fact tested positive for a chemical compounds commonly found
24 in hot sauce?

25 A. Of the total 19 items, 11 items tested positive for

1 capsaicin and dyhydrocapsaicin, which are the two capsaicins
2 present in compounds which are common to hot sauce.

3 Q. I would like to show you Government's Exhibits for
4 identification 4304 and 4301 and just ask you if those are two
5 of the items that you examined for the presence of hot sauce?

6 A. Yes, they are.

7 Q. Are those two of the items that tested positive for those
8 two chemicals?

9 A. Yes, both of these items tested positive for the two
10 capsaicins.

11 MR. GARCIA: I have nothing further, Judge.

12 CROSS-EXAMINATION

13 BY MR. RUHNKE:

14 Q. Mr. Quenzer, do you have your notes in front of you about
15 what you tested and the results?

16 A. Yes, I do.

17 Q. Would you bring them out, please.

18 A. Yes, sir.

19 Q. Did you test item Q48 for the presence of hot sauce?

20 A. Q48 item was not tested for the presence of hot sauce.

21 Q. Did you test item Q51 for the presence of hot sauce?

22 A. Q51 item was not tested for the presence of hot sauce.

23 Q. Q52 item tested for the presence of hot sauce or not?

24 A. The Q52 item was not tested for the presence of hot sauce.

25 Q. Q53?

1 A. Was not tested for the presence of hot sauce.

2 Q. Q54?

3 A. Was not tested for the presence of hot sauce.

4 Q. Q55 through Q61?

5 A. Was not tested for the presence of hot sauce.

6 Q. Q62 and 63?

7 A. Were not tested for the presence of hot sauce.

8 Q. Who made the decision as to what items to test?

9 A. The decision as to what items to test generally comes from
10 the contributor of the items of evidence, through a request in
11 an incoming letter.

12 Q. It was not your decision, basically you were asked to test
13 certain items?

14 A. That is correct.

15 Q. And you tested the items that you were asked to test; is
16 that right?

17 A. That is correct.

18 MR. RUHNKE: Thank you. I have no more questions.

19 REDIRECT EXAMINATION

20 BY MR. GARCIA:

21 Q. You stated that was generally the case, Mr. Quenzer, that
22 the people submitting the samples to the labs would make the
23 decisions as to what would be tested?

24 A. With all laboratory specimens there is usually an incoming
25 letter from the contributor requesting certain exams regarding

1 the evidence that they sent in.

2 Q. In this case did the lab itself make decisions not to test
3 certain items based on lab criteria?

4 A. The laboratory itself didn't make any decisions not to
5 test items, no.

6 Q. Was the lab asked to test certain other hot sauce bottles
7 for the presence of these chemicals?

8 A. The laboratory, we were requested to test items 85, 86 and
9 87, the containers, for latent fingerprints, and the contents
10 of the bottle. Those contents within that bottle were
11 inventoried and physically observed. As I stated before, they
12 were three of the items that were not chemically tested.

13 Q. But there was a request initially to test those items?

14 A. Yes, there was a request to test those items.

15 Q. You mentioned Q86. Is that Q86?

16 A. This is Q86.

17 Q. Is that one of the items that there was a request to test?

18 A. Yes.

19 Q. Again, that decision not to test this item, where was that
20 made?

21 A. The decision not to test that item was made by myself. It
22 wasn't a laboratory decision.

23 MR. GARCIA: Thank you.

24 MR. RUHNKE: Nothing further.

25 THE COURT: Thank you, sir. You may step down.

1 (Witness excused)

2 THE COURT: The government may call its next witness.

3 MR. GARCIA: The government calls Joe Foelsch.

4 JOSEPH FOELSCH, recalled.

5 THE COURT: Mr. Foelsch, the court reminds you you
6 are still under oath.

7 DIRECT EXAMINATION continued

8 BY MR. GARCIA:

9 Q. Agent Foelsch, I will handing you what has been entered
10 into evidence as Government's Exhibit 4050. What is that
11 document that you have in front of you, 4050?

12 A. This is a document that was recovered in cell number 6
13 that I had read previously in court.

14 Q. What language is that?

15 A. English.

16 Q. Did there come a time when the investigative team made a
17 decision to submit that document for handwriting analysis?

18 A. Yes.

19 Q. The known samples of which individuals were submitted for
20 comparison with that document?

21 A. Salim and El Hage.

22 Q. Were Khalfan Mohamed's known samples submitted for
23 comparison purposes?

24 A. No.

25 Q. Why not?

1 A. Looking at that and looking at the samples we had of Salim
2 and El Hage, we thought it was Salim.

3 Q. Was the handwriting analyst able to match that writing
4 with Salim?

5 A. No.

6 Q. Was it inconclusive?

7 A. Yes.

8 Q. After receiving that, did you have it tested or compared
9 to Khalfan Mohamed's known handwriting?

10 A. No.

11 Q. Why not?

12 A. We didn't believe he wrote it.

13 Q. Did you have any comparison of the Arabic documents done,
14 any of the Arabic documents seized in this case, with known
15 samples of Arabic writing?

16 A. No.

17 Q. Why was that?

18 A. We were informed there were no experts that could do that.

19 MR. GARCIA: I have nothing further.

20 CROSS-EXAMINATION

21 BY MR. RUHNKE:

22 Q. Mr. Foelsch, the exhibit we are talking about, 4050, is
23 that the one that begins we are the Muslims falsely accused or
24 words to that effect?

25 A. Yes.

1 Q. Can you tell us today or can you tell us, tell the jury or
2 tell anyone where that note was recovered from?

3 A. Cell number 6.

4 Q. Cell number 6, as we have seen the photographs, there were
5 large blue containers which were themselves filled with
6 documents; is that correct?

7 A. Some were filled with documents, yes.

8 Q. Do you know whether the note came out of one of those
9 containers?

10 A. No, sir.

11 THE COURT: You do not know or it did not?

12 THE WITNESS: I do not know.

13 Q. Do you know whether the note was buried under three feet
14 of paper or sitting on top of something?

15 A. I do not know.

16 Q. Is there anyone in the FBI who does know?

17 A. Not to my knowledge.

18 MR. RUHNKE: Nothing further.

19 MR. GARCIA: Nothing, Judge.

20 THE COURT: Thank you. You may step down.

21 (Witness excused)

22 MR. FITZGERALD: The government calls Samuel
23 Baechtel, B-A-E-C-H-T-E-L.

24 (Continued on next page)

25

1 FRANK SAMUEL BAECHEL,
2 called as a witness by the government,
3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FITZGERALD:

6 Q. Sir, could you tell the jury what you do for a living.

7 A. Yes. I am a forensic examiner in DNA analysis unit number
8 1 with the FBI laboratory in Washington.

9 Q. Can you tell the jury what your educational background is.

10 A. Yes. I have a bachelor's degree in biology and chemistry,
11 a master's degree and a Ph.D in buy chemistry.

12 Q. What did you do for work prior to joining the FBI?

13 A. For a number of years I was on the faculty of a medical
14 school in Dallas, Texas, one of the University of Texas
15 medical schools.

16 Q. For how long did you reach at the medical school?

17 A. I was there between 12 and 13 years, 12 and a half years.

18 Q. When did you join the FBI?

19 A. In July of 1982.

20 Q. Tell us your experience in your first 12 years with the
21 FBI. What did you do?

22 A. For about the first 12 years I was with the FBI
23 laboratory, I was part of our laboratory's research and
24 training unit, and my responsibilities while in that unit were
25 really in two areas. Number one was the research aspect, in

1 which I was developing methodology that could be used in our
2 laboratory or adapting methods from other fields so they could
3 be used in our forensic laboratory, and also exported to other
4 labs. Initially, that involved genetic typing, identification
5 of body fluid, tests, and in 1987 I became part of the
6 research team that developed the first DNA type of methods for
7 use in the forensic lab. I left the research unit at the end
8 of 1994 and joined the DNA analysis number 1 at the end of
9 that year, 1994.

10 Q. During the 12 years that you were involved with the
11 research unit and since 1995 when you have been examiner, have
12 you received specialized training while at the FBI?

13 A. Yes. Initially I went through the course that taught some
14 of the aspects of the genetic typing of what was typed at that
15 time. Since that time, additional courses in biology,
16 statistics as it applies to DNA typing, and I attend a number
17 of meetings throughout the years.

18 Q. Have you conducted research studies in the field?

19 A. Yes, sir.

20 Q. Approximately how much how many?

21 A. How many research studies?

22 Q. Yes.

23 A. I don't know the number of studies. It resulted in, I
24 believe, 41 publications in scientific literature.

25 Q. Have you taught classes over the years in DNA?

1 A. Yes. While in the research and training unit, one of the
2 other responsibilities besides research was training, that is,
3 teaching not only people in our own laboratory DNA typing
4 methods but also people from laboratories around the United
5 States and other countries. Over the years it amounted to 500
6 and some students.

7 Q. Have you testified as a DNA forensic profiler in the past?

8 A. Yes, sir.

9 Q. Approximately how many times?

10 A. Forty-eight times prior to today.

11 MR. FITZGERALD: Your Honor, I would offer

12 Mr. Baechtel as an expert in forensic DNA.

13 MR. RUHNKE: Without objection.

14 THE COURT: Very well.

15 Q. Mr. Baechtel, could you briefly explain to the jury what
16 DNA is.

17 A. Yes, sir. DNA is the genetic code that is in the center
18 of our cells, the nucleus that codes, directs the manufacture
19 of what we are. Directly it codes for the production of
20 proteins, but those proteins make each one of us what we are.

21 Q. How does DNA differ from person to person?

22 A. Everyone's DNA is slightly different. There is much DNA
23 that is the same for each person. After all, we each have to
24 have two eyes, two ears, a number of features in common. But
25 there are differences in the DNA codes of each of us, unless

1 we have an identical twin. An identical twin will have the
2 same DNA code.

3 Q. How can the differences in DNA from one person to another
4 be detected?

5 A. The methods that we use in the forensic laboratory detect
6 differences at 13 different locations in a person's DNA, and
7 these differences make themselves known to us as differences
8 in lengths of pieces of DNA at those specific locations.

9 Q. Can you perform DNA testing on dry body fluid stains?

10 A. Yes, sir. That is in fact the preferred starting
11 material.

12 Q. What else can you perform DNA testing on besides dry body
13 fluid stains?

14 A. Any piece of biological tissue that contains cells that
15 have nuclei are suitable. That would include cells from the
16 inside of the mouth that you find in saliva, cells that rub
17 off your forehead onto a baseball cap that you are wearing,
18 cells that rub off into the back of your shirt that you have
19 been wearing all day. Really, any biological material is
20 suitable target for DNA typing.

21 Q. How are DNA profiles applied in the forensic context such
22 as examining items from a crime scene?

23 A. The DNA typing in the forensic area is a comparison. You
24 are probably familiar with comparisons that the ballistics
25 laboratory does. If they want to know that a particular

1 bullet could have been fired from a certain weapon, they
2 compare markings on that bullet with the ability of that
3 weapon to put those markings on that bullet. So it's a
4 comparison. DNA typing is exactly the same. We develop DNA
5 profiles from evidence items, from blood and body fluid stains
6 left on evidence items. We develop those DNA profiles, and we
7 compare those profiles to DNA recovered from samples taken
8 from known individuals, who may or may not have deposited that
9 evidence.

10 Q. If you find a DNA profile from a particular item matches
11 the DNA from a known contributor, someone who has provided
12 blood or some other sample, and you find what is called a
13 match, what do you then?

14 A. Just to determine that DNA profiles from an individual
15 match the evidence is only half the job. The second half of
16 that job is to determine how common or how rare that DNA
17 profile is. After all, we want to know whether every other
18 person on the street might be carrying the DNA profile that we
19 found in the evidence, would it be every hundredth person,
20 every thousandth. So it is an evaluation of how common or
21 rare the DNA profiles in the evidence are.

22 Q. What level of certainty does the FBI lab state that a
23 particular amount of DNA or particular DNA was contributed by
24 a given person?

25 A. When we calculate how common or rare a profile is, we look

1 at that number that we obtain, and if a DNA profile found in
2 the evidence that has matched someone is more rare than 1 in
3 260 billion -- that's with a B -- billion persons, then we or
4 I would conclude that that individual was the contributor of
5 that body fluid or DNA sample.

6 Q. At the other end of the scale can you also exclude a
7 person as a contributor of DNA?

8 A. Yes, yes. We do that often.

9 Q. If you exclude the person has not providing the DNA which
10 matches a sample, how certain is that?

11 A. That's absolute. There is no probability estimate
12 involved in that.

13 Q. Besides coming to the conclusion that a person did provide
14 the DNA that is contained in a sample and excluding that
15 person, what other results can you reach?

16 A. There is a third category that we sometimes confront,
17 other than excluding someone or matching someone, and that is
18 when the results of the analysis are not clear or don't permit
19 me to reach a conclusion of match or exclusion, and then I
20 will say that information is inconclusive for that particular
21 part of the profile.

22 Q. Did you receive certain items or specimens in connection
23 with this case?

24 A. Yes, sir.

25 Q. Did you perform some DNA analysis on those items?

1 A. Yes, sir.

2 Q. Did you also receive blood samples from persons known as
3 Louis Pepe, Khalfan Mohamed, and Mamdouh Salim?

4 A. Yes, sir.

5 MR. FITZGERALD: Your Honor, at this time I would
6 read a stipulation, which is Government's Exhibit 4068, which
7 states:

8 It is hereby stipulated and agreed by and between the
9 United States of America and defendant Khalfan Khamis Mohamed,
10 by and with the consent of his attorneys, that in performing
11 the forensic analysis discussed in his testimony, Samuel
12 Baechtel, the DNA expert from the FBI laboratory, used blood
13 samples obtained from Correction Officer Louis Pepe, Mamdouh
14 Salim and Khalfan Khamis Mohamed, which were taken from each
15 of the three persons, sealed, and transported to the FBI
16 laboratory.

17 I would offer that at this time.

18 THE COURT: That is received.

19 (Government Exhibit 4068 received in evidence)

20 Q. Sir, among the items tested did that include some blood
21 stains and at times swabbings from some blood stains?

22 A. Yes, sir.

23 Q. For some of those items, particularly the swabbings of the
24 blood stains, were there items for which you could not
25 identify the DNA?

1 A. There were some of those items which yielded no DNA
2 capable of being typed, yes.

3 Q. For other items, did you in fact identify DNA?

4 A. Yes, sir.

5 Q. In addition to the blood stains, did you also test
6 clothing and other items?

7 A. Yes.

8 Q. Did you prepare reports concerning the results of your
9 comparisons?

10 A. Yes, sir.

11 Q. Prior to coming to court, did you assist in the
12 preparation and verification of an overlay to a chart which
13 would indicate who, what person contributed the DNA to
14 particular items that were tested for blood?

15 A. Yes, sir.

16 MR. FITZGERALD: Your Honor, I would approach the
17 witness with what has been premarked as 4000, which is a clear
18 transparent overlay on top of 4000-E, an enlargement of the
19 sketch of the 10 south unit of the MCC, which I think Agent
20 Hatton indicated where certain items were seized.

21 Q. I ask Mr. Baechtel, is this the overlay that you were
22 discussing and did you review it for accuracy?

23 A. Yes, sir.

24 MR. FITZGERALD: Your Honor, I would offer
25 Government's Exhibit 4000-O, the overlay on top of 4000-E.

1 MR. RUHNKE: No objection.

2 THE COURT: Received.

3 (Government Exhibit 4000-0 received in evidence)

4 Q. If we could talk about the blood stains for a moment, and
5 I will refer to the Government's Exhibit numbers and I will
6 also refer to the lab Q numbers to make sure we are on the
7 same page. If we look at blood sample number 1, which you
8 have listed as Q25, which is indicated to be in the area of 10
9 South of the MCC, outside of cell number 1, did you analyze
10 that stain and what conclusion did you reach?

11 A. Yes. That stain was analyzed and the DNA from that stain
12 was contributed by Mamdouh Salim.

13 Q. Turning to blood sample No., blood stain number 3, which
14 is Q41, which is shown on the chart 4000-0, for overlay, as
15 being opposite the office between cell number 3 and cell
16 number 4, did you analyze that blood stain and what conclusion
17 did you reach?

18 A. Yes, that also was analyzed and that DNA was contributed
19 by Louis Pepe.

20 Q. Turning to blood stain number 4, which is Q39, which is
21 located, as indicated on the chart 4000-0, in the hall between
22 cells number 4 and number 5, did you analyze that stain and
23 what result did you receive?

24 A. Yes, that also was analyzed and that DNA was contributed
25 by Khalfan Mohamed.

1 Q. Turning to blood stain number 5, Q27, which is indicated
2 on 4000-0, the overlay, as being located in the doorway of
3 cell number 6, did you analyze that stain, and what conclusion
4 did you reach?

5 A. It also was analyzed, and that DNA was contributed by
6 Louis Pepe.

7 Q. Turning finally to blood stain number 8, which is Q31,
8 which is a stain inside cell 6, opposite the shower area, as
9 reflected on 4000-0, did you analyze that stain, and what
10 result did you reach?

11 A. Yes, it was analyzed, and that DNA was also contributed by
12 Louis Pepe.

13 Q. Now I am going to refer to some of the green dots that are
14 displayed, referring to various clothing items. First, could
15 you tell us the method by which you would test blood stains on
16 clothing items.

17 A. All possible blood stains go through a two-step process.
18 The first test is what we call a presumptive test procedure,
19 which rapidly let us rule out what is not blood. By that I
20 mean if we get a positive result in that test, then it means
21 to me that blood is possibly present, and if there is
22 sufficient material we will go to the second phase, which is
23 the confirmatory test procedure, which confirms, which if that
24 is positive, confirms the presence of blood.

25 Q. Did you pick certain of the stains in each item to test

1 for DNA analysis?

2 A. Yes, sir.

3 Q. Turning to the green item known as Government's Exhibit
4 4058, or Q51, which is indicated on this chart as found
5 opposite cell 1, do you understand them to be a pair of sweat
6 pants?

7 A. I do.

8 Q. Can you tell us the result of your analysis of the stains
9 on that item.

10 A. Yes. Four different stains from that item were subjected
11 to DNA analysis. The first stain, there is a single
12 contributor and that contributor was Mamdouh Salim. There
13 were two stains on that garment, that pair of sweat pants, in
14 which the sole contributor was Louis Pepe. And for the fourth
15 stain it was a mixture of DNA, and by that I mean at least two
16 people contributed DNA to that particular stain area. One of
17 those individuals I could recognize as the major contributor
18 of DNA. What that means is more of that person's DNA was
19 present, and the strength of the signal that I get during the
20 analysis indicates that that was the major contributor. The
21 major contributor to that particular stain was Mamdouh Salim.
22 I can also tell you that as regards the minor contributor,
23 that Khalfan Mohamed would be excluded as the minor
24 contributor to that stain.

25 Q. Did you also test Officer Pepe's blood to see whether that

1 was a contributor to that stain, that one sample?

2 A. Louis Pepe's blood was tested as part of the analysis,
3 yes, sir.

4 Q. But there were no conclusive results?

5 A. It was inconclusive with regard to the minor contributor
6 of that stain.

7 Q. The reflection on the chart here is that with regard to
8 that item, you have listed Salim and Pepe as contributors to
9 the stains on Government's Exhibit 4058, correct?

10 A. Yes, sir.

11 Q. Turning to Government's Exhibit 4075, or Q52, another pair
12 of sweat pants, which is indicated on the chart as being
13 located outside the recreation area on the right-hand side of
14 the map of 10 South, did you analyze that item, and what
15 conclusions did you reach?

16 A. Yes, sir. Four stain areas from that garment also were
17 subjected to DNA analysis. For three of those stain areas,
18 Louis Pepe is the sole contributor. For a fourth stain from
19 that item, it is once again a mixed stain in which at least
20 two people have contributed. The major contributor to that
21 DNA stain was Louis Pepe, and I can tell you that Mamdouh
22 Salim is excluded as the minor contributor.

23 Q. Again, for that item did you test the blood, or compare
24 the blood of both Louis Pepe, Khalfan Mohamed and Mamdouh
25 Salim?

1 A. They were all compared, yes, sir.

2 Q. If I could display on the screen, Government's Exhibit
3 4075A-P, and if you could tell us, using 4075A-P, which of
4 those stains you did the DNA analysis on by number, and I will
5 also show you B-P, which is the other side.

6 A. If I point to this, can the jury see what I am pointing
7 to?

8 Q. No, but if you refer to the number I will have
9 Mr. Francisco point a white arrow when you describe it, and if
10 you could tell us whether that arrow is in the appropriate
11 place.

12 A. On the left leg just below the knee there is a stain
13 labeled 1B on the other side.

14 Q. Is the arrow pointing to 1B, which is where the circle is
15 around the stain?

16 A. Yes, sir.

17 Q. Are those markings added at the laboratory, just so we are
18 clear?

19 A. Yes, sir.

20 Q. OK, 1B. Where else did you test on that item?

21 A. Dash 5B, which is just right across on the other leg.
22 That area in there is what was tested.

23 Q. Is the arrow correctly indicating the 5B area, the large
24 circle?

25 A. Yes, sir. 7B, which is directly over to the other edge of

1 that item, right above that arrow.

2 Q. Was the last area 9B? If we could show 4075B-P.

3 A. Dash 9, which is where the arrow points right now.

4 Q. Now I would like to talk to you about two T-shirt items.

5 One is Government's Exhibit 4078, also known as Q53, and on
6 the chart it is this green dot located outside cell number 4.
7 Did you compare that item, do DNA profiling on the blood from
8 that item, and what conclusion did you reach?

9 A. Yes, sir, DNA profiling was performed on four stains from
10 that item. Three of those stains, for three of those stains
11 Louis Pepe is the sole contributor. For the fourth stain, it
12 is, as I mentioned before, a mixture of DNA from at least two
13 people. The major contributor to that stain is Louis Pepe,
14 and I can tell you that Mamdouh Salim is excluded as a minor
15 contributor to that stain.

16 Q. Again, did you compare the DNA profiles with both Mamdouh
17 Salim, Khalfan Mohamed and Louis Pepe for that item?

18 A. Yes, sir.

19 Q. If I could display Government's Exhibit 4078P, and if you
20 could indicate to the jury those four areas that you tested,
21 compared the DNA profiles where they are located on 4078P?

22 A. Yes. Dash 1, the first stain is going to be in the lower
23 right-hand part of the shirt, lower left of the screen.
24 That's it.

25 Q. Is the arrow correctly pointing beneath that area circled?

1 A. Yes, sir.

2 Q. And the next area?

3 A. Dash 5, which is up just about where the heart would be.

4 Yes. That is another area that was tested.

5 And 9 -- let's see. Let's catch 3 while we are
6 there. 3 is in the lower left-hand part of the shirt, right
7 there.

8 Q. The arrow is correctly pointing where that is?

9 A. Yes. Finally stain 9, which is --

10 Q. If we could show the other, 4078B-P.

11 A. -- which is on the outside back of the right sleeve.

12 There you go. That's it.

13 Q. Did you also test an item known as Q54, which we will deem
14 marked as Government's Exhibit 4076 -- and if I could have one
15 moment.

16 Your Honor, there is a stipulation with counsel that
17 that is a shirt provided by the medical unit downstairs at the
18 MCC and not recovered from the floor, which is why it is not
19 on the chart.

20 MR. RUHNKE: Your Honor, if I could have a moment
21 with Mr. Fitzgerald.

22 MR. FITZGERALD: In fact it is stipulated that it was
23 cut off Mamdouh Salim, I believe. We will stipulate that it
24 is Salim's shirt, to make it simple.

25 MR. RUHNKE: That is right.

1 Q. Could you tell us the results of your analysis on Q54,
2 Government's Exhibit 4076.

3 A. Yes, sir. Three stains there were subjected to DNA
4 analysis. One of those stains, the sole contributor was Louis
5 Pepe, and for two of those stains the sole contributor to each
6 was Mamdouh Salim.

7 MR. FITZGERALD: I would offer Government's Exhibit
8 4076, your Honor.

9 MR. RUHNKE: Without objection.

10 THE COURT: Received.

11 (Government Exhibit 4076 received in evidence)

12 Q. Using Government's Exhibit 4076P, could you indicate to
13 the jury which areas were tested.

14 A. Yes. 2B, which is over on the right breast of that shirt,
15 right there. Dash 4B, which is in the lower left-hand part of
16 the shirt. And finally 6, which is on the outside back of the
17 left sleeve. That is where you are pointing.

18 Q. Did you also test a number of shoes?

19 A. Yes, sir.

20 Q. Let me ask you questions about Q55, which is Government's
21 Exhibit 4064, which is a shoe reflected on the chart, 4064,
22 which is shown outside cell number 5 with a green dot, and ask
23 you what the results of your analysis were regarding
24 Government's Exhibit 4064, or Q55.

25 A. Two stain areas from that shoe were subjected to DNA

1 analysis, and Louis Pepe is the sole contributor, or was the
2 sole contributor to both of those.

3 Q. If we could display 4064A-P and 4064B-P. If you could
4 just tell us which two areas were tested on Q55, what the
5 numbers areas are.

6 A. Yes. The number 1 area is rather large. As you can see,
7 it extends from the top of the shoe where the area is for the
8 moment, and if you follow the silver line you see it goes all
9 the way back across the top of the shoe and then the line
10 comes back under the sole, underneath on the bottom of the
11 shoe till it returns to the starting point up there at the
12 toe.

13 Q. So the area 1 includes the top of the shoe, side of the
14 shoe and the bottom of the shoe?

15 A. Yes.

16 Q. Area number 3, was that also tested?

17 A. Yes. As you can see, it's on the top of the toe, over on
18 the right part of the toe of that shoe.

19 Q. Approaching you with the original exhibit, Government's
20 Exhibit 4064, if you could remove that item.

21 A. Did you say remove it?

22 Q. Yes, if you could just remove it, I can give you some
23 gloves.

24 A. I've got some.

25 Q. And just show where the item, how the item was tested for

1 the area 3, or 3B.

2 MR. FITZGERALD: Your Honor, I would offer
3 Government's Exhibits 4064A-P, 4064B-P and 4076-P, the
4 photographs.

5 MR. RUHNKE: No objection.

6 THE COURT: Received.

7 (Government Exhibits 4064A-P, 4064B-P and 4076-P
8 received in evidence)

9 Q. If you could just show the jury how the area 3 was tested.

10 A. Yes. Area 3, it was this part of the shoe that you see
11 missing was cut out after the identification of blood, and
12 that area of the stain was subjected to DNA analysis.

13 Q. Thank you. So obviously these pictures were taken at the
14 lab prior to the removal of that patch?

15 A. Yes, sir.

16 Q. Now if I could direct your attention to Q56 -- you can put
17 that item away, if you like -- also known as 4063, and 4063
18 would be the green dot outside the electrical closet outside
19 cell 6 on the chart. If you could tell us what the results of
20 your analysis on that item, Government's Exhibit 4063 was.

21 A. Yes. One area was subjected to DNA analysis and Louis
22 Pepe was the contributor of that DNA.

23 MR. FITZGERALD: If I could offer and display
24 Government's Exhibit 4063P, which is a photograph of the shoe.

25 MR. RUHNKE: No objection.

1 Q. If you could tell us what area was tested on the shoe.

2 A. Yes, right there on the toe where you see the dark area on
3 the top of the toe item, the darkly stained area there.

4 Q. To the right of area number 1?

5 A. Yes, if you move the arrow to the right a little bit,
6 starting in there.

7 Q. Again, that would be reflected on this chart as having
8 Pepe next to 4063 and the same with regard to 4063, the name
9 Pepe to show that he is the contributor?

10 A. Yes, sir.

11 Q. Did there also come a time when you tested a jump suit,
12 Government's Exhibit 4087, also known as Q50? That would show
13 on the chart at 4087 with the green dot, inside cell 6, past
14 the chair, before the shower, apparently near the toilet area
15 in cell number 6.

16 A. Yes, I did test that.

17 Q. What were the results of your analysis?

18 A. Four different stain areas from that item were tested, and
19 the DNA for each of those areas was contributed by Louis Pepe.

20 Q. Finally, did you test Government's Exhibit 4082, which was
21 Q65 and Q66, which were some white strips of sheet-like
22 material?

23 A. Yes, sir.

24 Q. What was your analysis?

25 A. The DNA on both of those items was contributed by Louis

1 Pepe.

2 Q. And again, for the record, 4082 would be the blue dot in
3 the doorway of cell 6, reflected by an orange arrow showing
4 the name Pepe beneath that.

5 Finally, did you test an exhibit known to us as
6 Government's Exhibit 4042, also known others Q20? 4042 is the
7 blue dot in the area outside of cell 6, between cell 6 and the
8 electrical closet.

9 A. Yes, sir, I tested that also.

10 Q. What were the results of your analysis?

11 A. The DNA on that item was contributed solely by Louis Pepe.

12 Q. Let me show you Government's Exhibit 4042. Is this the
13 item that you are referring to and as reflected on the chart,
14 which is determined to have Mr. Pepe's blood on it?

15 A. Yes, sir.

16 Q. Would you take it out and just hold it up, just show us
17 what the item is.

18 A. These gloves are slippery on these plastic bags.

19 MR. FITZGERALD: Thank you, Judge. I have nothing
20 further.

21 THE COURT: Cross-examination, Mr. Ruhnke?

22 MR. RUHNKE: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. RUHNKE:

25 Q. Dr. Baechtel, you were submitted three different blood

1 samples in the laboratory, is that correct, known samples?

2 A. Actually, more of the known samples were submitted.

3 Q. Were some of the known samples submitted actually what are
4 called buccal swabs?

5 A. I could look.

6 Q. Is that how you pronounce it?

7 A. Yes, sir. Yes, sir, a number of buccal swabs.

8 Q. Just for reference, a buccal swab is a cotton swab taken
9 from the mouth which picks up a lot of cells; is that correct?

10 A. Yes.

11 Q. So the only three blood samples you had were K1, K2 and
12 K12; is that correct?

13 A. I had additional known stains, sir, that were not
14 subjected to DNA analysis, however.

15 Q. K1 was identified as the blood of Khalfan Khamis Mohamed,
16 is that correct?

17 A. Yes, sir.

18 Q. K2 was identified as the blood of Mamdouh Ahmed Salim, is
19 that correct?

20 A. Yes, sir.

21 Q. K12 was Officer Pepe's blood, correct?

22 A. Yes.

23 Q. Included among the items that were submitted to you were
24 numerous articles of clothing and other items that were
25 identified as having either been carried by Officer Pepe,

1 belonging to Officer Pepe or worn by Officer Pepe; is that
2 correct?

3 A. To be honest, I don't know if those three situations -- I
4 knew those three situations. I just know them as items
5 submitted for this case. Whether Officer Pepe was carrying
6 any items, I don't know.

7 Q. Let's start with Khalfan Mohamed's blood then. In all the
8 analysis that you conducted, is it correct that you identified
9 the blood of Khalfan Mohamed in only one location?

10 A. Yes, sir.

11 Q. That location was via a swabbing of the floor of a
12 hallway, is that correct?

13 A. I just know it as item number 4 on that exhibit.

14 Q. Item number?

15 A. Stain number 4.

16 Q. And stain number 4 on that exhibit shows it being in the
17 hallway area outside cells 4 and 5, based on the summary
18 exhibit that you looked at, correct?

19 A. OK.

20 MR. RUHNKE: Could we have Exhibit 4007 displayed for
21 the jury, in evidence.

22 Q. Can you see it, Doctor?

23 A. Yes.

24 Q. Looking at 4007 in evidence, do you know that to be the
25 stain -- almost directly in the middle of the photograph, do

1 you know that to be the stain that was analyzed as Q39?

2 A. I don't know. I could look in the notes and see if any
3 identification in the communications indicated where that was
4 taken from.

5 Q. For example, let me look at the summary chart.

6 Do you know what blood sample number 4 was in your
7 analysis?

8 A. In my analysis, it was Q39.

9 Q. Q39, is that correct?

10 A. Yes. Q39.

11 Q. Of all the items that you examined and tested for the
12 presence of Khalfan Mohamed's DNA, this was the sole item
13 where his DNA appeared; is that not correct?

14 A. It is the sole item where it was identified as the
15 contributor, yes, sir.

16 Q. Do you see an item in that photograph in the foreground?

17 A. The brown garment down there on the floor?

18 Q. Yes.

19 A. Yes, I see that.

20 Q. Do you recognize that as an item that you tested?

21 A. Looks like it could be, yes.

22 Q. Let me just put some gloves on.

23 You previously testified or testified a few minutes
24 ago that there was one item that was identified for your
25 purposes as Salim's shirt recovered from the MCC medical unit,

1 correct? Do you remember that testimony a few moments ago?

2 A. Yes, but I don't remember which item it was. I have two
3 shirts here.

4 (Continued on next page)

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1 Q. Mr. Baechtel, I'm going to hold up to you the second
2 exhibit, which is 4078, I'll take it out of the bag, and I'm
3 going to display the front of this garment and the back of
4 this garment to the jury. And is this the item that was Q53
5 for purposes of your examination?

6 A. Yes, sir.

7 Q. Did you also have submitted to you for examination tissue
8 paper and news-type paper that appeared to be in blood?

9 A. Appeared to be what?

10 Q. Appeared to have blood on them?

11 A. Yes, sir.

12 MR. RUHNKE: Can I see Government Exhibit 4022-A,
13 please, displayed.

14 Q. Do you see the photograph depicting, apparently, some
15 tissue paper with some apparent blood stains on it?

16 A. Yes, it's right in the center of that black box, or the
17 lower bottom of that center of that black box.

18 Q. Yes. Do you see to the left of that what appears to be a
19 light fixture that has on it some newspaper or other paper
20 covering up the light fixture with what appear for our
21 purposes to be blood stains on that as well?

22 A. That's what it looks like, yes.

23 Q. Did you analyze those stains on that tissue or those
24 papers? This would be item Q77 and Q76.

25 A. Yes, sir. We did Q76.

1 Q. What were the results of Q76?

2 A. Off that item I analyzed four stain areas, and the
3 contributor of the DNA to those stain areas was Louis Pepe.

4 Q. To the stain areas on Q76?

5 A. Yes, sir.

6 Q. I'm going to show you in a moment the other shirt that was
7 taken. In analyzing body fluids, fluids that come out of our
8 bodies, are there some fluids that do contain nucleated cells
9 in the sense that they can be analyzed via DNA and other types
10 ever fluids that do not?

11 A. And other what that do not?

12 Q. Do not contain cells appropriate for DNA analysis?

13 A. Well, any biological fluid that is going to have nucleated
14 cells -- now, for example, blood has two different types of
15 cells generally it. It has white blood cells and red blood
16 cells. White blood cells have nuclear DNA. Red blood cells
17 do not.

18 Q. And actually, you are looking simply for white blood cells
19 when you do your analysis; is that correct?

20 A. When the source is blood. If the source is skin, why, we
21 are looking for cells from skin.

22 Q. And is there a bodily fluid that is known as the vitreous
23 humor?

24 A. Yes. It's inside the eyeball, I believe.

25 Q. And does the vitreous humor lend itself to DNA analysis?

1 A. To be frank, I don't know.

2 Q. How about the aqueous humor?

3 A. I don't know that also.

4 Q. Do you what that is?

5 A. If there were nucleated cells floating about in that
6 fluid -- if, I say -- if there were, and I don't know if there
7 are, then they would be possibly suitable.

8 Q. Both the fluids that I mentioned are in and around the eye
9 area of a person, is that not correct?

10 A. That's right.

11 Q. Is there also something called cerebrospinal fluid in our
12 bodies?

13 A. Yes.

14 Q. And for example, does the brain have a fluid in and around
15 it that helps to cushion it from injury and damage?

16 A. I believe so, yes.

17 Q. Is that known as cerebrospinal fluid?

18 A. I would consider that such, yes.

19 Q. I'm going to show you the second shirt, Government Exhibit
20 4076, and you tested this for the presence of DNA, obviously,
21 and reached certain conclusions about this shirt. And just
22 for the record and for clarity, this is a shirt that was
23 testified a few moments ago as having been recovered from
24 Mamdouh Salim in the medical unit on the day in question.

25 And this was Q54 among the items that you identified;

1 is that correct?

2 A. Yes, sir.

3 Q. Tell us again on Q54 the areas that you particularly cut
4 out samples from, if you can recall. Actually --

5 A. I have to look at the notes, sir.

6 Q. Look at your notes rather than looking at this garment.

7 A. Area 2B, which is on the outside right, upper -- on the
8 outside front, upper right of that shirt.

9 MR. RUHNKE: Just for a moment can I have 4076-P
10 displayed for the jury so they can follow what you are saying.

11 A. Okay. Move the arrow to the right, and that stain area
12 right there. Move the arrow down into the right onto 4B, that
13 area. And finally, I believe 6 is on the other side, the back
14 of the left sleeve. Yes.

15 Q. And those were the four items that you analyzed?

16 A. Those were the three areas that were DNA tested.

17 Q. On that particular shirt?

18 A. Yes.

19 Q. I am also going to show you what has been marked Q52 in
20 evidence. And do you recall that Q52 was an item seized in
21 the hallway between Cells 4 and 5, or in the vicinity of Cells
22 4 and 5?

23 A. I don't recall that, but if that's what was stated, I'll
24 say, yes.

25 Q. And next I'm going to take out Government Exhibit 4085.

1 A. What number did you say, sir?

2 Q. This is Government Exhibit 4085, which is your Q51 for
3 identification.

4 A. I had that as Government Exhibit 4058.

5 Q. 4058. If I said it wrong, I'm sorry. 4058. And that
6 accounts to Q51?

7 A. 51.

8 Q. On Q51, I direct your attention to some staining, appears
9 to go down the left thigh area of Q51.

10 MR. RUHNKE: I'm going to approach if may, your
11 Honor?

12 THE COURT: Yes.

13 A. Yes, sir.

14 Q. Do you see a yellow, clear-type stain extending down the
15 left. I'm holding the left leg in front of you of Q51, a
16 yellowish discoloration. It seems to --

17 A. Yes, I can see it when the light is on it, right in there.

18 Q. All right.

19 A. Yes.

20 Q. And have you examined garments or other materials that
21 have on them cerebrospinal fluid or the various humors aqueous
22 humor, vitreous humor, from the human eye?

23 A. Not knowingly, no, sir.

24 Q. Did you test this material at all to see if it was even
25 biological in nature?

1 A. That yellowish area that you are --

2 Q. That yellowish area.

3 A. That is not circled. I can tell you that -- if you would
4 bring it back to me, please.

5 I can tell you this area right here, which is a
6 little dark red spot to the left of that arrow, was
7 presumptively positive for the presence of blood. But as far
8 as that yellow area, I performed no test on that.

9 Q. There was no testing performed at all on that area?

10 A. No, sir.

11 Q. Just one final question. Again, based on all the analysis
12 that you performed, the only area that you found any blood
13 associated or any DNA attributed by Mr. Mohamed was in the
14 area I am pointing to, which is stain number 4; is that
15 correct?

16 A. Yes, that is the only stain in which I could conclusively
17 match Khalfan Mohamed, yes.

18 Q. I'm sorry. And one final question. Let me just finish
19 putting this away. I'm going to look for the number of one
20 exhibit from the photo exhibit.

21 MR. RUHNKE: Could I have Government Exhibit 4004
22 displayed, please. Display Government Exhibit 4004.

23 Q. Do you see a trail of blood leading -- to be more precise,
24 do you see a trail of what appears to the lay person to be
25 blood leading to a large puddle of blood displayed in that

1 photograph?

2 A. Yes.

3 Q. And referring to the summary chart, this would be blood
4 stain number 1; is that correct?

5 A. I can't see the chart, but I'll take your word for it,
6 sir.

7 Q. And blood stain number 1 on the summary chart was examined
8 by you in the lab and was determined that Salim was the soul
9 contributor to that sample; is that correct?

10 A. Yes, sir.

11 MR. RUHNKE: Nothing further, your Honor.

12 MR. FITZGERALD: Nothing further, Judge.

13 THE COURT: Thank you. You may step down.

14 (Witness excused)

15 MR. FITZGERALD: The government calls Special Agent
16 John Scarbeck.

17 JOHN SCARBECK,

18 called as a witness by the government,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. FITZGERALD:

22 Q. Sir, you testified at the earlier part of the trial,
23 correct?

24 A. Yes, I did.

25 Q. Are you still employed by the FBI?

1 A. Yes, I am.

2 Q. And directing your attention back to late December 1998,
3 did you have occasion to fly back from Germany with a person
4 by the name of Mamdouh Mahmud Salim?

5 A. Yes, I did.

6 Q. And as part of that flight, on that flight, did the FBI
7 take pictures of Mr. Salim with his shirt off?

8 A. Yes, they did.

9 Q. Let me approach you with what has been premarked as
10 Government Exhibits 4121 through 4124 and ask you to take a
11 look at those four photographs.

12 Do those four photographs fairly and accurately
13 depict what Mr. Salim looked like on that day in December 1998
14 with his shirt off?

15 A. Yes, it does.

16 MR. FITZGERALD: Your Honor, I would offer the
17 photographs.

18 MR. RUHNKE: Without objection.

19 THE COURT: Received.

20 (Government Exhibits 4121, 4122, 4123 and 4124
21 received in evidence)

22 MR. RUHNKE: If we could just display 4121 through
23 4124.

24 (Exhibits displayed)

25 MR. FITZGERALD: I have nothing further.

1 CROSS-EXAMINATION

2 BY MR. RUHNKE:

3 Q. Agent, as part of your duties in accompanying the flight
4 back from Germany, where Mr. Salim had been extradited, did
5 you make any note of his height and weight?

6 A. I did not personally.

7 Q. Was he logged into the Metropolitan Correction Center
8 later that evening?

9 A. To the best of my recollection, yes, he was.

10 Q. What date was that that he was actually arrived in the
11 United States of America?

12 A. I don't remember offhand the exact date.

13 Q. Were you present when his height and weight were recorded
14 as 6 feet tall, 170 pounds?

15 A. I do not recall.

16 Q. Does that sound like an accurate estimate of Mr. Salim's
17 height and weight?

18 A. I would say so, fairly, yes.

19 MR. RUHNKE: Nothing further, your Honor.

20 MR. FITZGERALD: Nothing further, Judge.

21 THE COURT: Thank you. You may step down, agent.

22 THE WITNESS: Thank you.

23 (Witness excused)

24 MR. GARCIA: The government calls Maxim Koslow.

25 MAXIM KOSLOW,

1 called as a witness by the government,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. GARCIA:

5 Q. Dr. Koslow, how are you employed? Where do you work?

6 A. At New York University Medical Center.

7 Q. And what is your -- if you could speak a little closer to
8 the microphone.

9 And what do you do at the Bellevue Medical Center?

10 A. I am the associate director of the Department of
11 Neurosurgery at Bellevue.

12 Q. And how long have you been associate director of that
13 department?

14 A. Approximately ten years, maybe a little bit more.

15 Q. How long have you been practicing in this area of
16 neurosurgery?

17 A. Since approximately 1980.

18 Q. Directing your attention to November 1 of 2000, did you
19 treat a patient on that day named Louis Pepe?

20 A. Yes, I did.

21 Q. Where did you first see Mr. Pepe that day?

22 A. At Bellevue Hospital on the third floor, the radiology
23 department.

24 Q. What stage of procedures was he at at that time?

25 A. He had just had a CAT scan of his head and was about to

1 have an angiogram.

2 Q. And a cat scan of the head area, what would that show?

3 A. It is a radiologic technique that shows you slices of the
4 head and brain.

5 Q. I am going to show you what has been marked as Government
6 Exhibits 4112 and 4113. Are these CAT scans or CT scans done
7 of Louis Pepe?

8 A. That's correct.

9 MR. GARCIA: Your Honor, the government would offer
10 4112 and 4113.

11 MR. RUHNKE: No objection.

12 THE COURT: They are received.

13 (Government Exhibits 4112 and 4113 received in
14 evidence)

15 THE COURT: There are certain rules that apply with
16 respect to x-rays and documents of this sort. I just want to
17 note that if the occasion arises, there may be some limitation
18 on the extent to which the jury can make use of exhibits which
19 require expertise to read and understand.

20 MR. GARCIA: If we could put up Government Exhibit
21 4113 on the elmo. Start with the lower photo, the lower
22 image.

23 Q. Could you explain for us, Doctor, what we are seeing here
24 on this CT scan?

25 A. Yes. This is one slice of the CT scan, which, if I point

1 here, does that --

2 Q. If you just would speak a little bit louder into the mike.

3 A. This is one slice of the CT scan. And just for

4 orientation, that's the right side, that's the left side.

5 These are the ears. This is the right eye. So this is the

6 front of the head, the back of the head and the sides.

7 Q. Let me stop you for a second, Doctor. The top of the
8 screen is the front of the head, the top of the screen here?

9 A. That's correct.

10 Q. And the bottom is the back of the head, obviously?

11 A. That's correct.

12 Q. And there is a thick white issue line around part of the
13 image. What is that, circling the back of the image, a thick
14 white line?

15 A. I'm not sure what you are referring to.

16 Q. The skull area?

17 A. The area around here is the skull.

18 THE COURT: Doctor, when you say "around here," that
19 is not meaningful in the printed record, nor does the jury
20 know what you are pointing to.

21 THE WITNESS: Yes.

22 THE COURT: Try and do it in words.

23 THE WITNESS: Yes, your Honor.

24 The dense white area encircling the image is the
25 skull.

1 Q. And up near the top, which, looking at the image on your
2 right-hand side where the object appears to be, what eye would
3 that be of the patient?

4 A. That's the left eye.

5 Q. So, in effect, this is reversed?

6 A. You are referring to this?

7 Q. Right. On our right, the object is in the patient's left
8 eye?

9 A. That is correct.

10 Q. And the left side, then, would be the eye which there was
11 no damage to?

12 A. That's correct.

13 Q. And focusing on the side that has the object, could you
14 explain what we are seeing here? What is the damage to this
15 patient?

16 A. Yes. The object is partially sitting in the left orbit,
17 which is the globe of the eye and the muscles that control the
18 movements of the eye, and then approximately here it enters
19 inside the skull and is into the brain, we'll call the left
20 temporal lobe.

21 Q. And approximately how far into the brain did this object
22 go?

23 A. It's approximately eight centimeters. About two and a
24 half inches.

25 Q. And if we could see the image on the top of that

1 Government Exhibit 4113. And again, what are we seeing here,
2 Doctor?

3 A. This is a, the way these images are taken is like a loaf
4 of bread, where you take a series of slices and they have done
5 what we call the axial projection, which is cross sections of
6 the head, and then you can stack them up and radiologically
7 reconstruct to look at other planes other than the axial. And
8 this is a sagittal reconstruction of the CT scan so that you
9 are looking at it from the side, sliced from the side.

10 Q. You mention that this object went approximately two and a
11 half inches into what you called the left temporal lobe?

12 A. That's correct.

13 Q. And generally speaking, what does that area of the brain
14 control?

15 A. The left temporal lobe, most importantly, controls
16 language function, speaking and understanding language; also
17 controls to some extent vision and to some extent movement on
18 the opposite side of the body.

19 MR. GARCIA: If we could have displayed Government
20 Exhibit 4112.

21 Q. Again, starting with the images in the upper left-hand
22 corner of Government Exhibit 4112, is that a similar image to
23 the one that you were just talking about on 4113?

24 A. Yes, the one you saw before is one slice lower than this,
25 towards the base of the skull.

1 Q. One slice down?

2 A. Correct.

3 MR. GARCIA: And if we could just show some of the
4 other images, perhaps pull back to show more images here.

5 Q. Dr. Koslow, on these images -- and we are talking about
6 the second two on the top row and the second and third row --
7 there appear to be lighter and darker areas. Could you
8 explain for us what those represent?

9 A. Yes. The gray areas that you see are the brain; the black
10 areas, wherever you see black, is spinal fluid; and wherever
11 you see white inside the skull is blood.

12 Q. If we could lift that exhibit up to see a little bit
13 lower.

14 Doctor, on what appears to be the bottom row now on
15 the screen, the image all the way in the right corner, it
16 appears that the image on the right side of the brain has less
17 detail than on the left side of the brain. Is there a reason
18 for that?

19 A. Yes.

20 Q. What is that reason?

21 A. Because there is increased pressure of and swelling of the
22 left hemisphere of the brain.

23 Q. Doctor, you mention that there is white images displayed
24 on these images on 4112, and you mention that that was blood;
25 is that correct?

1 A. That's correct.

2 Q. Based on your reading of these CT scans, did you come to
3 any conclusion as to where this patient was bleeding or
4 whether or not he had any blood clots?

5 A. Yes.

6 Q. What was that?

7 A. That there was a large blood clot in the left temporal
8 lobe with extension into the, what we call the subdural space,
9 which is the space between the brain and the covering of the
10 brain, which is called the dura, and blood in the ventricular
11 system, which are the passageways inside the brain where the
12 spinal fluid is made.

13 Q. After viewing the CAT scan images for the patient Louis
14 Pepe, did you consider any issues about his treatment, whether
15 or not to operate?

16 A. Well, the first issue was the performance of an angiogram.

17 Q. And what is an angiogram?

18 A. Angiogram is an injection of dye directly into the
19 arteries that feed the brain so you can see what the pattern
20 of the blood flow is and what the arteries look like.

21 Q. Was this in fact done for the patient, Mr. Pepe?

22 A. Yes, it was.

23 Q. If I could approach and show you Government Exhibits 4111
24 and 4116. Are those angiograms taken of Mr. Pepe on November
25 1st?

1 A. Yes, they are?

2 MR. GARCIA: The government offers 4111 and 4116.

3 MR. RUHNKE: Without objection.

4 THE COURT: Yes, received, subject to my caveat.

5 (Government Exhibits 4111 and 4116 received in
6 evidence)

7 MR. GARCIA: If we could display 4116 on the elmo
8 first.

9 Q. Looking at those images, Doctor, could you explain to us
10 what the results of the angiogram analysis was for Louis Pepe?

11 A. Yes. On this view, which is an anterior/posterior
12 projection, and that is, dye is injected and a series of
13 x-rays are taken head-on to look at the flow of blood through
14 the brain over a period of time, and we're looking at an
15 injection into the left carotid artery, which is one of the
16 major arteries that feeds the brain, the front part of the
17 brain.

18 And this is the carotid artery in the neck, which
19 then goes, when it reaches approximately here, enters the
20 intracranial space and then divides into two major arteries,
21 the anterior cerebral and the middle cerebral artery on the
22 left side. There is a mirror circulation on the right side.
23 And what we see on this particular film is the middle cerebral
24 artery should be almost horizontal in its normal position;
25 here, it is lifted up.

1 Q. Doctor, just to back up a little bit, let's start -- we'll
2 look at the image on the right of the screen, our right of the
3 screen. The very dark thick area on the bottom of that image,
4 is that the carotid artery?

5 A. That's the common carotid artery, right.

6 Q. Following that line up towards the top of the image on the
7 right hand of the, right-hand image, there appears to be a
8 part at the top of that image where it splits almost into a V
9 shape.

10 A. You are talking up here?

11 Q. They can't see what you are pointing to, but at the very
12 top of this image.

13 A. Correct.

14 Q. And is it your testimony that that in fact should be more
15 of a square?

16 A. Correct.

17 Q. Perpendicular?

18 A. Correct.

19 Q. And the fact that the artery that is now not perpendicular
20 but more towards a V, what does that indicate to you?

21 A. That means that there is mass effect of the temporal lobe.

22 Q. Would that be pressure pushing that artery up?

23 A. That's correct.

24 Q. And can you also tell anything about the blood flow
25 through these arteries?

1 A. Yes. When you look at the serial, the sequence of the
2 whole angiogram where blood goes, the dye goes through the
3 arteries and then into smaller arteries and capillaries and
4 then small veins, et cetera, you can look at the time course
5 of that flow of blood, and in this case it was prolonged.

6 Q. Very slow?

7 A. Correct.

8 Q. And would there be a risk associated with that type of
9 flow of blood through these arteries?

10 A. Yes.

11 Q. And what would that be?

12 A. You get eschemia, decreased blood supply or even stoppage
13 of blood supply to areas of the brain, and it can cause
14 strokes.

15 Q. Doctor, after viewing the CAT scans for Mr. Pepe and the
16 angiograms, did you reach a decision about how to proceed
17 medically with this patient?

18 A. Yes.

19 Q. And what did you decide, and why?

20 A. To do surgery in an attempt to save his life.

21 Q. And what was the specific goal in doing the surgery?

22 A. To relieve the increased pressure in the brain by removing
23 the blood clot and taking out the penetrating object.

24 Q. Prior to beginning the actual operation, did you have an
25 opportunity to examine, look at this patient, Louis Pepe?

1 A. Very briefly.

2 Q. Could you describe what you observed on his face?

3 A. He had a lot of blood covering his face. He had a
4 laceration of the left forehead and an object sticking out of
5 his left orbit.

6 Q. And let's focus on the laceration on his left forehead. A
7 cut; is that correct?

8 A. That's correct.

9 Q. Approximately how long was that cut?

10 A. Perhaps an inch or so.

11 Q. How deep?

12 A. It was down to the bone, skull.

13 Q. And could you indicate approximately where that was? And
14 I will describe it for the record.

15 A. (Witness indicating.)

16 Q. Above the left eye?

17 A. Correct.

18 Q. Could you tell us, then, how you proceeded when you
19 operated on Mr. Pepe?

20 A. Yes. What we did is make a scalp incision which started
21 in front of his left ear and then came back and forward like a
22 reverse question mark, incorporating the laceration in this
23 part of the, higher part of the incision. And then you
24 reflect the scalp and muscle, the temporalis muscle, which is
25 the thick muscle at the temple, and then drill a hole in the

1 skull and use a special type of saw to remove a large window
2 of the skull to get access to the covering of the brain and
3 the brain.

4 Q. And that window that you describe is on the side of the
5 skull?

6 A. That's correct.

7 Q. And after you accomplished that, what was the procedure?

8 A. To open the dura, sort of like a parchment-paper-thick
9 layer that covers the brain, and then make an incision in the
10 brain initially to decompress the blood clot, to remove some
11 of the blood clot, and then you extend the incision to be able
12 to remove all the blood clot and expose and get control of the
13 penetrating object.

14 Q. This object, was it removed from the patient at that time?

15 A. Yes, eventually.

16 Q. And can you tell us the procedure you followed for doing
17 that?

18 A. Once we had exposed the entire length of the object within
19 the brain so that we could put some clamps on it so when it
20 was pulled out it didn't move or wiggle, we initially tried to
21 remove it that way and weren't able to because it was wedged
22 into the bone in the back of the orbit. And at that point the
23 plastic surgery people who were operating with us took a piece
24 of the skull out in the orbit, exposing the intraorbital
25 portion of the object, and then we were able to take it out.

1 Q. Doctor, you mentioned the bone of the orbit, is that the
2 back of the eye socket?

3 A. That's correct.

4 Q. And is that bone behind the eye socket of uniform
5 thickness?

6 A. It varies depending on what portion of the orbit it is.

7 Q. And the portion that the object here passed through, would
8 that be one of the thinner portions or the thicker portions of
9 the orbit?

10 A. It was actually both; partially through one of the thicker
11 portions and also fractured the thinner portion of the orbit.

12 Q. And the object that you did in fact remove, what did it
13 look like?

14 A. It was a, I don't exactly know how to describe -- it was a
15 long, probably, I guess, very hard plastic, rubber, pointed
16 object with serrations on it, sort of similar to a serrated
17 knife, pointed knife.

18 MR. GARCIA: And if I might approach with Government
19 Exhibit 4041?

20 THE COURT: Yes.

21 Q. Do you recognize that, Doctor?

22 A. Yes, I do.

23 Q. And I'm going to also hand you 4041-A, a container
24 containing a small object. Do you recognize that?

25 A. Yes, I do.

1 Q. Are those the, 4041, the actual instrument you removed
2 from the patient, Louis Pepe?

3 A. That's correct.

4 Q. And the other object, 4041-A, is that a small piece of
5 that first?

6 A. That's correct.

7 Q. And I will show you 4041-P. Is that a fair and accurate
8 photograph of the object 4041?

9 A. Yes, it is.

10 MR. GARCIA: At this time, Judge, we would offer
11 4041, 4041-A and 4041-P, and ask that 4041 be displayed.

12 THE COURT: Yes, proceed.

13 (Government Exhibits 4041, 4041-A and 4041-P received
14 in evidence)

15 BY MR. GARCIA:

16 Q. Again, Doctor, this is the instrument that you removed
17 that day?

18 A. Yes, it is.

19 Q. And there is a small piece of plastic in 4041-A. Could
20 you indicate for us where that came from on this knife?

21 A. Approximately here.

22 THE COURT: In words, please.

23 THE WITNESS: Approximately the second serration
24 after the large vertical piece.

25 Q. After the object was removed, did there come a time that

1 you closed back up the incision that you had made that you
2 described for us?

3 A. Yes.

4 Q. And looking into the orbit, or the eye socket, was there
5 anything left of the actual eye?

6 A. No, the globe was totally destroyed.

7 Q. And what was done with that?

8 A. The globe and muscle cone were removed by the
9 ophthalmologic surgeons.

10 Q. Then was the area of the eye closed?

11 A. The actual orbit was not closed. It was packed with
12 packing.

13 Q. Was anything done to seal the area behind the eye?

14 A. Yes. We had tried to repair the dura as best we could,
15 and then the plastic surgeons rotated a portion of the
16 temporalis muscle inside the skull in the, just behind the
17 orbit to try to seal that before we put the bone flap and
18 closed the scalp.

19 Q. And did you continue to monitor the patient Louis Pepe's
20 condition after the operation?

21 A. Yes.

22 Q. Did any complications develop within the next few days?

23 A. He developed, as I remember, pneumonia and urinary tract
24 infections and had a fairly prolonged, lengthy postop course
25 with fevers and developed a leak of spinal fluid through the

1 orbit.

2 Q. Is that because some of the vessels carrying spinal fluid
3 had been damaged behind the eye?

4 A. It is because the covering of the brain had been damaged
5 so that there was a communication between the brain cavity
6 where fluid flows and the outside through the orbit.

7 Q. Did there come a time after the operation that the patient
8 also suffered a stroke?

9 A. Yes.

10 Q. Approximately when did that happen?

11 A. It was noted on the CT scan, as I recall, approximately
12 two or three days after the initial operation.

13 MR. GARCIA: If I might approach with Government
14 Exhibit 4109.

15 Q. Is that a copy of the CT scan done at about that time?

16 A. This is an MRI scan which was done some time later. This
17 was the 10th of March.

18 Q. Would this MRI scan show the area affected by the stroke?

19 A. Yes.

20 MR. GARCIA: The government offers 4109.

21 THE COURT: Received.

22 (Government Exhibit 4109 received in evidence)

23 MR. GARCIA: Is it possible to make it a little bit
24 lighter and just lifting it up one more row.

25 That's fine.

1 Q. Looking, Doctor, at the full row that is on the bottom,
2 the first full row from the bottom, the two right images, do
3 those show the areas affected by the stroke?

4 A. Yes, it does. Or, they do.

5 Q. Generally, if you can describe it for us. What area of
6 the image is that?

7 A. It's on the left side. This is the same convention, that
8 the left side is on your right as you look at the images. You
9 see an area of gray, which is sort of wedge-shaped on all the
10 images going out to the -- it's wedge-shaped and going out to
11 the surface of the brain, and that is an area of infarction.

12 Q. And that area which is on the lower right side of the
13 image as we are facing it, what does that represent, that
14 grayish area?

15 A. It represents an area of death of the cells.

16 Q. And what would the effect of the death of those cells be
17 on the patient?

18 A. It would affect in that location, again, in addition to
19 the language difficulty, here particularly the vision and the
20 movement of the right side of the body.

21 Q. Doctor, this type of injury, is the damage to the patient
22 complete with the initial trauma of the instrument entering
23 through the eye and into the brain?

24 A. No.

25 Q. Is this an ongoing injury?

1 A. Yes, it is.

2 Q. And could you explain what you mean by that?

3 A. There are a series of biochemical and physical changes
4 that occur within the brain basically as a cascade of damage
5 that usually goes on for a period of time after the initial
6 insult to the brain.

7 Q. Would that also be as a result of the increase in
8 pressure, things of that nature?

9 A. That's correct.

10 Q. And as a result of the damage done to Officer Pepe here,
11 what condition is he in?

12 A. He is alert. He has got what we call a severe receptive
13 and expressive dysphasia, which refers to his language
14 function, his ability to communicate both in terms of
15 understanding what is said to him and being able to
16 communicate to other people what he wants to communicate. He
17 has a right hemiparesis, which is worse in the arm than the
18 leg, and he's got a visual deficit.

19 Q. The hemiparesis, I believe you called it, is that a
20 paralysis?

21 A. It's a partial paralysis.

22 Q. And you mentioned a language difficulty. Doctor, would
23 that only be with spoken language or would that also affect
24 his ability to communicate through writing?

25 A. It would affect all aspects of language.

1 Q. You mentioned damage to his sight. Doctor, based only on
2 the injury to his brain, to the left temporal lobe, without
3 any damage to the eye mechanics itself, would there have been
4 a loss of sight to this patient?

5 A. Yes, there would.

6 Q. And if you could, describe what that loss would have been
7 based solely on the injury to the brain.

8 A. What we call a right homonymous hemianopia, which means
9 that the ability to see to the right-hand side in both eyes is
10 affected.

11 Q. So if you break down each eye to a right and a left field,
12 so a total of four fields, the right field for each eye would
13 be affected?

14 A. That's correct.

15 Q. Would the sight be eliminated in that field?

16 A. That is correct.

17 Q. And then add to that the damage to the eye itself, that
18 would eliminate the sight field for the left eye completely?

19 A. Correct.

20 Q. So, in effect, this patient is left with one field sight
21 in total?

22 A. That's correct.

23 Q. So he has lost more sight than just losing the eye itself?

24 A. That is correct.

25 THE COURT: How much longer will you be on direct?

1 MR. GARCIA: We could break now, Judge. Not much
2 longer.

3 THE COURT: We'll take our midmorning break.

4 (Jury not present)

5 THE COURT: We'll take a five to ten-minute recess.

6 (Recess)

7 THE COURT: Let's bring in the jury.

8 MR. GARCIA: One minute before. Just to advise the
9 Court, we have very short time with this witness. After
10 whatever cross, the government plans to read three clean-up
11 stipulations, and to just display the weapon, not pass it to
12 the jury.

13 THE COURT: Yes.

14 MR. GARCIA: Without formally resting so we can look
15 into things this afternoon, and then we would be prepared to
16 either rest or go forward in the morning.

17 THE COURT: So what you are saying is you think we
18 will end early today?

19 MR. GARCIA: We will end, obviously not to be
20 speaking for Mr. Ruhnke, but we have about five minutes more
21 of things to take up. We would like not to formally rest at
22 this point.

23 MR. RUHNKE: We will definitely end before lunch,
24 your Honor.

25 THE COURT: End before lunch, all right.

1 You can bring in the jury.

2 Have you resolved the stipulations? There was
3 something that required my attention. We will resolve that.

4 MR. FITZGERALD: There is one stipulation that
5 requires your attention and some other issues we could perhaps
6 deal with after the jury is excused.

7 THE COURT: After the jury is excused. All right.

8 (Jury present)

9 THE COURT: Mr. Garcia, you may continue.

10 MR. GARCIA: Thank you, Judge.

11 BY MR. GARCIA:

12 Q. Dr. Koslow, prior to the break you were speaking about
13 some of the complications that Mr. Pepe had suffered as result
14 of his injury, correct?

15 A. That's correct.

16 Q. Is there also a problem with blood clots?

17 A. Yes.

18 Q. Could you tell us about that?

19 A. He developed blood clots in his right leg, the weak leg.

20 Q. What would cause blood clots like that to appear?

21 A. Not using the leg; the leg being paralyzed.

22 Q. First of all, as a result of the clot, did his leg become
23 swollen?

24 A. That's correct.

25 Q. What would be the danger of a blood clot for the patient?

1 A. Mr. Pepe had had previously had a filter placed, which is
2 like an umbrella which goes into the main vein that drains the
3 lower extremities to prevent large blood clots from breaking
4 off to go to the lungs. You can also get blood clots, and
5 with the filter, the blood in the leg tends to be -- does not
6 circulate well and tends to get what we call stasis, venous
7 stasis, and the leg swells.

8 Q. And venous stasis leads to swelling, is that correct?

9 A. Correct.

10 Q. And blood clots getting into the lungs, what would be the
11 result?

12 A. It is one of the causes of sudden death.

13 Q. Dr. Koslow, have you continued periodically to see Officer
14 Pepe at the hospital?

15 A. Yes, I have.

16 Q. Is he presently at a facility at the NYU Medical Center?

17 A. That's correct.

18 Q. Based on your examinations and your dealings with the
19 patient, what is Louis Pepe's condition now?

20 A. He has a severe expressive and receptive dysphasia,
21 language difficulty. His right lower extremity has gotten
22 better to some extent and he can stand with support. He has
23 got very little motion, movement of his right upper extremity,
24 and no obvious change in the visual difficulty.

25 Q. And in your opinion, is this a major permanent disability?

1 A. Yes, it is.

2 MR. GARCIA: I have nothing further, Judge.

3 MR. RUHNKE: We have no questions, your Honor.

4 THE COURT: No questions?

5 MR. RUHNKE: No questions.

6 THE COURT: Thank you, Doctor. You may step down.

7 (Witness excused)

8 MR. GARCIA: Judge, at this time we would like to
9 read three stipulations.

10 THE COURT: Three stipulations.

11 MR. GARCIA: The first, Government Exhibit 4088: It
12 is hereby stipulated and agreed between the parties as
13 follows:

14 Although the fingerprint expert testified that a
15 latent fingerprint belonging to Mamdouh Salim was identified
16 on Government Exhibit 4054, in fact that fingerprint belonging
17 to Salim was identified on Government Exhibit 4052. There
18 were no fingerprint identifications with respect to Government
19 Exhibit 4054.

20 And at this time the government would offer 4088.

21 THE COURT: Yes, received.

22 (Government Exhibit 4088 received)

23 MR. GARCIA: It is hereby stipulated and agreed
24 between the parties that Government Exhibit 4091 consists of
25 eyeglasses belonging to Khalfan Mohamed and the case for those

1 glasses, and is further stipulated and agreed that this
2 stipulation may be received in evidence as a government
3 exhibit at trial. And the government would offer that
4 stipulation, Government Exhibit 4069, and hold up 4091,
5 already in evidence.

6 THE COURT: Yes.

7 (Government Exhibit 4069 received in evidence)

8 MR. GARCIA: And the final stipulation, number 4067:
9 It is hereby stipulated and agreed between the parties as
10 follows:

11 That Khalfan Khamis Mohamed was born on July 25th,
12 1973 and was, thus, 25 years of age as of August 7th, 1998.

13 And the government would offer that stipulation,
14 number 4067.

15 THE COURT: Received.

16 (Government Exhibit 4067 received in evidence)

17 MR. GARCIA: As a final thing, I would just like to
18 hold up, and not pass, Government Exhibit 4041, now in
19 evidence.

20 THE COURT: Yes.

21 (Government Exhibit 4041 displayed to the jury)

22 MR. GARCIA: And that's all at this time, Judge.

23 THE COURT: Ladies and gentlemen, things have moved
24 at a more rapid rate than was provided for, which I am sure we
25 are all grateful for, which is another way of saying that that

1 is all for today.

2 We have ordered lunch. It is your option whether you
3 want to stay or not. If you opt not to stay, the food will
4 not be wasted, the marshals tell me, particularly the heavier
5 marshals tell me.

6 The likely time sequence is that the case on behalf
7 of K.K. Mohamed will begin tomorrow and will run the rest of
8 the week, and that next week, after closing argument and the
9 jury charge, you will begin your deliberations sometime next
10 week. And as I have already mentioned, we won't sit on
11 Wednesday.

12 But that is it for today. Thank you.

13 (Jury not present)

14 THE COURT: Counsel want to see me about some
15 stipulation. You want to do that in open court or in the
16 robing room?

17 MR. FITZGERALD: There are some other matters that
18 involve the robing room as well.

19 THE COURT: So we will do it all in the robbing room.
20 And insofar as open court is concerned, we're adjourned until
21 tomorrow morning.

22 (Pages 8075 through 8098 filed under seal.)

23 (Adjourned to June 26, 2001 and 10:00 a.m.)

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